

STATE OF TEXAS §

COUNTY OF TARRANT §

ENGINEERING SERVICES CONTRACT

THIS CONTRACT, by and between the **CITY OF EULESS**, a municipal corporation located in Tarrant County, Texas, hereinafter called “City”, and Elliott and Hughes, Inc., a Texas corporation, in Tarrant County, Texas, hereinafter called “Engineer”, evidences the following:

WHEREAS, the City has entered into a Construction Funding and Development Agreement, hereinafter called “Agreement”, with CADG 901 AIRPORT FREEWAY, LLC hereinafter called “Developer”, for the development of the project known as EULESS MIDTOWN, hereinafter called “Project”, and

WHEREAS, Developer will undertake the construction and installation of the authorized improvements, hereinafter called “Authorized Improvements”, consistent with and defined within the Agreement, and

WHEREAS, the Developer will be reimbursed by the City for the cost of construction of the Authorized Improvements, subject to the limitations and requirements set forth in the applicable sections of the Agreement, and

WHEREAS, the City desires to obtain independent professional civil engineering services, hereinafter called “City Engineering Consultant”, to evaluate the extent of work performed on or for the Authorized Improvements and to review and approve the Developer’s Certification for Payment Requests, the results of such evaluations to be used by the City in determining the amount of Developer’s periodic entitlement payment(s) as further described in the Agreement, and

WHEREAS, Engineer represents that it is qualified and capable of performing the City Engineering Consultant services proposed herein and is willing to enter into this contract with City to perform said services;

NOW THEREFORE, the parties in consideration of the terms and conditions contained herein agree as follows:

1. EMPLOYMENT OF THE ENGINEER

Engineer agrees to perform professional civil engineering services as set forth in the following sections of this Contract, and City agrees to pay, and Engineer agrees to accept fees as set forth in the following sections as full and final compensation for all services provided under this Contract.

2. CONTRACT ADMINISTRATION

Its duly authorized official shall administer this Contract on behalf of the City by the City Manager or his/her designated representatives, and on behalf of the Engineer.

3. ENGINEER'S SERVICES

The Engineer agrees to render services as outlined in "GENERAL DESCRIPTION OF PROPOSED SERVICES" attached as EXHIBIT "A".

4. PAYMENT FOR SERVICES

- A. Payment for basic professional civil engineering services will be computed on an hourly basis, according to the fixed hourly rates for partners or principals and for technical, professional, and clerical staff directly chargeable to the project as outlined in "PER DIEM FEE SCHEDULE, JANUARY 1, 2016", attached as EXHIBIT "B".
- B. Payments for direct non-labor expenses, which in general include expenses for supplies, reproduction, transportation, equipment, communication, travel, subsistence and lodging away from home, and similar incidentals.

The direct non-labor expenses shall be reimbursable at actual invoice cost plus 10%, except for living and travel expenses when away from Engineer's home on business connected with the contract services. All travel outside of the Dallas/Fort worth Metropolitan area to be made, which are reimbursable at actual invoice cost, by the Engineer in connection with this Contract must be approved in writing by the City.

- C. Subcontractor cost shall be reimbursed at the actual invoice cost plus ten (10%) percent.
- D. Engineer shall submit itemized monthly statements (Invoices) for professional civil engineering services, direct non-labor expenses, and costs incurred for subcontractors. The City shall make monthly payments in the amounts shown in the Engineer's monthly statements.
- E. Nothing contained in this article shall require the City to pay for any work which is unsatisfactory as reasonably determined by the City or which is not submitted in compliance with the terms of this Contract. City shall not be required to make any payments to the Engineer when the Engineer is in default under this Contract; nor shall this paragraph constitute a waiver of any right, at law or in equity, which City may have if the Engineer is in default, including the right to bring legal action for damages or for specific performance of this Contract.

5. OWNERSHIP OF DOCUMENTS

All information and other data given to, prepared, or assembled by Engineer under this Contract, and other related items shall become the sole property of City and shall be delivered to City, without restriction on future use. Engineer may make copies of any and all documents and items for his files. Engineer shall have no liability for changes made to or use of the documents generated during the term of this Contract by anyone subsequent to the completion of the Contract.

City shall require that any such change or other use shall be sealed by the Engineer making that change or use and shall be appropriately marked to reflect what was changed or modified.

6. SERVICES BY CITY

City shall provide the following services under this Contract.

- A. Provide all available construction drawings, maps, surveys, contract documents, (including line items of construction and associated unit costs), and notes relating to Authorized Improvements and the Project.
- B. Provide to the Engineer a copy of the detailed budget.
- C. Provide to the Engineer a copy of the Certificate for Payment Request and supporting documents.
- D. Provide Engineer with copies of any correspondence, electronic mail, notes, changes in the approved construction plans, including changes by field change and/or change order, contractor's request for information (RFI), and any other information exchanged between the contractor and the City and/or Developer that could change the work on the Authorized Improvements.

