

STATE OF TEXAS                   §  
   §  
 COUNTY OF FORT BEND         §

**AGREEMENT FOR PROFESSIONAL CONSTRUCTION MANAGEMENT SERVICES  
 FORT BEND COUNTY TRANSIT CENTER**

THIS AGREEMENT is made and entered into by and between Fort Bend County, (hereinafter "County"), a body corporate and politic under the laws of the State of Texas, and Huitt-Zollars, Inc. (hereinafter "Contractor"), a company authorized to conduct business in the State of Texas.

WITNESSETH

WHEREAS, County desires that Contractor provide certain professional construction management for the Fort Bend County Transit Center (hereinafter "Services") pursuant to SOQ 17-042; and

WHEREAS, Contractor represents that it is qualified and desires to perform such services.

NOW, THEREFORE, in consideration of the mutual covenants and conditions set forth below, the parties agree as follows:

AGREEMENT

**Section 1.     Scope of Services**

- 1.01 Consultant shall render Services to County as defined in the Scope of Services attached hereto as Exhibit A.
- 1.02 Consultant agrees all work provided under this Agreement shall conform to and be in the format required by federal and state funding agencies. Guidelines and requirements of the Federal Transit Administration, The Federal Highway Administration, The Environmental Protection Agency, The Texas Commission on Environmental Quality and the Texas Department of Transportation are applicable to this project. Other federal and local funding sources may impose additional and/or differing requirements.
- 1.03 All performance of the Scope of Services by Consultant including any changes in the Scope of Services and revision of work satisfactorily performed will be performed only when approved in advance in writing and authorized by County.

**Section 2.     Compensation and Payment**

- 2.01 Consultant's fees shall be paid in accordance with the schedule and rates described in the attached Exhibit B, Cost Schedule, Payment Schedule and Hourly Rates.

- 2.02 The Maximum Compensation for the performance of Services within the Scope of Services described in Exhibit A is nine hundred fifty-six thousand one hundred sixteen dollars and no/100 (\$956,116.00). In no case shall the amount paid by County under this Agreement exceed the Maximum Compensation without a written amendment executed by both parties.
- 2.03 The compensation for the Basic Construction Management Services for the Fort Bend County (FBC) Transit Center within the overall Scope of Services in Exhibit A is seven hundred eighty-seven thousand nine hundred sixty six dollars and no/100 (\$787,966.00) which will not be exceeded without a written amendment executed by both parties.
- 2.03.1 Both County and Consultant agree that the Estimated Construction Cost equals \$19,699,161.00 and the Estimated Construction Duration equals thirteen (13) months.
- 2.03.2 Both County and Consultant agree that the compensation for the Basic Construction Management Services for the FBC Transit Center as set in this Agreement represents an amount equivalent to 4% of the Estimated Construction Cost.
- 2.03.3 Both County and Consultant agree that the Actual Construction Cost represents the amount negotiated and awarded by the County for Construction Services to the Construction Contractor.
- 2.03.4 Both County and Consultant agree that should the Actual Construction Cost vary from the Estimated Construction Cost, the County and Consultant will allow for an increase or decrease of the compensation for the Basic Construction Management Services for the FBC Transit Center under this Agreement of (\$787,966.00 ). Any adjustment to the compensation for Basic Construction Management Services for the FBC Transit Center will reflect an amount that shall equal 4% of the Actual Construction Cost. Any adjustment to the compensation for the Basic Construction Management Services for the FBC Transit Center must be approved in writing by the County. One and only one adjustment shall be allowed under this Agreement.
- 2.04 County and Consultant shall develop, prior to any payments due to Consultant, a billing practice by which Consultant shall submit to County staff person designated by the Transportation Department Director, one (1) electronic (pdf) and/or one (1) original copy of invoice showing the amounts due for services performed. County reserves the right to withhold payment pending verification of satisfactory work performed and receipt of all required reports/documentation.
- 2.05 Payment Schedule.
- 2.05.1 Basic Construction Management Services. Site Observation and Management Services shall be paid monthly based on the construction progress of the Contractor, and will be equal to 75% of the Basic Construction Management Services for the

FBC Transit Center. Following Construction Completion and approved acceptance of billing and other documents required by funding sources, the Consultant shall be paid a lump sum fee equal to 25% of the Basic Construction Management Services for the FBC Transit Center

- 2.05.2 Other Professional Construction Management Services. Other Services are listed in Exhibit B-2 "Payment Schedule". These services will be paid monthly based on the rates set in the attached Exhibit B-3 "Hourly Rate Schedule" at the amounts set in the attached Exhibit B-2 "Payment Schedule".
- 2.05.3 Contingency Services. Depending upon need and only after receiving written approval by the County, Consultant may be entitled to payment for Contingency Services. These services will be paid monthly based upon the rates set in the attached Exhibit B-3 "Hourly Rate Schedule". Total amounts due for each "Contingency Service" shall not exceed the total amounts listed for Contingency Services in Exhibit B-2 "Payment Schedule".

**Section 3. Limit of Appropriation**

- 3.01 Consultant clearly understands and agrees, such understanding and agreement being of the absolute essence of this Agreement, that County shall have available the total maximum sum of nine hundred fifty-six thousand one hundred sixteen dollars and no/100 (\$956,116.00), specifically allocated to fully discharge any and all liabilities County may incur for the Maximum Compensation for the performance of Services as identified in this Agreement. Any additional funds made available may only be allocated pursuant to a written agreement executed by the parties.
- 3.02 Consultant does further understand and agree, said understanding and agreement also being of the absolute essence of this Agreement, that the total maximum compensation that Consultant may become entitled to and the total maximum sum that County may become liable to pay to Consultant shall not under any conditions, circumstances, or interpretations thereof exceed nine hundred fifty-six thousand one hundred sixteen dollars and no/100 (\$956,116.00), unless mutually agreed upon in writing by both parties. Notwithstanding the foregoing, any increase in the maximum sum that County may become liable to pay to Consultant shall be pursuant to a written agreement executed by the parties.

**Section 4. Personnel**

- 4.01 Consultant represents that it presently has, or is able to obtain, adequate qualified personnel in its employment for the timely performance of the Scope of Services required under this Agreement and that Consultant shall furnish and maintain, at its own expense, adequate and sufficient personnel, in the opinion of County, to perform the Scope of Services when and as required and without delays.
- 4.02 All employees of Consultant shall have such knowledge and experience as will enable them to perform the duties assigned to them. Any employee of Consultant who, in the

opinion of County, is incompetent or by his conduct becomes detrimental to the project shall, upon request of County, immediately be removed from association with the project.

- 4.03 Key personnel under this Project are listed by name in the attached Exhibit D. It is agreed that the Consultant's key employees and positions are necessary for the successful performance of this Agreement. No changes shall be made to key personnel without prior written approval by the County. Any changes in personnel must be of a comparable level of experience, qualifications and ability.
- 4.04 Consultant will endeavor to protect the County against defects and deficiencies in the work of chosen Construction Contractor, but does not guarantee the performance of the Construction Contractor.
- 4.05 Except as otherwise specified herein, Consultant shall furnish all equipment, transportation, supplies, and materials required to provide all services subject to this Agreement.

**Section 5. Work Authorizations**

- 5.01 Execution of this Agreement does not predicate Notice to Proceed. County will issue Work Authorizations using the form included as Exhibit C to authorize all work provided by Consultant under this Agreement. Consultant must sign and return a Work Authorization to County within seven (7) working days after receipt. Refusal of Consultant to accept a Work Authorization shall be grounds for termination of this Agreement by County.
- 5.02 Each Work Authorization shall specify the types of Services to be performed and shall include: (A) a period of performance with a beginning and ending date; (B) a full description of the work to be performed; (C) a work schedule with milestones; (D) a cost not to exceed amount; (E) the basis of payment (i.e. cost plus fixed fee, unit cost, lump sum, or specified rate).
- 5.03 Consultant shall not include additional terms and conditions in the Work Authorization. In the event of any conflicting terms and conditions between the Work Authorization and this Agreement, the terms and conditions of this Agreement shall prevail and govern the work and costs incurred.
- 5.04 Consultant shall not provide any Services under this Agreement until authorized by County in a fully executed Work Authorization. Any Services provided by Consultant or any costs incurred by Consultant before issuance of a Work Authorization or after the expiration of a Work Authorization shall be ineligible for payment or reimbursement.
- 5.05 Work Authorizations are issued at the discretion of County. While it is County's intent to issue Work Authorizations hereunder, Consultant shall have no cause of action conditioned upon the lack or number of Work Authorizations issued.
- 5.06 Each Work Authorization shall be signed by all parties and shall become a part of this Agreement. No work authorizations will waive County or Consultant's responsibilities and

obligations established in this Agreement. Consultant shall promptly notify County of any event that will affect completion of the Work Authorization.

- 5.07 Before additional work may be performed or additional costs incurred, a change in a Work Authorization shall be approved in writing by the County. County shall not be responsible for actions by Consultant or any costs incurred by Consultant prior to the execution of the Work Authorization or any amendments thereto. Consultant shall allow adequate time for review and approval of any amendments to the Work Authorization by County prior to expiration of the Work Authorization. Under no circumstances shall a Work Authorization be allowed to extend beyond this Agreement's expiration date as detailed in Section 6, unless an appropriate contract extension has been approved by the County and set forth in writing, nor will the total amount of funds exceed the not-to-exceed amount set forth in Section 2 of this Agreement unless an appropriate contract amendment has been approved by the County and set forth in writing.
- 5.08 Upon satisfactory completion and acceptance of work performed as determined by County, Consultant shall submit invoices and deliverables to County in accordance with Section 2.

**Section 6. Time of Performance**

Time for performance of the Scope of Services under this Agreement shall begin with execution of the First Work Authorization and end no later than June 30, 2020. Consultant shall complete the tasks described in the Scope of Services, within this time or within such additional time as may be extended by the County.

**Section 7. Modifications and Waivers**

- 7.01 The parties may not amend or waive this Agreement, except by a written agreement executed by both parties.
- 7.02 No failure or delay in exercising any right or remedy or requiring the satisfaction of any condition under this Agreement, and no course of dealing between the parties, operates as a waiver or estoppel of any right, remedy, or condition.
- 7.03 The rights and remedies of the parties set forth in this Agreement are not exclusive of, but are cumulative to, any rights or remedies now or subsequently existing at law, in equity, or by statute.

**Section 8. Termination**

- 8.01 Termination for Convenience – County may terminate this Agreement at any time upon thirty (30) days written notice.
- 8.02 Termination for Default
- 8.02.1 County may terminate the whole or any part of this Agreement for cause in the following circumstances:

- 8.02.1.1 If Contractor fails to perform services within the time specified in the Scope of Services or Work Authorization or any extension thereof granted by the County in writing;
- 8.02.1.2 If Contractor materially breaches any of the covenants or terms and conditions set forth in this Agreement or fails to perform any of the other provisions of this Agreement or so fails to make progress as to endanger performance of this Agreement in accordance with its terms, and in any of these circumstances does not cure such breach or failure to County's reasonable satisfaction within a period of ten (10) calendar days after receipt of notice from County specifying such breach or failure.
- 8.02.2 If, after termination, it is determined for any reason whatsoever that Contractor was not in default, or that the default was excusable, the rights and obligations of the parties shall be the same as if the termination had been issued for the convenience of the County in accordance with Section 8.01 above.
- 8.03 Upon termination of this Agreement, County shall compensate Contractor in accordance with Section 2, above, for those services which were provided under this Agreement prior to its termination and which have not been previously invoiced to County. Contractor's final invoice for said services will be presented to and paid by County in the same manner set forth in Section 2 above.
- 8.04 If County terminates this Agreement as provided in this Section, no fees of any type, other than fees due and payable at the Termination Date, shall thereafter be paid to Contractor.
- 8.05 If the Consultant has any property in its possession belonging to County, the Consultant will account for the same, and dispose of it in the manner County directs.
- 8.06 Upon receipt of the notice, the Consultant shall (1) immediately discontinue all services affected (unless the notice directs otherwise), and (2) deliver to the County's Contracting Officer all data, drawings, specifications, reports, estimates, summaries, and other information and materials accumulated in performing this contract, whether completed or in process. County has a royalty-free, nonexclusive, and irrevocable license to reproduce, publish or otherwise use, all such data, drawings, specifications, reports, estimates, summaries, and other information and materials.
- 8.07 If the termination is for failure of the Consultant to fulfill the contract obligations, the County may take over the work and complete it by contract or otherwise, and may take possession of and use any materials, appliances, and plant on the work site necessary for completing the work. The Consultant and its sureties shall be liable for any damage to the County resulting from the Consultant's refusal or failure to complete the work within specified time, whether or not the Consultant's right to proceed with the work is terminated. This liability includes any increased costs incurred by the County in completing the work.

