

THE STATE OF TEXAS) ENGINEERING SERVICES AGREEMENT
) FOR PROFESSIONAL SERVICES
COUNTY OF EL PASO) (Rodman Shared Use Path (SUP)
)

THIS AGREEMENT is made and entered into as of the ____ day of _____, 2024, by and between the **TOWN OF HORIZON CITY**, a municipal corporation organized and existing under the laws of the State of Texas, hereinafter referred to as the “**City**”, and **HUITT-ZOLLARS, INC.**, a Texas Corporation, hereinafter referred to as the “**Engineer**”.

RECITALS

WHEREAS, on or about Dec. 9, 1998, based on a process to select a firm based on qualifications, the Parties entered into an Engineering Services Agreement (“Initial Agreement”) for the Engineer to provide professional engineering services to the Town of Horizon City on an on-call basis for specific projects, under which Engineer essentially functions as the City Engineer for the City;

WHEREAS, the City desires to engage the services of an engineering firm to provide engineering support services for the Rodman Shared Use Path (SUP);

WHEREAS, because the Engineer is qualified and was selected through the City's selection procedure, in accordance with all applicable state and local laws and ordinances, the Parties desire to amend the Initial Agreement to provide for the services required for the Municipal Services Phase I Project.

AGREEMENT

NOW, THEREFORE, for the consideration set forth in the Agreement, the City and the Engineer agree to the following terms and conditions.

ARTICLE I.
ATTACHMENTS

1.1 The below attachments are hereby attached to this Agreement for engineering support services for Municipal Facilities Phase I, hereinafter referred to as the “Project”, and are incorporated herein by reference for all purposes, as follows:

- Attachment “A”** Scope of Services and Project Budget
- Attachment “B”** Engineer's Fee Proposal and Unit/Hourly Rates
- Attachment “C”** Insurance Certificates

**ARTICLE II.
PROJECT COVERED UNDER THIS AGREEMENT**

2.1 The City hereby agrees to retain the Engineer, and the Engineer agrees to perform professional services engineering and review services as a professional engineer for the Project covered by this Agreement. The Project shall consist of the Engineer's completion of the Scope of Services as further described in **Attachment "A"**.

2.2 The Engineer shall serve as the City's professional representative in those phases of the Project to which this Agreement applies and shall give consultation and advice to the City during the performance of services.

2.3 The City shall provide all available information to the Engineer as to the Project for which Engineer will provide the services for the City.

2.5 The City shall provide all available information to the Engineer as to the City's general requirements for the Project. Should the Engineer determine that the information provided is inadequate to proceed, Engineer shall notify the Interim Director of Planning, who shall direct the Engineer on how to acquire or develop the needed information. The City shall also provide the Engineer all known information pertinent to the Project site, including previous reports and other data relative to design, such as "as-built" drawings or physical conditions now existing at the Project site.

2.6 The City hereby designates the Interim Director of Planning as the City's representative with respect to the professional services to be provided by the Engineer pursuant to this Agreement. The Interim Director of Planning shall have complete authority to transmit instructions, receive information, interpret, and define the City's policies and decisions with respect to materials, equipment, elements, and systems pertinent to the work covered by this Agreement. The Interim Director of Planning will render written decisions within a five (5) working daytime period.

**ARTICLE III.
ENGINEER FEES AND PROJECT'S BUDGET**

3.1 PAYMENT TO ENGINEER. The total amount of compensation for all phases of the Project NINETY-THREE THOUSAND FIVE HUNDRED FIFTY DOLLARS (\$93,550.00)

3.1.1 The Mayor may authorize additional services as identified in **Attachment "A"** for this Agreement in an amount not to exceed ten percent (10%) of the total estimated Project amount identified in Section 3.1. Should any additional services as identified in **Attachment "A"** be necessary and the cost of the services exceed the identified additional ten percent (10%) of the total estimated Project amount identified in Section 3.1, such additional services and payment must be approved by the City Council of the Town of Horizon City.

3.2 ENGINEER'S SERVICES. The Scope of Services to be provided by the Engineer for the Project are attached hereto as **Attachment "A"**.

3.3 ENGINEER'S INVOICES. The Engineer shall bill the City separately for the services under this Agreement not more often than monthly. Invoices shall indicate the costs for outside consultants, if any, with copies of their invoices as back-up materials as well as other authorized direct costs for hourly rate contracts. All invoices shall be made in writing.

3.3.1 Each invoice shall contain a brief summary indicating, at a minimum, the total Project budget(s), the total amount(s) authorized for the Engineer, the current invoiced amount(s), and the amount(s) billed to date. In addition to the Summary, each invoice shall provide a Progress Report. The Progress Report shall describe, at a minimum, the progress of the Project to date, also indicating the percentage of completion of each phase. The established schedule for completion shall not be revised except by written amendment to this Agreement, executed by both Parties.

