



CITY OF RAPID CITY

RAPID CITY, SOUTH DAKOTA 57701-2724

PLANNING DEPARTMENT

300 Sixth Street

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MEMORANDUM

To: Legal and Finance Committee

From: Jeff Gies, Transportation Planning Coordinator

Date: October 3, 2001

Re: Authorize Mayor and Finance Officer to sign the professional services agreement between Felsburg Holt and Ullevig and the City of Rapid City to complete the Jackson Boulevard Extension Study for an amount not to exceed \$106,938.

The professional services agreement for the Jackson Boulevard Extension Study has been reviewed by the City Attorney's Office and the South Dakota Department of Transportation, and the requested changes have been incorporated into the agreement. Approximately 82% of the cost of this project will be eligible for reimbursement by Federal Highway Administration Planning Funds.

Staff recommends that the City Council authorize the Mayor and Finance Officer to sign the professional services agreement between Felsburg Holt and Ullevig and the City of Rapid City to complete the Jackson Boulevard Extension Study for an amount not to exceed \$106,938.

AGREEMENT FOR PROFESSIONAL SERVICES

JACKSON BOULEVARD EXTENSION INFRASTRUCTURE ASSESSMENT, ALIGNMENT IDENTIFICATION AND ENVIRONMENTAL ASSESSMENT

THIS IS AN AGREEMENT made on this ____ day of _____, 2001 between the City of Rapid City, 300 Sixth Street, Rapid City, South Dakota 57701, hereinafter referred to as OWNER, and Felsburg Holt & Ullevig, 7951 East Maplewood Avenue, Suite 200, Greenwood Village, Colorado 80111, hereinafter referred to as ENGINEER. This project will encompass the assessment of the extension of Jackson Boulevard north from its existing terminus at West Main Street to intersect with West Omaha Street.

OWNER and ENGINEER in consideration of their mutual covenants herein agree in respect of the performance of professional engineering services by ENGINEER and the payment for those services by OWNER as set forth below.

SECTION 1 - BASIC SERVICES OF ENGINEER

1.1 General

ENGINEER shall provide to OWNER professional engineering services in all phases of the Project to which this Agreement applies as hereinafter provided. These services will include serving as OWNER's professional engineering representative for the Project, providing professional engineering consultation and advice and furnishing selected transportation planning services.

1.2 Scope of Work

The Basic Services Scope of Work is described in detail in Exhibit A.

SECTION 2 - ADDITIONAL SERVICES OF ENGINEER

2.1 Services Requiring Authorization in Advance

If authorized in writing by OWNER, ENGINEER shall furnish or obtain from others Additional Services of the types listed in paragraphs 2.1.1 through 2.1.7, inclusive. These services are not included as part of Basic Services except to the extent provided otherwise in Exhibit A; these will be paid for by OWNER as indicated in Section 5.

- 2.1.1 Services resulting from significant changes in the general scope, extent or character of the Project including, but not limited to, changes in size, complexity, or method of financing; and revising previously accepted studies, reports or design documents when such revisions are required by changes in laws, rules, regulations, ordinances, codes or orders enacted subsequent to the preparation of such studies, reports or documents.

- 2.1.2 Investigations and studies involving, but not limited to detailed consideration of operations, maintenance and overhead expenses; providing value engineering during the course of design; the preparation of feasibility studies, cash flow and economic evaluations, rate schedules and appraisals; assistance in obtaining financing for the Project; evaluating processes available for licensing and assisting OWNER in obtaining process licensing; detailed quantity surveys of material, equipment and labor; and audits or inventories required in connection with construction performed by OWNER.
- 2.1.3 Furnishing services of independent professional associates and consultants for other than Basic Services (which include, but are not limited to, customary civil, structural, mechanical and electrical engineering and customary architectural design incidental thereto);
- 2.1.4 Services during out-of-town travel required of ENGINEER other than visits to the site, attendance at OWNER's office as required by Section 1, or other services as detailed in Exhibit A.
- 2.1.5 Providing any type of property surveys or related engineering services needed for the transfer of interests in real property and field surveys for design purposes and providing other special field surveys.
- 2.1.6 Preparing to serve or serving as consultant or witness for OWNER in any litigation, arbitration or other legal or administrative proceeding involving the Project (except for assistance in consultations which is included as part of Basic Services).
- 2.1.7 Additional services in connection with the Project, excluding services which are to be furnished by OWNER in accordance with Article 3, and services not otherwise provided for in this Agreement.

