

**BOARD OF COUNTY COMMISSIONERS**  
**SARPY COUNTY, NEBRASKA**  
**RESOLUTION APPROVING AGREEMENT WITH FELSBURG, HOLT & ULLEVIG**  
**FOR THE DESIGN AND ENVIRONMENTAL EVALUATION OF IMPROVEMENTS**  
**TO THE INTERSECTION OF 156<sup>TH</sup> & GILES ROAD**

WHEREAS, pursuant to Neb. Rev. Stat. §23-104(6) (Reissue 2007), the County has the power to do all acts in relation to the concerns of the county necessary to the exercise of its corporate powers; and,

WHEREAS, pursuant to Neb. Rev. Stat. §23-103 (Reissue 2007), the powers of the County as a body are exercised by the County Board; and,

WHEREAS, improvements are needed to the intersection of 156<sup>th</sup> & Giles Road in Sarpy County, Nebraska, and agreement has been proposed with Felsburg, Holt & Ullevig to provide professional services in the design and environmental evaluation of improvements to said intersection.

NOW, THEREFORE, BE IT RESOLVED BY THE SARPY COUNTY BOARD OF COMMISSIONERS THAT the agreement attached agreement between Sarpy County and Felsburg, Holt & Ullevig for the design and environmental evaluation of improvements to the intersection of 156<sup>th</sup> & Giles Road, , Project No. MAPA - 3772(1), State Control No. 22408, is hereby approved.

DATED this 1<sup>st</sup> day of September, 2009.

Moved by Tom Richards, seconded by Rusty Huke, that the above Resolution be adopted. Carried.

YEAS:

NAYS:

ABSENT:

<u>Rusty Huke</u>	<u>none</u>	<u>none</u>
<u>Rich Jensen</u>	_____	_____
<u>Tom Jones</u>	_____	ABSTAIN:
<u>Tom Richards</u>	_____	<u>none</u>
<u>Patrick J. Thomas</u>	_____	_____

Rene Lemmer  
County Clerk  
Asst. Chief Deputy

Approved as to form:

[Signature]  
Deputy County Attorney



## ENGINEERING AGREEMENT

FELSBURG HOLT & ULLEVIG  
SARPY COUNTY  
PROJECT NO. MAPA-3772(1)  
CONTROL NO. 22408  
156<sup>TH</sup> STREET & GILES ROAD INTERSECTION IMPROVEMENT  
DESIGN & ENVIRONMENTAL EVALUATION

THIS AGREEMENT, entered into by and between Sarpy County, hereinafter referred to as the "County", and Felsburg Holt & Ullevig, hereinafter referred to as the "Consultant".

WITNESSETH

WHEREAS, the County desires to engage the Consultant to render professional services for the above named project at the location shown on EXHIBIT "A", which is attached and hereby made a part of this agreement, and

WHEREAS, the Consultant is certified by the Nebraska Secretary of State as a Corporation eligible to operate in the State of Nebraska, and

WHEREAS, the Consultant is willing to perform such work in accordance with the terms hereinafter provided, and does represent that it is in compliance with the Nebraska statutes relating to the registration of professional engineers, and hereby agrees to comply with all federal, state, and local laws and ordinances applicable to the work.

NOW THEREFORE, in consideration of these facts, the parties agree as follows:

### I. DEFINITIONS

Wherever in this agreement the following terms are used, they will mean:

"COUNTY" means Sarpy County, the County Board or an authorized representative.

"CONSULTANT" means Felsburg Holt & Ullevig, whose business and mailing address is 11422 Miracle Hills Drive, Suite 410, Omaha, NE 68154.

"SUBCONSULTANT/SUBCONTRACTOR" means Terracon Consultants, Inc, whose business and mailing address is 2211 South 156<sup>th</sup> Circle, Omaha, NE 68130; Sides & Associates, Inc., whose business and mailing address is 3207 N. 90<sup>th</sup> St., Omaha, NE 68134.

"STATE" means the Nebraska Department of Roads in Lincoln, Nebraska, the Director of the department, or an authorized representative.

"FHWA" means the Federal Highway Administration, Department of Transportation, Washington, D.C. 20590, acting through its authorized representatives.

"DOT" means the United States Department of Transportation, Washington, D.C. 20590,

To "SUSPEND" the work means the County has determined the progress is not sufficient, or the conditions or intentions as originally existed have changed, or the work completed or submitted is unsatisfactory, and the work as contemplated herein should be stopped on a temporary basis. This cessation will prevail until the County determines to abandon or terminate the work or to reinstate it under the conditions as defined in this agreement.

To "TERMINATE" or the "TERMINATION" of this agreement is the cessation or quitting of this agreement based upon action or failure of action on the part of the Consultant as defined herein and as determined by the County.

## II. GENERAL DESCRIPTION OF SCOPE AND CONTROL OF THE WORK

The Consultant shall provide preliminary and final design and environmental evaluation services for project MAPA-3772(1), 156<sup>th</sup> Street & Giles Road Intersection Improvement, in Sarpy County, Nebraska.

Upon receiving a notice to proceed, the Consultant shall perform all work required under this agreement as outlined in EXHIBIT "B", schedule of services, and EXHIBIT "C", Consultant's Proposal, which are attached and made a part of this agreement.

The Consultant has furnished a personnel chart or list in EXHIBIT "C". Any major deviation from or revision in the classifications or personnel shown in the chart or list must receive the prior approval of the County. All personnel replacements must be made with persons of equal ability or experience and failure to provide capable replacements to keep the work on schedule will be cause for termination of this agreement, with settlement to be made as provided in Section VII of this agreement.

## III. STANDARD PRACTICES AND REQUIREMENTS

It is mutually agreed that the County, State and FHWA have continuing rights of work progress inspections. Any additions, deletions, changes, elaborations, or modifications of the services performed under the terms of this agreement, which may from time to time be determined by the County as desirable or preferable, will be controlling and governing.

## IV. TIME OF BEGINNING AND COMPLETION

The County will issue the Consultant a written Notice-to-Proceed upon State approval of this agreement. Any work or services performed on the project prior to the Notice-to-Proceed date is not eligible for reimbursement.

The completion time will not be extended because of any avoidable delay attributed to the Consultant, but delays attributable to the County may constitute a basis for an extension of time.

County authorized changes in the scope of work, which increase or decrease workhours or services required of the Consultant, will provide the basis for a change of time and/or changes to the Consultant's fee.

#### V. FEES AND PAYMENTS

- A. For performance of the work as outlined in this agreement, the Consultant will be paid a fixed-fee-for-profit of \$2,365.90, as defined in paragraph D of this section, and up to a maximum amount of \$22,634.10 for actual costs as defined in paragraph E of this section, that are allowable subject to the terms of this agreement and the federal cost principles contained in the Federal Acquisition Regulation (48 CFR 31). The total agreement amount is \$25,000.00.
- B. The Consultant is responsible for determining if its actual costs will exceed the maximum amount stated above. If at any time during this project, the Consultant determines that its costs will exceed, or have exceeded the maximum amount stated above, the Consultant must immediately notify the County in writing and describe which costs are causing the overrun and the reason. The Consultant must also estimate the additional costs needed to complete the work. The County will then determine if the maximum amount is to be increased, and a supplemental agreement will be prepared if needed.
- C. The County is not responsible for costs incurred prior to the Notice-to-Proceed date or after the completion deadline date stated in Section IV of this agreement.
- D. The fixed-fee is computed upon the direct salary or wage costs, indirect salary costs, indirect non-salary costs, and direct payroll additives. The fixed-fee is not allowable upon direct non-salary costs.
- E. Actual costs include direct labor costs, direct non-labor costs, and overhead costs.
  - (1) Direct Labor Costs are the earnings that individuals receive for the time they are working directly on the project.
    - (a) Hourly rates: For hourly employees, the hourly earnings rate is based on the compensation received during the pay period that the work is

the employee works more hours than normally expected and does not receive additional compensation at least equal to the normally expected hourly rate, the rate for that pay period will be determined by dividing the actual compensation by the actual hours reported.

(b) Time records: The hours charged to the project must be supported by adequate time distribution records. The records must clearly indicate the distribution of hours to all activities on a daily basis for the entire pay period, and there must be a system in place to ensure that time charged to each activity is accurate.

(2) Direct Non-Labor Costs charges in this category include per diem expenses for personnel away from their base of permanent assignment, communication costs, reproduction and printing costs, computer charges, special equipment and materials required for the project, special insurance premiums if required solely for this agreement, and such other similar items. Payment for these items must be made on receipted invoices whenever possible, or on certified billings of the Consultant.

(3) Overhead Costs include indirect salary costs, indirect non-salary costs, and direct salary additives that are allowable in accordance with 48 CFR 31. Overhead costs are to be allocated to the project as a percentage of direct labor costs. The consultant will be allowed to charge the project using its actual allowable overhead rate. Overhead rate increases which occur during the project period will not be cause for an increase in the maximum amount established in paragraph A of this section.