- 8.08 County may direct Consultant to continue performance under this Contract while matters in dispute are being resolved.

**Section 9. Breaches, Disputes and Remedies**

- 9.01 The County has the right to specific performance, an injunction or any other appropriate equitable remedy; and the right to money damages in the event that the County deems the Consultant guilty of a breach of any term under the Contract.
- 9.02 Inasmuch as the Consultant can be adequately compensated by money damages for any breach of the Agreement, which may be committed by the County, the Consultant expressly agrees that no default, act or omission of the County shall constitute a material breach of its Agreement with the County, entitling Consultant to cancel or rescind the Agreement (unless the County directs Consultant to do so) or to suspend or abandon performance.
- 9.03 **Dispute Resolution.** The parties shall attempt in good faith to resolve promptly any dispute arising out of or relating to this Agreement by negotiation between the parties. Disputes arising in the performance of this Contract that are not resolved by agreement of the parties shall be decided in writing by the authorized representative of the County. This decision shall be final and conclusive unless within ten [10] days from the date of receipt of its copy, the Consultant mails or otherwise furnishes a written appeal to the County. In connection with any such appeal, the Consultant shall be afforded an opportunity to be heard and to offer evidence in support of its position. The decision of the County shall be binding upon the Consultant and the Consultant shall abide by the decision.
- 9.04 The requirement to seek mediation may be a condition required before filing an action at law or in equity, unless to do so would prevent either party from seeking relief in a court of law or equity under any applicable statute of limitations.
- 9.05 **Claims for Damages -** Should either party to the Contract suffer injury or damage to person or property because of any act or omission of the party or of any of his employees, agents or others for whose acts he is legally liable, a claim for damages therefor shall be made in writing to such other party within a reasonable time after the first observance of such injury of damage.
- 9.06 **Rights and Remedies -** The duties and obligations imposed by the Contract Documents and the rights and remedies available thereunder shall be in addition to and not a limitation of any duties, obligations, rights and remedies otherwise imposed or available by law. No action or failure to act by the County or Consultant shall constitute a waiver of any right or duty afforded any of them under the Contract, nor shall any such action or failure to act constitute an approval of or acquiescence in any breach thereunder, except as may be specifically agreed in writing.

**Section 10. Ownership and Reuse of Documents**

All documents, data, reports, research, graphic presentation materials, etc., developed by Consultant, including any documents or materials developed by its subcontractors, as a part of its work under this Agreement, shall become the property of County upon completion of this Agreement, or in the event of termination or cancellation thereof, at the time of payment under Section 2 for work performed. Consultant shall promptly furnish all such data and material to County on request. County has a royalty-free, nonexclusive, and irrevocable license to reproduce, publish or otherwise use, all such data, drawings, specifications, reports, estimates, summaries, and other information and materials.

**Section 11. Inspection of Books and Records**

Consultant will permit County, or any duly authorized agent of County, to inspect and examine the books and records of Consultant for the purpose of verifying the amount of work performed under the Scope of Services. County's right to inspect survives the termination of this Agreement for a period of five years.

**Section 12. Insurance**

12.01 Prior to commencement of the Services, Consultant shall furnish County with properly executed certificates of insurance which shall evidence all insurance required and provide that such insurance shall not be canceled, except on 30 days' prior written notice to County. Consultant shall provide certified copies of insurance endorsements and/or policies if requested by County. Consultant shall maintain such insurance coverage from the time Services commence until Services are completed and provide replacement certificates, policies and/or endorsements for any such insurance expiring prior to completion of Services. Consultant shall obtain such insurance written on an Occurrence form (or a Claims Made form for Professional Liability insurance) from such companies having Best's rating of A/VII or better, licensed or approved to transact business in the State of Texas, and shall obtain such insurance of the following types and minimum limits:

- 12.01.1 Workers' Compensation insurance. Substitutes to genuine Workers' Compensation Insurance will not be allowed.
- 12.01.2 Employers' Liability insurance with limits of not less than \$1,000,000 per injury by accident, \$1,000,000 per injury by disease, and \$1,000,000 per bodily injury by disease.
- 12.01.3 Commercial general liability insurance with a limit of not less than \$1,000,000 each occurrence and \$2,000,000 in the annual aggregate. Policy shall cover liability for bodily injury, personal injury, and property damage and products/completed operations arising out of the business operations of the policyholder.
- 12.01.4 Business Automobile Liability insurance with a combined Bodily Injury/Property Damage limit of not less than \$1,000,000 each accident. The

policy shall cover liability arising from the operation of licensed vehicles by policyholder.

- 12.01.5 Professional Liability insurance may be made on a Claims Made form with limits not less than \$1,000,000.
- 12.02 County and the members of Commissioners Court shall be named as additional insured to all required coverage except for Workers' Compensation and Professional Liability. All Liability policies including Workers' Compensation written on behalf of Consultant, excluding Professional Liability, shall contain a waiver of subrogation in favor of County and members of Commissioners Court.
- 12.03 If required coverage is written on a claims-made basis, Consultant warrants that any retroactive date applicable to coverage under the policy precedes the effective date of the contract; and that continuous coverage will be maintained or an extended discovery period will be exercised for a period of 2 years beginning from the time that work under the Agreement is completed.

### Section 13. Indemnity

- 13.01 CONSULTANT SHALL INDEMNIFY AND DEFEND COUNTY AGAINST ALL LOSSES, LIABILITIES, CLAIMS, CAUSES OF ACTION, AND OTHER EXPENSES, INCLUDING REASONABLE ATTORNEYS FEES, ARISING FROM ACTIVITIES OF CONSULTANT, ITS AGENTS, SERVANTS OR EMPLOYEES, PERFORMED UNDER THIS AGREEMENT THAT RESULT FROM THE NEGLIGENT ACT, ERROR, OR OMISSION OF CONSULTANT OR ANY OF CONSULTANT'S AGENTS, SERVANTS OR EMPLOYEES.
- 13.02 Consultant shall timely report all such matters to County and shall, upon the receipt of any such claim, demand, suit, action, proceeding, lien or judgment arising from activities of Consultant, its agents, servants or employees, not later than the fifteenth day of each month; provide County with a written report on each such matter, setting forth the status of each matter, the schedule or planned proceedings with respect to each matter and the cooperation or assistance, if any, of County required by Consultant in the defense of each matter.
- 13.03 Consultant's duty to defend indemnify and hold County harmless shall against all losses, liabilities, claims, causes of action, and other expenses, including reasonable attorneys' fees, arising from activities of consultant, its agents, servants or employees, performed under this Agreement that result from the negligent act, error, or omission of Consultant or any of Consultant's agents, servants or employees be absolute. It shall not abate or end by reason of the expiration or termination of the Agreement unless otherwise agreed by County in writing. The provisions of this Section shall survive the termination of the Agreement and shall remain in full force and effect with respect to all such matters no matter when they arise.
- 13.04 In the event of any dispute between the parties as to whether a claim, demand, suit, action, proceeding, lien or judgment appears to have been caused by or appears to have arisen out of or in connection with acts or omissions of Consultant or any of Consultant's agents, servants or employees, Consultant shall never-the-less fully defend such claim,

demand, suit, action, proceeding, lien or judgment until and unless there is a determination by a court of competent jurisdiction that the acts and omissions of Consultant or any of Consultant's agents, servants or employees are not at issue in the matter.

- 13.05 Consultant's indemnification shall cover, and Consultant agrees to indemnify County, in the event County is found to have been negligent for having selected Consultant to perform the work described in this request.
- 13.06 The provision by Consultant of insurance shall not limit the liability of Consultant under this Agreement.
- 13.07 Consultant shall cause its subcontractors who enter a contract with Consultant to perform any of the Services to be provided by Consultant under this Agreement, to agree to indemnify County and to hold it harmless from all claims for bodily injury and property damage that may arise from said Consultant's operations. Such provisions shall be in form satisfactory to County.
- 13.08 Loss Deduction Clause - County shall be exempt from, and in no way liable for, any sums of money which may represent a deductible in any insurance policy. The payment of deductibles shall be the sole responsibility of Consultant and/or its subcontractors providing such insurance.

**Section 14. Reports of Accidents**

Within 24 hours after the occurrence of any accident or other event which results in, or might result in, injury to the person or property of any third person shall send a written report of such accident or other event to County, setting forth a full and concise statement of the facts pertaining thereto.

**Section 15. Confidential and Proprietary Information**

- 15.01 Consultant acknowledges that it and its employees or agents may, in the course of performing their responsibilities under this Agreement, be exposed to or acquire information that is confidential to County. Any and all information of any form obtained by Consultant or its employees or agents from County in the performance of this Agreement shall be deemed to be confidential information of County ("Confidential Information"). Any reports or other documents or items (including software) that result from the use of the Confidential Information by Consultant shall be treated with respect to confidentiality in the same manner as the Confidential Information. Confidential Information shall be deemed not to include information that (a) is or becomes (other than by disclosure by Consultant) publicly known or is contained in a publicly available document; (b) is rightfully in Consultant's possession without the obligation of nondisclosure prior to the time of its disclosure under this Agreement; or (c) is independently developed by employees or agents of Consultant who can be shown to have had no access to the Confidential Information.

- 15.02 Consultant agrees to hold Confidential Information in strict confidence, using at least the same degree of care that Consultant uses in maintaining the confidentiality of its own confidential information, and not to copy, reproduce, sell, assign, license, market, transfer or otherwise dispose of, give, or disclose Confidential Information to third parties or use Confidential Information for any purposes whatsoever other than the provision of Services to County hereunder, and to advise each of its employees and agents of their obligations to keep Confidential Information confidential. Consultant shall use its best efforts to assist County in identifying and preventing any unauthorized use or disclosure of any Confidential Information. Without limitation of the foregoing, Consultant shall advise County immediately in the event Consultant learns or has reason to believe that any person who has had access to Confidential Information has violated or intends to violate the terms of this Agreement and Consultant will at its expense cooperate with County in seeking injunctive or other equitable relief in the name of County or Consultant against any such person. Consultant agrees that, except as directed by County, Consultant will not at any time during or after the term of this Agreement disclose, directly or indirectly, any Confidential Information to any person, and that upon termination of this Agreement or at County's request, Consultant will promptly turn over to County all documents, papers, and other matter in Consultant's possession which embody Confidential Information.
- 15.03 Consultant acknowledges that a breach of this Section, including disclosure of any Confidential Information, or disclosure of other information that, at law or in equity, ought to remain confidential, will give rise to irreparable injury to County that is inadequately compensable in damages. Accordingly, County may seek and obtain injunctive relief against the breach or threatened breach of the foregoing undertakings, in addition to any other legal remedies that may be available. Consultant acknowledges and agrees that the covenants contained herein are necessary for the protection of the legitimate business interest of County and are reasonable in scope and content.
- 15.04 Consultant in providing all services hereunder agrees to abide by the provisions of any applicable Federal or State Data Privacy Act.
- 15.05 Consultant expressly acknowledges that County is subject to the Texas Public Information Act, TEX. GOV'T CODE ANN. §§ 552.001 *et seq.*, as amended, and notwithstanding any provision in the Agreement to the contrary, County will make any information related to the Agreement, or otherwise, available to third parties in accordance with the Texas Public Information Act. Any proprietary or confidential information marked as such provided to County by Consultant shall not be disclosed to any third party, except as directed by the Texas Attorney General in response to a request for such under the Texas Public Information Act, which provides for notice to the owner of such marked information and the opportunity for the owner of such information to notify the Attorney General of the reasons why such information should not be disclosed.

