

AGREEMENT FOR PROFESSIONAL SERVICES

THIS AGREEMENT FOR PROFESSIONAL SERVICES (the “Agreement”) is made and entered into effective this ____ day of _____, 2022 (the “Effective Date”), by and between the CITY OF COMMERCE CITY, a Colorado home rule municipality whose address is 7887 East 60th Avenue, Commerce City, Colorado (the “City”), and HUITT-ZOLLARS, INC., a Texas corporation authorized to conduct business in the State of Colorado, whose principal business address is 4582 S Ulster Street Suite 240, Denver, Colorado 80237 (Consultant).

WHEREAS, the City desires to retain the services of Consultant, and Consultant desires to provide services to the City.

NOW, THEREFORE, in consideration of the mutual covenants and agreements contained in this Agreement, the sufficiency of which is hereby acknowledged, the parties agree as follows:

I. SERVICES.

A. Services. At the City’s direction, Consultant will provide professional engineering and right-of-way acquisition services as set forth in Exhibit A, attached and incorporated by reference (the “Services”). The City reserves the right to omit any of the Services identified in Exhibit A upon written notice to Consultant.

B. Controlling Terms. The terms of this Agreement will control if the terms of any exhibit, attachment, or invoice conflict with this Agreement.

C. Deliverables.

1. Electronic format. Consultant will provide all reports, surveys, maps, plans, drawings or photographs, or any other materials that lend themselves to production in electronic format (“Deliverables”) to the City in both hard copy and electronic formats acceptable to the City, unless otherwise directed by the City in writing. Consultant’s failure to do so will constitute a material breach of this Agreement. Consultant will consult with the City to determine acceptable electronic formats before beginning the Services. All Deliverables and other tangible materials produced by Consultant pursuant to this Agreement will at all times be considered the property of the City.

2. Spatial Data. Deliverables including spatial data (GIS/AutoCad) will include geospatial datasets (those generated from GPS, survey data, or other derived geospatial data like orthography) in Environmental Systems Research Institute, Inc.’s (“ESRI”) file/personal geodatabase or shapefile format, including a coordinate system projection information or file. Point features will be generated as point shapefiles, linear features will be generated as line shapefiles, and area features will be generated as polygon shapefiles. Any geospatial dataset derived from new or existing geospatial data will be in file/personal geodatabase or shapefile format, along with an explanation of the method used to generate the derived geospatial data. Spatial Coordinate or Survey System will be documented and used, along with a coordinate system projection file for said data. Contractor will provide complete metadata (who, what, when, where, how) for all provided spatial data and related information.

3. Digital images. Consultant will provide non-copyrighted, high resolution, illustrative, digital images of project site plans, elevations, renderings, photos, and other Deliverables, as directed by the City, suitable for reproduction of and dissemination in marketing materials and at City Council hearings and public presentations. Consultant will affirm that the images do not violate copyright laws and will indemnify and hold harmless the City from liability for any expense, cost, loss or damage resulting

from any claim of copyright infringement arising from the City's use of the images. All images provided will become the property of the City.

D. Consultant Representations. Consultant warrants and represents that it has the requisite authority, capacity, experience and expertise to perform the Services in compliance with the provisions of this Agreement and all applicable laws. Consultant acknowledges that the City is relying on Consultant's expertise, skill, and knowledge, and that the Consultant's obligations and liabilities will not be diminished by reason of any approval or review by the City.

E. Warranties. Consultant warrants that all work performed under this Agreement will be free from defects in workmanship, equipment, and materials.

F. Prosecution of the Services. Consultant shall be responsible for the professional quality, technical accuracy, and the coordination of all materials produced and other services furnished by the Consultant under this Agreement. Consultant will furnish all labor, materials, and other equipment that may be necessary for the prompt completion of the Services. Consultant will monitor, supervise, and otherwise control and be solely responsible for all persons or entities performing work on its behalf.

G. Correction of Errors. Consultant will correct any errors or omissions in its work and any work deemed unsatisfactory or unacceptable by the City promptly and for no additional compensation.