7. CONTRACT PERIOD

The term of this contract shall be for a period of two (2) years from the date of City Council award, or completion and acceptance by the City of the "Authorized Improvements", whichever first occurs. Extensions of the contract after initial expiration may be mutually agreed between the City and the Engineer.

8. NOTICE TO PROCEED

City shall have complete control of the services to be rendered and no work shall be done under this Contract until the Engineer is instructed in writing to proceed.

9. TERMINATION OF CONTRACT

City may indefinitely suspend further work hereunder or terminate this Contract or any phase of this Contract upon thirty days prior written notice to the Engineer with the understanding that immediately upon the receipt of such notice all work and labor being performed under this Contract shall cease immediately. Before the end of the thirty day period, Engineer shall invoice the City for all work accomplished by him prior to the receipt of such notice. No amount shall be due for lost or anticipated profits. All data related to the contract shall become property of the City upon termination of the Contract and shall be promptly delivered to City in a reasonably organized form without restriction on future use except as stated in Article 5. Should City subsequently contract with a new consultant for continuation of services on the Contract, Engineer shall cooperate in providing information.

10. RESPONSIBILITY FOR CLAIMS AND LIABILITIES

Approval by City shall not constitute nor be deemed a release of the responsibility and liability of the Engineer, its employees, associates, agents, and consultants for the accuracy and competency of their work; nor shall approval be deemed to be an assumption of such responsibility by City for any defect in the work prepared by the Engineer, its employees, subcontractors, agents, and consultants.

11. EQUAL EMPLOYMENT OPPORTUNITY

- A. The Engineer shall not discriminate against any employee or applicant for employment because of race, age, color, religion, sex, ancestry, national origin, or place of birth. The Engineer shall take affirmative action to insure that applicants are employed and that employees are treated during their employment without regard to their race, age, color, religion, sex, ancestry, national origin, or place of birth.
- B. If the Engineer fails to comply with the Federal Laws relating to Equal Employment Opportunity, it is agreed that the City at its option may do either or both of the following:
 - 1) Cancel, terminate, or suspend the Contract in whole or in part;
 - 2) Declare the Engineer ineligible for further City Contracts until it is determined to be in compliance.

12. AMENDMENTS

This Contract may be amended or supplemented in any particular only by written instrument and only as approved by resolution of City Council or

the City Manager, except for termination under Article 9, TERMINATION OF CONTRACT, which may be accomplished by the City Manager or his/her designated representative as identified in Article 9, TERMINATION OF CONTRACT.

13. COMPLIANCE WITH LAWS, CHARTERS, AND ORDINANCES, ETC.

The Engineer, its consultants, agents, employees, and subcontractors shall comply with all applicable Federal and State Laws, the Charter and Ordinances of the City of Euless, and with all applicable rules and regulations promulgated by all local, state, and national boards, bureaus, and agencies existing and published before the date of this contract.

14. RIGHT OF REVIEW

Engineer agrees that the City may review any and all of the work performed by Engineer under this Contract. City is hereby granted the right to audit at City's election, all of the Engineer's records and billings related to the performance of this Contract. Engineer agrees to retain such records for a minimum of three (3) years following completion of this Contract.

15. CONFLICT OF INTEREST

No officer or employee shall have any financial interest, direct or indirect, in any contract with the City or be financially interested, directly, in the sale to the City of any land, materials, supplies, or services, except on behalf of the City as an officer or employee. Any violation of this section shall constitute malfeasance in office, and any officer or employee guilty thereof shall thereby forfeit his office or position with the City. Any violation of this section with knowledge, expressed or implied, of the person or corporation contracting with the City shall render the Contract involved voidable by the City Manager or the City Council.

16. CONTRACT PERSONAL

This Contract is for personal and professional services, and the Engineer shall not assign this Contract, in whole or in part, without the prior written consent of the City.

17. NOTICES

All notices, communications, and reports required or permitted under this Contract shall be personally delivered or mailed to the respective parties by depositing the same in the United States Mail at the address shown below unless and until either party is otherwise notified in writing by the other party at the following addresses. Mailed notices shall be deemed communicated after five days.

If intended for Euless to:

Loretta Getchell

City Manager
City of Euless
201 North Ector Drive
212
Euless, Texas 76039
(817) 685-1400

If intended for Engineer to:

David C. Hughes, JR., P.E.

Principal
Elliot and Hughes, INC.
1001 West Euless Blvd., Suite
Euless, Texas 76040
(817) 267-1303

18. INDEPENDENT CONTRACTOR

In performing services under this Contract, Engineer is performing services of the type performed prior to this Contract; and Engineer by the execution of this Contract does not change the independent status of the Engineer. No term, or provision hereof, or act of Engineer in the performance of this Contract shall be constructed as making Engineer the agent, servant, or employee of the City of Euless.