**Section 16. Independent Consultant**

- 16.01 In the performance of work or services hereunder, Consultant shall be deemed an independent Consultant, and any of its agents, employees, officers, or volunteers performing work required hereunder shall be deemed solely as employees of Consultant or, where permitted, of its subcontractors.
- 16.02 Consultant and its agents, employees, officers, or volunteers shall not, by performing work pursuant to this Agreement, be deemed to be employees, agents, or servants of County and shall not be entitled to any of the privileges or benefits of County employment.

**Section 17. Notices**

- 17.01 Each party giving any notice or making any request, demand, or other communication (each, a "Notice") pursuant to this Agreement shall do so in writing and shall use one of the following methods of delivery, each of which, for purposes of this Agreement, is a writing: personal delivery, registered or certified mail (in each case, return receipt requested and postage prepaid), or nationally recognized overnight courier (with all fees prepaid)
- 17.02 Each party giving a Notice shall address the Notice to the receiving party at the address listed below or to another address designated by a party in a Notice pursuant to this Section:

County: Fort Bend County Public Transportation Department  
Attn: Director  
12550 Emily Court, Suite 400  
Sugar Land, Texas 77478

With a copy to: Fort Bend County  
Attn: County Judge  
401 Jackson Street, 1<sup>st</sup> Floor  
Richmond, Texas 77469

Consultant: Hultt-Zollars, Inc.  
Attn: Gregory R. Wine  
1500 South Dairy Ashford, Suite 200  
Houston, Texas 77077

- 17.03 A Notice is effective only if the party giving or making the Notice has complied with subsections 17.01 and 17.02 and if the addressee has received the Notice. A Notice is deemed received as follows:
- 17.03.1 If the Notice is delivered in person, or sent by registered or certified mail or a nationally recognized overnight courier, upon receipt as indicated by the date on the signed receipt.

17.03.2 If the addressee rejects or otherwise refuses to accept the Notice, or if the Notice cannot be delivered because of a change in address for which no Notice was given, then upon the rejection, refusal, or inability to deliver.

**Section 18. Compliance with Laws**

Consultant shall comply with all applicable federal, state, and local laws, statutes, ordinances, rules and regulations, and the orders and decrees of any courts or administrative bodies or tribunals in any matter affecting the performance of this Agreement, including, without limitation, Worker's Compensation laws, minimum and maximum salary and wage statutes and regulations, licensing laws and regulations; as applicable to professional services contracts. When required by County, Consultant shall furnish County with written compliance with said laws, statutes, ordinances, rules, regulations, orders, and decrees above specified.

**Section 19. Additional Federal and State Law Requirements**

This project is funded utilizing federal dollars from the Federal Transit Authority. Therefore, the following federal clauses apply. These requirements extend to all third party contractors and their contracts at every tier and their subcontracts at every tier that meet or exceed the required acquisition threshold.

The Consultant shall require that the clauses below shall be included in each covered transaction at any tier:

**19.01 Fly America.**

The Consultant agrees to comply with 49 U.S.C. 40118 (the "Fly America" Act) in accordance with the General Services Administration's regulations at 41 CFR Part 301-10, which provide that recipients and sub-recipients of Federal funds and their contractors are required to use U.S. Flag air carriers for U.S Government-financed international air travel and transportation of their personal effects or property, to the extent such service is available, unless travel by foreign air carrier is a matter of necessity, as defined by the Fly America Act. The Consultant shall submit, if a foreign air carrier was used, an appropriate certification or memorandum adequately explaining why service by a U.S. flag air carrier was not available or why it was necessary to use a foreign air carrier and shall, in any event, provide a certificate of compliance with the Fly America requirements. The Consultant agrees to include the requirements of this Section in all subcontracts that may involve international air transportation.

**19.02 Buy America.**

The Consultant agrees to comply with 49 U.S.C. 5323(j) and 49 C.F.R. part 661, which provide that Federal funds may not be obligated unless all steel, iron, and manufactured products used in FTA funded projects are produced in the United States, unless a waiver has been granted by FTA or the product is subject to a general waiver. General waivers are listed in 49 C.F.R. § 661.7. Separate requirements for rolling stock are set out at 49 U.S.C. 5323(j)(2)(C) and 49 C.F.R. § 661.11.

19.03 Cargo Preference-Use of United States-Flag Vessels.

The Consultant agrees to use a) privately owned US -Flag commercial vessels to ship at least 50 percent of the gross tonnage (computed separately for dry bulk carriers, dry cargo liners, and tankers) involved, whenever shipping any equipment, material or commodities pursuant to this Agreement to the extent such vessels are available at fair and reasonable rates for US-Flag commercial vessels; b) to furnish within 20 working days following the date of loading for shipments originating within the US or within 30 working days following the date of loading for shipments originating outside the US, a legible copy of a rated, "on-board" commercial ocean bill-of-lading in English for each shipment of cargo to the Division of National Cargo, Office of Market Development, Maritime Administration, Washington, DC 20590 and to the FTA recipient (through the contractor in the case of a subcontractor's bill-of-lading).

19.04 Seismic Safety.

The Consultant agrees to comply with the Earthquake Hazards Reduction Act of 1977, as amended, 42 U.S.C. § 7701 *et seq.*, and U.S. DOT regulations, "Seismic Safety," 49 C.F.R. part 41, specifically, 49 C.F.R. § 41.117, and agrees that any new building or addition to an existing building will be designed and constructed in accordance with the standards for Seismic Safety required in Department of Transportation Seismic Safety Regulations 49 CFR Part 41 and will certify to compliance to the extent required by the regulation. The Consultant also agrees to ensure that all work performed related to this Agreement including work performed by a subcontractor is in compliance with the standards required by the Seismic Safety Regulations and the certification of compliance issued on the project.

19.05 Intelligent Transportation Systems.

Intelligent transportation system (ITS) property and services must comply with the National ITS Architecture and Standards to the extent required by 23 U.S.C. Section 517(d) and FTA Notice, "FTA National ITS Architecture Policy on Transit Projects," 66 FR 1455 *et seq.*, January 8, 2001, and later published policies or implementing directives FTA may issue.

19.06 Environmental Protections.

The Consultant agrees to, and assures that it will, comply with all applicable environmental and resource use laws, regulations, and requirements, and follow applicable guidance, now in effect or that may become effective in the future, including state and local laws, ordinances, regulations, and requirements and follow applicable guidance.

19.07 National Environmental Policy Act.

An Award of federal assistance requires the full compliance with applicable environmental laws, regulations, and requirements. Accordingly, the Consultant agrees to:

19.07.1 Comply and facilitate compliance with federal laws, regulations, and requirements, including, but not limited to: (a) Federal transit laws, such as 49 U.S.C. § 5323(c)(2), and 23 U.S.C. § 139, (b) The National Environmental Policy Act of 1969 (NEPA), as amended, 42 U.S.C. §§ 4321 *et seq.*, as limited by 42 U.S.C. § 5159, and CEQ's implementing regulations 40 C.F.R. part 1500 – 1508, (c) Joint FHWA and FTA regulations, "Environmental Impact and Related Procedures," 23 C.F.R. part 771 and 49 C.F.R. part 622, (d) Executive Order No. 11514, as amended, "Protection and Enhancement of Environmental Quality," March 5, 1970, 42 U.S.C. § 4321 note, and (e) Other federal environmental protection laws, regulations, and requirements applicable to the Recipient or the Award, this Agreement, and any Amendments thereto.

19.07.2 Follow the federal guidance identified herein to the extent that the guidance is consistent with applicable authorizing legislation: (a) Joint FHWA and FTA final guidance, "Interim Guidance on MAP-21 Section 1319, Accelerated Decisionmaking in Environmental Reviews," January 14, 2013 (b) Joint FHWA and FTA final guidance, "SAFETEA-LU Environmental Review Process (Pub. L. 109-59)," 71 *Fed. Reg.* 66576, November 15, 2006, and (c) Other federal environmental guidance applicable to the Recipient of the Award, and the accompanying this Agreement.

19.08 Environmental Justice.

The Consultant agrees to, and assures that it will, promote environmental justice by following: (1) Executive Order No. 12898, "Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations," February 11, 1994, 42 U.S.C. § 4321 note, as well as facilitating compliance with that Executive Order, (2) U.S. DOT Order 5610.2, "Department of Transportation Actions To Address Environmental Justice in Minority Populations and Low-Income Populations," 62 *Fed. Reg.* 18377, April 15, 1997, and (3) the most recent edition of FTA Circular 4703.1, "Environmental Justice Policy Guidance for Federal Transit Administration Recipients," August 15, 2012, to the extent consistent with applicable federal laws, regulations, requirements, and guidance.

19.09 Energy Conservation.

The Consultant agrees to comply with mandatory standards and policies relating to energy efficiency which are contained in the state energy conservation plan issued in compliance with the Energy Policy and Conservation Act. and perform an energy assessment for any building constructed, reconstructed, or modified with federal assistance required under FTA regulations, "Requirements for Energy Assessments," 49 C.F.R. part 622, subpart C.

19.10 Use of Certain Public Lands.

The Consultant agrees to comply with U.S. DOT laws, specifically 49 U.S.C. § 303 (often referred to as "section 4(f)), and joint FHWA and FTA regulations, "Parks, Recreation Areas, Wildlife and Waterfowl Refuges, and Historic Sites," 23 C.F.R. part 774, and referenced in 49 C.F.R. part 622.

19.11 Historic Preservation.

The Consultant agrees to: (1) Comply with U.S. DOT laws, including 49 U.S.C. § 303 (often referred to as "section 4(f)"), which requires certain findings be made before an Award may be undertaken if it involves the use of any land from a historic site that is on or eligible for inclusion on the National Register of Historic Places. (2) Encourage compliance with the federal historic and archaeological preservation requirements of section 106 of the National Historic Preservation Act, as amended, 54 U.S.C. § 306108. (3) Comply with the Archeological and Historic Preservation Act of 1974, as amended, 54 U.S.C. § 312501 *et seq.* (4) Comply with U.S. Advisory Council on Historic Preservation regulations, "Protection of Historic Properties," 36 C.F.R. part 800. (5) Comply with federal requirements and follow federal guidance to avoid or mitigate adverse effects on historic properties.

19.12 Indian Sacred Sites.

The Consultant agrees to facilitate compliance with federal efforts to promote the preservation of places and objects of religious importance to American Indians, Eskimos, Aleuts, and Native Hawaiians, and facilitate compliance with the American Indian Religious Freedom Act, 42 U.S.C. § 1996, and Executive Order No. 13007, "Indian Sacred Sites," May 24, 1996, 42 U.S.C. § 3161 note.

19.13 Clean Water.

The Consultant agrees to comply with all applicable standards, orders or regulations issued pursuant to the Federal Water Pollution Control Act, as amended, 33 U.S.C. 1251 *et seq.* The Consultant agrees to report each violation to the County and understands and agrees that the County will, in turn, report each violation as required to assure notification to FTA and the appropriate EPA Regional Office. The Consultant agrees it will not use any violating facilities. It will report the use of facilities placed on or likely to be placed on the U.S. EPA "List of Violating Facilities". It will report violations of use of prohibited facilities to FTA. The Consultant also agrees to include these requirements in each subcontract exceeding \$150,000 financed in whole or in part with Federal assistance provided by FTA.

19.14 Clean Air.

The Consultant agrees to comply with all applicable standards, orders or regulations issued pursuant to the Clean Air Act, as amended, 42 U.S.C. §§ 7401 *et seq.* The Consultant agrees to report each violation to the County and understands and agrees that the County will, in turn, report each violation as required to assure notification to FTA and the appropriate EPA Regional Office. The Consultant agrees it will not use any violating facilities. It will report the use of facilities placed on or likely to be placed on the U.S. EPA "List of Violating Facilities". It will report violations of use of prohibited facilities to FTA.

The Consultant also agrees to include these requirements in each subcontract exceeding \$150,000 financed in whole or in part with Federal assistance provided by FTA.

19.15 Resource Recovery.

The contractor agrees to comply with Section 6002 of the Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act. The requirements of Section 6002 include procuring only items designated in guidelines of the Environmental Protection Agency (EPA) at 40 C.F.R. part 247 that contain the highest percentage of recovered materials practicable, consistent with maintaining a satisfactory level of competition, where the purchase price of the item exceeds \$10,000 or the value of the quantity acquired during the preceding fiscal year exceeded \$10,000; procuring solid waste management services in a manner that maximizes energy and resource recovery; and establishing an affirmative procurement program for procurement of recovered materials identified in the EPA guidelines.