H. Subcontractors. Consultant will not engage subcontractors to perform any part of the Services, other than for the provision of goods, materials or supplies, without the City's express written consent.

I. Licenses & Permits. Consultant and each subcontractor will be responsible to obtain all required licenses and permits, including a City Contractor's license, if required. Consultant will pay any and all license and permit fees.

J. Rate of Progress. At the City's request, Consultant will provide a progress schedule for the performance of any Services subject to the City's approval.

K. Monitoring and Evaluation. The City reserves the right to monitor and evaluate the progress and performance of Consultant to ensure that the terms of this Agreement are being satisfactorily met in accordance with the City's and other applicable monitoring and evaluating criteria and standards. Consultant will cooperate with the City relating to such monitoring and evaluation.

L. Drugs, Alcohol and Workplace Violence; Compliance with Applicable Law. Consultant and its employees and agents, while performing the Services or while on City property for any reason during the Term, will adhere to the City's policies applicable to City employees regarding drugs, alcohol and workplace violence. Policies will be made available to Consultant upon request. Consultant will comply with all applicable federal, state and local laws, ordinances and regulations.

M. Non-Exclusivity. The City may engage the services of other persons for the provision of Services that could be performed under this Agreement. Consultant acknowledges that it is not entitled to perform any work except as assigned under this Agreement and is not guaranteed any amount of work.

II. COMPENSATION.

A. Amount. As compensation for performance of the Services and any other obligations under this Agreement, the City will pay Consultant for work actually performed, in accordance with the rates set forth in Exhibit A, a sum not to exceed **\$ 739,274.04**. The compensation established by this Agreement includes

all of Consultant's costs and expenses to fully perform the Services and other obligations of this Agreement. The City will not consider or be obligated to pay or reimburse Consultant any other charges or fees and Consultant will not be entitled to any additional compensation or reimbursement.

B. Changed Conditions. Consultant specifically waives any claim for additional compensation for any changed condition arising out of any one or more of the following, unless such changed condition is caused in whole or in part by acts or omissions within the City's control: (1) a physical condition of the site of an unusual nature; (2) any condition differing materially from those ordinarily encountered and generally recognized as inherent in work or services of the character and at the location provided for in this Agreement; or (3) any force majeure.

C. Invoices. Consultant will submit invoices on a monthly basis, in a format approved by the City, and provide verification documentation as requested by the City. Invoices will be submitted to the City not more frequently than monthly. Invoices will identify the specific Services performed for which payment is requested, including a description of the Services, the applicable rates, any costs for which Consultant seeks reimbursement, and the total amount that Consultant claims is due.

D. Payment. The City will make payment to Consultant within thirty (30) days after receipt and approval of invoices submitted by Consultant. The City's obligation to make payment is contingent upon the Consultant's: (a) submission of a complete and accurate invoice; and (b) satisfactory performance of the Services and conditions of this Agreement. The City may withhold payment of any disputed amounts, and no interest will accrue on any amount withheld pending the resolution of the dispute.

E. IRS Form W-9. If not on file with the City, Consultant will provide to the City a current, completed Internal Revenue Service Form W-9 with or before Consultant's first invoice. Failure to submit a W-9 may result in delay or cancellation of payment under this Agreement.

F. Appropriation. This Agreement will neither constitute nor be deemed a multiple fiscal-year debt or financial obligation of the City based on the City's ability to terminate this Agreement. Consultant acknowledges that the City has made no promise to continue to budget funds beyond the current fiscal year and that the City has and will pledge adequate cash reserves on a fiscal-year by fiscal-year basis.

III. TERM AND TERMINATION.

A. Term. The term of this Agreement will be from the Effective Date until December 31, 2024 ("Term"), unless the Term is extended in by validly executed written amendment.

B. Termination.

1. Generally. The City may terminate this Agreement without cause if the City determines that such termination is in the City's best interest. The City will effect such termination by giving written notice of termination to Consultant, specifying the effective date of termination, at least fourteen (14) calendar days prior to the effective date of termination.

