PROFESSIONAL SERVICE AGREEMENT
POWER DRIVE ROAD EXTENSION – 35TH AVE TO HWY 275
CITY PROJECT NUMBER PW21-11
CITY OF COUNCIL BLUFFS, IOWA

Mr. Matthew S. Cox, P.E.
Director of Public Works / City Engineer
City of Council Bluffs
209 Pearl Street
Council Bluffs, IA 51503

Dear Mr. Cox:

FELSBURG HOLT & ULLEVIG (FHU) proposes to provide professional engineering services for the PW21-11 Power Drive Road Extension – 35th Avenue to Highway 275 (Veterans Memorial Highway) project.

Scope of Services

FELSBURG HOLT & ULLEVIG TO PROVIDE THE FOLLOWING SERVICES:

Task 1 - Project Management
Initiate and monitor project schedules, workload assignments and internal cost controls throughout the project. Also included are efforts to prepare and process invoices and monthly progress reports; prepare project correspondence with the City; and maintain project records.

Task 2 – Meetings
Attend project meetings with the City to review specific design elements. Includes meeting preparation and distribution of meeting minutes.

Task 3 – Topographic Information
Complete topographic survey required to complete the preliminary and final design of the project. This work is planned to be completed by a subconsultant.

Task 4 – Utility Coordination
Review the utility locations shown on the plans and verify these locations during field inspections. Identification and verification by the utility companies of major utility conflicts such as fiber optic lines, gas pipelines, crude oil pipelines, high-pressure waterlines, transmission lines, etc., will be accomplished early in the design process.

Task 5 – Agency Coordination
Agency coordination may include, but are not limited to, Burlington Northern Santa Fe Railway and the Iowa DOT. Coordination may include meetings, correspondence, document preparations and applying for permits.

Task 6 – Geotechnical Analysis
Complete geotechnical services for the project. This work is planned to be completed by a subconsultant.

Task 7 – Drainage Design
Complete an analysis of the existing drainage network and determine impacts from the project. Design new drainage systems to accommodate the proposed roadway profile and alignment.

Task 8 – Environmental Services
Complete evaluations of potential environmental impacts. Assist in the preparation of any necessary documentation and permits required, including wetland delineations to support Section 404 permitting needs. Agency coordination for permitting may include, but are not limited to, US Army Corps of Engineers, Iowa Department of Natural Resources (IDNR), and the Iowa State Historic Preservation Office (SHPO).

Task 9 – Traffic Engineering
Provide necessary traffic engineering services to complete signal design, signing and striping, signal timings, traffic control, and other traffic engineering tasks.

Task 10 – Right-of-Way (ROW) Design
Coordinate and prepare necessary documentation to obtain ROW, easements, outside permits, legal descriptions, and assessments.

Task 11 – Design Plan Submittals
In consultation with the City, prepare and submit all drawings, special provisions, and cost estimate, to the City at 30%, 60%, and 95% submittals.

Task 12 – Bidding Phase
Prepare the necessary contract documents and permits through the City of Council Bluffs for the Project. Provide other services as directed by the City to initiate the Bidding Phase.

Task 13 – Construction Phase
Provide construction observation, project management, and construction staking services necessary to determine in general that work by the contractor is proceeding in accordance with the Contract Documents. The City will be kept informed of the progress of the work. Review of shop drawings, coordination of testing services, processing of change orders, and applications for payment will also be provided. Some of this work will be completed by a subconsultant.

Fee Schedule

The consultant proposes to conduct these services on a "time and materials" basis. Under such an agreement, we are compensated on an hourly basis for all labor and other direct costs, such as printing, are reimbursed at a rate of 1.1 times actual cost. The FHU 2021 Standard Rates are our standard hourly billing rates. The contract will be hourly, not to exceed a negotiated maximum. Subconsultants may provide services on a lump sum fee schedule.