19.16 Other Environmental Federal Laws.

The Consultant agrees to comply or facilitate compliance will comply or facilitate compliance with all applicable federal laws, regulations, and requirements, and will follow applicable guidance, including, but not limited to, the Wild and Scenic Rivers Act of 1968, Coastal Zone Management Act of 1972, the Endangered Species Act of 1973, Magnuson Stevens Fishery Conservation and Management Act, Resource Conservation and Recovery Act, Comprehensive Environmental Response, Compensation, and Liability Act, Executive Order No. 11990 relating to "Protection of Wetlands," and Executive Order Nos. 11988 and 13690 relating to "Floodplain Management."

19.17 Lobbying.

Consultants who apply or bid for an award of \$100,000 or more shall file the certification required by 49 CFR part 20, "New Restrictions on Lobbying." Each tier certifies to the tier above that it will not and has not used Federal appropriated funds to pay any person or organization for influencing or attempting to influence an officer or employee of any agency, a member of Congress, officer or employee of Congress, or an employee of a member of Congress in connection with obtaining any Federal contract, grant or any other award covered by 31 U.S.C. 1352. Each tier shall also disclose the name of any registrant under the Lobbying Disclosure Act of 1995 who has made lobbying contacts on its behalf with non-Federal funds with respect to that Federal contract, grant or award covered by 31 U.S.C. 1352. Such disclosures are forwarded from tier to tier up to the County.

19.18 Access to Records and Reports.

The Consultant agrees to provide County, the FTA Administrator, the Comptroller General of the United States or any of their authorized representatives access to any books, documents, papers and records of the Consultant which are directly pertinent to this

Agreement for the purposes of making audits, examinations, excerpts and transcriptions. Consultant also agrees, pursuant to 49 C.F.R. 633.17 to provide the FTA Administrator or his authorized representatives including any PMO Consultant access to Consultant's records and construction sites pertaining to a major capital project, defined at 49 U.S.C. 5302(a)1, which is receiving federal financial assistance through the programs described at 49 U.S.C. 5307, 5309 or 5311. The Consultant agrees to permit any of the foregoing parties to reproduce by any means whatsoever or to copy excerpts and transcriptions as reasonably needed.

The Consultant agrees to comply and will require all subcontractors of any tier to comply with the record retention requirements in accordance with 2 C.F.R. 200.333. The Consultant agrees to retain, and will require its subcontractors of all tiers to retain, complete and readily accessible records related in whole or in part to the contract, including, but not limited to, all books, records, accounts, statistics, leases, subcontracts, arrangements other third party arrangements of any type, reports, and supporting materials related to those records required under this Agreement for a period of not less than three years after the date of termination or expiration of this Agreement, except in the event of litigation or settlement of claims arising from the performance of this Agreement, in which case Consultant agrees to maintain same until County, the FTA Administrator, the Comptroller General, or any of their duly authorized representatives, have disposed of all such litigation, appeals, claims or exceptions related thereto.

19.19 No Government Obligation to Third Parties.

County and Consultant acknowledge and agree that, notwithstanding any concurrence by the Federal Government in or approval of the solicitation or award of this Agreement, absent the express written consent by the Federal Government, the Federal Government is not a party to this Agreement and shall not be subject to any obligations or liabilities to County, the Consultant, or any other party (whether or not a party to that contract) pertaining to any matter resulting from this Agreement. The Consultant agrees to include this clause in each subcontract financed in whole or in part with Federal assistance provided by FTA. It is further agreed that the clause shall not be modified, except to identify the subcontractor who will be subject to its provisions.

19.20 Program Fraud and False or Fraudulent Statements and Related Acts.

Program Fraud and False or Fraudulent Statement and Related Acts. The Consultant acknowledges that the provisions of the Program Fraud Civil Remedies Act of 1986, as amended, 31 U.S.C. § 3801 et seq. and U.S. DOT regulations, "Program Fraud Civil Remedies," 49 C.F.R. Part 31, apply to its actions pertaining to this Project. Upon execution of this Agreement, the Consultant certifies or affirms the truthfulness and accuracy of any statement it has made, it makes, it may make, or causes to be made,

pertaining to this Agreement or the FTA assisted project for which this Agreement is being performed. In addition to other penalties that may be applicable, the Consultant further acknowledges that if it makes, or causes to be made, a false, fictitious, or fraudulent claim, statement, submission, or certification, the Federal Government reserves the right to impose the penalties of the Program Fraud Civil Remedies Act of 1986 on the Consultant to the extent the Federal Government deems appropriate.

The Consultant also acknowledges that if it makes, or causes to be made, a false, fictitious, or fraudulent claim, statement, submission, or certification to the Federal Government under a contract connected with a project that is financed in whole or in part with Federal assistance originally awarded by FTA under the authority of 49 U.S.C. § 5307, the Government reserves the right to impose the penalties of 18 U.S.C. § 1001 and 49 U.S.C. § 5307(n)(1) on the Consultant, to the extent the Federal Government deems appropriate.

The Consultant agrees to include the above two clauses in each subcontract financed in whole or in part with Federal assistance provided by FTA. It is further agreed that the clauses shall not be modified, except to identify the subcontractor who will be subject to the provisions.

#### 19.21 Notification of Disputes, Breaches, Defaults or Other Litigation.

19.21.01 FTA Interest. Consultant understands and agrees that FTA has a vested interest in the settlement of any violation of federal law, regulation, or disagreement involving the Award, the accompanying this Agreement, and any Amendments thereto including, but not limited to, a default, breach, major dispute, or litigation, and FTA reserves the right to concur in any settlement or compromise.

19.21.02 Notification to FTA. Consultant understands that if a current or prospective legal matter that may affect the Federal Government emerges, the County must promptly notify the FTA Chief Counsel, or FTA Regional Counsel for the Region in which the County is located. (1) The types of legal matters that require notification include, but are not limited to, a major dispute, breach, default, litigation, or naming the Federal Government as a party to litigation or a legal disagreement in any forum for any reason. (2) Matters that may affect the Federal Government include, but are not limited to, the Federal Government's interests in the Award, the accompanying this Agreement, and any Amendments thereto, or the Federal Government's administration or enforcement of federal laws, regulations, and requirements.

19.21.03 If the County has credible evidence that Consultant or other person has submitted a false claim under the False Claims Act, 31 U.S.C. § 3729 *et seq.*, or has committed a criminal or civil violation of law pertaining to such matters as fraud, conflict of interest, bribery, gratuity, or similar misconduct involving

federal assistance, the County must promptly notify the U.S. DOT Inspector General, in addition to the FTA Chief Counsel or Regional Counsel for the Region in which the County is located.

19.22 Government-wide Debarment and Suspension.

The Consultant shall comply and facilitate compliance with U.S. DOT regulations, "Nonprocurement Suspension and Debarment," 2 C.F.R. part 1200, which adopts and supplements the U.S. Office of Management and Budget (U.S. OMB) "Guidelines to Agencies on Governmentwide Debarment and Suspension (Nonprocurement)," 2 C.F.R. part 180. A contract award in any tier must not be made to parties listed on the government wide exclusions in the System for Award Management (SAM), in accordance with the OMB guidelines at 2 C.F.R. § 180 that implement Executive Orders Nos. 12549 (3 C.F.R. part 1986 Comp., p. 189) and 12689 (3 C.F.R. part 1989 Comp., p. 235), "Debarment and Suspension." SAM Exclusions contains the names of parties debarred, suspended, or otherwise excluded by agencies, as well as parties declared ineligible under statutory or regulatory authority other than Executive Order No. 12549.

These provisions apply to each contract at any tier of \$25,000 or more, and to each contract at any tier for a federally required audit (irrespective of the contract amount), and to each contract at any tier that must be approved by an FTA official irrespective of the contract amount.

19.23 Privacy Act.

The Consultant agrees to comply with, and assures the compliance of its employees with, the information restrictions and other applicable requirements of the Privacy Act of 1974, 5 U.S.C. § 552a. Among other things, the Consultant agrees to obtain the express consent of the Federal Government before the Consultant or its employees operate a system of records on behalf of the Federal Government. The Consultant understands that the requirements of the Privacy Act, including the civil and criminal penalties for violation of that Act, apply to those individuals involved, and that failure to comply with the terms of the Privacy Act may result in termination of this Agreement. The Consultant also agrees to include these requirements in each subcontract to administer any system of records on behalf of the Federal Government financed in whole or in part with Federal assistance provided by FTA.

19.24 Civil Rights and Equal Opportunity Requirement.

The following requirements apply to this Agreement:

Nondiscrimination - In accordance with Title VI of the Civil Rights Act, as amended, 42 U.S.C. § 2000d, Section 303 of the Age Discrimination Act of 1975, as amended, 42 U.S.C. § 6102, Section 202 of the Americans with Disabilities Act of 1990, 42

U.S.C. § 12132, and Federal transit law at 49 U.S.C. § 5332, the Consultant agrees that it will not discriminate against any employee or applicant for employment because of race, color, creed, national origin, sex, sexual orientation, gender identity, age, status as a parent or disability. In addition, the Consultant agrees to comply with applicable Federal implementing regulations and other implementing requirements FTA may issue.

Race, Color, Creed, National Origin, Sex - In accordance with Title VII of the Civil Rights Act, as amended, 42 U.S.C. § 2000e, and Federal transit laws at 49 U.S.C. § 5332, the Consultant agrees to comply with all applicable equal employment opportunity requirements of U.S. Department of Labor (U.S. DOL) regulations, "Office of Federal Contract Compliance Programs, Equal Employment Opportunity, Department of Labor," 41 C.F.R. Parts 60 et seq., (which implement Executive Order No. 11246, "Equal Employment Opportunity," as amended by Executive Order No. 11375, "Amending Executive Order 11246 Relating to Equal Employment Opportunity," 42 U.S.C. § 2000e note), and with any applicable Federal statutes, executive orders, regulations, and Federal policies that may in the future affect construction activities undertaken in the course of the Project. The Consultant agrees to take affirmative action to ensure that applicants are employed, and that employees are treated during employment, without regard to their race, color, creed, national origin, sex, or age. Such action shall include, but not be limited to, the following: employment, upgrading, demotion or transfer, recruitment or recruitment advertising, layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. In addition, the Consultant agrees to comply with any implementing requirements FTA may issue.

Age - In accordance with Section 4 of the Age Discrimination in Employment Act of 1967, as amended, 29 U.S.C. § 623 and Federal transit law at 49 U.S.C. § 5332, the Consultant agrees to refrain from discrimination against present and prospective employees for reason of age. In addition, the Consultant agrees to comply with any implementing requirements FTA may issue.

Disabilities - In accordance with Section 102 of the Americans with Disabilities Act, as amended, 42 U.S.C. § 12112, the Consultant agrees that it will comply with the requirements of U.S. Equal Employment Opportunity Commission, "Regulations to Implement the Equal Employment Provisions of the Americans with Disabilities Act," 29 C.F.R. Part 1630, pertaining to employment of persons with disabilities. In addition, the Consultant agrees to comply with any implementing requirements FTA may issue.

The Consultant also agrees to include these requirements in each subcontract financed in whole or in part with Federal assistance provided by FTA, modified only if necessary to identify the affected parties.

19.25 Disadvantaged Business Enterprise (DBE).

This Agreement is subject to the requirements of Title 49, Code of Federal Regulations, Part 26, *Participation by Disadvantaged Business Enterprises in Department of Transportation Financial Assistance Programs* including a Part 26, Section 1101(b) of MAP-21 (23 U.S.C. § 101 note). The national goal for participation of Disadvantaged Business Enterprises (DBE) is 10%. A separate contract goal has not been established for this procurement.

The Consultant shall not discriminate on the basis of race, color, national origin, or sex in the performance of this Agreement. The Consultant shall carry out applicable requirements of 49 CFR Part 26 in the award and administration of this DOT-assisted contract. The Consultant must comply with 49 CFR Part 26. Failure by the Consultant to carry out these requirements is a material breach of this Agreement, which may result in the termination of this Agreement or such other remedy as County deems appropriate, which may include, but is not limited to: (1) withholding monthly progress payments; (2) assessing sanctions; (3) liquidated damages; and/or (4) disqualifying the Consultant from future bidding as non-responsible. Each subcontract the Consultant signs with a subcontractor must include the assurance in this paragraph (see 49 CFR 26.13(b)).