F. The Consultant should submit invoices to the County at monthly intervals. The invoices must present actual direct labor, actual overhead, and actual direct non-labor costs, as well as a prorated amount of the fixed-fee based upon the actual direct labor and overhead costs billed for that period relative to the Consultant's estimated total direct labor and indirect overhead costs, until 100 percent of the fixed-fee has been billed. The fixed-fee amount on the final invoice should be the difference between 100 percent of the agreed-upon fee and the total amount

Monthly invoices must be substantiated by progress reports which indicate the percent of work completed. If the Consultant does not submit a monthly invoice, it shall submit its progress report by the fifth day of each month.

- G. The County will make every effort to pay the Consultant within 30 days of receipt of the Consultant's invoices. Payment is dependent upon whether the monthly progress reports provide adequate substantiation for the work and whether the County determines that the work is satisfactory. Upon determination that the work was adequately substantiated and satisfactory, payment will be made in the amount of 100 percent of the billed actual costs and fixed-fee. After the Consultant has completed all work required under this agreement, a final bill must be sent to the County. Upon acceptance by the County and State, a final audit of all invoiced amounts will be completed by the County or its authorized representative, if deemed necessary.

The acceptance by the Consultant of the final payment will constitute and operate as a release to the County for all claims and liability to the Consultant, its representatives, and assigns, for any and all things done, furnished, or relating to the services rendered by or in connection with this agreement or any part thereof. The Consultant agrees to reimburse the County for any overpayments discovered by the County or its authorized representative.

- H. The Consultant shall maintain, and also require that its Subconsultants/Subcontractors maintain, all books, documents, papers, accounting records, and other evidence pertaining to costs incurred and shall make such material available for examination at its office at all reasonable times during the agreement period and for three years from the date of final payment under this agreement. Such materials must be available for inspection by the County, State, FHWA, or any authorized representative of the federal government, and when requested the Consultant shall furnish copies.

#### VI. PROFESSIONAL PERFORMANCE

The Consultant understands that the County will rely on the professional performance and ability of the Consultant to satisfactorily accomplish the work under this agreement. Any

responsibility for the propriety and integrity of the professional work to be accomplished by the Consultant pursuant to this agreement. That further, acceptance or approval of any of the work of the Consultant by the County or of payment, partial or final, will not constitute a waiver of any rights of the County to recover from the Consultant, damages that are caused by the Consultant due to error, omission, or negligence of the Consultant in its work. That further, if due to error, omission, or negligence of the Consultant, the plans, specifications, and estimates are found to be in error or there are omissions therein revealed during the construction of the project and revision or reworking of the plans is necessary, the Consultant shall make such revisions without expense to the County. The Consultant shall respond to the County's notice of any errors or omissions within 24 hours and give immediate attention to these corrections to minimize any delays to the construction contractor. The Consultant shall make project site visits, if directed by the County. If the Consultant discovers errors in its work, it shall notify the County of the errors within seven days. Failure of the Consultant to notify the County will constitute a breach of this agreement. The Consultant's legal liability for all damages incurred by the County caused by error, omission, or negligent acts of the Consultant will be borne by the Consultant without liability or expense to the County.

#### VII. CHANGE OF PLAN, ABANDONMENT, SUSPENSION, AND TERMINATION

Additions to the schedule of services, if approved in writing, will require negotiation of a supplemental agreement. For any work beyond the schedule of services, the Consultant shall document the additional work, estimate the cost to complete the work, and receive written approval from the County before the Consultant begins the work. Any such work performed by the Consultant prior to written approval of the County will be done at the expense of the Consultant.

The County can abandon the project or to change the general scope of work at any time and such action on its part will in no event be deemed a breach of agreement. The County can suspend or terminate this agreement at any time. Such suspension or termination may be effected by the County giving the Consultant seven days written notice.

If the County abandons or subtracts from the work, or suspends or terminates the agreement as presently outlined, the Consultant will be compensated in accordance with the provisions of 48 CFR 31, provided however, that in case of suspension, abandonment, or

this agreement. The ownership of all project plans, documents, etc., completed or partially completed at the time of such termination or abandonment will be retained by the County and the Consultant shall immediately deliver all project plans, documents, etc., to the County.

#### VIII. OWNERSHIP OF DOCUMENTS

All surveys, tracings, plans, specifications, maps, computations, sketches, charts, and other data prepared or obtained under the terms of this agreement are the property of the County and the Consultant shall deliver them to the County without restriction or limitation as to further use.

County acknowledges that such data may not be appropriate for use on an extension of the work covered by this agreement or on other projects. Any use of the data for any purpose other than that for which it was intended without the opportunity for Consultant to review the data and modify it if necessary for the intended purpose will be at the County's sole risk and without legal exposure or liability to Consultant.

#### IX. FORBIDDING USE OF OUTSIDE AGENTS

The Consultant warrants that it has not employed or retained any company or person, other than a bona fide employee working for the Consultant, to solicit or secure this agreement, and that it has not paid or agreed to pay any company or person, other than a bona fide employee, any fee, commission, percentage, brokerage fee, gift, or any other consideration contingent upon or resulting from the award or making of this agreement. For breach or violation of this warranty, the County has the right to annul this agreement without liability or, in its discretion, to deduct from the agreement price or consideration, or otherwise recover the full amount of such fee, commission, percentage, brokerage fee, gift, or contingent fee.

#### X. NON-RAIDING CLAUSE

The Consultant shall not engage the services of any person or persons presently in the employ of the County and State for work covered by this agreement without the prior written consent of the employer of the persons.

#### XI. GENERAL COMPLIANCE WITH LAWS

The Consultant agrees to comply with all federal, state, and local laws and ordinances applicable to the work.

#### XII. DISPUTES

XIII. RESPONSIBILITY FOR CLAIMS AND LIABILITY

A. The Consultant agrees to save harmless the County from all claims and liability due to the negligent activities of the Consultant or those of the Consultant's agents or employees in the performance of work under this agreement. In this connection, the Consultant shall for the life of this agreement, carry insurance of the following types in at least the following amounts:

(1) Bodily Injury and Property

Damage with a combined  
single unit of liability of \$500,000 each occurrence

or Bodily Injury

General and Automobile \$250,000 each person

General and Automobile \$500,000 each occurrence

Property Damage

General and Automobile \$250,000 each occurrence

General \$500,000 aggregate

(2) Workers' Compensation - Statutory

(3) a) Valuable Papers With the State named as the loss

b) Electronic Data payee. The insurance must be

Processing Coverage in the amount of the total fee

of this agreement.

B. The insurance referred to in (1) above must be written under comprehensive general and comprehensive automobile liability policy forms, including coverage for all owned, hired, and non-owned automobiles. The Consultant may, at its option, provide the limits of liability, as set out above, by a combination of the above described policy forms and excess liability policies. The Consultant shall furnish proof of insurance coverage to the County.

XIV. PROFESSIONAL REGISTRATION

The Consultant shall affix the seal of a registered professional engineer or architect licensed to practice in the State of Nebraska, on all plans, documents, and specifications

XV. SUCCESSORS AND ASSIGNS

This agreement is binding on successors and assigns of either party.

XVI. DRUG-FREE WORKPLACE POLICY

The Consultant shall have an acceptable and current drug-free workplace policy on file with the State.

XVII. FAIR EMPLOYMENT PRACTICES ACT

The Consultant agrees to abide by the Nebraska Fair Employment Practices Act, as provided by Sections 48-1101 through 48-1126, Nebraska Revised Statutes (Reissue 1998), which is hereby made a part of and included in this agreement by reference.

XVIII. DISABILITIES ACT

The Consultant agrees to comply with the Americans with Disabilities Act of 1990 (P.L. 101-366), as implemented by 28 CFR 35, which is hereby made a part of and included in this agreement by reference.

XIX. DISADVANTAGED BUSINESS ENTERPRISES

The Consultant shall ensure that disadvantaged business enterprises, as defined in 49 CFR 26, have the maximum opportunity to compete for and participate in the performance of subagreements financed in whole or in part with federal funds under this agreement. Consequently, the disadvantaged business requirements of 49 CFR 26 are hereby made a part of and included in this agreement by reference.

The Consultant shall not discriminate on the basis of race, color, sex, or national origin in the award and performance of FHWA-assisted contracts. Failure of the Consultant to carry out the requirements set forth above will constitute a breach of this agreement and, after the notification of the FHWA, may result in termination of this agreement by the County or such remedy as the County deems appropriate. The SUBLETTING, ASSIGNMENT OR TRANSFER Section of this agreement further explains the Consultant's responsibility in ensuring that disadvantaged business enterprises have the maximum opportunity to compete for subagreements.

