

**AGREEMENT FOR PROFESSIONAL SERVICES
BETWEEN OWNER AND ENGINEER**

This Agreement for Engineering Services between the Owner and Engineer (the "Agreement") is made and entered into by the City of University Park, a body corporate and politic under the laws of the State of Texas, (the "Owner") and Huitt-Zollars, Inc., a Texas Corporation (the "Engineer"). This Agreement shall be effective on the date indicated above the signatures on the signature page.

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 Engineer agree:

**ARTICLE 1.
SCOPE OF SERVICES**

The Engineer will provide professional services for the Miracle Mile Landscaping Project (Lovers Lane @ the Douglas Avenue intersection; NE and NW corners). Specific project scope for the project is shown on Exhibit "A".

**ARTICLE 3.
REPRESENTATIONS**

By executing this Agreement, the Engineer makes the following express representations to the Owner:

1. The Engineer is professionally qualified to act as the Engineer for this Contract and is licensed to practice Engineering by all public entities having jurisdiction over the Engineer and the Project and will carry out the responsibilities and obligations identified in this Agreement:
 - (a) with the professional skill and care ordinarily provided by competent Engineers practicing in the same or similar locality and under the same or similar circumstances and professional license; and
 - (b) as expeditiously as is prudent considering the ordinary professional skill and care of a competent Engineer; and
 - (c) in accordance with all applicable laws, codes, and regulations.
2. The Engineer shall maintain all necessary licenses, permits or other authorizations necessary to act as Engineer for all assignments until the Engineer's duties hereunder have been fully satisfied;
3. The Engineer will become familiar with the Project site and the local conditions for each assignment;
4. The Engineer shall prepare all documents and things required by this Agreement in accordance with the standard of care including, but not limited to, all Agreement plans and specifications, in such a manner that they shall be accurate, coordinated, and adequate for construction and shall be in conformity and comply with all applicable law, codes and regulations;
5. The Engineer assumes full responsibility to the Owner for the improper acts and omissions of its consultants or others employed or retained by the Engineer in connection with any assignment.

ARTICLE 4.
DUTIES, OBLIGATIONS AND RESPONSIBILITIES OF THE OWNER

The Owner shall have and perform the following duties, obligations, and responsibilities to the Engineer as applicable to the project:

- (a) The Owner shall provide the Engineer with the Owner's requirements, including standard specifications, standard details, and CADD standards;
- (b) The Owner shall review any Documents provided by or through the Engineer requiring the Owner's decision, and shall make any required decisions;
- (c) In the event the Owner learns of any failure to comply with the Construction Contract by the Contractor, or of any errors, omissions, or inconsistencies in the work product of the Engineer, and in the further event that the Engineer does not have notice of same, the Owner shall inform the Engineer;
- (d) The Owner shall afford the Engineer access to the Project site and to the Work as may be reasonably necessary for the Engineer to properly perform its services under this Agreement;
- (e) The Owner shall perform its duties set forth in this Article in a timely manner;

Except for documents requiring the Owner's decision as set forth in (b) above, the Owner's review of any documents prepared by the Engineer or its consultants shall be solely for the purpose of determining whether such documents are generally consistent with the Owner's Criteria, as, and if, modified. No review of such documents shall relieve the Engineer of its responsibilities for the accuracy, adequacy, fitness, suitability, or coordination of its work product.

ARTICLE 5.
NOT USED

ARTICLE 6.
RELATIONSHIP OF PARTIES

The Owner and Engineer agree that the terms and conditions of this Agreement do not constitute the creation of a separate legal entity or the creation of legal responsibilities of either party other than under the terms of this Agreement. Owner and Engineer are and shall be acting as independent contractors under this Agreement; accordingly, nothing contained in this Agreement shall be construed as establishing a master/servant, employer/employee, partnership, joint venture, or joint enterprise relationship between Owner and Engineer. Engineer and Owner are responsible for their own acts, forbearance, negligence, and deeds, and for those of their respective agents or employees in conjunction with the performance of work covered under this Agreement. Engineer represents that it has, or will secure at its own expense, all personnel and consultants required in performing the Services herein. Such personnel and consultants shall not be employees of or have any contractual relationship with the Owner.