The successful bidder/offeror will be required to report its DBE participation obtained through race-neutral means throughout the period of performance.

The Consultant is required to pay its subcontractors performing work related to this Agreement for satisfactory performance of that work no later than 30 days after the Consultant's receipt of payment for that work from County. In addition, the Consultant is required to return any retainage payments to those subcontractors within 30 days after the subcontractor's work related to this Agreement is satisfactorily completed.

The Consultant must promptly notify County whenever a DBE subcontractor performing work related to this Agreement is terminated or fails to complete its work, and must make good faith efforts to engage another DBE subcontractor to perform at least the same amount of work. The Consultant may not terminate any DBE subcontractor and perform that work through its own forces or those of an affiliate without the prior written consent of County.

19.26 Incorporation of Federal Transit Administration Terms.

The preceding provisions include, in part, certain Standard Terms and Conditions required by DOT, whether or not expressly set forth in the preceding contract provisions. All contractual provisions required by DOT, as set forth in FTA Circular 4220.1F, are hereby

incorporated by reference. Anything to the contrary herein notwithstanding, all FTA mandated terms shall be deemed to control in the event of a conflict with other provisions contained in this Agreement. The Consultant shall not perform any act, fail to perform any act, or refuse to comply with any County requests which would cause County to be in violation of the FTA terms and conditions.

19.27 Prompt Payment.

The Consultant is required to pay its subcontractors performing work related to this Agreement for satisfactory performance of that work no later than 30 days after the Consultant's receipt of payment for that work from County. In addition, the Consultant is required to return any retainage payments to those subcontractors within 30 days after the subcontractor's work related to this Agreement is satisfactorily completed.

19.28 Access for Individuals with Disabilities.

The Consultant agrees to comply with 49 U.S.C. § 5301(d), which states the Federal policy that elderly individuals and individuals with disabilities have the same right as other individuals to use public transportation services and facilities, and that special efforts shall be made in planning and designing those services and facilities to implement transportation accessibility rights for elderly individuals and individuals with disabilities. The Consultant also agrees to comply with all applicable provisions of Section 504 of the Rehabilitation Act of 1973, as amended, with 29 U.S.C. § 794, which prohibits discrimination on the basis of disability; with the Americans with Disabilities Act of 1990 (ADA), as amended, 42 U.S.C. §§ 12101 *et seq.*, which requires that accessible facilities and services be made available to individuals with disabilities; and with the Architectural Barriers Act of 1968, as amended, 42 U.S.C. §§ 4151 *et seq.*, which requires that buildings and public accommodations be accessible to individuals with disabilities, and any subsequent amendments to these laws. In addition, the Consultant agrees to comply with applicable implementing Federal regulations and directives and any subsequent amendments thereto, as follows:

- (1) U.S. DOT regulations, "Transportation Services for Individuals with Disabilities (ADA)," 49 C.F.R. Part 37;
- (2) U.S. DOT regulations, "Nondiscrimination on the Basis of Handicap in programs and Activities Receiving or Benefiting from Federal Financial Assistance," 49 C.F.R. Part 27;
- (3) Joint U.S. Architectural and Transportation Barriers Compliance board (U.S. ATBCB)/U.S. DOT regulations, "Americans with Disabilities (ADA) Accessibility Specifications for Transportation Vehicles," 36 C.F.R. Part 1192 and 49 C.F.R. Part 38;
- (4) U.S. DOJ regulations, "Nondiscrimination on the Basis of Disability in State and Local Government Services," 28 C.F.R. Part 35;
- (5) U.S. DOJ regulations, "Nondiscrimination on the Basis of Disability by Public Accommodations and in Commercial Facilities," 28 C.F.R. Part 36;

- (6) U.S. General Services Administration (U.S. GSA) regulations, "Accommodations for the Physically Handicapped," 41 C.F.R. Subpart 101-19;
- (7) U.S. EEOC, "Regulations to Implement the Equal Employment Provisions of the Americans with Disabilities Act," 29 C.F.R. Part 1630;
- (8) U.S. Federal Communications Commission regulations, "Telecommunications Relay Services and Related Customer Premises Equipment for the Hearing and Speech Disabled," 47 C.F.R. Part 64, Subpart F; and
- (9) U.S. ATBCB regulations, "Electronic and Information Technology Accessibility Standards," 36 C.F.R. Part 1194; FTA regulations, "Transportation for Elderly and Handicapped Persons," 49 C.F.R. Part 609; and
- (10) U.S. DOT regulations, "Transportation for Individuals with Disabilities: Passenger Vessels," 49 C.F.R. Part 39
- (11) FTA Circular 4710.1, "Americans with Disabilities Act: Guidance," and
- (12) Federal civil rights and nondiscrimination directives implementing the foregoing regulations, except to the extent the Federal Government determines otherwise in writing.

19.29 Trafficking of Persons

Consultant agrees that it and its employees that participate in the Recipient's Award, may not: 1. Engage in severe forms of trafficking in persons during the period of time that the Recipient's Award is in effect, 2. Procure a commercial sex act during the period of time that the Recipient's Award is in effect, or 3. Use forced labor in the performance of this Agreement or any subagreements thereunder.

19.30 Veterans Preference.

The Consultant shall give a hiring preference, to the extent practicable, to veterans (as defined in 5 USC Section 2108) who have the requisite skills and abilities to perform the construction work required under the contract. This subsection shall not be understood, construed or enforced in any manner that would require an employer to give preference to any veteran over any equally qualified applicant who is a member of any racial or ethnic minority, female, an individual with a disability, or former employee.

19.31 Flood Insurance.

The Consultant agrees and assures that it will agree to comply with flood insurance laws and guidance as follows:

- (1) It will have flood insurance as required by the Flood Disaster Protection Act of 1973, 42 U.S.C. § 4012a(a), for any building located in a special flood hazard area (100-year flood zone), before accessing federal assistance to acquire, construct, reconstruct, repair, or improve that building.

(2) Each such building and its contents will be covered by flood insurance in an amount at least equal to the federal investment (less estimated land cost) or to the maximum limit of coverage made available with respect to the particular type of property under the National Flood Insurance Act of 1968, 42 U.S.C. § 4001 *et seq.*, whichever is less.

(1) It will follow FTA guidance, except to the extent FTA determines otherwise in writing.

#### 19.32 Prevailing Wage and Anti-Kickback.

The Consultant shall comply with the Davis-Bacon Act, as amended (40 U.S.C. §§ 3141 – 3148). When required by Federal program legislation, all prime construction contracts in excess of \$2,000 awarded by non-Federal entities must include a provision for compliance with the Davis-Bacon Act (40 U.S.C. §§ 3141 - 3144, and 3146 – 3148) as supplemented by Department of Labor regulations (29 C.F.R. part 5, "Labor Standards Provisions Applicable to Contracts Covering Federally Financed and Assisted Construction"). In accordance with the statute, contractors must be required to pay wages to laborers and mechanics at a rate not less than the prevailing wages specified in a wage determination made by the Secretary of Labor. In addition, contractors must be required to pay wages not less than once a week. The non-Federal entity must place a copy of the current prevailing wage determination issued by the Department of Labor in each solicitation. The decision to award a contract or subcontract must be conditioned upon the acceptance of the wage determination. The non-Federal entity must report all suspected or reported violations to the Federal awarding agency. The contracts must also include a provision for compliance with the Copeland "Anti-Kickback" Act (40 U.S.C. § 3145 and 18 U.S.C. §874), as supplemented by Department of Labor regulations (29 C.F.R. part 3, "Contractors and Subcontractors on Public Building or Public Work Financed in Whole or in Part by Loans or Grants from the United States"). The Act provides that each contractor or subrecipient must be prohibited from inducing, by any means, any person employed in the construction, completion, or repair of public work, to give up any part of the compensation to which he or she is otherwise entitled. The non-Federal entity must report all suspected or reported violations to the Federal awarding agency.

#### 19.33 Contract Work Hours and Safety Standards Act.

The Consultant shall comply with the Contract Work Hours and Safety Standards Act (40 U.S.C. §§ 3701-3708), as supplemented by the DOL regulations at 29 C.F.R. part 5. Where applicable, all contracts awarded by the non-Federal entity in excess of \$100,000 that involve the employment of mechanics or laborers (including watchmen and guards) must include a provision for compliance with 40 U.S.C. §§ 3702 and 3704, as supplemented by Department of Labor regulations (29 C.F.R. part 5).

(1) Overtime requirements - No contractor or subcontractor contracting for any part of the contract work which may require or involve the employment of laborers or mechanics

shall require or permit any such laborer or mechanic in any workweek in which he or she is employed on such work to work in excess of forty hours in such workweek unless such laborer or mechanic receives compensation at a rate not less than one and one-half times the basic rate of pay for all hours worked in excess of forty hours in such workweek.

(2) Violation; liability for unpaid wages; liquidated damages - In the event of any violation of the clause set forth in paragraph (1) of this Section the Consultant and any subcontractor responsible therefore shall be liable for the unpaid wages. In addition, such Consultant and subcontractor shall be liable to the United States for liquidated damages. Such liquidated damages shall be computed with respect to each individual laborer or mechanic, including watchmen and guards, employed in violation of the clause set forth in paragraph (1) of this Section, in the sum of \$10 for each calendar day on which such individual was required or permitted to work in excess of the standard workweek of forty hours without payment of the overtime wages required by the clause set forth in paragraph (1) of this Section.

(3) Withholding for unpaid wages and liquidated damages - County shall upon its own action or upon written request of an authorized representative of the Department of Labor withhold or cause to be withheld, from any moneys payable on account of work performed by the Consultant or subcontractor under any such contract or any other Federal contract with the same prime contractor, or any other federally-assisted contract subject to the Contract Work Hours and Safety Standards Act, which is held by the same prime contractor, such sums as may be determined to be necessary to satisfy any liabilities of such contractor or subcontractor for unpaid wages and liquidated damages as provided in the clause set forth in paragraph (2) of this Section.

(4) Subcontracts - The Consultant or subcontractor shall insert in any subcontracts the clauses set forth in paragraphs (1) through (4) of this Section and also a clause requiring the subcontractors to include these clauses in any lower tier subcontracts. The prime contractor shall be responsible for compliance by any subcontractor or lower tier subcontractor with the clauses set forth in paragraphs (1) through (4) of this Section.

(5) Payrolls and basic records - Payrolls and related basic records shall be maintained by the contractor during the course of the work and preserved for three years thereafter for all laborers and mechanics working at the worksite (or under the United States Housing Act of 1937 or the Housing Act of 1949, in the construction or development of the project). Such records shall contain the name, address and social security number of each worker, his or her correct classification, hourly rates of wages paid (including rates of contributions or costs anticipated for bona fide fringe benefits or cash equivalents thereof of the types described in Section 1(b)(2)(B) of the Davis-Bacon Act), daily and weekly number of hours worked, deductions made and actual wages paid.

Whenever the Secretary of Labor has found under 29 CFR 5.5(a)(1)(iv) that the wages of

any laborer or mechanic include the amount of any costs reasonably anticipated in providing benefits under a plan or program described in Section 1(b)(2)(B) of the Davis-Bacon Act, the contractor shall maintain records showing that the commitment to provide such benefits is enforceable, that the plan or program is financially responsible, that the plan or program has been communicated in writing to the laborers or mechanics affected, and records of the costs anticipated or actual costs incurred in providing such benefits. Consultants employing apprentices or trainees under approved programs shall maintain written evidence of registration of apprenticeship programs, certification of trainee programs, registration of the apprentices and trainees, and ratios & wage rates prescribed in applicable programs.

(6) The requirements of 40 U.S.C. § 3704 are applicable to construction work and provide that no laborer or mechanic must be required to work in surroundings or under working conditions which are unsanitary, hazardous or dangerous. These requirements do not apply to the purchases of supplies or materials or articles ordinarily available on the open market, or contracts for transportation or transmission of intelligence. A federally assisted construction contract must exceed \$100,000 before these construction safety requirements apply to that contract.

19.34 Child Support

Under Section 231.006, Family Code, the Contractor certifies that the individual or business entity named in this contract, bid, or application is not ineligible to receive the specified grant, loan, or payment and acknowledges that this contract may be terminated and payment may be withheld if this certification is inaccurate.