Scope of Service	*Fee Basis*
Task 1 – Project Management	Hourly, not to exceed negotiated maximum.
Task 2 – Meetings	Hourly, not to exceed negotiated maximum.
Task 3 – Topographic Information	Lump Sum
Task 4 – Utility Coordination	Hourly, not to exceed negotiated maximum.
Task 5 – Agency Coordination	Hourly, not to exceed negotiated maximum.
Task 6 – Geotechnical Analysis	Lump Sum
Task 7 – Drainage Design	Hourly, not to exceed negotiated maximum.
Task 8 – Environmental Services	Hourly, not to exceed negotiated maximum.
Task 9 – Traffic Engineering	Hourly, not to exceed negotiated maximum.
Task 10 – Right-of-Way (ROW) Design	Hourly, not to exceed negotiated maximum.
Task 11 – Design Plan Submittals	Hourly, not to exceed negotiated maximum.
Task 12 – Bidding Phase	Hourly, not to exceed negotiated maximum.
Task 13 – Construction Phase	Hourly, not to exceed negotiated maximum.

Actual project fees will be determined at a later date and approved by a supplemental agreement.

FHU 2021 Standard Rates

The following hourly billing rates apply to all "Time and Materials" contracts.

Staff Rates

Principal III	$270
Principal II	$240
Principal I	$220
Associate	$210
Sr. Bridge Engineer	$195
Bridge Engineer V	$175
Bridge Engineer IV	$155
Bridge Engineer III	$130
Bridge Engineer II	$115
Bridge Engineer I	$110
Sr. Engineer	$195
Engineer V	$175
Engineer IV	$155
Engineer III	$130
Engineer II	$115
Engineer I	$105
Sr. Environmental Scientist/Planner	$190
Environmental Scientist/Planner V	$175
Environmental Scientist/Planner IV	$155
Environmental Scientist/Planner III	$130
Environmental Scientist/Planner II	$115
Environmental Scientist/Planner I	$105
GIS Manager	$190
GIS Specialist V	$170
GIS Specialist IV	$155
GIS Specialist III	$130
GIS Specialist II	$115
GIS Specialist I	$105
Sr. Transportation Planner	$190
Transportation Planner V	$170
Transportation Planner IV	$155
Transportation Planner III	$130
Transportation Planner II	$115
Transportation Planner I	$105
Lead ITS Specialist	$200
CADD Manager	$190
Sr. Bridge Designer	$185
Lead Designer	$180
Sr. Designer/Project Technician	$160
Designer V/Project Technician V	$145
Designer IV/Project Technician IV	$135
Designer III/Project Technician III	$115
Designer II/Project Technician II	$100
Designer I/Project Technician I	$90
Sr. Construction Technician	$140
Construction Technician V	$130
Construction Technician IV	$115
Construction Technician III	$100
Construction Technician II	$90
Construction Technician I	$75
Intern I	$55
Graphic Design Manager	$150
Graphic Design Specialist V	$140
Graphic Design Specialist IV	$135
Graphic Design Specialist III	$120
Graphic Design Specialist II	$105
Graphic Design Specialist I	$90
Marketing Manager	$150
Marketing Specialist	$115
Systems Administrator	$120
Sr. Administrative Assistant	$115
Administrative.	$90

Other Direct Costs

Plots

Bond	$0.31/sq ft

Prints

Black and White	$0.12/print
Color	$0.19/print

Presentation Boards

Bond Foam Core Mounted	$1.51/sq ft

Travel

Mileage	$0.575/Mile (or current allowable Federal rate)
Truck (Construction)	$45.00/day
Parking	Actual Costs
Lodging/Airfare	Actual Costs

Other Miscellaneous Costs

Courier/Postage	Actual Costs
Per Diem	Actual Costs
Subconsultants/Vendors	Actual Costs

Other direct costs are reimbursed at a rate of 1.1 times the rates above and/or actual costs

Engineering Contract Provisions

A. INDEMNIFICATION

The **ENGINEER** agrees to indemnify and save harmless the City, its officers, agents, and employees from and against any and all claims including reasonable attorneys' fees and defense costs arising out of the negligent acts, errors, or omissions of the **ENGINEER**, its officers, agents, and employees in the execution of the services specified in this Agreement.

In recognition of the relative risks and benefits of the project to both the City and **ENGINEER**, the risks have been allocated such that the City agrees, to the fullest extent permitted by law, to limit the liability of the **ENGINEER** and their sub-consultants to the **OWNER** and to all construction contractors and subcontractors on the project for any and all claims, losses, costs, damages of any nature whatsoever or claims expenses from any cause or causes, so that the total aggregate liability of the **ENGINEER** and their sub-consultants to all those named shall not exceed $2,000,000.00. Such claims and causes include negligence, professional errors or omissions, strict liability, breach of contract or warranty.