SECTION 3 - OWNER'S RESPONSIBILITIES

OWNER shall do the following in a timely manner so as not to delay the services of ENGINEER:

- 3.1 Mr. Jeff Gies, Transportation Planning Coordinator with the Rapid City Planning Department, shall act as OWNER's representative with respect to the services to be rendered under this Agreement. Mr. Gies shall have complete authority to transmit instructions, receive information, interpret and define OWNER's policies and decisions with respect to ENGINEER's services for the Project.

- 3.2 Assist ENGINEER by placing at ENGINEER's disposal all available information pertinent to the Project including previous reports and any other data relative to the Project.
- 3.3 Examine all studies, reports, sketches, drawings, proposals and other documents presented by ENGINEER, obtain advice of an attorney, insurance counselor and other consultants as OWNER deems appropriate for such examination and render in writing decisions pertaining thereto within a reasonable time so as not to delay the services of ENGINEER.
- 3.4 Give prompt written notice to ENGINEER whenever OWNER observes or otherwise becomes aware of any development that affects the scope or timing of ENGINEER's services.
- 3.5 Furnish or direct ENGINEER to provide Additional Services as stipulated in paragraph 2.1 of this Agreement or other services as required.

SECTION 4 - PERIOD OF SERVICE

- 4.1 The ENGINEER'S period of service shall extend 12 months from the OWNER'S issuance of notice-to-proceed. The ENGINEER'S services shall be provided in general accordance with the schedule as defined in Exhibit B.

SECTION 5 - PAYMENTS TO ENGINEER

5.1 Methods of Payment for Services and Expenses of Engineer

- 5.1.1 *For Basic Services.* OWNER shall pay ENGINEER for Basic Services rendered under Section 1 (as amended and supplemented in Exhibit A) an amount not-to-exceed \$106,938.

- 5.1.1.1 *Direct Labor Costs and Overhead.* Direct labor costs and overhead shall be paid at a rate equal to ENGINEER's salary cost times a factor of 2.3679 for all Basic Services rendered on the Project.

- 5.1.1.2 *Fixed Fee.* A fixed fee of \$6,240.00 shall be paid on a prorated share based on the amount of work completed upon each billing.

- 5.1.1.3 OWNER shall pay ENGINEER the actual costs (except where specifically provided otherwise) of all Reimbursable Expenses approved by OWNER. The term "Reimbursable Expenses" has the meaning assigned to it in paragraph 5.4.

5.1.2 *For Additional Services.* OWNER shall pay ENGINEER for Additional Services rendered under Section 2 as follows:

5.1.2.1 General. For additional services of ENGINEER's principals and employees engaged directly on the Project and rendered pursuant to paragraph 2.1 on the same basis as outlined in paragraphs 5.1.1.1, 5.1.1.2 and 5.1.1.3.

5.2 Times of Payments

5.2.1 ENGINEER shall submit monthly statements for Basic and Additional Services rendered and for Reimbursable Expenses incurred. OWNER shall make prompt monthly payments in response to ENGINEER's monthly statements.

5.3 Other Provisions Concerning Payments

5.3.1 If OWNER fails to make any payment due ENGINEER for services and expenses within forty-five (45) days after receipt of ENGINEER's statement therefor, the amounts due ENGINEER will be increased at the rate of 1.5% per month from said forty-fifth day, and in addition, ENGINEER may, after giving seven (7) days written notice to OWNER, suspend services under this Agreement until ENGINEER has been paid in full all amounts due for services, expenses and charges.

5.3.2 In the event of termination by OWNER upon completion of any phase of Basic Services, progress payments due ENGINEER for services rendered through such phase shall constitute total payment for such services. In the event of such termination by OWNER during any phase of the Basic Services, ENGINEER also will be reimbursed for the charges of independent professional associates and consultants employed by ENGINEER to render Basic Services incurred through such phase. In the event of any such termination, ENGINEER will be paid for unpaid Reimbursable Expenses previously incurred.

5.3.3 The employees of ENGINEER, professional associates and consultants, whose time is directly assignable to the program shall keep and sign a time record showing the element of the Project, date and hours worked, title of position and compensation rate.

5.3.4 *Records.* The ENGINEER shall maintain an accurate cost keeping system as to all costs incurred in connection with the subject to this Agreement and shall produce for examination books of accounts, bills, invoices and other vouchers or certified copies thereunder if originals be lost at such reasonable time and place as may be designated by the OWNER, South Dakota Department of Transportation or Federal Highway Administration and shall permit extracts and copies thereof to be made during the contract period and for three years after the date of final payment to ENGINEER.

