

CONTRACT FOR ON-CALL SURVEYOR SERVICES

County Contract# 2018-0497

This CONTRACT FOR ON-CALL GENERAL LAND SURVEYOR SERVICES ("Contract") is made and entered into by the County of El Paso, Texas ("Owner") and Huitt-Zollars, Inc. ("Consultant"), a Texas registered land surveyor firm.

The on-call surveyor services required by this Contract are to be rendered for Owner's public works projects that may arise, as further described under Request for Qualifications Number 18-012 entitled "As-Needed Surveyor Services for the County of El Paso" (RFQ 18-012) and Consultant's responses provided thereto, all fully incorporated herein as referenced below.

NOW, THEREFORE, in consideration of the mutual promises, covenants and agreements stated herein, and for other good and valuable consideration, the sufficiency of which is hereby acknowledged, the Owner and the Consultant agree:

GENERAL SCOPE OF WORK. Owner will request services on demand for various projects and improvements. Consistent with this Contract, Consultant will provide these services in response to Owner's specific and individual task (Project) assignments. Depending on the nature and complexity of each Project, it may be performed using County trades personnel or be bid to contractor(s). Consultant will provide services per the RFQ 18-012 scope of work. Generally, this scope of work includes services on exterior improvements, site evaluation, staking of right of ways preparing of right of way maps, establishing boundaries, platting, preparing metes and bounds and legal descriptions, easement surveying, setting of benchmarks, topographic, improvement, as built and/or Alta surveys as needed.

TERM. The term of this Contract is three (3) years from full execution and may be reasonably extended in writing by the parties in order to bring any Project initiated hereunder to final completion.

This Contract includes the following documents, which are all fully incorporated by this reference:

- (1) the Request for Qualifications, **Exhibit A;**
- (2) Response to the Request for Qualifications, **Exhibit B;**
- (3) Consultant's fee schedule, **Exhibit C;**
- (4) Insurance, **Exhibit D;**

1.

CONSULTANT REPRESENTATIONS AND WARRANTIES

By executing this Contract, Consultant makes the following express representations and warranties to Owner:

(A) Consultant is an independent contractor and professionally qualified to act as the Registered Professional Land Surveyor (RPLS) for each Project assumed under this Contract and is licensed by/registered with appropriate entities having jurisdiction over the Consultant and each Project.

(B) Consultant shall perform its services consistent with all rules applicable to its professional practice and licensure, and the professional skill and standards ordinarily provided by like professionals practicing in the same/similar locality under same/similar circumstances. Consultant shall perform its services as expeditiously as is consistent with such professional skill, standard of care, and orderly progress of each Project.

(C) Consultant and those it contracts/retains/employs to do Project work or services, shall have all necessary licenses, certifications, permits or other authorizations necessary to perform on each Project until their duties and obligations have been fully satisfied.

(D) At a minimum, Consultant is experienced with standard surveying practices and follows state requirements for RPLS' standards as required under RFQ 18-012 and represented by Consultant.

(E). Consultant has become or will be familiar with each Project, site and/or the conditions under which each Project is to be designed, handled, and/or performed.

(F) Consultant shall prepare all documents and things required by this Contract including, but not limited to, reports, tests, notices, in such a manner that these shall be accurate, coordinated and adequate for the Project and shall be in compliance with all applicable law, code, and regulation.

(G) Consultant assumes full responsibility to Owner for the improper acts and omissions of Consultant, its employees, or others employed or retained by Consultant in connection with each Project.

2.

INDEPENDENT CONTRACTOR

Nothing contained in this Agreement shall be construed as creating the relationship of employer and employee between the Owner and the Consultant. The Consultant shall be deemed at all times to be an independent contractor. Consultant's sole compensation shall be as provided under Section 7, Compensation. The Owner shall not be subject to any obligations or

liabilities of the Consultant incurred in the performance of the Contract. Consultant shall be fully responsible for payment of any and all taxes and insurance, including, but not limited to federal, state and local income taxes, and payroll taxes (such as FICA, federal and state unemployment insurance, etc.) and shall make such statutory filings as may be required by law.

3.

