

**PROFESSIONAL SERVICES AGREEMENT
FOR
ENGINEERING SERVICES
RELATED TO
ENGINEERING & PLANNING PROJECT NO. 2014-10031
CITY OF TOMBALL
FM 2920/MAIN STREET IMPROVEMENTS
PUBLIC MEETING NO. 2**

**THE STATE OF TEXAS §
 §
COUNTY OF HARRIS §**

THIS AGREEMENT made on the _____ day of _____, 2022 entered into, and executed by and between the City of Tomball, Texas (the “City”), a municipal corporation of the State of Texas, and Gunda Corporation, LLC (“Engineer”).

WITNESSETH:

WHEREAS, the City desires to Construct improvements to FM2920/Main Street, (the “Project”); and

WHEREAS, the services of a professional engineering firm are necessary to project planning, project design, and preparation of construction documents, and

WHEREAS, the Engineer represents that it is fully capable and qualified to provide professional services to the City related to professional engineering;

NOW, THEREFORE, the City and Engineer, in consideration of the mutual covenants and agreements herein contained, do mutually agree as follows:

**SECTION I
SCOPE OF AGREEMENT**

Engineer agrees to perform certain professional engineering services as defined in Attachment “A” attached hereto and made a part hereof for all purposes, hereinafter sometimes referred to as “Scope of Work,” and for having rendered such services, the City agrees to pay Engineer compensation as stated in Section VII.

**SECTION II
CHARACTER AND EXTENT OF SERVICES**

Engineer shall do all things necessary to render the engineering services and perform the Scope of Work in a professional and workmanlike manner. It is expressly understood and agreed that Engineer is an Independent Contractor in the performance of the services agreed to herein. It is further understood and agreed that Engineer shall not have the authority to obligate or bind the City, or make representations or commitments on behalf of the City or its officers or employees without the express prior

approval of the City. The City shall be under no obligation to pay for services rendered not identified in Attachment "A" without prior written authorization from the City.

SECTION III OWNERSHIP OF WORK PRODUCT

Engineer agrees that the City shall have the right to use all exhibits, maps, reports, analyses and other documents prepared or compiled by Engineer pursuant to this Agreement. The City shall be the absolute and unqualified owner of all studies, exhibits, maps, reports, analyses, determinations, recommendations, computer files, and other documents prepared or acquired pursuant to this Agreement with the same force and effect as if the City had prepared or acquired the same.

SECTION IV TIME FOR PERFORMANCE

The time for performance of the Scope of Work is an estimated 120 calendar day duration beginning from the execution date of this Agreement. Upon written request of Engineer, the City may grant time extensions to the extent of any delays caused by the City or other agencies with which the work must be coordinated, and over which Engineer has no control.

SECTION V COMPLIANCE AND STANDARDS

Engineer agrees to perform the work hereunder in accordance with generally accepted standards applicable thereto and shall use that degree of care and skill commensurate with the applicable profession to comply with all applicable state, federal, and local laws, ordinances, rules, and regulations relating to the work to be performed hereunder and Engineer's performance.

SECTION VI INDEMNIFICATION

To the fullest extent permitted by Texas Local Government Code Section 271.904, Engineer shall and does hereby agree to indemnify, hold harmless and defend the City, its officers, agents, and employees against liability for damage caused by or resulting from an act of negligence, intentional tort, intellectual property infringement, or failure to pay a subcontractor or supplier committed by the Engineer, the Engineer's agent, consultant under contract, or another entity over which the Engineer exercises control.

SECTION VII ENGINEER'S COMPENSATION

For and in consideration of the services rendered by Engineer pursuant to this Agreement, the City shall pay Engineer only for the actual work performed under the

Scope of Work, on the basis set forth in Attachment "A," up to an amount not to exceed **\$65,000.00** including reimbursable expenses as identified in Attachment "A."

SECTION VIII TERMINATION

The City may terminate this Agreement at any time by giving written notice to Engineer. Upon receipt of such notice, Engineer shall discontinue all services in connection with the performance of this Agreement and shall proceed to promptly cancel all existing orders and contracts insofar as such orders or contracts are chargeable to the Agreement. As soon as practicable after receipt of notice of termination, Engineer shall submit a sworn statement, showing in detail the services performed under this Agreement to the date of termination. The City shall then pay Engineer for such services performed under this Agreement as those services bear to the total services called for under this Agreement, less such payments on account of the charges as have been previously made. Copies of all completed or partially completed designs, maps, studies, documents and other work product prepared under this Agreement shall be delivered to the City when and if this Agreement is terminated.