All personnel employed by ENGINEER shall maintain time records for time spent performing work on study described in this Agreement for a period of three years from the conclusion of the study. Time records and payroll records for said personnel shall be similarly retained by ENGINEER for a period of three years from the conclusion of the study.

Upon reasonable notice, the ENGINEER will allow OWNER auditors to audit all records of the ENGINEER related to this Agreement. These records shall be clearly identified and readily accessible. All records shall be kept for a period of three (3) years after final payment under Agreement is made and all other pending matters are closed.

- 5.3.5 *Inspection of Work.* OWNER auditors shall at reasonable times be accorded proper ENGINEER facilities for review and inspection of the work in this Agreement. OWNER shall have access to ENGINEER's premises and to all books, records, correspondence, instructions, receipts, vouchers and memoranda of every description pertaining to this Agreement.
- 5.3.6 *Audits.* The ENGINEER shall, with reasonable notice, afford representatives of the OWNER reasonable facilities for examination and audits of the cost account records; shall make such returns and reports to a representative as he may require; shall produce and exhibit such books, accounts, documents and property as he may determine necessary to inspect and shall, in all things, aid him in the performance of his duties.
- 5.3.7 Payment shall be made subject to audit by duly authorized representatives of the OWNER.
- 5.3.8 In the event the services of the contract are terminated by the OWNER for fault on the part of the ENGINEER, the agreement shall be null and void, and, the OWNER shall be entitled to recover payments made to the ENGINEER on the work which is the cause of the at-fault termination. The ENGINEER shall be paid only for work satisfactorily performed and delivered to the Owner up to the date of termination. After audit of the ENGINEER'S actual costs to the date of termination and after determination by the ENGINEER of the amount of work satisfactorily performed, the ENGINEER shall determine the amount to be paid to the OWNER.

5.4 Definitions

- 5.4.1 Reimbursable Expenses means the actual expenses incurred by ENGINEER or ENGINEER's independent professional associates or consultants directly in connection with the Project, including expenses for: transportation and subsistence incidental thereto; reproduction of reports, graphics, and similar Project related items; and if authorized in advance by OWNER, overtime work requiring higher than regular rates. In addition, if authorized in advance by OWNER, Reimbursable Expenses will also include expenses incurred for computer time and other highly specialized equipment, including an appropriate charge for previously established programs and expenses of photographic production techniques times a factor of 1.0.

5.5 Ownership of Data

Documents and all products of this Agreement are to be the property of the OWNER.

5.6 Publication and Release of Information

The ENGINEER shall not copyright material developed under this Agreement without written authorization from the OWNER. The OWNER reserves a royalty-free non-exclusive, and irrevocable license to reproduce, publish or otherwise use, and to authorize others to use, the work for government purposes.

5.7 Acquisition of Property or Equipment

The acquisition of property or equipment will be in accordance with 49 CFR 18.32.

5.8 Subcontracting

ENGINEER shall perform all work except specialized services. Specialized services are considered to be those items not ordinarily furnished by ENGINEER which must be obtained for proper execution of this Agreement. Specialized services required by the study, if any, are itemized in Exhibit A of this Agreement.

Neither this Agreement nor any interest therein shall be assigned, sublet or transferred unless written permission to do so is granted by the OWNER. Subcontracts are to contain all the required provisions of the prime contract as required by 49 CFR Part 18, definitions.

5.9 Personnel Employment

The ENGINEER warrants that it has not employed or retained any company or person, other than a bona fide employee working solely for the ENGINEER, to solicit or secure this agreement, and that he has not paid or agreed to pay any company or person, other than a bona fide employee working solely for the ENGINEER, any fee, commission, percentage, brokerage fee, gifts, or any other considerations, contingent upon or resulting from the award of making of this Agreement. For breach or violation of this warranty, the OWNER shall have 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 fees, commission, percentage, brokerage fee, gift or contingent fee.

5.10 Nondiscrimination/ADA

The ENGINEER agrees to comply with the requirements of Title 49, CFR Part 21 and Title VI of the Civil Rights Act of 1964. The ENGINEER agrees to submit upon request quarterly Title VI (Civil Rights) State of Contractor reports to the State. The ENGINEER agrees to provide services in compliance with the Americans With Disabilities Act of 1990.