XX. NONDISCRIMINATION

- A. Compliance with Regulations: During the performance of this agreement, the Consultant, for itself and its assignees and successors in interest, agrees to comply

- B. Nondiscrimination: The Consultant, with regard to the work performed by it after award and prior to completion of this agreement, shall not discriminate on the basis of race, color, sex, or national origin in the selection and retention of subconsultants, including procurements of materials and leases of equipment. The Consultant shall not participate either directly or indirectly in the discrimination prohibited by 49 CFR 21.5, including employment practices when the agreement covers a program set forth in Appendixes A, B, and C of 49 CFR 21.
- C. Solicitations for Subagreements, Including Procurements of Materials and Equipment: In all solicitations either by competitive bidding or negotiation made by the Consultant for work to be performed under a subagreement, including procurements of materials or equipment, each potential Subconsultant or supplier shall be notified by the Consultant of the Consultant's obligations under this agreement and the Regulations relative to nondiscrimination on the basis of race, color, sex, or national origin.
- D. Information and Reports: The Consultant shall provide all information and reports required by the Regulations, or orders and instructions 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 County, State or FHWA to be pertinent to ascertain compliance with such Regulations, orders, and instructions. Where any information required of a Consultant is in the exclusive possession of another who fails or refuses to furnish this information, the Consultant shall certify to the County, State or FHWA, as appropriate, and set forth what efforts it has made to obtain the information.
- E. Sanctions for Noncompliance: In the event of the Consultant's noncompliance with the nondiscrimination provisions of this agreement, the County will impose such agreement sanctions as it or the State and FHWA may determine to be appropriate, including but not limited to withholding of payments to the Consultant under this agreement until the Consultant complies, and/or cancellation, termination, or suspension of this agreement, in whole or in part.
- F. Incorporation of Provisions: The Consultant shall include the provisions of

State or FHWA may direct as a means of enforcing such provisions including sanctions for noncompliance, provided however, that in the event a Consultant becomes involved in or is threatened with litigation with a Subconsultant/ Subcontractor as a result of such direction, the Consultant may request that the County enter into such litigation to protect the interests of the County and, in addition, the Consultant may request that the State and United States enter into such litigation to protect the interests of the State and United States.

XXI. SUBLETTING, ASSIGNMENT, OR TRANSFER

The Subconsultant/Subcontractor will provide the services indicated in EXHIBITS "D".

Any other subletting, assignment, or transfer of any services to be performed by the Consultant is hereby prohibited unless prior written consent of the County is obtained.

The Consultant shall enter into an agreement with its Subconsultants/Subcontractors for work covered under this agreement. All Subconsultant/Subcontractor agreements for work covered under this agreement, in excess of \$10,000, must contain similar provisions to those in this agreement. No right-of-action against the County will accrue to any Subconsultant/Subcontractor by reason of this agreement.

As outlined in the DISADVANTAGED BUSINESS ENTERPRISES Section of this agreement, the Consultant shall take all necessary and reasonable steps to ensure that disadvantaged business enterprises have the maximum opportunity to compete for and perform subagreements. Any written request to sublet any other work must include documentation of efforts to employ a disadvantaged business enterprise.

XXII. CONFLICT OF INTEREST

By signing this agreement, the Consultant certifies that it has no financial or other interests in the outcome of this project.

XXIII. CONSULTANT CERTIFICATION

The Consultant hereby certifies that wage rates and other factual unit costs supporting the fees in this agreement are accurate, complete, current, and subject to adjustment, if required, as provided by Sections 81-1701 through 81-1721, Nebraska Revised Statutes (Reissue 1994).

After being duly sworn on oath, I do hereby certify that except as noted below, neither I nor any person associated with the firm in the capacity of owner, partner, director, officer,

- a) has employed or retained for a commission, percentage, brokerage, contingent fee, or other consideration, any firm or person (other than a bona fide employee working solely for me or the above consultant) to solicit or secure this agreement, or
  
- b) has agreed, as an express or implied condition for obtaining this agreement, to employ or retain the services of any firm or person in connection with carrying out this agreement, or
  
- c) has paid, or agreed to pay, to any firm, organization or person (other than a bona fide employee working solely for me or the above consultant) any fee, contribution, donation, or consideration of any kind for, or in connection with procuring or carrying out this agreement, except as here expressly stated (if any).

Certification Regarding Debarment, Suspension, and Other  
Responsibility Matters-Primary Covered Transactions

Instructions for Certification

1. By signing this agreement, the Consultant is providing the certification set out below.
  
2. The inability of a person to provide the certification required below will not necessarily result in denial of participation in this project. The Consultant shall submit an explanation of why it cannot provide the certification set out below. The certification or explanation will be considered in connection with the County's determination whether to enter into this agreement. However, failure of the Consultant to furnish a certification or an explanation will disqualify the Consultant from participation in this agreement.
  
3. The certification in this clause is a material representation of fact upon which reliance was placed when the State determined to enter into this agreement. If it is later determined that the Consultant knowingly rendered an erroneous certification, in addition to other remedies

4. The Consultant shall provide immediate written notice to the County if at any time the Consultant learns that its certification was erroneous when submitted or has become erroneous by reason of changed circumstances.

5. The terms "covered transaction," "debarred," "suspended," "ineligible," "lower tier covered transaction," "participant," "person," "primary covered transaction," "principal," "proposal," and "voluntarily excluded," as used in this clause, have the meanings set out in the Definitions and Coverage sections of the rules implementing Executive Order 12549.

6. The Consultant agrees that should the proposed covered transaction be entered into, it will not knowingly enter into any lower tier covered transaction with a person who is debarred, suspended, declared ineligible, or voluntarily excluded from participation in this covered transaction, unless authorized by the County before entering into this agreement.

7. The Consultant further agrees to include the clause titled "Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion - Lower Tier Covered Transaction," provided by the State without modification, in all lower tier covered transactions and in all solicitations for lower tier covered transactions.

8. The Consultant in a covered transaction may rely upon a certification of a prospective Subconsultant in a lower tier covered transaction that it is not debarred, suspended, ineligible, or voluntarily excluded from the covered transaction, unless it knows that the certification is erroneous. A Consultant may decide the method and frequency by which it determines the eligibility of its principals.

9. Nothing contained in the foregoing will be construed to require establishment of a system of records in order to render in good faith the certification required by this clause. The knowledge and information of the Consultant is not required to exceed that which is normally possessed by a prudent person in the ordinary course of business dealings.

transaction, in addition to other remedies available to the federal government, the County may terminate this agreement for cause or default.

Certification Regarding Debarment, Suspension, and Other  
Responsibility Matters - Primary Covered Transactions

A. The Consultant certifies to the best of its knowledge and belief, that it and its principals:

(1) Are not presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from covered transactions by any federal department or agency;

(2) Have not within a three-year period preceding this agreement been convicted of or had a civil judgment rendered against them for commission of fraud or a criminal offense in connection with obtaining, attempting to obtain, or performing a public (federal, state, or local) transaction or contract under a public transaction; violation of federal or state antitrust statutes or commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements, or receiving stolen property;

(3) Are not presently indicted for or otherwise criminally or civilly charged by a governmental entity (federal, state, or local) with commission of any of the offenses enumerated in paragraph A.(2) of this certification; and

(4) Have not within a three-year period preceding this agreement had one or more public transactions (federal, state, or local) terminated for cause or default.

B. Where the Consultant is unable to certify to any of the statements in this certification, such Consultant shall attach an explanation to this agreement. I acknowledge that this certification is to be furnished to the State and the FHWA in connection with this agreement involving participation of federal-aid highway funds and is subject to applicable, state and federal laws, both criminal and civil.

(a) employ or retain, or agree to employ or retain, any firm or person, or (b) pay or agree to pay to any firm, person, or organization, any fee, contribution, donation, or consideration of any kind.

I acknowledge that this certificate is to be furnished to the State and FHWA in connection with this agreement involving participation of federal-aid highway funds and is subject to applicable state and federal laws, both criminal and civil.

XXV. ALL ENCOMPASSED

This instrument embodies the whole agreement of the parties. There are no promises, terms, conditions, or obligations other than contained herein, and this agreement supersedes all previous communications, representations, or other agreements or contracts, either oral or written hereto.