19.35 National Intelligent Transportation Systems Architecture and Standards.

Consultant ensures that they will conform to the National Intelligent Transportation Systems (ITS) Architecture requirements of 23 U.S.C. § 517(d), unless it obtains an exemption from those requirements, and follow FTA Notice, "FTA National ITS Architecture Policy on Transit Projects," 66 *Fed. Reg.* 1455, January 8, 2001, and all other applicable federal guidance.

19.36 Seat Belt Use.

Consultant shall encourage their employees and other personnel that operate company-owned vehicles, company rented-vehicles, or personally operated vehicles to adopt on-the-job seat belt policies and programs.

19.37 Federal Changes.

The Consultant shall at all times comply with all applicable FTA regulations, policies, procedures and directives, including without limitation those listed directly or by reference in the Master Agreement between County and FTA, as they may be amended or promulgated from time to time during the term of this Agreement. Consultant's failure to so comply shall constitute a material breach of this Agreement.

**Section 20. Standard of Care**

Consultant shall perform its Services with the professional skill and care ordinarily provided by Consultant practicing in the same or similar locality under the same or similar circumstances. Consultant shall perform its Services as expeditiously as is consistent with such professional skill and care and the orderly progress of the Project. No warranty or guarantee, either express or implied, is made or intended by this Agreement.

**Section 21. Assignment**

21.01 Neither party may assign any of its rights under this Agreement, except with the prior written consent of the other party. That party shall not unreasonably withhold its consent. All assignments of rights are prohibited under this subsection, whether they are voluntarily or involuntarily, by merger, consolidation, dissolution, operation of law, or any other manner.

21.02 Neither party may delegate any performance under this Agreement.

21.03 Any purported assignment of rights or delegation of performance in violation of this Section is void.

**Section 22. Applicable Law**

The laws of the State of Texas govern all disputes arising out of or relating to this Agreement. The parties hereto acknowledge that venue is proper in Fort Bend County, Texas, for all legal actions or proceedings arising out of or relating to this Agreement and waive the right to sue or be sued elsewhere. Nothing in the Agreement shall be construed to waive the County's sovereign immunity.

**Section 23. Successors and Assigns**

County and Consultant bind themselves and their successors, executors, administrators and assigns to the other party of this Agreement and to the successors, executors, administrators and assigns of the other party, in respect to all covenants of this Agreement.

**Section 24. Third Party Beneficiaries**

This Agreement does not confer any enforceable rights or remedies upon any person other than the parties.

**Section 25. Severability**

If any provision of this Agreement is determined to be invalid, illegal, or unenforceable, the remaining provisions remain in full force, if the essential terms and conditions of this Agreement for each party remain valid, binding, and enforceable.

**Section 26. Publicity**

Contact with citizens of Fort Bend County, media outlets, or governmental agencies shall be the sole responsibility of County. Under no circumstances whatsoever, shall Consultant

release any material or information developed or received in the performance of the Services hereunder without the express written permission of County, except where required to do so by law. Use of County logo on any materials shall not be allowed without written consent from the County.

**Section 27. Captions**

The section captions used in this Agreement are for convenience of reference only and do not affect the interpretation or construction of this Agreement.

**Section 28 Conflict**

In the event there is a conflict between this Agreement and the attached exhibits, this Agreement controls.

IN WITNESS WHEREOF, the parties hereto have signed or have caused their respective names to be signed to multiple counterparts to be effective on the \_\_\_\_ day of \_\_\_\_\_, 2017.

*{Execution Page Follows}  
{Remainder Left Intentionally Left Blank}*

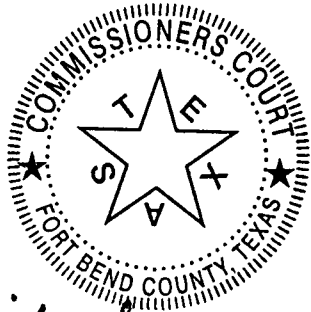
FORT BEND COUNTY

*Robert E. Hebert*

Robert E. Hebert, County Judge

9.26.2017

Date



ATTEST:

*Laura Richard*

Laura Richard, County Clerk

REVIEWED BY:

*Paulette Shelton*

Paulette Shelton  
Fort Bend County Transportation Director

**AUDITOR'S CERTIFICATE**

I hereby certify that funds are available in the amount of \$ 956,116.00 to accomplish and pay the obligation of Fort Bend County under this contract.

*Robert Ed Sturdivant*  
Robert Ed Sturdivant, County Auditor

HUITT-ZOLLARS, INC.

*[Signature]*

Authorized Agent – Signature

DANIEL MENDOZA

Authorized Agent – Printed Name

VICE PRESIDENT

Title

AUGUST 25, 2017

Date

# EXHIBIT A

SCOPE OF SERVICES

## HUITT-ZOLLARS, INC.

### SCOPE OF WORK

#### PROJECT UNDERSTANDING:

The purpose of this project is to deliver the Fort Bend County Transit Center. This project has is partially funded by the Federal Transit Administration (FTA) and will need to be managed considering all the requirements for reporting in order to safeguard the federal funding. Of specific interest will be the Final Close-out of the project. Additionally, this project will be managed with the efforts to mitigate any impacts on the neighboring community.

#### SCOPE OF SERVICES:

##### **Professional Construction Management Services**

The contracted scope will include but not be limited to the Services detailed below.

##### **Additional Services**

Because the effort required for some items of work varies considerably from project to project, and because some items of work are sometimes provided separately by the County, these items of work are not included in the basic services fees and will be charged separately. These Additional Services shall be negotiated and mutually agreed upon and authorized separately by the County and paid on a lump sum or an hourly basis in accordance with the Hourly Rate Sheet provided in Exhibit B. Such additional services may include but not be limited to:

- A. Performing survey services
- B. Specialized engineering reports
- C. Conducting Community Outreach
- D. Commissioning of facilities
- E. Furniture, Fixtures & Equipment Oversight / Management
- F. Any other service not otherwise included in the Basic Services

**County Provided Services:**

County shall provide Huitt-Zollars with the following:

- A. Access to the Project
- B. Available Drawings and Reports
- C. Materials Testing Services
- D. Field Office

**Pre-Construction Phase Services**

The Construction Manager (CM) will represent Fort Bend County throughout the course and process of constructing a new transit facility. CM services that will be needed prior to the construction phase include:

- Assist with pre-construction activities such as pre-bid meetings, site visits of current contractor work sites, pre-bid conferences, negotiation, award, etc., ensuring completeness and accuracy of official files.
- Assist in facilitating pre-construction conference.
- Establish and maintain communication protocol between the County, Architect and General Contractor.
- Establish and maintain positive community relations with neighbors, permitting agencies, utility providers, etc., on behalf of the County.
- Develop, prepare and submit Constructability Review
- Develop and maintain Construction Project Management Plan.
- Develop and maintain a Quality Assurance Plan
- Review milestone schedule for overall program design and construction.
- Monitor and maintain all party's efforts for conformance to schedule and budget.
- Review design documents, drawings, and specifications for constructability, scheduling, consistency, and coordination.
- Prepare Post bid analysis, assist County in analyzing bids
- Notify County of Design and Budget concerns throughout design process as required.
- Assist in development of value engineering options as required.
- Update construction cost estimate.
- Ensure all contractually required tests and documented results are fully specified in the contract documents, including identification of those that must be witnessed by Fort Bend County.
- Establish and ensure document control procedures are in place throughout the course of the project.
- Monitor environmental concerns and coordinate all efforts and/or requirements with the appropriate parties. For more information visit:  
<https://www.epa.gov/nepa> and <https://www.transit.dot.gov/regulations-and-guidance/environmental-programs/environmental-programs>

## Construction Phase Services

### Billing

The Construction Manager will review all billings for not only accuracy in relation to services rendered, but in accordance with the necessary FTA guidelines governing project funding.

- Perform quality surveys, reviews, and verifications of the contractor's monthly application for progress payments.
- Review and verify Construction General Contractor's (GC's) project record drawings and schedule are updated to reflect all changes and work completed before each monthly progress payment.
- Obtain field measurements for verification of unit price items.
- Maintain record of obligated contract amount, billed amount, and, at no time, exceed the amount of contract.
- Responsible for determining progress on a monthly basis and recommending payment based on criteria given in contract.
- Documentation should include:
  - Payment Report
  - Certified Payrolls
  - Quantity Verification sheets
  - Monthly Progress Report and Schedule of Values
  - Revised Construction Schedule
  - Certification of as-built drawings
  - Contractor's Quality Control (CQC) Daily reports submitted to date
  - Test log up to date
  - Deficiency log up to date
  - Submittal control document up to date
  - Submittal file up to date
  - Stored material up to date
  - Insurance certifications in force
  - City inspections
  - Monthly photo log update
- Monitor environmental concerns and coordinate all efforts and/or requirements with the appropriate parties. For more information visit: <https://www.epa.gov/nepa> and <https://www.transit.dot.gov/regulations-and-guidance/environmental-programs/environmental-programs>
  - Ensure documentation of all DBE activities with each invoice submittal to include:
    - Verification of subcontractor presence and work on site.
    - Completion of Fort Bend County Vendor Payment Report.  
<I:\Reporting\External Reporting - Administration and Operations\Grants - Reporting\DBE Reports\DBE FY2016\Vendor Payment Report.xlsx>
    - Verification of prompt payments to subcontractors.  
<I:\Reporting\External Reporting - Administration and Operations\Grants - Reporting\DBE Reports\DBE FY2016\Prompt payment DBE Verification Form.xls>
    - Details for the County's DBE program can be found at:  
<http://fortbendcountytexas.gov/index.aspx?page=4>

- o Details regarding DBE Federal Regulations are available here: <https://www.transit.dot.gov/regulations-and-guidance/civil-rights-ada/dbe-regulations>

## Compliance

The Construction Manager shall be responsible for ensuring all aspects of the project adhere to the guidelines and regulations of FTA and TXDOT necessary to guarantee continued funding.

- Generate monthly site visit reports describing general events, problems, and unusual events.
- Take appropriate photographs that document construction progress and conformity with Contract Documents.
  - Progress of work
  - Unusual construction techniques
  - Accidents or damage
  - Unsafe or hazardous working conditions
  - Reinforcing steel prior to concrete placement
  - Work completed prior to being covered
  - Areas or activities where claims and/or changes are anticipated
- Investigate and report differing site conditions within one (1) business day.
- Conduct inspections of the construction as follows:
  - Periodically inspect for progress, workmanship, and conformance with the Contract Documents.
  - Coordinate and track all County testing.
  - Review special inspection and material testing reports to verify conformance with the Contract Documents.
  - When work is found to be in non-conformance, document the deficiencies and promptly provide notification of the deficiencies to the Architect, County, and Construction GC.
  - Verify that deficiencies have been corrected and/or approved by applicable party.
  - Issue inspection deficiency list to the Architect, County, and Construction GC within two (2) business days.
  - Conduct inspections and track deficiencies through correction.
- Monitor contractor's compliance with contract technical specifications related to environmental compliance, soil erosion, sediment control, and water pollution.
- Ensure documentation of all labor laws to include:
  - Verification of Davis-Bacon Act (subcontractor fee and pay rate schedule). <https://www.dol.gov/whd/regs/statutes/dbra.pdf>
  - Verification of Contract Work-Hours and Safety Standards Act. <https://www.dol.gov/whd/regs/statutes/safe01.pdf>
  - Verification of the Copeland Anti-Kickback Act. <https://www.dol.gov/whd/regs/statutes/copeland.htm>
- Ensure ongoing compliance with NEPA requirements: <https://www.epa.gov/nepa>
- Ensure all Buy America requirements are met and properly documented throughout the course of the project. <https://www.transit.dot.gov/regulations-and-guidance/buy-america/buy-america>

- Ensure the project adheres to all applicable FTA Regulations and Guidance.  
<https://www.transit.dot.gov/regulations-and-guidance/fta-circulars/final-circulars>
- Ensure all appropriate TXDOT construction forms are completed and submitted on time.  
<http://www.txdot.gov/inside-txdot/forms-publications/consultants-contractors/forms/construction.html>

### **Construction**

The Construction Manager shall serve as the on-site representative for the County ensuring day to day activities are conducted in accordance with the GC contract.