B. INSURANCE

The **ENGINEER** shall maintain insurance to protect the **ENGINEER** from claims under Worker's Compensation Acts; claims due to personal injury or death of any employees or any other person; claims due to injury or destruction of property; and claims arising out of errors, omissions, or negligent acts for the ENGINEER is legally liable. The amounts and extent of such insurance is as follows:

1. Professional Liability -	$2,000,000 each claim; $2,000,000 aggregate
2. Vehicle Coverage	
Bodily Injury -	$1,000,000 combined single limit (each accident)
3. Worker's Compensation -	$100,000 each accident
4. General Liability -	$1,000,000 each occurrence and $2,000,000 aggregate

C. ARBITRATION

Any controversy or claim arising out of this Agreement may, if both parties agree, be decided by arbitration in accordance with the Construction Industry Arbitration Rules of the American Arbitration Association.

The cost of the arbitration, if any, will be divided equally between the **OWNER** and the **ENGINEER**.

D. ENGINEER'S RESPONSIBILITY

The **ENGINEER** shall be responsible for the professional quality and technical accuracy of all services furnished by the **ENGINEER** under this Agreement, except for that work provided by **OWNER**. The **ENGINEER** shall, without additional compensation, correct or revise any error or deficiencies in his work. Approval of the **OWNER** of any such work shall not in any way relieve the **ENGINEER** of responsibility for the technical accuracy and adequacy of said services. The **OWNER's** review, approval or acceptance of, or payment for any of the services shall not be construed to operate as a waiver of any rights under this Agreement or of any cause of action arising out of the performance of this Agreement.

Special Provisions

A. RESPONSIBILITIES OF THE OWNER

The **OWNER** shall provide and make available to the **ENGINEER**, for his use, all maps, property descriptions, surveys, previous reports, historical data, and other information within its knowledge and possession relative to the services to be furnished hereunder. Data so furnished to the **ENGINEER** shall remain the property of the **OWNER** and will be returned upon completion of its services

The **OWNER** shall make provisions for the **ENGINEER** to enter upon public and private properties as required for the **ENGINEER** to perform its services hereunder.

B. EXTRA WORK

The **OWNER** may desire to have the **ENGINEER** perform work or render services other than those provided in Scope of Work. This will be Extra Work. Work shall not proceed until so authorized by the **OWNER**. Payment for all work under this Agreement shall be on an hourly basis plus expenses in accordance with the attached rate schedule. Charges for outside services, expenses, and subconsultant work will be billed at 1.10 times the invoice amount.

C. TIME OF BEGINNING AND COMPLETION

Execution of the Proposal is authorization by the **OWNER** for the **ENGINEER** to proceed with the work (Time of Beginning). The original Time of Completion is as noted in the Agreement.

D. PAYMENT

Unless otherwise provided herein, **ENGINEER** shall submit monthly invoices for Basic, Additional or Special Services and for Reimbursable Expenses each month for work that has been performed. If hourly, invoices will be based on labor and expenses incurred. If lump sum, invoices will be based on the percentage of work completed.

Payments not made within 60 days of the billing date shall bear interest at the rate of 1% per month which is an annual interest rate of 12%. If any portion of, or an entire account remains unpaid 90 days after billing, the **OWNER** shall pay all costs of collection, including reasonable attorney's fees.

E. DELAYS

If the **ENGINEER** is delayed at any time in the progress of work by any act or neglect of the **OWNER** or its agents, employees or contractors, or by changes in the work, or by extended reviews by the **OWNER**, fire, unavoidable casualties, or by any causes beyond the **ENGINEER'S** control, the time schedule shall be extended for a reasonable length of time, and **ENGINEER'S** compensation may be subject to renegotiation for increased expenses due to escalation of prices, extended services, rework, and/or other expenses incidental to such delays.

F. OWNERSHIP OF DOCUMENTS

All drawings, specifications, reports, records, and other work products developed by the **ENGINEER** associated with this project are instruments of service for this project only and shall remain the property of the **ENGINEER** whether the project is completed or not. The **ENGINEER** shall furnish originals or copies of such work product to the **OWNER** in accordance with the services required hereunder. Reuse of any of the work product of the **ENGINEER** by the **OWNER** on an extension of this project or on any other project without the written permission of the **ENGINEER** shall be at the **OWNER'S** risk and the **OWNER** agrees to defend, indemnify, and hold harmless the **ENGINEER** from all claims, damages, and expenses including attorney's fees arising out of such unauthorized reuse by the **OWNER** or by others acting through the **OWNER**. Any reuse or adaptation of the **ENGINEER'S** work product shall entitle the **ENGINEER** to equitable compensation.