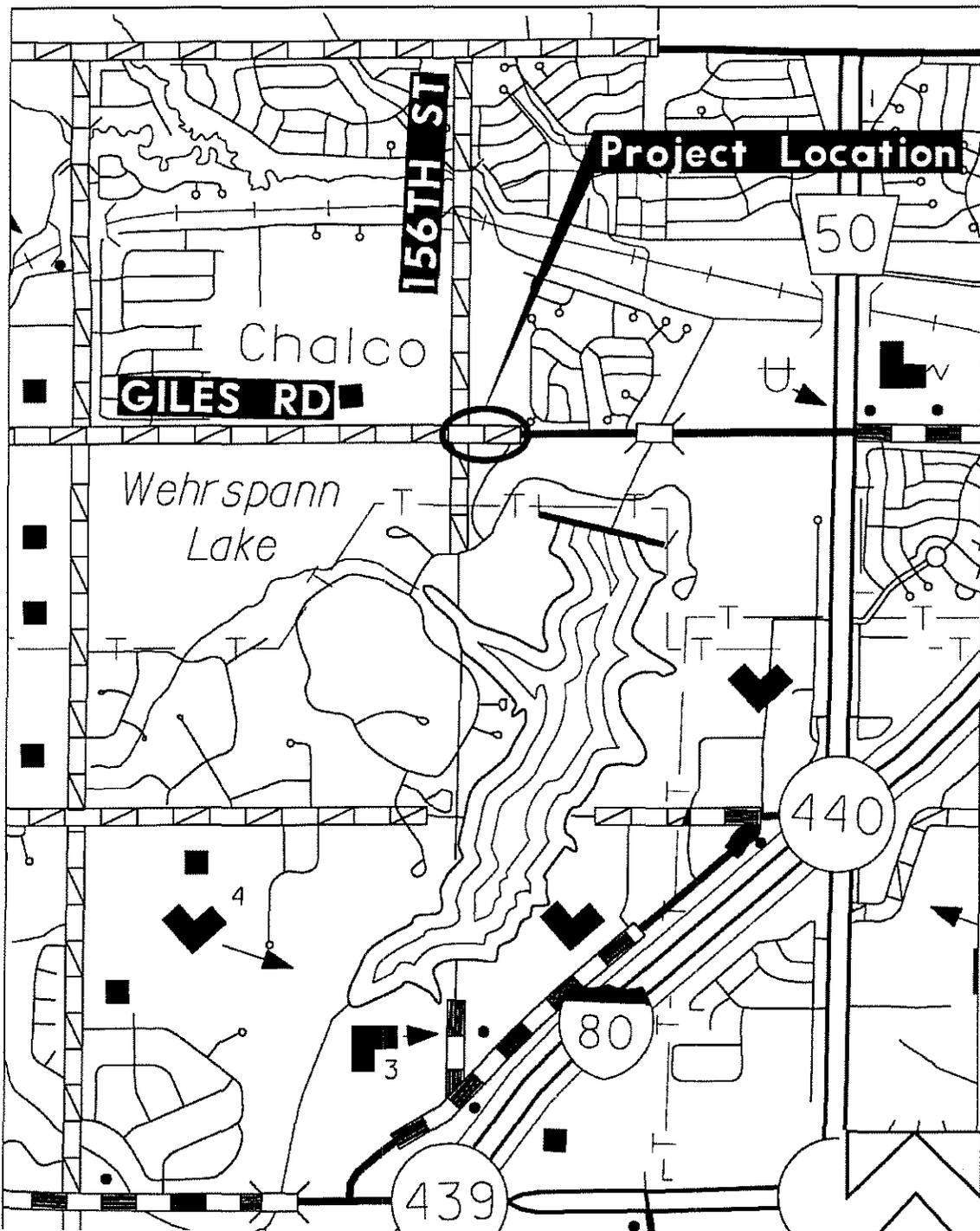


**EXHIBIT "A"**  
**PROJECT LOCATION MAP**

**FEDERAL AID PROJECT MAPA-3772(1), STATE CONTROL No. 22408**  
**SARPY COUNTY PROJECT C-77(09-2)**

**DESIGN AND ENVIRONMENTAL EVALUATION**  
**156<sup>TH</sup> STREET & GILES ROAD INTERSECTION**

**Project Location Map**



**EXHIBIT "B"**  
**DESCRIPTION OF PROJECT AND SCOPE OF SERVICES**

**FEDERAL AID PROJECT MAPA-3772(1), STATE CONTROL No. 22408**  
**SARPY COUNTY PROJECT C-77(09-2)**

**DESIGN AND ENVIRONMENTAL EVALUATION**  
**156<sup>TH</sup> STREET & GILES ROAD INTERSECTION**

**INTRODUCTION**

This scope of services consists of providing engineering services related to the completion of an environmental evaluation and final design for the 156<sup>th</sup> Street and Giles Road intersection improvement project.

The current intersection consists of a T-Intersection with an access drive for the Natural Resources District maintenance facility. The project will consist of building traffic signals to accommodate the traffic flow in the area, and improving the alignment of the existing roadways. Since this is a federal aid project, all federal requirements and procedures will be followed.

**DESCRIPTION OF TASKS**

**1. Project Management**

This task includes activities to initiate and monitor project schedules, workload assignments and internal cost controls throughout this phase of the project. Also included are efforts to prepare and process invoices and monthly progress reports; and prepare project correspondence with the Client.

**2. Traffic Study**

A traffic study for the 156<sup>th</sup> Street and Giles Road intersection will be conducted for both existing conditions and for the Design Year 2030 traffic conditions. The Year 2030 traffic forecasts will be provided by MAPA. The analysis will be used to determine the required lane configurations and storage lengths for left and right turn lanes at major intersections.

**3. Public Information Meeting**

Prepare for and attend one Public Information Meetings for this Project. The Consultant will be responsible for inviting the property owners, advertising for the meetings, and securing a suitable location for the meetings.

**3.1 Preparation of Public Information Exhibits**

A mosaic will be prepared from existing aerial photography of the site and will show the proposed improvements and impacted properties (if any).

**3.2 Prepare a Project Fact Sheet**

A written summary of the projects design criteria, features and relevant facts will be prepared and distributed to the team members participating in the Public Information Meeting.

**3.3 Attend and Document Information Meetings**

Representatives from the design team will attend the meetings; take notes summarizing the general comments, and review written comments. A written response with input from the County will be prepared for comments requesting/warranting one.

#### **4.2 Meetings**

- A Kick-off meeting with the County to discuss the scope of the project and to identify project milestones.
- Two progress meetings with the County staff.
- Utility Meeting – After receiving information from the utility companies to draft their facilities on the plans, we will meet to identify and work through potential conflicts identified in the preliminary plans.

#### **4.3 Data Collection and Review**

This task includes the compiling and review of data and information collected from the County, utilities or any other sources concerning the design of the project.

#### **4.4 Note Reduction/Preliminary Plotting**

This task will include the effort for gathering data to create the existing topography file to use in the drawings and to create the base sheets that will be used in the plan set.

#### **4.5 Roadway Horizontal Alignment**

This task will include the design and drafting of horizontal alignments for Giles Road and 156<sup>th</sup> Street. The data describing the horizontal alignments will be placed on the appropriate plan sheets.

#### **4.6 Roadway Vertical Alignment**

This task includes the design and drafting of vertical alignments for Giles Road and 156<sup>th</sup> Street. The data describing the vertical alignments will be placed on the appropriate plan & profile sheets.

#### **4.7 Roadway Cross-Sections**

This task includes setting up and developing the models necessary to run roadway cross-sections. Cross-sections will be cut at 50-foot intervals and at key features such as driveways, culverts, etc.

#### **4.8 Earthwork**

Includes setting up and processing earthwork for each alignment. This also includes drafting the earthwork on the plan sheets.

#### **4.9 Roadway Geometric Design**

This task includes the geometric design of all intersections, driveways, parking lots, etc., which includes setting up the geometric sheets for the project and labeling the geometric points with Station and Offsets.

#### **4.10 Storm Sewer Design**

This task includes the efforts to analyze the existing drainage patterns and determine whether storm sewer is required or not. The design team is assuming some storm sewer may be necessary to complete the project. The Consultant will design and draft the appropriate storm sewer plan data on the Construction sheets and storm sewer profiles on the Plan and Profile sheets respectively. The Consultant will follow the Omaha Regional Stormwater Design Manual.

#### **4.11 Construction and Removal**

Development of separate Removal plan sheets and Construction plan sheets with appropriate notes detailing construction and removal items not specifically identified elsewhere in the plans.

#### **4.14 Seeding, Sodding & Erosion Control**

The Consultant will design and draft Seeding, Sodding & Erosion Control elements to include in the plan set.

#### **4.15 Utilities Coordination/Verification**

This task includes coordination of the design with affected utilities and making revisions based upon the utility review comments and the utility meetings noted in Section 4.2.

#### **4.16 Quantities/Estimates**

This effort includes design quantity takeoffs, quantity calculations, and a separate engineer's estimate of probable cost. NDOR will develop the quantity sheet to include in the plan set.

#### **4.17 Typical Sections**

This includes designing and drafting the typical sections for Giles Road and 156<sup>th</sup> Street.

#### **4.18 Traffic Phasing Plans/Detour Plans**

This task is to develop the phasing/detour plan for this project.

#### **4.19 Special Provisions**

This task is to develop any special provisions that may be needed for this project.