- Coordinate construction logistics between the Construction GC and the County.
- Assure contractor's design, manufacturing and construction are accomplished in accordance with contract. Provide Quality Assurance.
- Personally observe major assemblies placed in to construction for general compliance to contract documents and supplemental instructions from the Architect. Support the quality assurance efforts of the Inspector(s).
- Ensure that appropriate materials and equipment testing are completed on time.
- Review and analyze proposed change orders and make recommendations to County.
- Coordinate preparation of the punch-list and implement corrective work.
- Recommend conditional and final acceptance.
- Coordinate turnover of all construction related work.
- Recommend to the County issuance of stop orders to contractor whenever necessary.
- Observe contractor performance and ensure:
  - Progress coincides with reported progress.
  - Contractor is appropriately supervising performance of work.
  - Contractor is implementing a Quality Control Program.
  - Contractor is confining operations to areas permitted by the contract.
  - Contractor is adequately protecting existing site conditions.
  - Contractor is maintaining good housekeeping practices.
- Ensure Contractor has an established and appropriate accident prevention program.
- Ensure auditable documentation of changes and accurateness of contract drawings.
- Ensure quantity, quality, acceptability, manner of work, and rate of progress of work achieved by Contractor.
- Monitor utility work performed, the quality of utility work performed, and handle communications with utility company.
- Monitor storage of all products brought on-site by contractor and sub-contractors.
- Ensure all appropriate federal and state required notifications are posted on site.
- Monitor location limit marks, base lines, grades and all items in connection with layout and control work in the specifications.

### **Contract Administration**

The Construction Manager will ensure the General Contractor (GC) adheres to the terms and conditions set forth in the contract between Fort Bend County and the GC and that the project is completed on time and within budget.

- Maintain thorough knowledge of the plans and specifications.
- Establish and maintain communication protocol between the County, Architect, and Construction General Contractor (GC).
- Review and process Construction GC submittals and contract modifications.

- Track submittals as required through completion of the process.
- Review requests for information (RFI) and architect's supplemental instructions (ASI).
- Review Construction GC schedule of values/cost breakdown and construction schedule and recommend approval/changes and disapproval.
- Assess and evaluate pricing on all change order requests taking the lead in negotiating fair and equitable resolutions and managing schedule impacts.
- Monitor overall budget and schedule and advise the County of any trends that affect the timely procedures and cost effective completion of the Project.
- Attend, arrange and conduct a variety of meetings, as requested by the County.
- Facilitate resolution of disagreements with contractor within the scope of contract.
- Forward all disagreements which cannot be resolved.
- Responsible for monitoring, verifying, and arranging for physical completion of the contract and effecting transfer of the contract documentation to appropriate follow-on operations and storage (punch-list and final inspection).
- Ensure all aspects of project adhere to FTA Civil Rights/ADA regulations and guidance: <https://www.transit.dot.gov/regulations-and-guidance/civil-rights-ada/civil-rights-ada>

### **Safety & Security Monitoring**

The Construction Manager shall be responsible for monitoring Contractor's development and management of overall project-wide safety and security and reporting the status of such to County.

- Responsible for advising County and monitoring the development, implementation, administration, enforcement and coordination of construction safety policies and security requirements to be inclusive of statutory and regulatory programs and requirements.
- Review Contractor's documentation necessary protocol for equipment security, inspections, daily inspections, operations, motor vehicle operations, fall protection, scaffolding systems, and reporting. Should also include safety guidelines for authority tours, special events, and non-compliance.
- Confirm that a job-site Safety Bulletin Board is established and maintained to include all legally required postings and relevant safety posters/information and report any failure of Contractor to post such.
- Monitor Contractor's implementation of acceptable policies, work practices and standards to promote the goals of the safety and security program.
- Confirm Contractor's policies address existing federal, state, and local statutory and regulatory safety and health laws, standards, codes, regulations, etc.
- Review Contractor's visitors log to record visitors to the site.
- Monitor Contractor's application of safety and accident prevention procedures and policies.
- Review any investigations of accidents, assess any corrective action taken by Contractor, and report any claims filed to County.
- Attend Contractor's weekly safety meetings
- Confirm Contractor has provided workers with proper protective equipment and tools.
- Monitor for safe practices and conditions: report and correct unsafe conditions.
- Confirm Contractor has provided appropriate first-aid, medical treatment is provided and administered to injured employees and direct stoppage of construction activities when stoppage is warranted for protection of life and/or property.

### Closeout Phase Services

The Construction Manager will work with Fort Bend County staff to transition responsibility and maintenance of the new facility to the County's control upon substantial completion of the project.

- Verify completion/resolution of all punch list items.
- Assist with resolution of outstanding change/claim disputes and final quantities delivered.
- Assist with the determination/recovery of liquidated damages.
- Assist with the review of the insurance claim file by counsel/insurance specialist to determine if funds need to be withheld from final payment to cover any unsettled claims against the contractor
- Assist with cost audit and resolution of questioned costs (if any) for cost-reimbursement contracts.
- Verify settlement of all subcontracts by prime contractor.
- Generate Contractor Performance Report.
- Ensure necessary documentation is provided to County for FTA grant close-out.  
[https://www.transit.dot.gov/sites/fta.dot.gov/files/docs/C\\_5010\\_1D\\_Grant\\_Management\\_Requirements\\_2012\\_Page\\_Changes\\_8-27-2012.pdf](https://www.transit.dot.gov/sites/fta.dot.gov/files/docs/C_5010_1D_Grant_Management_Requirements_2012_Page_Changes_8-27-2012.pdf)
- Coordinate final inspection and acceptance testing by the Project Sponsor with proper documentation.
- Ensure Contractor forwards red-lined Record plans or as-built drawings to Architect to be finalized per their contract with the County.  
Verify all Project Record Documents are turned over to County and complete. To
- Include:
  - Final reports
  - Final payroll records and wage rate certifications
  - Spare parts list
  - Catalogues and brochures
  - Invention disclosure (if applicable)
  - Property report
  - Final invoice
  - Consent of surety to release final payment to General Contractor
  - General Contractor's affidavit of release of liens
  - General Contractor's general release (releasing the County from any further liabilities/claims under the contract)
  - Maintenance Bond (if required)
- Verify all O&M Manuals are complete and turned over to County.
- Ensure staff has received all necessary training for operation of new building and systems.
- Verify all warranties and guaranties are submitted and in accordance with Contract Documents.
- Maintain a presence, provide support, follow up and track completion on warranty requests.
- Assure all other commissioning activities have been completed in a satisfactory manner. Additional resources to assist with compliance and federal project planning can be found at: [https://www.transit.dot.gov/sites/fta.dot.gov/files/docs/FTA\\_Construction\\_Project\\_Management\\_Handbook\\_2016.pdf](https://www.transit.dot.gov/sites/fta.dot.gov/files/docs/FTA_Construction_Project_Management_Handbook_2016.pdf)  
[https://www.transit.dot.gov/sites/fta.dot.gov/files/docs/FTA\\_Project\\_and\\_Construction\\_Management\\_Guidelines\\_2016.pdf](https://www.transit.dot.gov/sites/fta.dot.gov/files/docs/FTA_Project_and_Construction_Management_Guidelines_2016.pdf)

# EXHIBIT B

COMPENSATION  
COST AND PAYMENT SCHEDULES and  
HOURLY RATE SHEET

**EXHIBIT B-1  
HUITT-ZOLLARS  
COST SCHEDULE**

DESCRIPTION	AMOUNT
<b>Basic Construction Management Services</b>	
FBC Transit Center	\$787,966
<i>Subtotal Basic Construction Management Services</i>	\$787,966
<b>Other Professional Construction Management Services</b>	
Constructability Review	\$17,820
Special Pre-Bid and Bidding Services (CSP)	\$8,330
Project Administration and Close Out	\$89,300
*Contingency/Coordination Services	\$52,700
<i>Subtotal Other Services</i>	\$168,150
<b>GRAND TOTAL</b>	<b>\$956,116</b>

*\*Negotiated and paid only if needed*

**EXHIBIT B-2  
HUITT-ZOLLARS  
PAYMENT SCHEDULE**

DESCRIPTION	PAYMENT SCHEDULE	AMOUNT
<i>Basic Construction Management Services for the FBC Transit Center</i>		
Site Observation and Management Services	Incremental payments based on percentage of Construction Progress and contingent upon receipt of all required reports/documents with invoices(s).	\$ 590,974.50
Construction Completion	Lump Sum Paid following Construction Completion and approved acceptance of billing and other documents required by funding sources.	\$196,991.50
<i>Subtotal Basic Construction Management Services</i>		<b>\$787,966</b>
<i>Other Professional Construction Management Services</i>		
Constructibility Review	Hourly	\$17,820
Special Pre-Bid and Bidding Services (CSP)	Hourly	\$8,330
Project Administration and Close Out	Hourly	\$89,300
*Contingency/Coordination Services (Paid Only if Needed)	Hourly	\$52,700
<i>Subtotal Other Professional Construction Management Services</i>		<b>\$168,150</b>
<b>GRAND TOTAL</b>		<b>\$956,116</b>

\*All Contingency and Coordination Services are subject to written pre-approval by County.

**EXHIBIT B-3  
Hourly Rate Sheet**

HUITT-ZOLIARS

**Houston  
2017  
HOURLY RATE SHEET**

**Engineering/Architecture**

Principal-In-Charge	\$ 240.00
Design Principal	\$ 210.00
Sr. Project Manager	\$ 205.00
QA Manager	\$ 185.00
Project Manager	\$ 175.00
Sr. Civil Engineer	\$ 180.00
Sr. Structural Engineer	\$ 185.00
Sr. Mechanical Engineer	\$ 180.00
Sr. Electrical Engineer	\$ 185.00
Civil Engineer	\$ 170.00
Structural Engineer	\$ 165.00
Mechanical Engineer	\$ 150.00
Electrical Engineer	\$ 150.00
Plumbing Engineer	\$ 150.00
Engineer Intern	\$ 120.00
Sr. Architect	\$ 185.00
Architect	\$ 150.00
Architect Intern 1	\$ 90.00
Architect Intern 2	\$ 110.00
Architect Intern 3	\$ 140.00
Sr. Landscape Architect	\$ 165.00
Landscape Architect	\$ 125.00
Landscape Architect Intern	\$ 95.00
Sr. Planner	\$ 205.00
Planner	\$ 120.00
Planner Intern	\$ 80.00
Sr. Designer	\$ 150.00
Designer	\$ 120.00
Sr. CADD Technician	\$ 125.00
CADD Technician	\$ 90.00

**Interior Design**

Sr. Interior Designer	\$ 110.00
Interior Designer	\$ 95.00
Interior Designer Intern	\$ 75.00

**Survey**

Survey Manager	\$ 155.00
Sr. Project Surveyor	\$ 140.00
Project Surveyor	\$ 120.00
Surveyor Intern	\$ 115.00
Survey Technician	\$ 100.00

**Survey Crews**

1-Person Survey Crew	\$ 95.00
2-Person Survey Crew	\$ 140.00
3-Person Survey Crew	\$ 165.00

**Construction**

Construction Manager	\$ 175.00
Resident Engineer	\$ 160.00
Sr. Project Representative	\$ 120.00
Resident Project Representative	\$ 95.00

**Administrative**

Sr. Project Support	\$ 95.00
Project Support	\$ 70.00

**Reimbursable Expenses**

Consultants	Cost + 10%
Other Direct Costs	Cost + 10%
Mileage	IRS Standard Business Mileage Rate

EXHIBIT C

WORK AUTHORIZATION TEMPLATE

STATE OF TEXAS

§

§

COUNTY OF FORT BEND

§

**WORK AUTHORIZATION NO. \_\_\_\_  
AGREEMENT FOR PROFESSIONAL SERVICES**

**THIS WORK AUTHORIZATION** is made pursuant to the terms and conditions of Section 5 of the Professional Services Agreement for Construction Management for the FBC Public Transportation Bus Facilities Project (hereinafter "Agreement") signed on \_\_\_\_\_ and entered into by and between Fort Bend County, (hereinafter "County"), a body corporate and politic under the laws of the State of Texas, and Huitt-Zollars (hereinafter "Consultant"), a company authorized to conduct business in the State of Texas

**PART I. Scope of Work.** The Consultant will perform professional services as defined in the attached **Exhibit A "Scope of Work"**. Included in the Scope of Work are the services to be provided, the Labor Estimate (if applicable) and the Work Schedule (if applicable).