G. TERMINATION

Either the **OWNER** or the **ENGINEER** may terminate this Agreement at any time with or without cause upon giving the other party fourteen (14) calendar days prior written notice. The **OWNER** shall within sixty (60) calendar days of termination pay the **ENGINEER** for all services rendered and all costs incurred up to the date of termination, in accordance with the compensation provisions of this contract.

H. SUCCESSORS AND ASSIGNS

The **OWNER** and the **ENGINEER** each binds itself and its partners, successors, executors, administrators and assigns to the other party of this Agreement and to the partners, successors, executors, administrators and assigns of such other party with respect to all covenants of this Agreement. Neither party shall assign or transfer its interest in this Agreement without the written consent of the other.

I. EXTENT OF AGREEMENT

This Agreement represents the entire and integrated agreement between the parties and supersedes all prior negotiations and representations. Nothing herein shall be deemed to create any contractual relationship between the **ENGINEER** and any other consulting business, or contractor, or material supplier on the project, nor obligate it to furnish any notices required under other such contracts, nor shall anything herein be deemed to give anyone not a party to this Agreement any right of action against a party which does not otherwise exist without regard to this Agreement.

J. NOTICES

All notices and instructions given by either party to the other shall be in writing, and shall be deemed to be properly served if delivered to the address of record shown below, or if deposited in the United States Mail properly stamped with the required postage and addressed to such party at the address in the Proposal or Agreement. The date of service of a notice sent by mail shall be deemed to be the day following the date on which said notice is so deposited. Either party hereto shall have the right to change its address by giving the other party written notice thereof.

K. ACCURACY OF SERVICES AND LIMITATION OF LIABILITY

The **ENGINEER** shall use reasonable professional skill and judgment in providing the services, hereunder, but does not warrant that such services are without errors and/or omissions. If, during the authorized use and prudent interpretation of documents or advice furnished by the **ENGINEER**, an error or omission is discovered within a reasonable time, the **ENGINEER** shall be responsible for correction of any work which must be removed or altered to meet the project requirements, provided the **ENGINEER** is given a reasonable opportunity to make remedial recommendations and to correct or arrange for the correction of the work itself. The **ENGINEER** will not be liable for the cost of procurement of work or services performed in correcting such errors and/or omissions where such work or services result in a value to the Project over and above that which the original work or services provided.

In providing opinions of probable construction cost, the **OWNER** understands that the **ENGINEER** has no control over costs or the price of labor, equipment, or materials, or the Contractor's method of pricing, and that the opinions of probable construction costs provided herein are to be made based on the **ENGINEER'S** qualifications, and experience. The **ENGINEER** makes no warranty, expressed or implied, as to the accuracy of such opinions as compared to bid or actual costs.

The **ENGINEER** agrees, to the fullest extent permitted by law, to indemnify and hold the **OWNER** harmless from any damage, liability or cost (including reasonable attorneys' fees and costs of defense) to the extent caused by the **ENGINEER'S** negligent acts, errors or omissions in the performance of professional services under this Agreement and those of his or her subconsultants or anyone for whom the **ENGINEER** is legally liable.

The **OWNER** agrees, to the fullest extent permitted by law, to indemnify and hold the **ENGINEER** harmless from any damage, liability or cost (including reasonable attorneys' fees and costs of defense) to the extent caused by the **OWNER'S** negligent acts, errors or omissions and those of his or her contractors, subcontractors or consultants or anyone for whom the **OWNER** is legally liable, and arising from the project that is the subject of this Agreement. **OWNER'S** amount of indemnity or costs incurred in providing the indemnity shall be limited to the same amount as the **ENGINEER'S** liability is listed below.