3.3.2 The City agrees to pay invoices for all services performed as soon as reasonably possible, but not later than thirty (30) days from receipt pursuant to the Texas State Prompt Payment Act. Upon dispute, however, the City may, upon notice to the Engineer, withhold payment to the Engineer for the amount in dispute only, until such time as the exact amount of the disputed amount due the Engineer is determined. The total amount paid to Engineer shall not exceed Engineer's fee proposal, except by written amendment to this Amendment, executed by both Parties.

3.4 COSTS NOT ENUMERATED. Except as specifically set forth in this Agreement and its attachments, all costs related to the completion of the services requested herein shall be borne by the Engineer and not passed on to the City or otherwise paid by the City, unless a written amendment to this Agreement is executed by both Parties allowing for additional costs.

3.5 INDEPENDENT CONTRACTOR. In the performance of work or services hereunder, the Engineer shall be deemed an independent contractor, and any of its employees performing work required hereunder shall be deemed employees of the Engineer.

3.6 SUBCONSULTANTS. The Engineer shall not award any work to any subconsultant or replace any subconsultant without prior written approval of the City. The Engineer will provide to the City a written statement concerning the proposed award or substitution of a subconsultant, which will include a Statement of Qualifications for such subconsultant and such additional information as the City may require, and City may verify the subconsultant's current eligibility status.

The Engineer shall be fully responsible to the City for the acts and omissions of its subconsultants, and of persons either directly or indirectly employed by them, as the Engineer is for the acts and omissions of persons directly employed by it.

The Engineer shall cause appropriate provisions to be inserted in all subcontracts relative to the work to bind subconsultants to the Engineer by the terms of this Agreement insofar as applicable to the work of subconsultants (including but not limited to the indemnification and insurance), and to give the Engineer the same power as regards to the termination of any subcontract that the City may exercise over the Engineer under this Agreement.

Nothing contained in this Agreement shall create any contractual relation between any subconsultant and the City. The City shall have no responsibility to any subconsultant employed by the Engineer for performance of work on the Project contemplated by this Agreement but said subconsultants will look exclusively to the Engineer for any payments due. In the performance of work or services hereunder, the subconsultants shall each be deemed an independent contractor, and any of its employees performing work required hereunder shall be deemed solely employees of the subconsultant.

ARTICLE IV. PERIOD OF SERVICE AND TERMINATION

4.1 PERIOD OF SERVICE. The services called for under the Project shall begin upon the issuance of a Notice to Proceed from the Interim Director of Planning. The Engineer shall complete the requested services in accordance with the timelines and schedules outlined in **Attachment "B"**.

4.2 TERMINATION. This Agreement for the Project may be terminated separately without affecting any other Agreement or amendment by and between the Parties for any other project, as provided herein. In the event of a termination of this Agreement, in whole or in part, the Engineer shall surrender all Project related documents to the City within five (5) business days of the effective date of the termination.

4.2.1 TERMINATION BY CITY. It is mutually understood and agreed by the Engineer and the City that the City may terminate this Agreement, in whole or in part for the convenience of the City, upon **fourteen (14) consecutive calendar days** written notice. It is also understood and agreed that upon such notice of termination, the Engineer shall cease the performance of services under this Agreement. Upon such termination, the Engineer shall provide one final invoice for all services completed and reimbursable expenses incurred prior to the City's notice of termination. The City shall compensate Engineer in accordance with this Agreement; however, the City may withhold any payment to the Engineer that is held to be in dispute for the purpose of set-off until such time as the exact amount due the Engineer from the City is determined. Nothing contained herein, or elsewhere in this Agreement shall require the City to pay for any services that are not in compliance with the terms of this Agreement and its attachments.

4.2.2 TERMINATION BY EITHER PARTY It is further understood and agreed by the Engineer and City that either Party may terminate this Agreement in whole or in part. Such a termination may be made for failure of one Party to substantially fulfill its contractual obligations, pursuant to this Agreement, and through no fault of the other Party.

No such termination shall be made unless the other Party being terminated is granted: a) written notice of intent to terminate enumerating the failures for which the termination is being sought; b) a minimum of **seven (7) consecutive calendar days** to cure such failures; and c) an opportunity for consultation with the terminating Party prior to such termination. However, the City retains the right to immediately terminate this Agreement for default if the Engineer violates any local, state, or federal laws, rules or regulations that relate to the performance of this Agreement. In the event of termination by the City pursuant to this subsection, the City may withhold payments to the Engineer for the purpose of set-off until such time as the exact amount due the Engineer from the City is determined.