Article 7.
INVOICES AND PAYMENTS

Invoices

Preparation and Submittal of Invoices. Engineer shall prepare invoices in accordance with its standard invoicing practices and the terms of this agreement, and in a manner acceptable to Owner. Engineer shall submit its invoices to Owner no more than once per month. Invoices are due and payable within 30 days of receipt.

Payments

Failure to Pay. If Owner fails to make any payment due Engineer for services and expenses within 60 days after receipt of Engineer's invoice and funds are available for the Project, then, Engineer may, after giving seven days written notice to Owner, suspend services under this Agreement until Owner has paid in full all amounts due for services, expenses, and other related charges. Owner waives all claims against Engineer for any such suspension.

Disputed Invoices. If Owner contests an invoice, Owner may withhold only that portion so contested, and must pay the undisputed portion.

ARTICLE 8.
INDEMNITY

- A. The Engineer shall indemnify and hold the Owner and the Owner's officers and employees harmless, but not defend, from and against damages, losses and judgments arising from claims by third parties, including reasonable attorneys' fees and expenses recoverable under applicable law, but only to the extent they are caused by the negligent acts or omissions of the Engineer, its employees, and its consultants in the performance of professional services under this Agreement. The Engineer has no obligation to pay for any of the indemnitees' costs prior to a final determination of liability or to pay any amount that exceeds the Engineer's finally determined percentage of liability based upon the comparative fault of the Engineer, its employees, and its consultants.
- B. Mutual Waiver. To the fullest extent permitted by law, Owner and Engineer waive against each other, and the other's employees, officers, directors, agents, insurers, partners, and consultants, all claims for or entitlement to special, incidental, indirect, or consequential damages arising out of, resulting from, or in any way related to the Project.

ARTICLE 9.
PROJECT RECORDS

All records relating in any manner whatsoever to any Project performed hereunder, or any designated portion thereof, which are in the possession of the Engineer or the Engineer's consultants, shall be made available to the Owner for inspection and copying upon written request of the Owner. Additionally, said records shall be made available, upon request by the 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 plans, specifications, submittals, correspondence, minutes, memoranda, tape recordings, videos, or other writings or things which document the Project, its design, and its construction. Said records expressly include those documents reflecting the time expended by the Engineer and its personnel in performing the obligations of this Agreement and the records of expenses incurred by the Engineer in its performance under said Agreement. The Engineer shall maintain and protect these records for no less than 3 years after final completion of the Project, or for any longer period as may be required by applicable law or good engineering practice. Thereafter, the Engineer shall forward to Owner all plans, specifications, submittals, correspondence, minutes, memoranda, tape recordings, videos, or other writings or things which document each Project, its design, and its construction. Additionally, the Engineer shall forward any time or expense records for any work performed under this Agreement.

ARTICLE 10.
USE AND OWNERSHIP OF DOCUMENTS

- A. All Documents are instruments of service in respect to this Project, and Engineer shall retain an ownership and property interest therein (including the copyright and the right of reuse at the discretion of the Engineer) whether the Project is completed. Owner shall not rely in any way on any Document unless it is in printed form, signed or sealed by the Engineer or one of its Consultants.
- B. A party may rely that data or information set forth on paper (also known as hard copies) that the party receives from the other party by mail, hand delivery, or facsimile, are the items that the other party intended to send. Files in electronic media format of text, data, graphics, or other types that are furnished by one party to the other are furnished only for convenience, not reliance by the receiving party. Any conclusion or information obtained or derived from such electronic files will be at the user's sole risk. If there is a discrepancy between the electronic files and the hard copies, the hard copies govern.
- C. Because data stored in electronic media format can deteriorate or be modified inadvertently or otherwise without authorization of the data's creator, the party receiving electronic files agrees that it will perform acceptance tests or procedures within 60 days, after which the receiving party shall be deemed to have accepted the data thus transferred. Any transmittal errors detected within the 60-day acceptance period will be corrected by the party delivering the electronic files.
- D. When transferring documents in electronic media format, the transferring party makes no representations as to long term compatibility, usability, or readability of documents resulting from the use of software application packages, operating systems, or computer hardware differing from those used by the documents' creator.
- E. Owner may make and retain copies of Documents for information and reference in connection with use on the Project by Owner.