CONSULTANT DUTIES AND RESPONSIBILITIES

For the duration of each Project, and at all times relevant thereto, Consultant shall have and perform the following duties, obligations, and responsibilities:

- (A) Consultant shall promptly provide services as necessary and collaborate well with Owner's representatives and consultants for the proper execution of the work.
- (B) Consultant shall perform due diligence investigations of right of way maps, plats, etc. to establish public right of ways and other alignments.
- (C) Consultant shall provide documentation and description of right of way closures to provide accurate information and to establish field control points.
- (D) Consultant shall promptly advise Owner concerning requests for change orders. Upon request by Owner, Consultant shall draft change orders, whether initiated by Owner and/or Consultant and approved by Owner, in accordance with Project and Owner requirements.
- (E) Consultant shall testify in any judicial or other proceeding concerning a Project when requested in writing by Owner, and Consultant shall make available to Owner any personnel or consultants employed or retained by Consultant for the purpose of reviewing, studying, analyzing or investigating any claims, contentions, allegations, or legal actions relating to, or arising out of, a Project.
- (F) Consultant shall, without additional compensation, promptly correct any errors, omissions, deficiencies, or conflicts in the work product of the Consultant, its employees, and/or others Consultant may retain or hire on the Project.
- (G) Consultant shall not accept or offer gifts or anything of value nor enter into any business arrangement with any Owner employee, official, or agent.
- (H) Consultant shall not sell, assign, transfer, or convey any of its rights or obligations under this Contract, in whole or in part, without the prior written consent of the Owner.
- (I) Consultant will provide any and all notices as may be required under the Drug Free Work Place Act of 1988, 28 CFR Par 67, Subpart F, to its employees and all sub-contractors to ensure that the Owner maintains a drug free work place.
- (J) Consultant shall comply with the minimum standards and requirements for Project services prescribed in RFQ 18-012.

(K) Consultant shall supply at its own expense all necessary management, supervision, labor, equipment, tolls, and supplies to accomplish the designated tasks as called for during Projects.

4.

RELEASE AND INDEMNITY

THE SERVICES TO BE PERFORMED UNDER THIS CONTRACT WILL BE PERFORMED ENTIRELY AT CONSULTANT'S RISK. CONSULTANT HEREBY WAIVES AND RELEASES ANY AND ALL CLAIMS, CAUSES OF ACTION AND OTHER DEMANDS WHICH IT MAY HAVE AGAINST OWNER FOR ANY PERSONAL INJURY, DEATH, OR PROPERTY DAMAGE ARISING OUT OF OR RELATED TO THESE SERVICES AND/OR CONTRACT.

CONSULTANT AGREES TO INDEMNIFY AND PROTECT OWNER FROM ANY CLAIMS INVOLVING INFRINGEMENTS OF PATENTS, TRADEMARKS, AND/OR COPYRIGHTS.

ONLY TO THE EXTENT ALLOWED BY APPLICABLE LAW INCLUDING TEX. GOV'T CODE SECTION 2254.0031, CONSULTANT SHALL INDEMNIFY, DEFEND, AND HOLD HARMLESS OWNER FROM AND AGAINST ANY BREACH OR DEFAULT UNDER THIS CONTRACT, ANY LIABILITY, CLAIM, ACTION, INJURY, DEATH, LOSS, DAMAGE, COST, FINE, EXPENSE, AND/OR PENALTY ARISING OR RESULTING FROM, AND TO THE EXTENT ATTRIBUTABLE TO OR CAUSED BY, THE ERROR, OMISSION, OR NEGLIGENCE OF CONSULTANT, ITS EMPLOYEES, CONSULTANTS, AND/OR CONTRACTORS, ON ANY PROJECT SERVICED OR WORKED UNDER THIS CONTRACT.

CONSULTANT SHALL DEFEND OWNER THROUGH COUNSEL CHOSEN BY THE OWNER AND THE CONSULTANT SHALL BEAR ALL COSTS, FEES AND EXPENSES OF SUCH DEFENSE, INCLUDING BUT NOT LIMITED TO, REASONABLE ATTORNEYS' FEES AND EXPENSES, COURT COSTS, AND EXPERT WITNESS FEES AND EXPENSES.

These Section 4 provisions survive termination of this Contract.

5.

TIME OF THE ESSENCE

Time is of the essence in the performance of any Project under this Contract. Within twenty-one (21) calendar days of accepting a Project proposed by Owner, or a change or adjustment thereto, Consultant shall provide Owner with appropriate services as specified by Owner and Project requirements.

6.

PERSONNEL

Consultant shall assign only licensed and qualified personnel, including consultants and contractors, to perform any service or work on any Project under this Contract.

7.