4.2.3 TERMINATION SHALL NOT BE CONSTRUED AS RELEASE. Termination by either Party shall not be construed as a release of any claims that the terminating Party may be lawfully entitled to assert against the terminated Party. Further, the terminated Party shall not be relieved of any liability for damages sustained by the terminating Party by virtue of any breach of this Agreement. The provisions set forth in Section 5.2 shall survive the termination of this Agreement and continue to be applicable to the Agreement, unless otherwise specifically agreed to by the Parties.

ARTICLE V. INSURANCE AND INDEMNIFICATION

5.1 INSURANCE. The Engineer shall have **seven (7) calendar days** from date of award to obtain sufficient insurance as required herein. Engineer shall not commence work under this Agreement until the Engineer has obtained the required insurance and such insurance has been approved by the City. The Engineer shall maintain the required insurance throughout the term of this Agreement. Failure to maintain said insurance shall be considered a material breach of this Agreement.

5.1.1 WORKERS' COMPENSATION INSURANCE. The Engineer shall procure and shall maintain, at Engineer's sole expense, during the life of this Agreement, Workers' Compensation Insurance as required by applicable Texas law for all of the Engineer's employees to be engaged in work under this Agreement. The Engineer shall provide the following endorsement:

"The policy is endorsed to provide that insurer waives any right of subrogation it may acquire against the City, its officers, agents and employees by reason of any payment made on or account of injury, including death resulting therefrom, sustained by any employee of the insured."

5.1.2 COMMERCIAL LIABILITY, PROPERTY DAMAGE LIABILITY AND AUTOMOBILE LIABILITY INSURANCE. The Engineer shall procure and shall maintain, at the Engineer's sole expense, and shall cause subconsultants to procure and maintain, during the life of this Agreement, such Commercial General Liability, Property Damage Liability, and Automobile Liability Insurance with the below coverages and limits of insurance with insurers licensed to do business in the State of Texas. Certificates of

such insurance and evidence of policy endorsement for additional insured(s) shall be executed by the insurer in a form satisfactory to the City. Such insurance shall also provide for the defense of the City as an additional insured. The minimum limits of liability and coverage shall be as follows:

a) **COMMERCIAL GENERAL LIABILITY**

\$500,000.00 per occurrence
\$1,000,000.00 General Aggregate

b) **AUTOMOBILE LIABILITY**

Combined Single Limit
\$1,000,000.00 per accident

5.1.3 PROFESSIONAL LIABILITY INSURANCE. The Engineer shall procure and shall maintain, at the Engineer's sole expense, and shall cause subconsultants to procure and maintain Professional Liability Insurance for the benefit of the City to cover the errors and omissions of the Engineer, its principals or officers, agents, or employees in the performance of this Agreement with a limit of ONE MILLION AND 00/100 DOLLARS (\$1,000,000.00) on a claims made basis.

5.1.4 CITY AS ADDITIONAL INSURED. The City shall be named as an Additional Insured on all of the Engineer's and subconsultant's Insurance Policies, with the exception of Workers' Compensation and Professional Liability Insurance required by this Agreement.

5.1.5 PROOF OF INSURANCE. The Engineer shall furnish the City with certificates showing the type of insurance coverages, limits on each insurance policy, class of operations covered under each insurance policy, effective dates and expiration dates of policies, insurance companies providing the insurance coverages, name of agent/broker and include confirmation of any endorsement(s) required in this Agreement.

5.1.6 GENERAL INSURANCE PROVISIONS. All certificates required herein shall be attached hereto and incorporated for all purposes as **Attachment "C"**. All certificates shall also include the name of the Project on the corresponding insurance certificate. Further, each certificate shall contain the following statement, and the policies shall be subject to such requirement:

"The insurance covered by this certificate will not be canceled, and there will be no change in coverage or deductibles, except after thirty (30) consecutive calendar days written notice of intent to cancel or change said insurance has been provided to the Town of Horizon City."