As negotiated as a part of this Agreement, to the fullest extent permitted by law, and not withstanding any other provision of this Agreement, the total liability, in the aggregate, of the **ENGINEER** and the **ENGINEER'S** officers, directors, partners, employees, agents and subconsultants, to the **OWNER** and anyone claiming by, through or under the **OWNER**, for any and all claims, losses, costs or damages of any nature whatsoever arising out of, resulting from or in any way related to the Project or the Agreement from any cause or causes, including but not limited to the negligence, professional errors or omissions, strict liability, breach of contract or warranty, express or implied, of the **ENGINEER** or the **ENGINEER'S** officers, directors, employees, agents or subconsultants, or any of them, shall not exceed the total amount of $100,000.

Upon execution of the Agreement or Proposal, the **OWNER** thereby agrees to the terms of these Special Provisions.

L. COMPLIANCE AND REGULATIONS

During the performance of this contract, the engineer, for itself, its assignees and successors in interest (hereinafter referred to as the **ENGINEER**) agrees as follows:

1. Compliance with Regulations: The Engineer shall comply with the Regulations relative to nondiscrimination in federally-assisted programs of the Department of Transportation (hereinafter, "DOT") Title 49, Code of Federal Regulations, Part 21, as they may be amended from time to time, (hereinafter referred to as the "Regulations"), which are herein incorporated by reference and made a part of this contract.

2. Nondiscrimination: The Engineer, with regard to the work performed by it during the contract, shall not discriminate on the grounds of race, color, national origin, sex, age, or disability in the selection and retention of subcontractors, including procurement of materials and leases of equipment. The Engineer shall not participate either directly or indirectly in the discrimination prohibited by Section 21.5 of the Regulations, including employment practices when the contract covers a program set forth in Appendix "B" of the Regulations.

3. Solicitations for Subcontracts, Including Procurement of Materials and Equipment: In all solicitations either by competitive bidding or negotiation made by the Engineer for work to be performed under a subcontract, including procurement of materials or leases of equipment, each potential subcontractor or supplier shall be notified by the Engineer of the Engineer 's obligations under this contract and the Regulations relative to nondiscrimination on the grounds of race, color, national origin, sex, age, or disability.

4. Information and Reports: The Engineer shall provide all information and reports required by the Regulations or directives issued pursuant thereto, and shall permit access to its books, records, accounts, other sources of information, and its facilities as may be determined by the City of Council Bluffs, the Iowa Department of Transportation or Federal Highway Administration to be pertinent to ascertain compliance with such Regulations, orders and instructions. Where any information required of an engineer is in the exclusive possession of another who fails or refuses

to furnish this information, the Engineer shall so certify to the City of Council Bluffs, the Iowa Department of Transportation or the Federal Highway Administration as appropriate, and shall set forth what efforts it has made to obtain the information.

5. Sanctions for Noncompliance: In the event of the Engineer's noncompliance with the nondiscrimination provisions of this contract, the City of Council Bluffs shall impose such contract sanctions as it, the Iowa Department of Transportation or the Federal Highway Administration may determine to be appropriate, including, but not limited to:

   a. withholding of payments to the Engineer under the contract until the Engineer complies; and/or,
   b. cancellation, termination or suspension of the contract, in whole or in part.

6. Incorporation of Provisions: The Engineer shall include the provisions of Paragraphs (1) through (6) in every subcontract, including procurement of materials and leases of equipment, unless exempt by the Regulations, or directives issued pursuant thereto. The Engineer shall take such action with respect to any subcontract or procurement as the City of Council Bluffs, the Iowa Department of Transportation or the Federal Highway Administration may direct as a means of enforcing such provisions including sanctions for non-compliance; provided, however, that, in the event an engineer becomes involved in, or is threatened with, litigation with a subcontractor or supplier as a result of such direction, the Engineer may request the City of Council Bluffs or the Iowa Department of Transportation to enter into such litigation to protect the interests of the City of Council Bluffs or the Iowa Department of Transportation; and, in addition, the Engineer may request the United States to enter into such litigation to protect the interests of the United States.

(signature page to follow)

Dated this_____ day of_____, 20____.

CITY OF COUNCIL BLUFFS, IOWA
CONTRACTING AUTHORITY

ATTEST:

_____
Jodi Quakenbush, City Clerk

OWNER

By: _____
Matthew J. Walsh, Mayor

ATTEST:

_____
Dave Lampe, Principal

ENGINEER
FELSBURG HOLT & ULLEVIG

By: _____
Mark Meisinger, Principal