Engineer grants Owner a license to use the Documents on the Project, extensions of the Project, and other projects of Owner, subject to the following limitations: (1) Owner acknowledges that such Documents are not intended or represented to be suitable for use on the Project unless completed by Engineer, or for use or reuse by Owner or others on extensions of the Project or on any other project without written verification or adaptation by Engineer; (2) any such use or reuse, or any modification of the Documents, without written verification, completion, or adaptation by Engineer, as appropriate for the specific purpose intended, will be at Owner's sole risk and without liability or legal exposure to Engineer or to Engineer's Subconsultants; (3) Owner shall indemnify and hold harmless Engineer and Engineer's Subconsultants

from all claims, damages, losses, and expenses, including attorneys' fees, arising out of or resulting from any use, reuse, or modification without written verification, completion, or adaptation by Engineer; and (4) such limited license to Owner shall not create any rights in third parties.

- F. If Engineer at Owner's request verifies or adapts the Documents for extensions of the Project or for any other project, then Owner shall compensate Engineer at rates or in an amount to be agreed upon by Owner and Engineer.

ARTICLE 11.
OPINIONS OF PROBABLE CONSTRUCTION COST

Engineer's opinions of probable Construction Cost are to be made based on Engineer's experience and qualifications and represent Engineer's best judgment as an experienced and qualified professional generally familiar with the construction industry. However, since Engineer has no control over the cost of labor, materials, equipment, or services furnished by others, or over contractors' methods of determining prices, or over competitive bidding or market conditions, Engineer cannot and does not guarantee that proposals, bids, or actual Construction Cost will not vary from opinions of probable Construction Cost prepared by Engineer. If Owner wishes greater assurance as to probable Construction Cost, Owner shall employ an independent cost estimator.

ARTICLE 12.
DISPUTE RESOLUTION

If a dispute arises between Engineer and Owner, the following procedures shall control.

- A. If any claim or dispute cannot be resolved between the project managers for the parties, or through negotiations between the chosen executives of each of the parties, then the parties shall attempt to resolve the dispute through non-binding mediation. The non-binding mediation process is agreed to be a condition precedent to the right of either party to initiate litigation as a means of resolving any dispute under this Agreement.
- B. The costs and expenses of the Mediator shall be shared equally by the parties. If the matter has not been resolved through the mediation process, either or both parties may elect to pursue resolution through litigation. In the event of any litigation between the parties, it is agreed and stipulated that the case shall be heard and decided by the court, without a jury.

ARTICLE 13.
CHANGES

If Owner makes any changes in this Agreement which are pertinent to Engineer's responsibilities under this Agreement, Engineer shall immediately notify Owner of the changed conditions. If the Owner's change involves an increase in Engineer's scope of services, the parties shall negotiate an equitable adjustment to Engineer's fees and/or the time to complete the additional services subject to changes approved in writing by Owner. If the change involves a decrease in Engineer's services, the parties shall negotiate an equitable downward adjustment to Engineer's fees and/or the time to complete the reduced services. Only written changes, as provided in this paragraph, will be of any force or effect.

ARTICLE 14.
SUCCESSORS AND
ASSIGNS

The Engineer 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.

ARTICLE 15.
NO THIRD-PARTY BENEFICIARIES

Nothing contained herein shall create any relationship, contractual or otherwise, with, or any rights in favor of, any third party.

