

AGREEMENT FOR PROFESSIONAL ENGINEERING DESIGN SERVICES

THIS AGREEMENT FOR PROFESSIONAL ENGINEERING DESIGN SERVICES (“Agreement”) is entered into this _____ day of _____, 2025, to be effective as of _____, 2025 (“Effective Date”), by and between the **HOLLY HILLS WATER AND SANITATION DISTRICT**, a quasi-municipal corporation and political subdivision of the State of Colorado (“District”), and _____, a _____ corporation (“Engineer”) whose address is _____, telephone number _____. The District and Engineer are hereinafter collectively sometimes referred to as the “Parties” and singularly as a “Party.”

RECITALS

WHEREAS, District desires professional engineering design services in connection with the District’s South Holly Street sanitary sewer replacement project (“Project”); and

WHEREAS, the Project consists of preparing complete drawings and specifications for the Project; and

WHEREAS, Engineer represents that it has the personnel and expertise to perform such professional engineering design services for the District; and

WHEREAS, District desires to retain Engineer to perform the required services upon the terms and conditions set forth herein.

NOW, THEREFORE, in consideration of the promises contained herein, District and Engineer agree as follows:

1. **Scope of Services.** Engineer agrees to perform the design services described on **Exhibit A**, (consisting of ___ pages) as attached hereto and incorporated herein by this reference (“Scope of Services”), together with all necessary labor, materials, scheduling, procurement and related work and services, including all things reasonably inferable from the Scope of Services as may be necessary to complete the totality of the obligations imposed upon Engineer by this Agreement (collectively the “Services”). The Services will be performed in accordance with this Agreement. In the event of a conflict or inconsistency between the terms and provisions of the Scope of Services and the text of this Agreement, the text of this Agreement shall control.

2. **Notice to Proceed.** From and after the Effective Date of this Agreement and provided District receives satisfactory Certificates of Insurance as required by Paragraph 16 below no later than _____, 2025, Engineer, without further specific authorization from District, is authorized to proceed with the Services.

3. **Completion Date.** Engineer shall give this Agreement and the Services to be performed hereunder such priority as is necessary to cause the Services to be timely and promptly performed in accordance with the time periods contemplated or expressly provided for in the Scope of Services, including but not limited to, the schedule as set forth on page ___ of the Scope of Services. Unless delayed by acts or the failure to act of District or other causes beyond the control of Engineer, and without extending any deadline established elsewhere in this Agreement or otherwise, all Services required under this Agreement shall be entirely completed to District's reasonable satisfaction and all deliverables as set forth in the Scope of Services shall be delivered to District no later than December 15, 2026.

4. **Responsibility of Services.** The District shall not supervise the work of Engineer or instruct the Engineer on how to perform the Services. Engineer shall be fully responsible for the professional quality, technical accuracy, timely completion, and coordination of Services including all work and reports that are a part thereof, whether such work is performed directly by Engineer or by any subconsultant or subcontractor hired by Engineer and approved by District in accordance with Paragraph 12 below. Without additional compensation and without limiting District's remedies, Engineer shall promptly remedy and correct any errors, omissions, or other deficiencies in the Services. Engineer warrants that all Services provided under this Agreement shall be performed with competence and in accordance with the standard of care of Engineer's profession prevailing in Colorado.

5. **Compensation.** District shall compensate Engineer in accordance with Engineer's hourly rates and reimbursable costs as set forth on **Exhibit B** (consisting of ___ pages) as attached hereto and incorporated herein by this reference; provided, however, that the total amount of compensation that Engineer shall receive under this Agreement, shall under no circumstances exceed \$_____ without the District's prior written consent. District will not compensate Engineer for preparing or responding to District's questions regarding Engineer's invoices. If Engineer is requested to perform any work that is not expressly described in the Scope of Services or that will cause the estimated time to perform any work described in the Scope of Services to be increased, Engineer will immediately notify District in writing and will not perform such work until authorized to do so in writing by District's representative.

The compensation to be paid Engineer under this Agreement is entire and complete and includes any and all reimbursable and other costs as set forth, and only as set forth, in the Scope of Services and **Exhibit B**. Engineer further represents and agrees that the reimbursable costs to District together with any approved subconsultant or approved subcontractor costs are at Engineer's actual cost and do not include any additional mark-up whatsoever. It is understood and agreed that Engineer will contract with and pay directly all approved subconsultants or approved subcontractors retained by Engineer for the performance of any Services or portion thereof.