### **5. Environmental Action Plan**

The proposed environmental action plan for the project is based on brief discussions with staff from the County regarding the project parameters and the adjacent environment. From these discussions, and the study team's review of the project parameters and the study area environment, the most likely appropriate NEPA product is a Categorical Exclusion (CATEX). The work plan provided assumes that a CATEX would be prepared.

Because this project plans to use stimulus money, the CATEX will be prepared by NDOR.

### **6. Right-of Way-Design**

The following tasks will be completed to establish the existing Right-of-Way and Design the proposed Right-of-Way.

#### **6.1 Existing Right-of-Way Base**

This task involves collecting the Plat drawings for the neighborhoods along the corridor, survey data and any other necessary information to establish the existing Right-of-Way for the properties abutting the project. The County will provide the Consultant with title information for the properties requested.

#### **6.2 Proposed Right-of-Way**

The Consultant will determine the easements (temporary and permanent) and right-of-way required to construct the project. Temporary construction easements will be acquired in cut and fill areas outside the proposed right-of-way acquisition. Temporary construction easements will be acquired to construct driveways or make improvements to personal property beyond the existing or proposed right of way.

The Consultant will make every effort necessary to avoid the need for additional Right-of-way, but for this proposal the Consultant estimates up to two tracts will be completed along the project.

#### **6.3 Right-of-Way Strip Maps**

**8. Topographic Survey**

The topographic survey for the project has been completed by County forces and will be provided to the Consultant in electronic format.

**9. Geotechnical Evaluation**

The Geotechnical Evaluation will be complete by Terracon as a subconsultant to the design team. Their scope and fee is included as Exhibit D.

**10. Proposed Milestones**

August 21, 2009 - Notice to Proceed.

Week of August 21, 2009 - Kick-off Meeting, Data Collection Begins.

Week of August 19, 2009 – Traffic Analysis & Design Begin.

Week of September 7, 2009 - Progress Meeting, Submit 30% Plans.

Week of September 14, 2009 – Public Information Meeting,

Week of September 21, 2009 - Progress Meeting, Submit 90% Plans.

October 1, 2009- Plans, Specifications, and Estimate Submittals (PS&E)

March 4, 2010- Bid Letting –Project Contract Complete

**11. Bidding and Construction Phase Services**

It is understood that this scope of services does not include contract letting services. Construction Phase Services can be supplemented at the discretion of the County.

**EXHIBIT "C"**  
**SUMMARY OF PRELIMINARY PROPOSAL**

**FEDERAL AID PROJECT MAPA-3772(1), STATE CONTROL No. 22408**  
**SARPY COUNTY PROJECT C-77(09-2)**

**DESIGN AND ENVIRONMENTAL EVALUATION**  
**156<sup>TH</sup> STREET & GILES ROAD INTERSECTION**

SUMMARY OF PRELIMINARY PROPOSAL  
 PROJECT DESIGN AND ENVIRONMENTAL REVIEW

Project No. MAPA-3772(1) Consultant: Felsburg Holt & Uliveg  
 CN: 22408 Location: 156th Street & Giles Road Intersection

DESCRIPTION OF WORK ITEMS/TASKS	CLASSIFICATIONS								Total
	PR/PM	SE	PE III	PE I	CT	CL			
<b>1. Project Management</b>									
1.1 Project Management (6%)	12								12
<b>2. Traffic Study</b>									
2.1 Existing Condition Analysis			2						2
2.2 Future Year Analysis			2						2
2.3 Documentation			2						2
<b>3. Public Information Meeting</b>									
3.1 Prepare Exhibits			2	2	2				6
3.2 Prepare a Projects Fact Sheet		2							2
3.3 Attend and Document the Information Meeting	2	4	4	2					12
<b>4. Preliminary Roadway Design</b>									
4.1 Site Inspection		2	2	2					6
4.2 Meetings	2	4	4		2				12
4.3 Data Collection and Review		2	2	2					6
4.4 Note Reduction/Preliminary Plotting					2				2
4.5 Roadway Horizontal Alignment				2	2				4
4.6 Roadway Vertical Alignment				2	2				4
4.7 Roadway Cross-Sections		1		2	4				7
4.8 Earthwork				2	2				4
4.9 Roadway Geometric Design				2	2				4
4.10 Storm Sewer Design			8		8				16
4.11 Construction and Removal				8	8				16
4.12 Traffic Signal Design			16		24	2			42
4.13 Joints and Spot Elevations		1		2	4				7
4.14 Seeding, Sodding & Erosion Control				2	2				4
4.15 Utilities Coordination/Verification		2	2						4
4.16 Quantities/Estimates		1		4	2				7
4.17 Typical Sections		1			2				3
4.18 Traffic Phasing Plans/Detour Plans		1			2				3
4.19 Special Provisions		4	8						12
<b>5. Environmental Action Plan</b>									
5.1 Coordination with NDOR		2							2
<b>6. Right-of-Way Design</b>									
6.1 Existing Right-of-Way Base					2				2
6.2 Proposed Right-of-Way				2	2				4
6.3 Right-of-Way Strip Map					2				2
<b>7. Quality Assurance/Quality Control (QA/QC)</b>									
7.1 Quality Assurance/Quality Control (QA/QC)		2	2						4

Est. by FHU  
Date 8/17/09

Project No. MAPA-3772(1) C.N.: 22408  
Project Title 156th Street & Giles Road Intersection

<u>Project Plan Sheets</u>	<u>Scale</u>	<u>Estimated Number</u>
A. Cover Sheet	<u>na</u>	<u>1</u>
B. Air Photo Plan Sheets	<u>50</u>	<u>1</u>
B. Typical Section Sheets	<u>na</u>	<u>1</u>
C. Summary of Approximate Quantities	<u>na</u>	<u>1</u>
D. Plan and Profile Sheets	<u>50</u>	<u>2</u>
E. Removals	<u>20</u>	<u>2</u>
F. Construction	<u>20</u>	<u>2</u>
G. Drainage	<u>20</u>	<u>2</u>
H. Right of Way Strip Maps	<u>50</u>	<u>1</u>
I. Roadway Cross-Section Sheets	<u>10 H&amp;V</u>	<u>5</u>
J. Drainage Cross-Section Sheets	<u>10 H&amp;V</u>	<u>1</u>
K. Traffic Control / Phasing	<u>50</u>	<u>4</u>
L. Horizontal Alignment and Control Sheets	<u>na</u>	<u>1</u>
M. General Information Sheets	<u>na</u>	<u>1</u>
	<b>PLAN TOTAL</b>	<u>25</u>

Est. by FHU  
Date 8/17/09

ESTIMATE OF COSTS / EXPENSES  
PROJECT DESIGN AND ENVIRONMENTAL REVIEW

Project No. MAPA-3772(1) Consultant: Felsburg Holt & Ulliveg  
CN: 22408 Location: 156th Street & Giles Road Intersection

	<u>Total Manhours</u>	<u>Rate</u>	<u>Amount</u>
Principal/Project Manager	16	\$64.90	\$1,038.40
Senior Project Engineer	29	\$52.64	\$1,526.56
Project Engineer III	56	\$32.00	\$1,792.00
Project Engineer I	36	\$19.71	\$709.56
CADD Technician	76	\$35.00	\$2,660.00
Clerical	2	\$27.15	\$54.30
<b>TOTALS</b>	<b>215</b>		<b>\$7,780.82</b>

**Direct Non-Salary Costs:**

	<u>Amount</u>
Subconsultants	\$2,500.00
Reproduction Costs	\$214.00
Mileage	\$114.40
Other Misc. Costs	\$89.88
Computer	\$0.00
<b>TOTALS</b>	<b>\$2,918.28</b>

	<u>Amount</u>
DIRECT SALARY COSTS	\$7,780.82
OVERHEAD @ 153.39%	\$11,935.00
DIRECT NON-SALARY COSTS	\$2,918.28
TOTAL COSTS	\$22,634.10
FIXED FEE (12%)	\$2,365.90
<b>TOTAL PROJECT COSTS</b>	<b>\$25,000.00</b>

Est. by FHU  
Date 8/17/09

ESTIMATE OF COSTS / EXPENSES  
PROJECT DESIGN AND ENVIRONMENTAL REVIEW

Project No. MAPA-3772(1) Consultant: Felsburg Holt & Ulliveg  
CN: 22408 Location: 156th Street & Giles Road Intersection

<b>Subconsultants:</b>	<b>Amount</b>
Terracon	\$2,500.00

**SubTotal** \$2,500.00

**Printing and Reproduction**

25 - 34"x22" Plan Sheets Plotted 2 times @ \$1.50/plot	\$75.00
25 - 11"x17" half size plan sheets plotted 10 times @ \$0.08/sheet	\$20.00
4 displays, 32"x40" @ \$15/display mounted	\$60.00
500 black & white zerox copies @ \$0.08/sheet	\$40.00
100 color zerox copies @ \$0.19/sheet	\$19.00