19. INDEMNITY

Engineer agrees to defend, indemnify, and hold City whole and harmless against claims for damages, costs, and expenses of persons or property that may arise out of, or be occasioned by, or from any negligent act, error or omission of Engineer, or any agent, servant, or employee of Engineer in the execution of performance of this Contract, without regard to whether such persons are under the direction of City agents or employees.

This provision shall not be deemed to apply liability for damage that is caused by or results from the negligence of the City of Euless its employees or other's agents.

20. INSURANCE

Engineer agrees to maintain workmen's compensation insurance to cover all of its own personnel engaged in performing services for City under this agreement. Engineer also agrees to maintain public liability insurance covering claims against Engineer for damages resulting from bodily injury, death or property damage from accidents arising in the course of services performed under this agreement.

21. VENUE

The obligations of the parties to this Contract are performable in Tarrant County, Texas; and if legal action is necessary to enforce it, exclusive venue shall lie in Tarrant County, Texas.

22. APPLICABLE LAWS

This Contract is made subject to the provisions of the Euless Code, other City Ordinances, Standards, Euless Specifications for materials and Construction, as amended, and all State and Federal Laws.

23. GOVERNING LAWS

This Contract shall be governed by and construed in accordance with the laws and decisions of the State of Texas.

24. LEGAL CONSTRUCTION

In case any one or more of the provisions contained in this Contract shall for any reason be held to be invalid, or unenforceable in any respect, such invalidity, illegality, or unenforceability shall not affect any other provisions thereof; and this Contract shall be considered as if such invalid, illegal, or unenforceable provision had never been contained in this Contract.

25. PUBLISHED MATERIAL

Engineer agrees that the City shall review and approve any written material about City projects and/or activities prior to being published by the Engineer.

26. CAPTIONS

The captions to the various clauses of this Contract are for informational purposes only and shall not alter any substance of the terms and conditions of this Contract.

27. SUCCESSORS AND ASSIGNS

This Contract shall be binding upon and inure to the benefit of the parties hereto and their respective heirs, executors, administrators, successors, and, except as otherwise provided in this Contract, their assigns.

28. ENTIRE AGREEMENT

This Contract (pages 1 thru 8 and attached Exhibits "A" and "B") embodies the complete agreement of the parties hereto, superseding all oral or written previous and contemporary agreements between the parties and relating to matters in this Contract, and except as otherwise provided herein, cannot be modified without written agreement of the parties to be attached to and made a part of this Contract.

IN WITNESS WHEREOF, the parties hereby have executed this agreement in duplicate originals on this date, the _____ day of _____, 2016.

ELLIOTT AND HUGHES, INC.:

CITY OF EULESS:

By:

By:

David C. Hughes, JR., P.E., Principal

Loretta Getchell, City Manager

ATTEST:

ATTEST:

Kim Sutter, TRMC, City Secretary

DRAFT

GENERAL DESCRIPTION OF PROPOSED SERVICES

1. Schedule and attend conferences with representatives of the City Public Works staff regarding general overall scope of the project and discuss any specific issues that may be known or encountered during the construction that would affect the services of the Engineer.
2. Attend preconstruction conference(s) for the Authorized Improvements.
3. Establish procedures with the Public Works Inspector for review and concurrence with the information contained in the various Certifications for Payment, including supporting documentation, as received from the Developer.
4. Determine that Developer Compliance Requirements have been satisfied with respect to the specific Certification for Payment for Authorized Improvement(s).
5. Conduct any additional reviews deemed necessary by Engineer to confirm information contained in the Certification(s) for Payment.
6. Submit completed and approved Certificate(s) to the City Manager for processing and payment.
7. Assist the City, as required, in processing notification of disapproval of any Certification for Payment.
8. Assist City in final inspections and contract close-out for Authorized Improvements.

EXHIBIT "A"

**ELLIOTT AND HUGHES, INC.
ENGINEERS/PLANNERS**

**PER DIEM FEE SCHEDULE
JANUARY 1, 2016**

PRINCIPAL/ENGINEER	\$ 110.00 PER HOUR
EXPERT WITNESS TESTIMONY/ PRINCIPAL (4 HOUR MINIMUM)	\$ 175.00 PER HOUR
TECHNICIAN	\$ 65.00 PER HOUR
SECRETARIAL/WORD PROCESSING	\$ 40.00 PER HOUR
OUTSIDE SERVICES ~COST PLUS 10% SERVICE CHARGE	
REPRODUCTION~COST PLUS 10% SERVICE CHARGE	

Invoices are payable upon receipt.

Interest Charged at the rate of 10% per annum on unpaid balances over 30 days.

EXHIBIT "B"