SECTION IX ADDRESSES, NOTICES AND COMMUNICATIONS

All notices and communications under this Agreement shall be mailed by certified mail, return receipt requested, to Engineer at the following address:

Gunda Corporation, LLC
32731 Egypt Lane, Suite 501
Magnolia, Texas 77354
Attn: Kyle A. Bertrand, P.E., Client Director, Transportation

All notices and communications under this Agreement shall be mailed by certified mail, return receipt requested, to the City at the following address:

City of Tomball
501 W. Market Street
Tomball, Texas 77375
Attn: Meagan Mageo, Project Coordinator

SECTION X LIMIT OF APPROPRIATION

Prior to the execution of this Agreement, Engineer has been advised by the City and Engineer clearly understands and agrees, such understanding and agreement being of the absolute essence to this Agreement, that the City shall have available only those sums as expressly provided for under this Agreement to discharge any and all liabilities which may be incurred by the City and that the total compensation that

Engineer may become entitled to hereunder and the total sum that the City shall become liable to pay to Engineer hereunder shall not under any conditions, circumstances, or interpretations hereof exceed the amounts as provided for in this Agreement.

SECTION XI SUCCESSORS AND ASSIGNS

The City and Engineer bind themselves and their successors and assigns to the other party of this Agreement and to the successors and assigns of such other party, in respect to all covenants of this Agreement. Engineer shall not assign, sublet, or transfer its interest in this Agreement without the written consent of the City. Nothing herein shall be construed as creating any personal liability on the part of any officer or agent of the City or any public body which may be a party hereto.

SECTION XII MODIFICATIONS

This instrument, including Attachment "A," contains the entire Agreement between the parties relating to the rights herein granted and the obligations herein assumed. To the extent there is a conflict between the provisions of this Agreement and the provisions of Attachment "A," this Agreement shall control. Any oral or written representations or modifications concerning this instrument shall be of no force and effect excepting a subsequent modification in writing signed by both parties hereto.

SECTION XIII ADDITIONAL SERVICES OF ENGINEER

If authorized in writing by the City, Engineer shall furnish, or obtain from others, Additional Services that may be required because of significant changes in the scope, extent or character of the portions of the Project designed or specified by the Engineer, as defined in Attachment "A." These Additional Services, plus reimbursable expenses, will be paid for by the Owner on the basis set forth in Attachment "A," up to the amount authorized in writing by the City.

SECTION XIV CONFLICTS OF INTEREST

Pursuant to the requirements of the Chapter 176 of the Texas Local Government Code, Engineer shall fully complete and file with the City Secretary a Conflict of Interest Questionnaire.

SECTION XV PAYMENT TO ENGINEER FOR SERVICES AND REIMBURSABLE EXPENSES

Invoices for Basic and Additional Services and reimbursable expenses will be prepared in accordance with Engineer's standard invoicing practices and will be

submitted to the City by Engineer at least monthly. Invoices are due and payable thirty (30) days after receipt by the City.

SECTION XVI INSURANCE

Engineer shall procure and maintain insurance in accordance with the terms and conditions set forth in Attachment "B," for protection from workers' compensation claims, claims for damages because of bodily injury, including personal injury, sickness or disease or death, claims or damages because of injury to or destruction of property including loss of use resulting therefrom, and claims of errors and omissions.

SECTION XVII MISCELLANEOUS PROVISIONS

A. This Agreement is subject to the provisions of the Texas Prompt Payment Act, Chapter 2250 of the Texas Government Code. The approval or payment of any invoice shall not be considered to be evidence of performance by Engineer or of the receipt of or acceptance by the City of the work covered by such invoice.

B. Venue for any legal actions arising out of this Agreement shall lie exclusively in the federal and state courts of Harris County, Texas.

C. This Agreement is for sole benefit of the City and Engineer, and no provision of this Agreement shall be interpreted to grant or convey to any other person any benefits or rights.

D. Contractor further covenants and agrees that it does not and will not knowingly employ an undocumented worker. An "undocumented worker" shall mean an individual who, at the time of employment, is not (a) lawfully admitted for permanent residence to the United States, or (b) authorized by law to be employed in that manner in the United States.

E. Statutory Terms Applicable to State Political Subdivisions. As required by Chapter 2270, Government Code, ENGINEER hereby verifies that it does not boycott Israel and will not boycott Israel through the term of this Agreement. For purposes of this verification, "boycott Israel" means refusing to deal with, terminating business activities with, or otherwise taking any action that is intended to penalize, inflict economic harm on, or limit commercial relations specifically with Israel, or with a person or entity doing business in Israel or in an Israeli-controlled territory, but does not include an action made for ordinary business purposes.

IN WITNESS WHEREOF, the City of Tomball has lawfully caused this Agreement to be executed by the Assistant City Manager of said City and attested by the City Secretary and Gunda Corporation LLC, acting by and through its duly authorized officer/representative, does now sign, execute, and deliver this instrument.