**SubTotal** \$214.00

**Mileage**

1 trips to Lincoln @ 120 mi/trip @ \$0.55/mi	\$66.00
2 trips to County Office @ 32 mi/trip @ \$0.55/mi	\$35.20
2 trips to project site @ 12 mi/trip @ \$0.55/mi	\$13.20

**SubTotal** \$114.40

**Other Misc Costs**

Miscellaneous Postage, Mailing, Deliveries Etc.	\$89.88
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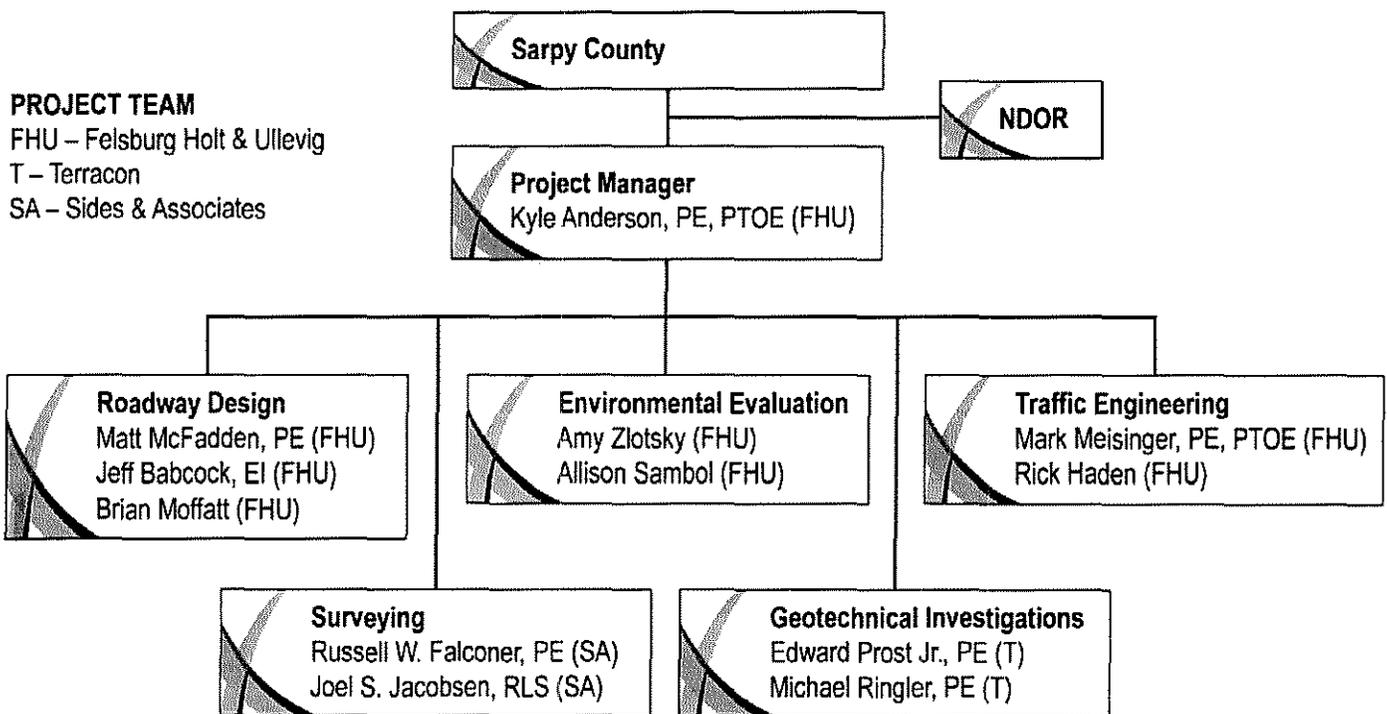
**SubTotal** \$89.88

**TOTAL DIRECT NON-SALARY COSTS** \$2,918.28

**EXHIBIT "C"**  
**PROJECT TEAM CHART**

**FEDERAL AID PROJECT MAPA-3772(1), STATE CONTROL No. 22408**  
**SARPY COUNTY PROJECT C-77(09-2)**

**DESIGN AND ENVIRONMENTAL EVALUATION**  
**156<sup>TH</sup> STREET & GILES ROAD INTERSECTION**



**EXHIBIT "D"**  
**SUMMARY OF PRELIMINARY PROPOSAL**

**TERRACON, INC.**

**FEDERAL AID PROJECT MAPA-3772(1), STATE CONTROL No. 22408**  
**SARPY COUNTY PROJECT C-77(09-2)**

**DESIGN AND ENVIRONMENTAL EVALUATION**  
**156<sup>TH</sup> STREET & GILES ROAD INTERSECTION**

**Terracon**

July 28, 2009

Mr. Matthew McFadden, P.E.  
Felsburg Holt and Ullevig  
11422 Miracle Hills Drive, Suite 115  
Omaha, NE 68154

Re: Proposal for Subsurface Exploration and Geotechnical Services  
Giles Road Reconstruction and Traffic Signals  
154<sup>th</sup> Avenue and 156<sup>th</sup> Street  
Sarpy County, Nebraska  
Terracon Proposal No. P05090411

Dear Mr. McFadden:

As requested, Terracon Consultants, Inc. (Terracon) is submitting this proposal for subsurface exploration and geotechnical engineering services for the referenced project. This proposal outlines our understanding of the scope of services to be performed by Terracon and provides an estimate of the fee for our services.

**A. PROJECT INFORMATION**

We understand that the project includes reconstruction of Giles Road between 154<sup>th</sup> Avenue and 156<sup>th</sup> Street in Sarpy County, Nebraska. The project also includes installation of new traffic signals and supports for the intersection of 156<sup>th</sup> Street and Giles Road. We understand that site grading within this street alignment will be limited and anticipated to include less than 2 feet of cut or fill. The new pavement will include 3, 12 feet traffic lanes, anticipated to be centered on the existing alignment. No retaining walls are anticipated as part of this project. Traffic count and vehicle distribution information will be provided by Felsburg Holt and Ullevig (FHU).

**B. SCOPE OF SERVICES**

The services to be provided by Terracon are stated in the following paragraphs.

Field Program – We propose to complete a total of four soil borings for this project. Two borings will be completed within the shoulder along the street right-of-way to a depth of about 5 feet below existing grade. Two borings will be completed at the approximate traffic signal post

**Giles Road Reconstruction and Traffic Signals  
Sarpy County, Nebraska  
Proposal No. P05090411  
July 28, 2009**

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During drilling of the borings, four test samples will be collected within the top ten feet and one sample will be collected at five-foot intervals thereafter. Thin walled Shelby tubes will be used to sample cohesive or semi-cohesive native soils or clean fill. Split spoon samples will be obtained in granular soil, miscellaneous fill, and weathered rock or other hard material. Once the samples have been collected and classified in the field, they will be prepared and placed in appropriate sample containers for transport to our laboratory.

Our fees are based on the site being accessible to standard truck mounted drilling equipment; additional costs may result if this is not the case. It does not include services associated with site clearing, wet ground conditions, or location of underground utilities beyond contacting a "one-call" locate service. If such conditions are known to exist on the site, Terracon should be notified so that we may adjust our scope of services and fee, if necessary. All borings will be completed within right-of-way outside of the existing pavement areas. We anticipate that traffic control and signage are not necessary to complete our work. Terracon should be contacted immediately if this is not correct.

Boring layout will be approximate and will be completed by a Terracon drill personnel. Elevations are also approximate and are generally obtained using a surveyor's level from a convenient reference point. For reference of the borings to a specific bench mark, we will use a local spot elevation, such as the pavement of the adjacent street or a manhole. If you would like the elevation of the borings tied to a specific datum, please provide the location and elevation of a bench mark. The locations and elevations of the borings should be considered accurate only to the degree implied by these methods. If precise boring locations and elevations of the borings are desired, we suggest that FHU or others develop this information by surveying the locations after drilling is complete.

The boreholes will be backfilled with soil cuttings after completion, and topped with sack-crete or cold-mix asphalt to match the existing surfacing. Sand or hole plug could be used to backfill the boring for an additional fee. The client should understand that some settlement of the borehole fill might occur. No future maintenance or filling of the holes is included in our fee.

Laboratory Testing – The samples will be tested in our laboratory to determine physical engineering characteristics. Testing will be performed under the direction of a geotechnical engineer. For this project and the anticipated subsurface conditions, water content, dry unit weight and unconfined compressive strength tests will be performed on thin-walled tube samples. Water content and, when applicable, hand penetrometer tests are routinely performed on split-barrel samples. In addition, an Atterberg limits test may be performed on a selected sample of surficial high plasticity soil, if encountered.

Engineering Report – The results of our field and laboratory programs will be evaluated by a civil (geotechnical) engineer licensed as a professional civil engineer in the State of Nebraska.