5.1 **Rates and Employee Categories.** **Exhibit B**, page 2 sets forth the estimated man hours for each phase of the Services and the category of Engineer's employees that are expected to perform work under this Agreement. **Exhibit B**, page 2 also sets forth the hourly rates for each category of employee that will be performing work under this Agreement. Engineer agrees that all labor performed hereunder shall be performed for an hourly rate and by the category of the employee as identified in the Scope of Services or **Exhibit B**, page 2, except that if any work is performed by an employee whose hourly rate is less than the rate described in **Exhibit B**, page 2, District shall be charged the lesser rate. Further, should any employee's job category or classification change during the term of this Agreement, that change shall not in any way affect in any way or modify the employee's billing rate under this Agreement unless the billing rate has been reduced as a result of such job reclassification, in which case the reduced billing rate shall be applied for purposes of the invoices prepared and submitted to the District.

6. **Method of Payment.** Engineer shall provide an invoice for each month for the Services completed through the last day of the preceding month. Each invoice shall be submitted only for those Services actually performed during the period for which the invoice is submitted. Engineer shall submit with each invoice such supporting documentation as District may reasonably request. Each invoice submitted by Engineer shall constitute a representation to District that the Services are completed to the point as represented in the billing invoice. Unless Engineer does not properly perform the Services, invoices will be paid within thirty (30) to forty-five (45) days after receipt. District shall have the right to refuse to pay all or a portion of any invoice that is inconsistent with this Agreement. District may delay payment until it can verify the accuracy of an invoice, obtain releases or waivers with respect to Services covered in the invoice, or resolve a dispute with Engineer regarding an invoice.

7. **Conflict of Interest.** Engineer agrees that it will not accept any employment during the Term of this Agreement that creates a potential conflict of interest or compromises the effectiveness of Engineer or otherwise interferes with the ability of Engineer to perform the Services required by this Agreement, unless approved, in advance, in writing, by the District.

8. **Records and Audits.** Engineer shall at all times maintain a system of accounting records in accordance with its normal billing procedures, together with supporting documentation for all work, purchases, Services and billings under this Agreement. Engineer shall make available for audit and reproduction by District all records, in whatever form, related to the Services. Engineer shall provide such availability during the term of this Agreement and for two (2) years after final payment. Engineer shall refund to District any charges determined by District's audit to be inconsistent with this Agreement.

9. **Confidentiality of Information.** Except as required by law or as is necessary for the performance of the Services, Engineer shall retain in strictest confidence all information furnished by District and the results of any reports or studies conducted as a result of this Agreement, along with all supporting work papers and any other substantiating documents. Engineer shall not disclose such information to others without the prior written consent of District's representative. Notwithstanding the foregoing, Engineer shall have no confidentiality obligation with respect to information that: (i) becomes generally available to the public other than as a result of disclosure by Engineer or its agents or employees; (ii) was available to Engineer on a non-confidential basis prior to its disclosure by District; and (iii) becomes available to Engineer from a third party who is not, to the knowledge of Engineer, bound to retain such information in confidence.

10. **Ownership of Work Product and Documents.** All printed materials and electronic documents produced as a result of the Services performed under this Agreement shall be the sole property of District and may not be used, sold or disposed of in any manner without prior written approval of the District's representative. If requested, all such work products shall be turned over to the District upon completion of the Project. Engineer may retain copies of all documents prepared under this Agreement.

11. **Changes in Services.** The District shall have the right to order additions, deletions or changes in the Services at any time, so long as such changes are not outside the Scope of Services covered by this Agreement. Requests for such changes in the Services may be made by District's representative orally or in writing; provided, however, that oral requests shall be confirmed by a written request within ten (10) days after the oral request. If District directs Engineer to proceed with any additional services, Engineer shall be paid for the additional services as agreed to by the Parties prior to Engineer's performance thereof.

12. **Approval of Subconsultants.** Except as set forth in the Scope of Services, Engineer shall not employ any subconsultant or subcontractor without the prior express written approval of District's representative nor shall Engineer assign any rights or obligations under this Agreement in whole or in part without the District's prior written approval which may be withheld for any reason. Engineer shall be responsible for the coordination, accuracy, and completeness of all Services in accordance with generally accepted principles and practices of Engineer's profession, regardless of whether the Services are performed by Engineer or one or more subconsultants. Engineer shall endeavor to bind each of its approved subcontractors or approved subconsultants, if any, to the terms of this Agreement. In the event that the subconsultant or subcontractor is unwilling or unable to comply with any term or provision of this Agreement, Engineer will inform District of the specific term or provision at issue. District may accept the lack of compliance to the terms of this Agreement on the part of the subconsultant or subcontractor or may request that a different subconsultant or subcontractor be retained.

This Agreement may be terminated by District if subcontracted or assigned, either in whole or in part, by the Engineer without the express written consent of District's representative.