5.2 INDEMNIFICATION. THE ENGINEER SHALL INDEMNIFY AND HOLD HARMLESS THE CITY, AND ITS OFFICERS, AGENTS, EMPLOYEES,

REPRESENTATIVES, CONTRACTORS, ASSIGNEES, AND/OR DESIGNEES FROM ANY AND ALL LIABILITY, ACTIONS, CLAIMS, DEMANDS, OR SUITS, AND ALL RELATED DAMAGES, COSTS, ATTORNEY FEES, AND EXPENSES TO THE EXTENT CAUSED BY, ARISING OUT OF, OR RESULTING FROM, ANY ACTS OF NEGLIGENCE, INTENTIONAL TORTS, WILLFUL MISCONDUCT, PERSONAL INJURY OR DAMAGE TO PROPERTY, AND/OR OTHERWISE RELATED TO THE ENGINEER'S PERFORMANCE, AND/OR FAILURES TO PAY A SUBCONTRACTOR OR SUPPLIER BY THE ENGINEER OR ITS AGENTS, EMPLOYEES, SUBCONTRACTORS, ORDER FULFILLERS, CONSULTANTS UNDER CONTRACT TO THE ENGINEER, OR ANY OTHER ENTITY OVER WHICH CONTRACTOR EXERCISES CONTROL, OR SUPPLIERS OF SUBCONTRACTORS IN THE EXECUTION OR PERFORMANCE OF THIS AGREEMENT. THE DEFENSE SHALL BE COORDINATED BY THE ENGINEER WITH THE CITY ATTORNEY IF THE CITY IS NAMED AS A DEFENDANT IN ANY LAWSUIT, AND THE ENGINEER MAY NOT AGREE TO ANY SETTLEMENT WITHOUT FIRST OBTAINING THE CONCURRENCE OF THE CITY ATTORNEY. THE ENGINEER AND THE CITY AGREE TO FURNISH TIMELY WRITTEN NOTICE TO EACH OTHER OF ANY SUCH CLAIM.

IF THIS AGREEMENT IS A CONTRACT FOR ENGINEERING OR ARCHITECTURAL SERVICES, THEN CONSULTANT'S INDEMNITY AND DEFENSE OBLIGATIONS UNDER THIS ARTICLE 5.2 ARE LIMITED BY, AND TO BE READ AS COMPLYING WITH, SECTION 271.904 OF THE TEXAS LOCAL GOVERNMENT CODE AND TEXAS CIVIL PRACTICE AND REMEDIES CODE SECTION 130.002(C) (c).

ARTICLE VI. GENERAL PROVISIONS

6.1 ENGINEER'S QUALITY OF WORK. The City's review of any documents prepared by the Engineer is only general in nature and its option to approve and accept the work in no way relieves the Engineer of responsibility for any specific deficiencies in its professional service. The Engineer shall perform services with the professional skill and care ordinarily provided by competent engineers practicing in the Town of Horizon City and the County of El Paso, Texas, and under the same or similar circumstances and professional license. The Engineer's services shall be performed as expeditiously as is prudent considering the ordinary skill and care of a competent engineer and the orderly progress of the Project and in accordance with the time periods established in **Attachment "B"** and which shall be adjusted, if necessary, as the Project proceeds. This schedule shall include allowances for periods of time required for the City's review, for the performance of the City's Engineers, if applicable, and for approval of submissions by authorities having jurisdiction over the Project. The Engineer understands that time is of the essence and the identified time limits shall not, except for reasonable cause, be exceeded by the Engineer or the City.

6.3 AUDITING RECORDS FOR THIS PROJECT. The Engineer's records subject to audit shall include but not be limited to records which, in the City's discretion, have a bearing on matters of interest to the City in connection with the Engineer's work on the Project for the City and shall be open to inspection and subject to audit and/or reproduction by the City's agent or its authorized representative to the extent necessary to adequately permit evaluation and verification of: (a) the Engineer's compliance with contract requirements; and (b) compliance with provisions for computing Direct Personnel Expense with reimbursable expenses, if applicable.

Such records subject to audit shall also include those records necessary to evaluate and verify direct and indirect costs as they may apply to costs associated with this Agreement. In those situations where the Engineer's records have been generated from computerized data, The Engineer agrees to provide the City's representatives with extracts of data files in computer-readable format on data disks or suitable alternative computer data exchange format.

The City or its designee shall be entitled, at its expense, to audit all of the Engineer's records related to this Project and shall be allowed to interview any of the Engineer's employees, pursuant to the provisions of this section throughout the term of this contract and for a period of **three (3) years** after final payment or longer if required by law. Such audits may require inspection and photo copying (at the City's sole expense) of selected documents from time to time at reasonable times, places, and charges to the City, if the Engineer is making copies for the City, under this section at the request of the City.