COMPENSATION

For its assumption and performance of the duties, obligations and responsibilities set forth herein, the Consultant shall be paid as follows:

(A) For satisfactory performance of the duties, obligations, responsibilities, and services required herein and authorized by Owner, Consultant and its personnel shall be paid pursuant to accepted fees listed on **Exhibit C**.

(B) If in the course of a Project, Consultant's duties, obligations and responsibilities are materially changed through no fault of the Consultant, compensation due to the Consultant shall be equitably adjusted, either upward or downward, by agreement of the parties.

(C) As a condition precedent for any payment due under this Section 7, and as agreed in writing by Owner, Consultant shall submit invoices to Owner requesting payment for services properly rendered and expenses due hereunder. Consultant's invoice shall describe with reasonable particularity each service rendered, the date thereof, the time expended, percentage completion as applicable, and the person(s) rendering such service. Consultant's invoice shall be accompanied by such data and/or documentation as the Owner may require in support of expenses for which payment is sought. As applicable, the invoice shall reflect any allocations and state the percentage of completion as to each such allocation. Each invoice shall bear the signature of the Consultant, which signature shall constitute Consultant's representation to Owner the amount requested is currently due and owing, there being no reason known to the Consultant that payment of any portion thereof should be withheld.

(D) For satisfactory service and work, Owner shall make payment to Consultant of all sums properly invoiced under the provisions of this Contract within thirty (30) days of the Owner's receipt and approval of such invoice.

8.

PROJECT RECORDS

All records relating in any manner whatsoever to any Project, or any designated portion thereof, in the possession of Consultant or its contractors/consultants shall be made available to Owner for inspection and copying upon written request of Owner. Additionally, said records shall be made available, upon request by Owner, to any state, federal or other

regulatory authorities and any such authority may review, inspect and copy such records. Said records include, but are not limited to, all submittals, correspondence, memoranda, drawings, recordings, videos, or other writings or things that document a Project, its design, progress, and completion. These records expressly include those documents reflecting the time expended and expenses incurred by Consultant, its personnel, contractors, and consultants in performing under this Contract. Consultant shall maintain and protect these records for no less than four (4) years after final completion of each Project, or for any longer period of time as may be required by a pending claim, audit, event, applicable law, or good practice.

9.

TITLE TO WORK PRODUCT

All information and data made or developed by Consultant in the course of performance under this Contract shall be the property of Owner, and any documents, information or other data made, developed, or accumulated by Consultant shall be promptly delivered to Owner upon demand, but in any event upon the expiration or termination of this Contract for any reason whatsoever.

10.

DUTIES, OBLIGATIONS AND RESPONSIBILITIES OF THE OWNER

Owner shall have and perform the following duties, obligations and responsibilities to the Consultant:

- (A) Owner shall provide Consultant with the Owner's criteria and requirements for each Project.
- (B) Owner shall perform its duties set forth in this Section 10 in a timely manner.
- (C) Owner will designate an employee as project manager on each Project to serve as Owner's principal point of contact throughout the course of that Project, to oversee the orderly progression and delivery of work and services, ensure compliance with Project requirements, provide interpretations as necessary/applicable to assist progress of the work, facilitate communication and coordination among consultants/contractors/agents, and address any issues that may arise.
- (D) Owner shall review any documents provided by or through the Consultant requiring the Owner's decision and shall make any required decisions.
- (E) Except for documents requiring Owner's decision as set forth above, Owner's review of any documents prepared by Consultant or its contractors/consultants shall be solely for the purpose of determining whether such documents are generally consistent with the Owner's criteria/requirements. No review of such documents shall relieve Consultant of its

responsibility for the accuracy, adequacy, fitness, suitability or coordination of its work product.

(F) Owner is a tax exempt political subdivision of the State of Texas that will not be liable for any taxes from which it is exempt.

(G) A condition precedent for funding to pay services referenced herein is annual appropriations by Owner's governing body.

(H) Owner is subject to the Open Meetings Act and Public Information Act, Chapters 551 and 552, respectively, Texas Government Code, which may require disclosure of information despite confidentiality, proprietary, or other provisions to the contrary.

(I) As concerns any payment, the Texas Prompt Payment Act, Government Code, Sec. 2251.001 et seq., applies to Owner and this Contract.

11.

MISCELLANEOUS

Nothing herein modifies or waives any sovereign immunity, defense, lien or indemnity prohibition, or limit of liability enjoyed by Owner, its elected officials, or employees at common law or under other Texas law.