**PART II. Maximum Compensation.** The maximum amount payable under this Work Authorization is \$ \_\_\_\_\_. The amount is based upon fees set forth in **Exhibit B, "Payment Schedule"**.

**PART III.** Payment to the Consultant for the services established under this Work Authorization shall be made in accordance with Section 2 of the Agreement.

**PART IV.** This Work Authorization shall become effective on the date of final acceptance of the parties hereto and shall terminate on \_\_\_\_\_, unless extended by amendment to this Work Authorization as provided in the Agreement.

**PART V.** This Work Authorization does not waive the parties' responsibilities and obligations provided under the Agreement.

**IN WITNESS WHEREOF**, this Work Authorization is executed in duplicate counterparts and hereby accepted and acknowledged below.

*{Execution Page Follows}  
{Remainder Intentionally Left Blank}*

FORT BEND COUNTY

HUITT-ZOLLARS

\_\_\_\_\_  
Robert E. Hebert, County Judge

\_\_\_\_\_  
Authorized Agent- Signature

\_\_\_\_\_  
Date

\_\_\_\_\_  
Authorized Agent- Printed Name

ATTEST:

\_\_\_\_\_  
Title

\_\_\_\_\_  
Laura Richard, County Clerk

\_\_\_\_\_  
Date

Reviewed by:

\_\_\_\_\_  
{Department Head}

**TEMPLATE**

**FINANCIAL CERTIFICATE**

I hereby certify that funds are available in the amount of \$ \_\_\_\_\_ to accomplish and pay obligations of Fort Bend County under this contract.

\_\_\_\_\_  
Robert Ed Sturdivant, County Auditor

EXHIBIT D

PRINCIPLES



## PRINCIPLES



### **DANIEL MENENDEZ, PE, PWLF** (*Lead Construction Manager: Huiitt-Zollars*)

Menendez recently joined Huiitt-Zollars after serving as the Deputy Director of Public Works and Engineering for the City of Houston for the last 8 years. In this role, Menendez was responsible for the design and construction of streets, traffic, utilities, and drainage systems for the City of Houston's Capital Improvement Program. Prior to that, Menendez provided on-site construction management and inspection services to the Metropolitan Transit Authority for the reconstruction of the numerous streets, drainage and utility systems in downtown Houston. Menendez has met the requirements for pre-certification by TxDOT for Category 11.1.1 – Roadway Construction Management and Inspection. He has a thorough understanding of project control systems including scheduling, cost control, procurement and estimating. His relevant project experience includes:

- **Construction Management & Inspection for Reconstruction of Franklin Street, METRO, Houston, TX**
- **Construction Management Oversight for Reconstruction of Shaver Road, City of Houston, Houston, TX**
- **Construction of the Bus Wash Facility for the Lamar Consolidated ISD, Rosenberg, Texas**
- **Engineering and Construction Management Services for the Light Rail Expansion Projects, Transit Coordinator, City of Houston, Consultant - Houston, TX**
- **Construction Oversight Services for the METRO Light Rail Expansion Program (East End Line, Southeast Line, North Line), Houston, TX**

EDUCATION: Bachelor of Science, Mechanical Engineering, 1992, United States Military Academy at West Point, NY

REGISTRATION: Registered Professional Engineer: 1992/Texas/#90731; LGPP Qualification for TxDOT (Qualified Person Training to deliver FHWA/TxDOT funded projects)



### **GREGORY R. WINE, PE, LEED AP** (*Principal in Charge: Huiitt-Zollars*)

Wine has been responsible for management, planning, and design and construction management for over \$100 million in construction projects. Wine has hands-on multi-discipline project experience on site plans, parks, hike and bike trails, flood control, wetland enhancement, erosion control protection, streets and roads, foundations, retaining walls, storm water drainage systems, water lines, and sanitary sewer lines. Wine wrote the Harris County Flood Control District's Construction Management Manual as well as METRO's Construction Quality Management Program Manual. He has a thorough understanding of project control systems including scheduling, cost control, procurement and estimating. Relevant experience include:

- **Construction Management Services of Japhet, McCarthy and Crosstimbers, Right of Way Maintenance Facilities, Houston, TX**
- **Construction Management Services on the North Service Center, Harris County Flood Control District, TX**
- **Construction Management Services on the Tennis and Recreation Center, Missouri City, TX**
- **Construction Management of Robinson Bayou Bank Stabilization Project, League City, TX**
- **Construction Management Services on Improvements to Gated Structure and Control Building, Second Outlet of Clear Lake Harris County, TX**
- **Program Manager for Maintenance of Federally Assisted Channel in Harris County, Texas; Harris County Flood Control District – Harris County, TX**

EDUCATION: Master of Engineering, University of Florida; Bachelor of Science, United States Military Academy at West Point, NY

REGISTRATION: Registered Professional Engineer: Civil/1992/Texas/#73646; Leadership in Energy and Environmental Design (LEED) Accreditation by the U.S. Green Building Council, 2005



**ROBERT POWELL, P.E. (Construction Manager: Huitt-Zollars)**

Powell has over 25 years of experience in effective and cost-efficient construction management of various projects involving paving, drainage and utilities. Powell was most recently the Construction Manager for the City of Houston's \$15.7 million Homestead Grade Separation project over the Union Pacific Rail Road, the \$12.8 million West Little York Drainage and Paving project and the \$21 million Shepherd Drive Paving and Drainage project. **Powell completed TxDOT's Local Government Project Procedures (LGPP) Qualification Training in 2014 to deliver FHWA/TxDOT funded projects.** He is pre-certified by TxDOT for Categories 11.1.1 – Roadway Construction Management and Inspection and 11.2.1 – Major Bridge Construction Management and Inspection. He has a thorough understanding of project control systems including scheduling, cost control, procurement and estimating. His relevant project experience includes:

- Construction Management & Inspection for Homestead Grade Separation Over UPRR Tracks, City of Houston, TX
- Construction Management & Inspection for Shepherd Drive Paving and Drainage, City of Houston, TX
- Construction Management & Inspection for West Little York Paving and Drainage, City of Houston, TX
- Construction Management & Inspection of White Oak Greenway Trail, Houston Parks Board, Houston, TX
- Construction Management and Inspection for the TIGER Project #3 – White Oak Downtown Path, Houston Parks Board, Houston, TX
- Construction Management and Inspection on White Oak Bayou Trails - Segments A, B, C and D, Houston Parks Board, Houston, TX
- Construction Administration Services for Public Works Fueling Facility, City of Baytown, TX

EDUCATION: Master of Engineering, Prairie View A&M University; Bachelor of Science, Building Construction, Texas A&M University.

REGISTRATION: Professional Engineer: Texas #102329; LGPP Qualification for TxDOT (Qualified Person Training to deliver FHWA/TxDOT funded projects)



**THOMAS GILLETTE, P.E. (Construction Manager: Gunda)**

Gillette of Gunda Corporation, has more than 35 years of engineering design and construction management experience with municipal utility systems, roadways, bridges, and building facilities along with the necessary coordination with project stakeholders, permitting /approval agencies, private utility companies and funding authorities. Gillette's construction management experience consists of Resident Engineering and serving as the Owner's Representative on the construction site. He is knowledgeable of construction contract laws, construction means and methods and interpretation of contract construction drawings and specifications. **Gillette completed TxDOT's LGPP) Qualification Training in 2014 to deliver FHWA/TxDOT funded projects.** He has a thorough understanding of project control systems including scheduling, cost control, procurement and estimating. Some of his relevant projects include:

- Construction Management and Inspection Services, Houston Intercontinental Airport Terminal E and adjacent roads / utilities, Houston, TX
- Construction Management and Inspection Services, Firefighting Rescue Command Centers, Houston, TX
- Construction Management and Inspection Services, Bissonnet Paving and Drainage Improvements, Houston, TX

EDUCATION: Bachelor of Science Civil Engineering Michigan State University

REGISTRATION/ CERTIFICATION: Professional Engineer, Texas; LGPP Qualification for TxDOT (Qualified Person Training to deliver FHWA/TxDOT funded projects)

# CERTIFICATE OF INTERESTED PARTIES

FORM 1295

1 of 1

Complete Nos. 1 - 4 and 6 if there are interested parties.  
Complete Nos. 1, 2, 3, 5, and 6 if there are no interested parties.

### OFFICE USE ONLY CERTIFICATION OF FILING

Certificate Number:  
2017-155130

Date Filed:  
01/17/2017

Date Acknowledged:

1 Name of business entity filing form, and the city, state and country of the business entity's place of business.  
Huitt-Zollars, Inc.  
Dallas, TX United States

2 Name of governmental entity or state agency that is a party to the contract for which the form is being filed.  
Fort Bend County

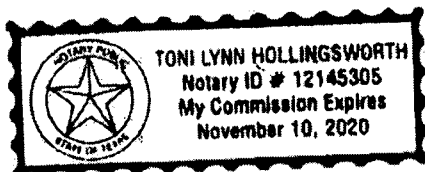
3 Provide the identification number used by the governmental entity or state agency to track or identify the contract, and provide a description of the services, goods, or other property to be provided under the contract.  
SOQ 17-042  
Construction Management Services for Transit Center

4 Name of Interested Party	City, State, Country (place of business)	Nature of Interest (check applicable)	
		Controlling	Intermediary
Zollars, Robert	Dallas, TX United States	X	
Huitt, Larry	Dallas, TX United States	X	
McDermott, Robert	Dallas, TX United States	X	
Wall, Cliff	Dallas, TX United States	X	
Congdon, James	Dallas, TX United States	X	

5 Check only if there is NO interested party.

6 AFFIDAVIT

I swear, or affirm, under penalty of perjury, that the above disclosure is true and correct.



*Cliff Wall*  
Signature of authorized agent of contracting business entity

AFFIX NOTARY STAMP / SEAL ABOVE

Sworn to and subscribed before me, by the said Cliff Wall, this the 17th day of January, 2017, to certify which, witness my hand and seal of office.

*Toni Lynn Hollingsworth*  
Signature of officer administering oath

Toni Lynn Hollingsworth  
Printed name of officer administering oath

Executive Assistant  
Title of officer administering oath

# CERTIFICATE OF INTERESTED PARTIES

FORM 1295

1 of 1

Complete Nos. 1 - 4 and 6 if there are interested parties.  
 Complete Nos. 1, 2, 3, 5, and 6 if there are no interested parties.

## OFFICE USE ONLY CERTIFICATION OF FILING

**1 Name of business entity filing form, and the city, state and country of the business entity's place of business.**

Certificate Number:  
2017-155130

Huitt-Zollars, Inc.  
 Dallas, TX United States

Date Filed:  
01/17/2017

**2 Name of governmental entity or state agency that is a party to the contract for which the form is being filed.**

Fort Bend County

Date Acknowledged:  
06/13/2017

**3 Provide the identification number used by the governmental entity or state agency to track or identify the contract, and provide a description of the services, goods, or other property to be provided under the contract.**

SOQ 17-042  
 Construction Management Services for Transit Center

4	Name of Interested Party	City, State, Country (place of business)	Nature of interest (check applicable)	
			Controlling	Intermediary
	Zollars, Robert	Dallas, TX United States	X	
	Huitt, Larry	Dallas, TX United States	X	
	McDermott, Robert	Dallas, TX United States	X	
	Wall, Cliff	Dallas, TX United States	X	
	Congdon, James	Dallas, TX United States	X	

**5 Check only if there is NO Interested Party.**

**6 AFFIDAVIT**

I swear, or affirm, under penalty of perjury, that the above disclosure is true and correct.

\_\_\_\_\_  
 Signature of authorized agent of contracting business entity

AFFIX NOTARY STAMP / SEAL ABOVE

Sworn to and subscribed before me, by the said \_\_\_\_\_, this the \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_\_, to certify which, witness my hand and seal of office.

\_\_\_\_\_  
 Signature of officer administering oath

\_\_\_\_\_  
 Printed name of officer administering oath

\_\_\_\_\_  
 Title of officer administering oath