2. For Cause. If, through any cause, Consultant fails to fulfill its obligations under this Agreement in a timely and proper manner, violates any provision of this Agreement or violates any applicable law ("Breach"), the City may terminate this Agreement for cause immediately upon written notice of termination to Consultant. Consultant will not be relieved of liability to the City for any damages sustained by the City by virtue of any Breach, and the City may withhold payment to Consultant for the purposes of setoff until such time as the exact amount of damages due to the City from Consultant is determined. If Consultant challenges a termination for cause by the City and prevails, the termination

for cause will be deemed to be a termination for convenience and will be effective fourteen (14) days from the date that the original written notice of termination for cause was given to Consultant and no further notice will be required.

3. For Convenience. Contractor agrees that the City may terminate this Agreement without cause at any time for convenience of the City. Contractor assumes all risks of being terminated for convenience, whether such risks are known or unknown, and acknowledges that the City's decision to terminate for convenience lies solely within the City's own discretion. Contractor represents that it is a sophisticated business, has entered into the Agreement voluntarily, and has calculated all business risks associated with this Agreement. In the event of a termination for convenience, the City will provide written notice of termination to Contractor at least fourteen (14) calendar days prior to the effective date of termination. Contractor expressly agrees to and assumes the risk that the City shall not be liable for any costs or fees of whatsoever kind and nature if termination for convenience occurs before Contractor begins any Services or portion of the Services. Once Contractor has commenced performance of the Services, Contractor expressly agrees that the City shall be liable only for work Contractor satisfactorily completed up to the point of the effective date of the notice of termination, consistent with Section III(C) of this Agreement. The Contractor shall have no claim of any kind whatsoever against the City for any termination for convenience, except for compensation for work completed to the satisfaction of the City

4. Effect of Termination. The City will be liable to pay Consultant for Services performed as of the effective date of termination, but will not be liable to Consultant for anticipated profits. Unless otherwise instructed in writing, Consultant will immediately discontinue performance of the Services upon receipt of a notice of termination.

C. Consultant's Remedies for Breach.

1. Consultant may terminate this Agreement for non-payment of sums due under this Agreement except where non-payment is pursuant to the City's rights under this Agreement. Consultant will first provide the City written notice of Consultant's intent to terminate and allow the City ten (10) days within which to make payment.

2. Pending resolution of any material breach by the City, Consultant may, in addition to any other remedies provided by law, discontinue performance of the Services without being in breach of this Agreement.

IV. **INDEMNITY.**

Consultant will be liable and responsible for any and all damages to persons or property caused by or arising out of the negligent or willful actions or omissions in the performance of the Services by Consultant, its employees, agents, or other persons acting under Consultant's direction or control. Consultant will indemnify and hold harmless the City, its elected and appointed officials and its employees, agents and representatives (the "Indemnified Parties"), from any and all liability, claims, demands, actions, damages, losses, judgments, costs or expenses, including, but not limited to, attorney fees, which may be made or brought or which may result against any of the Indemnified Parties as a result or on account of the negligent, grossly negligent, willful and wanton, or intentional actions or omissions of Consultant and/or its employees, agents or representatives or other persons acting under Consultant's direction or control. Consultant will include the provisions of this Section in any such subcontracts engaged to perform any part of the Services. The provisions set forth in this Section will survive the completion of the Services and the satisfaction, expiration or termination of this Agreement.

V. INSURANCE.

A. Required Policies. Consultant will procure and keep in force the following insurance subject to the conditions below, for the duration of this Agreement:

1. Commercial General Liability Insurance. Comprehensive general liability insurance insuring against any liability for personal injury, bodily injury or death arising out of the performance of the Services with at least **One Million Dollars (\$1,000,000)** each occurrence.

2. Products and Completed Operations Insurance. Products and completed operations insurance insuring against any liability for bodily injury or property damage caused by the completed Services, with a combined single limit of at least **One Million Dollars (\$1,000,000)**.