The parties expressly agree that, in all things relating to this Contract, the Owner is performing a governmental function, as defined by the Texas Tort Claims Act. The parties further expressly agree that every act or omission of the Owner, which in any way pertains to or arises out of this Contract, falls within the definition of governmental function.

Pursuant to Texas Government Code Section 2270.002, Consultant verifies it does not boycott Israel and will not boycott Israel as defined in Section 2270.001(1), for the duration of the Contract.

12.

INSURANCE

At its own expense, Consultant shall procure and maintain for the Contract term, the insurance listed below in the indicated amounts. Proof of such coverage is required prior to Consultant commencing work on any Project.

All such policies of insurance shall be written by insurance underwriters authorized to do business in the State of Texas. Except for professional liability and workers' compensation, these policies shall name Owner, El Paso County, Texas as an additional insured. Consultant shall furnish to the County Risk Manager a certificate from each insurer showing insurance to be in effect as required. This certificate shall provide that written notice

of cancellation or any material change in said policy shall be delivered by the insurer to the County Risk Manager at least thirty (30) days in advance of such cancellation or change.

In addition, Consultant shall require its contractors and consultants maintain professional liability and/or general liability insurance as appropriate for the work and services provided.

General Liability

\$1,000,000 – each occurrence
\$1,000,000 – annual aggregate per Project
\$1,000,000- personal and advertising injury
\$1,000,000 – products/completed operations – aggregate
\$500,000 – fire legal damage liability
\$5,000 - premises medical expense
Waiver of subrogation

Automobile

\$1,000,000 – each occurrence
Waiver of subrogation

Professional Liability (Errors and Omissions)

\$1,000,000 - annual aggregate ~~per Project~~ 1,000,000

Workers' Compensation

\$1,000,000 – Employers Liability – each accident
\$1,000,000 – Employers Liability – each employee
\$1,000,000 – Employers Liability – disease – policy limit
Statutory Limits
Waiver of Subrogation

13.

TERMINATION

Owner reserves the right to enforce performance of this Contract in any manner prescribed by law or deemed to be in the best interest of the Owner in the event of breach or default.

If Consultant is not delivering satisfactory performance under the Contract as determined by Owner, Owner may notify Consultant of deficiencies and give Consultant a period in which it shall take reasonable and immediate steps to satisfactorily improve performance under this Contract. Failure of Consultant to perform satisfactorily to the Owner within the notification period will terminate, cancel and void this contract and all financial agreements.

Either party shall be entitled to terminate Consultant's services without cause, and for convenience, upon thirty (30) days' written notice to the other party. Owner reserves the right

to terminate the Contract immediately in the event Consultant fails to perform as required herein.

In the event of termination for any reason, Owner shall incur no liability to Consultant whatsoever other than for payment of compensation as expressly provided herein for work actually completed and expenses actually incurred up to the date of such termination.

14.

NO REPRESENTATION

Owner does not in any way guarantee the availability or continuation of work or services to be performed by Consultant. It is understood that no promise or representations whatsoever have been made as to the potential number of Projects that may be available at any time during the term of this Contract. Owner may offer Projects to independent contractor other than Consultant, and Consultant may accept jobs from other parties.

15.

APPLICABLE LAW AND VENUE

This Contract is governed by the laws of the State of Texas, its choice of law or conflicts of law principles notwithstanding. Venue in any dispute arising out of this Contract shall be a court of appropriate jurisdiction in El Paso County, Texas.

16.

SUCCESSORS AND ASSIGNS

Consultant shall not assign its rights hereunder, excepting its right to payment, nor shall it delegate any of its duties hereunder without the written consent of the Owner. Subject to the provisions of the immediately preceding sentence, each party hereto binds itself, its successors, assigns and legal representatives to the other and to the successors, assigns and legal representatives of such other party.

17.

ENTIRE AGREEMENT

This Contract and its Exhibits constitute the entire agreement between the parties with reference to any Project and supersede any and all prior communications, discussions, negotiations, understandings, or agreements.

SIGNATURES FOLLOW ON NEXT PAGE

Executed by the authorized representative of each party as indicated below.

THE COUNTY OF EL PASO, TEXAS – OWNER

APPROVED:

Ruben J. Vogt
El Paso County Judge

Date

APPROVED AS TO FORM AND CONTENT:

For County Public Works

Date

APPROVED AS TO FORM AND CONTENT:

HUITT-ZOLLARS, INC. -- CONSULTANT

By: Isabel Vasquez Date 11/27/18
Name and Title: ISABEL VASQUEZ, VICE PRESIDENT