**Giles Road Reconstruction and Traffic Signals  
Sarpy County, Nebraska  
Proposal No. P05090411  
July 28, 2009**

Terr

The following information will be included or included in our geotechnical report to the extent applicable to this project and the observed site and subsurface conditions:

- Computer generated boring logs with soil stratification based on visual soil classification (Unified Soil Classification System),
- General project information,
- Subsurface exploration procedures,
- Site conditions (existing),
- Soil conditions (existing),
- Subsurface exploration diagram,
- Summarized laboratory data,
- Site water levels observed during and after drilling,
- Site preparation/earthwork recommendations,
- Suitability of on-site soils for use as structural fill,
- Fill and compaction recommendations,
- A table with soil parameters for design of the drilled shaft signal and sign foundations,
- Foundation installation considerations,
- Pavement subgrade preparation recommendations,
- Pavement thickness design (based on provided traffic information),
- Pavement drainage discussion,
- Subgrade stabilization (if required), and
- Site/excavation drainage discussion.

Schedule – We can generally begin the field exploration program within about 5 to 7 working days after receipt of authorization to proceed, if site and weather conditions permit. The geotechnical report can be completed within about two weeks after the field exploration is completed. In situations where information is needed prior to submittal of our report, we can provide verbal information or recommendations for specific project requirements after we have completed our field and laboratory programs.

### **C. COMPENSATION**

For the base scope of geotechnical services outlined in this proposal that includes drilling, laboratory testing, and an engineering report for the project, the lump-sum total fee would be

Giles Road Reconstruction and Traffic Signals  
Sarpy County, Nebraska  
Proposal No. P05090411  
July 28, 2009

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\$2,500. Should it be necessary to expand our services beyond the base scope of services outlined in this proposal, we will contact you for authorization, then send a supplemental proposal stating the additional services and fee.

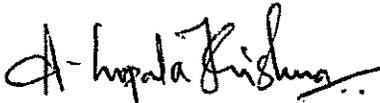
**D. AUTHORIZATION**

This proposal may be accepted by executing the attached Agreement for Services and returning it along with this proposal to Terracon. This Agreement, including the limitations it contains, shall constitute the exclusive terms, conditions and services to be performed for this project. Terracon's total fee is due within thirty days following receipt of invoice. This proposal is valid only if authorized within sixty days from the listed proposal date.

We appreciate the opportunity to be of service and look forward to helping you achieve successful completion of this project. Please contact the undersigned at (402) 330-2202 if you have any questions regarding this proposal.

Sincerely,

**Terracon Consultants, Inc.**



Gopala K. Allam, E.I.  
Staff Geotechnical Engineer



Edward D. Prost, Jr., P.E.  
Principal

GKA/EDP:gka/wjw

Copies to: Addressee (2)

Enclosure: Boring Location Diagram  
Agreement for Services



◆ - Proposed boring location

Note: This diagram is made from a copy of site aerial photo provided by FHU to Terracon.

THIS DIAGRAM IS FOR GENERAL LOCATION ONLY, AND IS NOT INTENDED FOR CONSTRUCTION PURPOSES

Project Manager: GKA	Proposal No. P05090411	 Consulting Engineers & Scientists 2211 South 156 <sup>th</sup> Circle Omaha, Nebraska 68130 PH. (402) 330 2202 FAX. (402) 330 7606	BORING LOCATION DIAGRAM	Ex. No.
Drawn by: GKA	Scale: 1" = 240'			GILES ROAD RECONSTRUCTION & TRAFFIC SIGNALS BETWEEN 154 <sup>TH</sup> AVE & 156 <sup>TH</sup> ST SARY COUNTY, NEBRASKA
Checked by: GKA	File Name: P05090411PLAN			
Approved by: EDP	Date: 7/28/2009			

## AGREEMENT FOR SERVICES

This AGREEMENT is between Felsburg Holt & Ullevig ("Client") and Terracon Consultants, Inc. ("Consultant") for Services to be provided by Consultant for Client on the Giles Road Reconstruction and Traffic Signals, Between 154<sup>th</sup> Avenue and 156<sup>th</sup> Street, Sarpy County, Nebraska project ("Project"), as described in the Project Information section of Consultant's Proposal dated July 28, 2009 ("Proposal") unless the Project is otherwise described in Exhibit A to this Agreement (which section or Exhibit is incorporated into this Agreement).

- 1. Scope of Services.** The scope of Consultant's services is described in the Scope of Services section of the Proposal ("Services"), unless Services are otherwise described in Exhibit B to this Agreement (which section or exhibit is incorporated into this Agreement). Portions of the Services may be subcontracted. Consultant's Services do not include the investigation or detection of, nor do recommendations in Consultant's reports address the presence or prevention of biological pollutants (e.g., mold, fungi, bacteria, viruses, or their byproducts) or occupant safety issues, such as vulnerability to natural disasters, terrorism, or violence. If Services include purchase of software, Client will execute a separate software license agreement. Consultant's findings, opinions, and recommendations are based solely upon data and information obtained by and furnished to Consultant at the time of the Services.
- 2. Acceptance.** Client agrees that execution of this Agreement is a material element of the consideration Consultant requires to execute the Services, and if Services are initiated by Consultant prior to execution of this Agreement as an accommodation for Client at Client's request, both parties shall consider that commencement of Services constitutes formal acceptance of all terms and conditions of this Agreement. Additional terms and conditions may be added or changed only by written amendment to this Agreement signed by both parties. In the event Client uses a purchase order or other form to administer this Agreement, the use of such form shall be for convenience purposes only and any additional or conflicting terms it contains are stricken. This Agreement shall not be assigned by either party without prior written consent of the other party.
- 3. Change Orders.** Client may request changes to the scope of Services by altering or adding to the Services to be performed. If Client so requests, Consultant will return to Client a statement (or supplemental proposal) of the change setting forth an adjustment to the Services and fees for the requested changes. Following Client's review, Client shall provide written acceptance. If Client does not follow these procedures, but instead directs, authorizes, or permits Consultant to perform changed or additional work, the Services are changed accordingly and Consultant will be paid for this work according to the fees stated or its current fee schedule. If project conditions change materially from those observed at the site or described to Consultant at the time of proposal, Consultant is entitled to a change order equitably adjusting its Services and fee.
- 4. Compensation and Terms of Payment.** Client shall pay compensation for the Services performed at the fees stated in the Compensation section of the Proposal unless fees are otherwise stated in Exhibit C to this Agreement (which section or Exhibit is incorporated into this Agreement). If not stated in either, fees will be according to Consultant's current fee schedule. Fee schedules are valid for the calendar year in which they are issued. Consultant may invoice Client at least monthly and payment is due upon receipt of invoice. Client shall notify Consultant in writing, at the address below, within 15 days of the date of the invoice if Client objects to any portion of the charges on the invoice, and shall promptly pay the undisputed portion. Client shall pay a finance fee of 1.5% per month, but not exceeding the maximum rate allowed by law, for all unpaid amounts 30 days or older. Client agrees to pay all collection-related costs that Consultant incurs, including attorney fees. Consultant may suspend Services for lack of timely payment. It is the responsibility of Client to determine whether federal, state, or local prevailing wage requirements apply and to notify Consultant if prevailing wages apply. If it is later determined that prevailing wages apply, and Consultant was not previously notified by Client, Client agrees to pay the prevailing wage from that point forward, as well as a retroactive payment adjustment to bring previously paid amounts in line with prevailing wages. Client also agrees to defend, indemnify, and hold harmless Consultant from any alleged violations made by any governmental agency regulating prevailing wage activity for failing to pay prevailing wages, including the payment of any fines or penalties.
- 5. Third Party Reliance.** This Agreement and the Services provided are for Consultant and Client's sole benefit and exclusive use with no third party beneficiaries intended. Reliance upon the Services and any work product is limited to Client, and is not intended for third parties. For a limited time period not to exceed three months from the date of the report, Consultant will issue additional reports to others agreed upon with Client, however Client understands that such reliance will not be granted until those parties sign and return Consultant's reliance agreement and Consultant receives the agreed-upon reliance fee.
- 6. LIMITATION OF LIABILITY.** CLIENT AND CONSULTANT HAVE EVALUATED THE RISKS AND REWARDS ASSOCIATED WITH THIS PROJECT, INCLUDING CONSULTANT'S FEE RELATIVE TO THE RISKS ASSUMED, AND AGREE TO ALLOCATE CERTAIN OF THE RISKS SO, TO THE FULLEST EXTENT PERMITTED BY LAW, THE TOTAL AGGREGATE LIABILITY OF CONSULTANT (AND ITS RELATED CORPORATIONS AND EMPLOYEES) TO CLIENT AND THIRD PARTIES GRANTED RELIANCE IS LIMITED TO THE GREATER OF \$25,000 OR ITS FEE, FOR ANY AND ALL INJURIES, DAMAGES, CLAIMS, LOSSES, OR EXPENSES (INCLUDING ATTORNEY AND EXPERT FEES) ARISING OUT OF CONSULTANT'S SERVICES OR THIS AGREEMENT REGARDLESS OF CAUSE(S) OR THE THEORY OF LIABILITY, INCLUDING NEGLIGENCE, INDEMNITY, OR OTHER RECOVERY. THIS LIMITATION SHALL NOT APPLY TO THE EXTENT THE DAMAGE IS PAID UNDER CONSULTANT'S COMMERCIAL GENERAL LIABILITY POLICY.
- 7. Indemnity/Statute of Limitations.** Consultant and Client shall indemnify and hold harmless the other and their respective employees from and against legal liability for all claims, losses, damages, and expenses to the extent such claims, losses, damages, or expenses are caused by their negligent acts, errors, or omissions. In the event such claims, losses, damages, or expenses are caused by the joint or concurrent negligence of Consultant and Client, they shall be borne by each party in proportion to its own negligence under comparative fault principles. Causes of action arising out of Consultant's services or this Agreement regardless of cause(s) or the theory of liability, including negligence, indemnity or other recovery shall be deemed to have accrued and the applicable statute of limitations shall commence to run not later than the date of Consultant's substantial completion of services on the project.
- 8. Warranty.** Consultant will perform the Services in a manner consistent with that level of care and skill ordinarily exercised by members of the profession currently practicing under similar conditions in the same locale. CONSULTANT MAKES NO WARRANTIES OR GUARANTEES, EXPRESS OR IMPLIED, RELATING TO CONSULTANT'S SERVICES AND CONSULTANT DISCLAIMS ANY IMPLIED WARRANTIES OR WARRANTIES IMPOSED BY LAW, INCLUDING WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE.
- 9. Insurance.** Consultant represents that it now carries, and will continue to carry: (i) workers' compensation insurance in accordance with the laws of the states having jurisdiction over Consultant's employees who are engaged in the Services, and employer's liability insurance (\$1,000,000); (ii) commercial general liability insurance (\$1,000,000 occ / \$2,000,000 agg); (iii) automobile liability insurance (\$1,000,000 B.I. and P.D. combined single limit); and (iv) professional liability insurance (\$1,000,000 claim / agg). Certificates of insurance will be provided upon request. Client and Consultant shall waive subrogation against the other party on all general liability and property coverage.