3. Comprehensive Automobile Liability Insurance. Comprehensive automobile liability insurance insuring against any liability for personal injury, bodily injury or death arising out of the use of motor vehicles and covering operations on or off the site of all motor vehicles controlled by Consultant that are used in connection with performance of the Services, whether the motor vehicles are owned, non-owned or hired, with a combined single limit of at least **One Million Dollars (\$1,000,000)**.

4. Professional Liability Insurance. If Consultant is an architect, engineer, surveyor, appraiser, physician, attorney, accountant or other licensed professional, or if it is customary in the trade or business in which Consultant is engaged, or if the City otherwise deems it necessary, errors and omissions professional liability insurance insuring Consultant against any professional liability with a limit of at least **One Million Dollars (\$1,000,000.00)** per claim and annual aggregate.

5. Other Insurance. Workers' compensation insurance (unless Consultant provides a completed Declaration of Independent Contractor Status Form) and other insurance required by applicable law.

The limits of any insurance required by this Agreement will not limit Consultant's liability.

B. Terms of Insurance.

1. Additional Insured. Except for the professional liability policy, if applicable, and workers' compensation policy, **all required insurance policies shall name the City as an additional insured** and will provide that the City, although named as an additional insured, will nevertheless be entitled to recovery under said policies for any loss occasioned to the City or its officers, employees or agents by reason of the negligence of Consultant or its officers, employees, agents, subcontractors or business invitees. The insurance policies will be for the mutual and joint benefit and protection of Consultant and the City. **Such policies will be written as primary policies not contributing to and not in excess of coverages the City may carry.**

2. Qualification; Deductible. Insurance required by this Section will be with companies qualified to do business in the State of Colorado and may provide for deductible amounts as Consultant deems reasonable for the Services, but in no event greater than **Ten Thousand Dollars (\$10,000.00)**, and Consultant will be responsible for the payment of any such deductible.

3. Cancellation. No such policies will be cancelable or subject to reduction in coverage limits or other modification unless previously approved by the City in writing.

4. Coverage Type. Consultant will identify whether the type of coverage is “occurrence” or “claims made.” If the type of coverage is “claims made,” which at renewal Consultant changes to “occurrence,” Consultant will carry a twelve (12) month tail. Consultant will not do or permit to be done anything that will invalidate the policies.

5. No “Pollution Exclusion.” The insurance required by this Agreement will cover any and all damages, claims or suits arising out of the actual, alleged or threatened discharge, dispersal, seepage, migration, release or escape of pollutants, and will not exclude from coverage any liability or expense arising out of or related to any form of pollution, whether intentional or otherwise. If necessary, Consultant will secure and maintain either a rider or a separate policy insuring against liability for pollution related damages, claims or suits, as described in subsection ii(a), with at least **Two Million Dollars (\$2,000,000)** each occurrence, subject to approval by the City, which approval will not be unreasonably withheld.

6. Evidence of Coverage. Before commencing work under this Agreement, Consultant will provide certificates of insurance policies and all necessary endorsements evidencing insurance coverage required by this Agreement. The City will not be obligated under this Agreement until Consultant provides acceptable such certificates of insurance and endorsements. If the Term extends beyond the period of coverage for any required insurance, Consultant will, at least ten (10) days before the expiration of any such insurance coverage, provide the City with new certificates of insurance and endorsements evidencing either new or continuing coverage.

C. Subcontracts. Consultant will include the insurance requirements of this Agreement in all subcontracts. Consultant will be responsible if any subcontractor fails to procure and maintain insurance meeting the requirements of this Agreement.

VI. SALES AND USE TAX.

Unless specifically exempt, all materials provided and equipment used in the performance of Services within the City are subject to City Sales & Use Tax, including services performed on behalf of the City.

A. Consultant Responsible for Tax. Consultant is subject to the tax on all purchases, fabrication, manufacture or other production of tangible personal property used, stored, or consumed in performance of the Services.

B. Specific Industry Standard. The Specific Industry Standard for Construction and Contractors (Regulation 20-S.I.15) can be provided upon request by contacting the City’s Finance Department, Sales Tax Division, at 303-289-3628, and is available on the City’s website.