EXECUTED on this _____ day of _____, 2022.

ENGINEER:

Gunda Corporation, LLC

By: _____
Name: Kyle A. Bertrand, PE
Title: Client Director, Transportation

CITY OF TOMBALL, TEXAS

David Esquivel, PE, City Manager

ATTEST:

Doris Speer, City Secretary

ATTACHMENT "A"

SCOPE OF SERVICES ENGINEERING & PLANNING PROJECT NO. 2014-10031 CITY OF TOMBALL FM 2920/MAIN STREET IMPROVEMENTS PUBLIC MEETING NO. 2

PART A – SCOPE OF SERVICES

DESCRIPTION OF PROJECT

The City of Tomball is pursuing Advanced Funding Agreements (AFA) with TxDOT and public comments for reconstruction of FM 2920 from SH 249 to Willow Street, TxDOT CSJ 2941-02-056. The project construction is currently funded by the HGAC 2015 Transportation Improvement Program (TIP).

The scope of work for this Project consists of the design and reconstruction of FM 2920, a 4-lane roadway. The Project is approximately 1.7 miles in length from Business 249 to Willow Street. The Project will include new reinforced concrete paving and curb, installation of a raised median, drainage, signal improvements including upgraded equipment and interconnected communication lines, pedestrian lighting, and sidewalks to improve safety and bring the roadway up to current ADA standards.

SCOPE OF SERVICES

The services to be provided under the terms of this agreement will include:

1. Preparation of a second Public Meeting, currently scheduled for December 6, 2022, in general compliance with the TXDOT/NEPA process intended to inform the public and stakeholders of project scope, project alternatives, schedule, etc. The Information to be presented includes findings and recommendations/options since the first meeting and/or to address first meeting comments. Task and deliverables included in this authorization include:
 - a. Coordination meetings with TxDOT and City staff for preparation, coordination of materials, data, exhibits, notification list, public modification language, evaluation of comments/matrix, etc.
 - b. Board mounted exhibits for use at the public meeting to include the overall schematic, 3 alternatives previously investigated for the area between Pine and Elm Streets with Pros and Cons for each alternative, conclusions from studies perform since last public meeting.
 - c. Assemble stakeholder notification list, letter, and public advertisement for meeting. To be sent and placed in publication by City of Tomball.
 - d. Prepare presentation in PowerPoint format for use in prerecorded presentation.

- e. Attendance at Public Meeting to assist with public questions and understanding of presentation materials.

PART B – BASIS OF COMPENSATION AND REIMBURSABLE EXPENSES

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The following represents the estimated maximum compensation for the scope of services documented in Attachment A, Part A of this agreement. If services beyond those specifically identified are determined necessary during the project, Engineer shall not proceed with those services until such time written approval of the scope and any additional fees are approved by the City of Tomball.

GUNDA will provide the aforementioned engineering services on an hourly Not-to Exceed basis in accordance with Gunda's standard hourly rates in effective at the time services are provided, fiscal year 2022 Rates attached. Total compensation for this authorization shall not exceed \$65,000, including reimbursable expenses.

Notes: 1. Reimbursable Expenses shall be invoiced and paid based on cost of service provided plus 10% markup. These services include travel, deliveries, postage, graphical reproduction, etc...

**2022 RATE SHEET
GUNDA CORPORATION**

Category	Description	Effective Date	Rate
1	Principal	1/1/2022	\$325.00
5	Program Manager	1/1/2022	\$284.00
10	Sr. Project Manager	1/1/2022	\$273.00
15	Project Manager	1/1/2022	\$231.00
30	Construction Manager	1/1/2022	\$210.00
20	Sr. Engineer	1/1/2022	\$189.00
25	Engineer	1/1/2022	\$158.00
40	Sr. Planner	1/1/2022	\$158.00
45	Planner	1/1/2022	\$105.00
50	Sr. Designer	1/1/2022	\$158.00
32	Deputy Construction Manager	1/1/2022	\$184.00
31	Asst. Construction Manager	1/1/2022	\$158.00
95	Graduate Engineer	1/1/2022	\$126.00
96	EIT	1/1/2022	\$142.00
55	Designer	1/1/2022	\$142.00
80	Sr. Inspector	1/1/2022	\$158.00
70	Sr. CADD Tech	1/1/2022	\$126.00
75	CADD Tech	1/1/2022	\$111.00
85	Inspector	1/1/2022	\$126.00
98	Public Engagement Officer	1/1/2022	\$210.00
99	Clerical	1/1/2022	\$80.00

Please note that future year rate will have escalation rate of up to 5% per year.

Non-exempt employees will be billed at 1.5 times for the overtime hours.

ATTACHMENT "B"

INSURANCE