5.11 Claims

To the extent authorized by law, the ENGINEER shall indemnify and hold harmless the OWNER, its employees and agents, against any and all claims, damages, liability and court awards including costs, expenses and attorney fees, to the extent such claims are caused by any negligent act or omission of, or breach of contract by, the ENGINEER, its employees, agents, subcontractors or assignees, or other parties not under the control of or responsible to the ENGINEER. It is further agreed that any and all employees of either party, while engaged in the performance of any work or services, shall not be considered employees of the other party, and that any and all claims that may or might arise under the Worker's Compensation Act of the State of South Dakota on behalf of said employees, while so engaged on any of the work or services provided to be rendered herein, shall in no way be the obligation or responsibility of the other party.

5.12 Acceptance and Modification

This Agreement together with the Exhibits and schedules identified above constitute the entire agreement between OWNER and ENGINEER and supersede all prior written or oral understandings. This Agreement and said Exhibits and schedules may only be amended, supplemented, modified or canceled after consultation with, and approval in writing by, the parties to this Agreement.

5.13 Termination or Abandonment

The ENGINEER and the OWNER share the right to terminate this Agreement upon giving thirty (30) days written notice of such cancellation to the other party. If this Agreement is terminated under this paragraph, ENGINEER shall deliver to OWNER all work product produced up to the time of termination. OWNER shall reimburse ENGINEER for all work completed to the date of termination.

SECTION 6- GOVERNING LAW

This agreement and any dispute arising out of this agreement shall be governed by the laws of the State of South Dakota.

6.1 Forum Selection

Any dispute arising out of this contract shall be litigated in the state court in South Dakota which includes the City of Rapid City, currently, the Seventh Circuit Judicial Court for the State of South Dakota.

SECTION 7 - MERGER CLAUSE

This written agreement including Exhibit A “Jackson Boulevard Extension Work Program” and Exhibit B “Jackson Boulevard Extension Schedule” constitutes the entire agreement of the parties. No other promises or consideration are a part of this agreement.

SECTION 8 - COMPLIANCE WITH CLEAN AIR ACT

ENGINEER stipulates that any facility to be utilized in the performance of this contract, under the Clean Air Act, as amended, Executive Order 11738, and regulations in implementation thereof is not listed on the U.S. Environmental Protection Agency List of Violating Facilities pursuant to 40 CFR 15.20 and that the OWNER and the State Department of Transportation shall be promptly notified of the receipt by the ENGINEER of any communication from the Director, Office of Federal Activities, EPA, indicating that a facility to be utilized for the contract is under consideration to be listed on the EPA List of Violating Facilities.

SECTION 9 - CERTIFICATION REGARDING DEBARMENT, SUSPENSION, INELIGIBILITY AND VOLUNTARY EXCLUSION

ENGINEER certifies, by signing this agreement, that neither it nor its Principals is presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participation in this transaction by any Federal department or agency.

IN WITNESS WHEREOF, the parties hereto have made and executed this Agreement by their duly authorized officers on the day, month and year first written above.

OWNER:

BY: _____

Mayor

BY: _____

Finance Officer

City of Rapid City
300 Sixth Street
Rapid City, SD 57701

ENGINEER:

BY: _____

Robert W. Felsburg, P.E.
Principal

Felsburg Holt & Ullevig
7951 East Maplewood Avenue, Suite 200
Greenwood Village, CO 80111

STATE OF SOUTH DAKOTA

COUNTY OF PENNINGTON

On this ____ day of _____, 2001, before me, a Notary Public, personally appeared _____, known to me to be the Mayor of the City of Rapid City, and acknowledge to me that he did sign the foregoing document as such officer and for the purposes therein stated.

Notary Public

My Commission Expires:

(SEAL)

STATE OF COLORADO

COUNTY OF ARAPAHOE

On this _____ day of _____, 2001, before me, a Notary Public, personally appeared Robert W. Felsburg, known to me to be a Principal of Felsburg Holt & Ullevig, and acknowledge to me that he did sign the foregoing document as such officer and for the purposes therein stated.

Notary Public

My Commission Expires:

(SEAL)

Address for Giving Notices:

City of Rapid City
Planning Department
300 Sixth Street
Rapid City, South Dakota 57701

Address for Giving Notices:

Felsburg Holt & Ullevig
7951 East Maplewood Avenue, Suite 200
Greenwood Village, Colorado 80111