C. Equipment. Prior to or on the date Consultant locates equipment within the City to fulfill this Agreement, Consultant will file a declaration describing each anticipated piece of equipment the purchase price of which was two thousand five hundred dollars (\$2,500) or greater, stating the dates on which Consultant anticipates the equipment to be located within and removed from the boundaries of the City and stating the actual or anticipated purchase price of each such anticipated piece of equipment along with any other information deemed necessary by the City. When such declared equipment is located within the City for a period of thirty (30) days or less, Consultant may include sales and use tax calculated on one-twelfth (1/12) of the purchase price of such equipment in the contract amount, in compliance with Section 20-5-T of the Commerce City Sales & Use Tax Code. If Consultant fails to declare the equipment to the City prior to or on the date Consultant locates the equipment within the City, none of the sales and use tax due on the equipment will be allowed as a contract expense.

VII. NOTICES.

Except for routine communications, written notices required under this Agreement and all other correspondence between the parties will be directed to the following and will be deemed received when hand-delivered or three (3) days after being sent by certified mail, return receipt requested:

If to the City:

Joe Wilson, Public Works Director
Public Works
City of Commerce City
8602 Rosemary Street
Commerce City, CO 80022

If to Consultant:

Project Manager
Huitt-Zollars, Inc.
4582 S Ulster St, Suite 240
Denver, Colorado 80237

The parties may agree to delivery of notices via electronic mail.

VIII. GENERAL PROVISIONS.

A. Independent Contractor. The relationship between Consultant and the City will be as independent Contractors, and neither the City nor Consultant will be deemed or constitute an employee, servant, agent, partner or joint venturer of the other. **Consultant is obligated to pay federal and state income tax on any money earned pursuant to this Agreement, and neither Consultant nor Consultant's employees, agents or representatives are entitled to workers' compensation benefits, unemployment compensation benefits, sick and annual leave benefits, medical insurance, life insurance, or pension or retirement benefits from the City.**

B. No Assignment. Consultant will not assign or transfer any rights, interests, or obligations under this Agreement without the City's prior written consent.

C. Governing Law; Jurisdiction and Venue; Recovery of Costs. This Agreement will be governed by the laws of the State of Colorado without regard to its conflicts of laws provisions. For all claims arising out of or related to this Agreement, Consultant consents to the exclusive jurisdiction of and venue in the state courts in the County of Adams, State of Colorado. Consultant waives any exception to jurisdiction because of residence, including any right of removal based on diversity of citizenship. The prevailing party in any litigation to resolve a dispute between the parties arising from this Agreement will be entitled to recover court costs and reasonable attorney fees from the non-prevailing party.

D. Governmental Immunity. No term or condition of this Agreement will be construed or interpreted as an express or implied waiver of any of the immunities, rights, benefits, protections, or other provisions of the Colorado Governmental Immunity Act, C.R.S. §§ 24-10-101, *et seq.*

E. Time of the Essence. Consultant acknowledges that time is of the essence in the performance of this Agreement. Consultant's failure to complete any of the Services during the Term, or as may be more specifically set forth in an exhibit, notice to proceed, change order, or any approved progress schedule, will be deemed a breach of this Agreement.

F. No Third-Party Beneficiaries. Enforcement of the terms and conditions of this Agreement and all rights of action relating to such enforcement will be strictly reserved to the parties. Any person other than the City and Consultant will be deemed to be only an incidental beneficiary under this Agreement.

G. No Waiver. The waiver of any breach of a term of this Agreement, including the failure to insist on strict compliance or to enforce any right or remedy, will not be construed or deemed as a waiver of any subsequent breach of such term; any right to insist on strict compliance with any term; or any right to enforce any right or remedy with respect to that breach or any other prior, contemporaneous, or subsequent breach.