10. **CONSEQUENTIAL DAMAGES.** NEITHER PARTY SHALL BE LIABLE TO THE OTHER FOR LOSS OF PROFITS OR REVENUE; LOSS OF USE OR OPPORTUNITY; LOSS OF GOOD WILL; COST OF SUBSTITUTE FACILITIES, GOODS, OR SERVICES; COST OF CAPITAL; OR FOR ANY SPECIAL, CONSEQUENTIAL, INDIRECT, PUNITIVE, OR EXEMPLARY DAMAGES.
11. **Dispute Resolution.** Client shall not be entitled to assert a Claim against Consultant based on any theory of professional negligence unless and until Client has obtained the written opinion from a registered, independent, and reputable engineer, architect, or geologist that Consultant has violated the standard of care applicable to Consultant's performance of the Services. Client shall provide this opinion to Consultant and the parties shall endeavor to resolve the dispute within 30 days, after which Client may pursue its remedies at law. This Agreement shall be governed by and construed according to Kansas law.
12. **Subsurface Explorations.** Subsurface conditions throughout the site may vary from those depicted on logs of discrete borings, test pits, or other exploratory services. Client understands Consultant's layout of boring and test locations is approximate and that Consultant may deviate a reasonable distance from those locations. Consultant will take reasonable precautions to reduce damage to the site when performing Services; however, Client accepts that invasive services such as drilling or sampling may damage or alter the site. Site restoration is not provided unless specifically included in the Services.
13. **Testing and Observations.** Client understands that testing and observation are discrete sampling procedures, and that such procedures indicate conditions only at the depths, locations, and times the procedures were performed. Consultant will provide test results and opinions based on tests and field observations only for the work tested. Client understands that testing and observation are not continuous or exhaustive, and are conducted to reduce - not eliminate - project risk. Client agrees to the level or amount of testing performed and the associated risk. Client is responsible (even if delegated to contractor) for notifying and scheduling Consultant so Consultant can perform these Services. Consultant shall not be responsible for the quality and completeness of Client's contractor's work or their adherence to the project documents, and Consultant's performance of testing and observation services shall not relieve Client's contractor in any way from its responsibility for defects discovered in its work, or create a warranty or guarantee. Consultant will not supervise or direct the work performed by Client's contractor or its subcontractors and is not responsible for their means and methods.
14. **Sample Disposition, Affected Materials, and Indemnity.** Samples are consumed in testing or disposed of upon completion of tests (unless stated otherwise in the Services). Client shall furnish or cause to be furnished to Consultant all documents and information known or available to Client that relate to the identity, location, quantity, nature, or characteristic of any hazardous waste, toxic, radioactive, or contaminated materials ("Affected Materials") at or near the site, and shall immediately transmit new, updated, or revised information as it becomes available. Client agrees that Consultant is not responsible for the disposition of Affected Material unless specifically provided in the Services, and that Client is responsible for directing such disposition. In the event that test samples obtained during the performance of Services (i) contain substances hazardous to health, safety, or the environment, or (ii) equipment used during the Services cannot reasonably be decontaminated, Client shall sign documentation (if necessary) required to ensure the equipment and/or samples are transported and disposed of properly, and agrees to pay Consultant the fair market value of this equipment and reasonable disposal costs. In no event shall Consultant be required to sign a hazardous waste manifest or take title to any Affected Materials. Client shall have the obligation to make all spill or release notifications to appropriate governmental agencies. The Client agrees that Consultant neither created nor contributed to the creation or existence of any Affected Materials conditions at the site. Accordingly, Client waives any claim against Consultant and agrees to indemnify and save Consultant, its agents, employees, and related companies harmless from any claim, liability or defense cost, including attorney and expert fees, for injury or loss sustained by any party from such exposures allegedly arising out of Consultant's non-negligent performance of services hereunder, or for any claims against Consultant as a generator, disposer, or arranger of Affected Materials under federal, state, or local law or ordinance.
15. **Ownership of Documents.** Work product, such as reports, logs, data, notes, or calculations, prepared by Consultant shall remain Consultant's property. Proprietary concepts, systems, and ideas developed during performance of the Services shall remain the sole property of Consultant. Files shall be maintained in general accordance with Consultant's document retention policies and practices.
16. **Utilities.** Client shall provide the location and/or arrange for the marking of private utilities and subterranean structures. Consultant shall take reasonable precautions to avoid damage or injury to subterranean structures or utilities. Consultant shall not be responsible for damage to subterranean structures or utilities that are not called to Consultant's attention, are not correctly marked, including by a utility locate service, or are incorrectly shown on the plans furnished to Consultant.
17. **Site Access and Safety.** Client shall secure all necessary site related approvals, permits, licenses, and consents necessary to commence and complete the Services and will execute any necessary site access agreement. Consultant will be responsible for supervision and site safety measures for its own employees, but shall not be responsible for the supervision or health and safety precautions for any other parties, including Client, Client's contractors, subcontractors, or other parties present at the site.
18. **Termination.** Either party may terminate this Agreement or the Services upon written notice to the other. In such case, Consultant shall be paid costs incurred and fees earned to the date of termination plus reasonable costs of closing the project.

Consultant: **Terracon Consultants, Inc.**  
By:  Date: **07/28/2009**  
Name/Title: **Edward D. Prost Jr., P.E., Principal**  
Address: **2211 South 156th Circle**  
**Omaha, Nebraska 68130**  
Phone: **402.330.2202** Fax: **402.330.7606**

Client: **Felsburg Holt & Ullevig**  
By: \_\_\_\_\_ Date: \_\_\_\_\_  
Name/Title: \_\_\_\_\_  
Address: **11422 Miracle Hills Drive, Suite 115**  
**Omaha, Nebraska 68154**  
Phone: **402.445.4405** Fax: **402.445.4394**

# THOMAS A. LYNAM

SARPY COUNTY SURVEYOR

• 15100 SOUTH 84th STREET • PAPILLION, NEBRASKA 68046 • 402.339.4606 • FAX: 402.339.6555 •

## Memo

**To:** Sarpy County Board of Commissioners

**From:** Tom Lynam, Sarpy County Surveyor 

**Date:** 07/01/2009

**Re:** *Agreement for the Improvement(s) to 156<sup>th</sup> Street & Giles Intersection.*

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I recommend approval of the Agreement with Felsburg Holt & Ullevig for the design and environmental evaluation of improvements to the Intersection of 156<sup>th</sup> & Giles Road. The County's cost is \$25,000.

If you have any questions, please feel free to contact me,