6.4 COPYRIGHT AND REPRODUCTION RIGHTS. Upon payment of amounts due, the Drawings, Specifications, concepts and design, and other documents prepared by the Engineer for the Project, and any other work of the Engineer under this Agreement that results in the Creation of Drawings, Specifications, concepts and design, including, without limitation, those in electronic form (sometimes referred to as the "Instruments of Service") are the property of the City, who shall be vested with all common law and statutory rights. The City shall have the right to the use of the Drawings, Specifications, and other documents for the maintenance, repair, remodeling, and renovation of the Project; provided, however, the Engineer shall have no liability for any use of one or more of the Instruments of Service by the City for maintenance, repair, remodeling, and renovation of the Project. The rights granted to the City herein for the use of the Drawings, Specifications, and other documents for additional projects shall not grant the City any right to rely upon the Engineer's seal on the Drawings and Specifications or to hold the Engineer responsible for any subsequent use of the Drawings, Specifications, and documents. The Engineer shall provide the City with copies of the Instruments of Service in both electronic form and in hard copy.

6.5 SUCCESSORS AND ASSIGNS. This Agreement shall be binding on the City and the Engineer, their successors, and assigns. Neither Party may assign, sublet, or transfer its interest in this Agreement without the written consent of the other.

6.6 VENUE. For the purpose of determining the place and the law governing the same, this Agreement is entered into in the Town of Horizon City and in the County of El Paso, the State of

with any of the provisions in this Agreement shall be void to the extent of such conflict or inconsistency.

6.13 TEXAS TORT CLAIMS ACT. The Engineer expressly agrees that, in all things relating to this Agreement, the City is performing a governmental function, as defined by the Texas Tort Claims Act. The Engineer further expressly agrees that every act or omission of the City which, in any way, pertains to or arises out of this Agreement falls within the definition of a governmental function.

6.14 PROHIBITION ON CONTRACTS BOYCOTTING ENERGY COMPANIES. If the Engineer is required to make a verification pursuant to Section 2274.002 of the Texas Government Code, the Engineer verifies that the Engineer does not boycott energy companies during the term of this Agreement and will not boycott energy companies during the term of this Agreement. If the Engineer does not make that verification, the Engineer must notify the City and state why the verification is not required.

6.15 FIREARMS. If the Engineer is required to make a verification pursuant to Section 2274.002 of the Texas Government Code, the Engineer verifies that it: (1) does not have a practice, policy, guidance, or directive that discriminates against a firearm entity or firearm trade association based solely on its status as a firearm entity or firearm trade association; and (2) will not discriminate during the term of this Agreement against a firearm entity or firearm trade association based solely on its status as a firearm entity or firearm trade association. If the Engineer does not make that verification, the Engineer must notify the City and state why the verification is not required.

6.16 FOREIGN TERRORIST ORGANIZATIONS. The Engineer represents and warrants that it is not engaged in business with Iran, Sudan, or a foreign terrorist organization, as prohibited by Section 2252.152 of the Texas Government Code.

6.17 BOYCOTTING OF ISRAEL. If the Engineer is required to make a certification pursuant to Section 2271.001 of the Texas Government Code, the Engineer certifies that the Engineer does not boycott Israel and will not boycott Israel during the term of this Agreement. If the Engineer does not make that certification, the Engineer must notify the City and state why the certification is not required.

6.18 ENTIRE AGREEMENT FOR PROJECT. This Agreement, along with the Initial Agreement, including attachments, constitutes and expresses the entire agreement between the Parties and supersedes all prior negotiations, representations, or agreements, whether written or oral, with respect to the Project defined under this Agreement. This Agreement shall not be amended or modified, except by written amendment, executed by both Parties.

TOWN OF HORIZON CITY:

By: _____

Andres Renteria, Mayor

Dated: _____, 2024

ATTEST:

By: _____

Elvia Schuller, TRMC

City Clerk

APPROVED AS TO FORM:

By: _____

Sylvia Borunda Firth

City Attorney

APPROVED AS TO CONTENT:

By: _____

Eduardo Garcia

Interim Planning Director

**ENGINEER:
HUITT-ZOLLARS, INC.**

By: _____

Printed name: _____

Title: _____

Dated: _____, 2024

ACKNOWLEDGEMENTS

THE STATE OF TEXAS §
§
COUNTY OF EL PASO §

This instrument was acknowledged before me on this ____ day of _____ 2022 by **Andres Renteria**, as **Mayor** of the **Town of Horizon City, Texas**.

Notary Public, State of Texas

My commission expires:

THE STATE OF TEXAS §
§
COUNTY OF EL PASO §

This instrument was acknowledged before me on this ____ day of _____ 2022, by _____, as _____ of **Huitt-Zollars, Inc.**

Notary Public, State of Texas

My commission expires:

ATTACHMENT "A"
Scope of Services and Budget

DRAFT

ATTACHMENT "B"
Schedule

DRAFT

ATTACHMENT "C"
INSURANCE CERTIFICATES

DRAFT