ARTICLE 16.
ERRORS AND OMISSIONS INSURANCE

The Engineer shall file with Owner a Certificate of Errors and Omissions Insurance having minimum limits of One Million Dollars (\$1,000,000.00) for each claim and a One Million Dollars (\$1,000,000.00) annual aggregate. Each Errors and Omissions Insurance shall have a deductible not to exceed \$250,000.00. The Engineer shall always maintain the Errors and Omissions Insurance this Agreement is in effect and for a period of 5 years after final completion of the Project. The coverage provided herein shall contain an endorsement providing 30 days' notice to the Owner prior to any cancellation of said coverage. Said coverage shall be written by an insurer acceptable to the Owner and shall be in a form acceptable to the Owner. Failure to maintain the required insurance shall be deemed a material breach of this Agreement.

ARTICLE 17.
OTHER INSURANCE

- A. The Engineer shall provide Worker's Compensation, automobile, and comprehensive general liability insurance policies. Engineer shall name Owner as an additional insured on its general liability insurance policy and shall provide Owner with any defense provided by said policy. Engineer shall deliver the insurance certificates to Owner.
- B. The coverage provided herein shall contain an endorsement providing 30 days' notice to the Owner prior to any cancellation of said coverage. Said coverage shall be written by an insurer acceptable to the Owner and shall be in a form acceptable to the Owner.
- C. Failure to maintain the required insurance shall be deemed a material breach of this Agreement.

ARTICLE 18.
TERMINATION

- A. Either party hereto may terminate this Agreement upon giving 10 days written notice to the other if such other party substantially fails to perform its material obligations set forth herein;

- B. This Agreement may be terminated by the Owner without cause upon 10 days written notice to the Engineer. In the event of such a termination without cause, the Owner shall pay the Engineer for all services rendered prior to the termination, plus any expenses incurred and unpaid that would otherwise be payable hereunder. In such event, the Engineer shall promptly submit to the Owner its invoice for final payment which invoice shall comply with the provisions herein.

ARTICLE 19.
APPLICABLE LAW - AMENDMENTS AND CHANGES

No modification, amendment, novation, renewal, or other alteration of this Agreement shall be effective unless mutually agreed upon in writing and executed by the parties hereto. Any alteration, addition, or deletion to the terms of this Agreement which are required by changes in federal or State law are automatically incorporated herein without written amendment to this Agreement and shall be effective on the date designated by said law. The laws applicable to this Agreement are hereby agreed to by the parties to be the laws of the State of Texas. Venue shall be in Dallas County, Texas.

ARTICLE 20.
SEVERABILITY

If any provision of this Agreement is construed to be illegal or invalid, this will not affect the legality or validity of any of the other provisions. The illegal or invalid provision will be deemed stricken and deleted, but all other provisions shall continue and be given effect as if the illegal or invalid provisions had never been incorporated.

ARTICLE 21.
ENTIRE AGREEMENT

This Agreement, including all Exhibits, attachments, and amendments, constitutes the entire and exclusive agreement between the parties with reference to the Project and supersedes all prior communications, discussions, negotiations, understandings, or agreements, whether oral or written.

ARTICLE 22.
BINDING EFFECT

This Agreement and the respective rights and obligations of the parties hereto shall inure to the benefit and be binding upon the successors and assigns of the parties hereto, as well as the parties themselves.

ARTICLE 23.
FISCAL FUNDING CLAUSE

Notwithstanding any provisions contained in this Agreement, the obligations of the Owner under this Agreement is expressly contingent upon the availability of funding for each item and obligation for the Term of the Agreement and any pertinent extensions. Engineer shall have no right of action against Owner in the event Owner is unable to fulfill its obligations under this Agreement because of lack of sufficient funding for any item or obligation from any source utilized to fund this Agreement or failure to budget or authorize funding for this Agreement during the current or future fiscal years. If Owner is unable to fulfill its obligations under this Agreement because of lack of sufficient funding, or if funds become unavailable, Owner, at its sole discretion, may provide funds from a separate source or may terminate this Agreement by written notice to Engineer pursuant to the Notice provisions set forth herein.