H. Rules of Construction. Neither party will be deemed to have drafted this Agreement. This Agreement has been reviewed by all parties and will be construed and interpreted according to the ordinary meaning of the words used so as to fairly accomplish the purposes and intentions of all parties. No term of this Agreement will be construed or resolved in favor of or against the City or Consultant on the basis of which party drafted the uncertain or ambiguous language. Where appropriate, the singular includes the plural and neutral words and words of any gender will include the neutral and other gender. Paragraph headings used in this Agreement are for convenience of reference and will in no way control or affect the meaning or interpretation of any provision of this Agreement.

I. Severability. A holding by a court of competent jurisdiction that any term of this Agreement is invalid or unenforceable will not invalidate or render unenforceable any other term of this Agreement.

J. Acknowledgement of Open Records Act. Consultant acknowledges that the City is a public entity subject to the Colorado Open Records Act, C.R.S. § 24-72-201, *et seq.*, and this Agreement and any related documents are subject to public disclosure.

K. Authority. The parties represent and warrant that they have taken all actions necessary to legally authorize the undersigned signatories to execute this Agreement for the parties and to bind the parties to its terms. The signatories represent and warrant that each has legal authority to execute this Agreement for the party he or she represents and to bind that party to its terms.

L. Counterparts. This Agreement may be executed in any number of counterparts, each deemed to be an original, and, taken together will constitute one and the same instrument.

M. Entire Agreement; Modification; Binding Effect. This Agreement contains the entire agreement of the parties relating to the subject matter of this Agreement and, except as expressly provided, may not be modified or amended except by validly executed written agreement of the parties. All prior and contemporaneous agreements and understandings, whether oral or written, are superseded by this Agreement and are without effect to vary or alter any terms or conditions of this Agreement. This Agreement will be binding upon, and will inure to the benefit of, the parties and their respective heirs, personal representatives, successors and assigns.

[Remainder of this page intentionally left blank – signature page(s) follow(s).]

IN WITNESS WHEREOF, the parties have executed this Agreement as of the Effective Date.

CITY OF COMMERCE CITY

Roger Tinklenberg, City Manager
City Manager's Office

ATTEST:

APPROVED AS TO FORM:

Dylan Gibson MMC, City Clerk

Matt Hader, City Interim Attorney

Recommended for approval:

Joe Wilson, Director of Public Works
Public Works

HuittZollars, Inc.

Name, Title

[must be notarized]

STATE OF COLORADO)
) ss.
COUNTY OF _____)

The foregoing Agreement was acknowledged before more this _____, 2022,
by _____ (Name), _____ (Title),
of _____.

Witness my hand and official seal.

My commission expires:_____.

Notary Public



7887 East 60th Avenue

Commerce City, Colorado 80022

Phone (303) 289-3627

EQUIPMENT DECLARATION

Company: _____

Date: _____

Address: _____

State and Zip: _____

Note: Construction equipment that was not otherwise subjected to the Commerce City sales or use tax, and which is located within the boundaries of the City of Commerce City for a period of thirty (30) consecutive days or less, will be subjected to the use tax of Commerce City on a prorated basis if the equipment is declared in advance. **If the equipment is not declared in advance or is located within the City for over thirty (30) consecutive days, the amount of tax due will be calculated on 100% of the original purchase price.**

The tax on Declared Equipment will be calculated using the following method: **The original purchase price of the equipment will be multiplied by a fraction, the numerator of which is one (1) and the denominator which is twelve (12); and the result will be multiplied by four and one-half percent (4.5%) to determine the amount of Use Tax payable to the City.** Example: thirty (30) days or less = $\frac{1}{12}$ x purchase price of the equipment x 4.5%.

In order for a taxpayer to qualify for this exemption, the taxpayer must comply with the procedures described in Section 29-2-109(4) of the Colorado Revised Statutes by completing this form and remitting the tax due to the Finance Department of the City of Commerce City. **If the taxpayer does not file this form the exemption herein provided for will be deemed waived by the taxpayer.**

A separate declaration form must be used for each individual piece of equipment.

Construction Equipment Declared:

Description of Equipment and/or VIN number: _____

Purchase price of above equipment and date purchased: _____

Date equipment will enter the City: _____

Date equipment will be removed from the City: _____