EXECUTED in triplicate originals of the _____ day of _____, 2021.

CITY OF UNIVERSITY PARK

HUITT-ZOLLARS, INC.

By: _____

By:  _____

John Ho, PE
Vice President

EXHIBIT "A"
SCOPE OF SERVICES

The City of University Park (City) is to improve approximately .34 acres of land at the Lovers Lane @ Douglas Avenue intersection – NE and NW corners at the termination of the project known as the Miracle Mile. This scope of work will amend and improve "Option C" of the schematic design that was approved by City Council in the summer of 2019. Improvements will include landscape design that associates and compliments the two sides of Douglas together, create an active space suitable for small gatherings, meetings and small, local events, with movable furniture, shade features, public art, a food truck space, attractive, complimentary landscape and screening, appropriate pedestrian level lighting features, connective sidewalks, pathways or trails and an efficient, underground irrigation system.

BASIC SERVICES

30% Preliminary Design Concept

1. Meet with the City to kick-off the Miracle Mile Landscaping Project, engage in a discussion to receive design ideas, thoughts and recommendations prior to proceeding with the production of a 30% preliminary design concept.
2. Prepare the 30% Preliminary Design Concept.
3. Prepare an opinion of probable construction costs.
4. Meet, present and submit the 30% Preliminary Design Concept to the City for review and comment.

60% Preliminary Design

1. Meet with the City to receive questions and comments concerning the Preliminary Design Concept prior to proceeding with the production of the 60% Preliminary Design.
2. Prepare preliminary construction plans on 11" x 17" sheets for the following:
 - Cover Sheet
 - Quantity Summary Sheets
 - General Notes
 - Demolition Plans
 - Erosion Control Plans
 - Tree Mitigation/Tree Preservation Plans
 - Dimensional Control
 - Grading Plans
 - Site Material Plans
 - Construction Details
 - Planting Plans
 - Planting Plan Details

3. Prepare an updated opinion of probable construction costs utilizing the 60% preliminary design.
4. Submit a PDF copy of the 60% Preliminary Design to the City for review and comment.

90% Pre-Final Design

1. Meet with the City to receive review comments on the 60% Preliminary Design prior to proceeding with the production of the 90% Pre-Final Design. This meeting shall “piggy-back” with the Miracle Mile project.
2. Prepare pre-final construction plans on 11" x 17" sheets for the following:
 - Cover Sheet
 - Quantity Summary Sheets
 - General Notes
 - Demolition Plans
 - Erosion Control Plans
 - Tree Mitigation/Tree Preservation Plans
 - Dimensional Control
 - Grading Plans
 - Site Material Plans
 - Construction Details
 - Planting Plans
 - Planting Plan Details
 - Irrigation Plans
 - Irrigation Details and Notes
3. Develop Bidding and Contract documents utilizing City standard contract documents.
4. Prepare an updated opinion of probable construction costs utilizing the 90% Pre-Final Design.
5. Submit a PDF copy of the 90% Pre-Final Design to the City for review and comment.

100% Final Design

1. Meet with the City to receive review comments on the 90% Pre-Final Design prior to proceeding with the production of the 100% Final Design. This meeting shall “piggy-back” with the Miracle Mile project.
2. Prepare final construction plans on 11" x 17" sheets for the following:
 - Cover Sheet
 - Quantity Summary Sheets
 - General Notes

- Horizontal Control Plans
 - Demolition Plans
 - Erosion Control Plans
 - Tree Mitigation/Tree Preservation Plans
 - Dimensional Control
 - Grading Plans
 - Site Material Plans
 - Construction Details
 - Planting Plans
 - Planting Plan Details
 - Irrigation Plans
 - Irrigation Details and Notes
3. Prepare final Bidding and Contract Documents utilizing City standard contract documents.
 4. Prepare a final, updated Opinion of Probable Construction Costs.
 5. Submit a PDF set of the 100% Final Design to the City for approval.
 6. Complete the Final Design to reflect final review comments.

Bid Phase

1. Prepare a PDF copy of the final plans, specifications and bid documents for distribution to the City.
2. Attend pre-bid conference.
3. Answer bidder questions and prepare necessary addenda as requested by the City.
4. Attend bid opening and tabulate bids.

Construction Phase - Limited Services

1. Attend up to 4 meetings with the City and Contractor during construction.
2. Review submittals and shop drawings as required by the City.
3. Answer RFIs from the Contractor submitted through the City during construction.
4. Participate with the City and Contractor in conducting a final walk through.
5. Upon completion of the Work, the Engineer shall compile for and deliver to the City one reproducible set of Record Documents based upon the marked-up record construction drawings, addenda, furnished by the City. These Record Documents will show significant changes made during construction. Because these Record Documents are based on unverified information provided by other parties, which the Engineer shall assume to be reliable; the Engineer cannot and does not warrant their accuracy. The Record Documents will contain the following warning: "These Record Documents have been prepared based on information provided by others. The Engineer has not verified the accuracy and/or completeness of this information and shall not be responsible for any errors or omissions that may be incorporated as a result of erroneous information provided by others." Electronic pdfs and CAD files will also be provided.

Reimbursable Expenses

The City shall reimburse Huitt-Zollars, Inc. for fees charged for the registration, review, and inspection of the plans by a TDLR RAS reviewer; mileage; printing costs; and other materials as a consequence of the work. The budget for reimbursable expenses shall not be increased without approval of the City.

SPECIAL SERVICES

Right of Way Parcels – Huitt-Zollars will conduct field surveys and prepare up to four (4) sets of metes and bounds descriptions and exhibit maps (8 1/2” x 11”) for the proposed right-of-way at the northeast and northwest corners of the intersection of Lovers Lane and Douglas Avenue, and any remainder parcels owned by the City. The parcels will be monumented on the ground and their descriptions will be referenced to the boundary corners of the parent tracts.

Exclusions:

The intent of the scope is to include only the services specifically listed above and none others. Services specifically excluded from this Scope of Services include, but are not necessarily limited to the following:

- Geotechnical Investigation
- Pavement and Subgrade Design
- Subsurface Utility Engineering
- New right-of-way and/or easement documents.
- Trench excavation safety plan.
- Daily construction staking for the Contractor throughout the duration of construction.
- Post-Construction Surveying.
- Staking/Re-staking of horizontal and vertical control knocked out during construction.
- Surveying to determine final quantities to be used in the final pay estimate.
- Storm Water Pollution Prevention Plan (SWPPP).
- Jurisdictional Waters and Wetlands Assessment and Delineation.
- Mitigation design efforts for waters, wetlands and habitat areas.
- USACOE 404 Permitting.
- Historical and archeological investigation.
- Material testing during construction.
- SWPPP

EXHIBIT "B"

FEE AND PAYMENT CONDITIONS

The fee basis for the Scope of Services as outlined in this Exhibit 'A' will be on a lump sum basis. Payment shall be based on percent of work completed for each reporting period as supported by a written progress report. The total compensation amount shall be Sixty-Five Thousand Dollars (\$65,000).

Compensation shall be as follows:

Basic Services - Lump Sum Fee

| | | |
|--|-----------------------------|------------------|
| Task 1 | Design | \$ 35,980 |
| Task 2 | Bidding | \$ 3,680 |
| Task 3 | Construction Administration | \$ 7,620 |
| Task 4 | Reimbursable Expenses | \$ 3,000 |
| TOTAL BASIC SERVICES LUMP SUM FEE | | \$ 50,280 |

Special Services - Lump Sum Fee

| | | |
|--|-----------------------|------------------|
| Task 1 | Right of Way Exhibits | \$ 14,720 |
| TOTAL SPECIAL SERVICES LUMP SUM FEE | | \$ 14,720 |

TOTAL LUMP SUM FEE **\$ 65,000**