13. **Independent Contractor.** In the performance of the Services, Engineer shall be, for all purposes, an independent contractor and not an employee or agent of District. Engineer and its employees and approved subconsultants shall in no way represent themselves to third parties as agents or employees of District.

14. **No Unemployment Insurance or Workers' Compensation Benefits.** Engineer agrees that it is not entitled to unemployment insurance or workers' compensation benefits as a result of performance of the Services for District. Engineer is required to provide workers' compensation and unemployment insurance benefits for its employees and/or subconsultants as required by law.

15. **Payment of Taxes.** Engineer is solely liable for any federal, state and local income and withholding taxes, unemployment taxes, FICA taxes and workers' compensation payments and premiums applicable to the performance of the Services under this Agreement. Engineer shall indemnify District for any liability resulting from nonpayment of such taxes and sums.

16. **Insurance.** Neither the Engineer nor any subconsultant, agent or employee thereof, shall continue work on any Services until the following minimum insurance coverages have been obtained:

16.1 **Workers' Compensation Insurance.** The Engineer and each subconsultant and each subcontractor, if any, shall carry workers' compensation insurance to cover liability under the laws of the State of Colorado in connection with the Services performed pursuant to this Agreement. Engineer and each subconsultant or subcontractor shall carry separate policies.

16.2 **Commercial General Liability Insurance.** The Engineer and each subconsultant and subcontractor, if any, shall carry commercial general liability insurance, which shall include blanket contractual liability coverage. Such insurance shall be in an amount specified in the Colorado Governmental Immunity Act, § 24-10101, et. seq., C.R.S., as may be amended from time to time (currently \$424,000 per person, \$1,195,000 per occurrence for bodily injury and property damage).

16.3 **Automobile Liability Insurance.** The Engineer and each subconsultant and subcontractor, if any, shall carry automobile liability insurance to include owned, non-owned and hired vehicles used in the performance of Services under this Agreement. Such insurance shall be in the amounts specified in the Colorado Governmental Immunity Act § 24-10-101, et. seq., C.R.S., as it may be amended from

time to time (currently \$424,000 per person, \$1,195,000 per occurrence for bodily injury and property damage).

16.4 **Professional Liability Insurance.** The Engineer and each subconsultant and subcontractor, if any, shall carry professional liability insurance in the amount of \$1,000,000 per claim and aggregate limit, unless an alternate amount is agreed to in writing by the District.

The required commercial general liability and automobile policies shall: (i) name the District as an additional insured for coverage only, with no premium payment obligation; (ii) provide a cross-liability/severability of interest clause; and (iii) provide that the coverage for the District will not be impaired by the Engineer's subconsultant's or subcontractor's failure to comply with any of the terms or conditions of the policy.

The Engineer and each subconsultant and subcontractor, if any, shall provide Certificates of Insurance (and renewals thereof) identifying this Agreement and demonstrating that the required coverages have been obtained. The Engineer shall not allow any subcontractor, agent, or employee to commence work until appropriate Certificates of Insurance have been obtained and approved by the District. The coverages specified in each Certificate of Insurance shall not be terminated, reduced, or modified without providing at least thirty (30) days prior written notice to the District.

17. **Compliance with Laws.** In performing this Agreement, Engineer shall comply with all applicable laws, rules and regulations, including but not limited to all federal, state and local laws.

18. **Communications.** It is understood by District and Engineer that successful progress under this Agreement requires frequent, concise and documented communication between the Party's representatives. District hereby designates Will Raatz, the District's consulting engineer, as the representative who shall give information to and receive information from Engineer. District may change its designated representative or name additional representatives from time to time.

Engineer hereby designates _____, as its representative who will give information to and receive information from District. Engineer may change its designated representative only with the prior written approval of District. Each designated representative shall have full District to not only accept and receive information but also to accept notices, give approvals and to fully represent its respective Party for all purposes under this Agreement.

19. **Indemnification.** To the extent authorized by law, Engineer hereby expressly agrees to indemnify and hold harmless the District, its directors, officers, agents, employees, and insurers against any and all liability, loss, damage demand, action, cause of action or expenses of whatsoever kind or nature, including but not

limited to damage for personal injury, property damage or financial loss of any kind (including court costs and reasonable attorney's fees) which may arise out of or that are in any way connected with the Services or materials furnished by Engineer, its employees, agents, subconsultants, contractors or assignees.

20. **Acceptance Not a Waiver.** The District's approval of studies, drawings, designs, plans, specifications, reports, computer programs and other work or material shall not in any way relieve Engineer of responsibility for the technical accuracy of the Services. The District's approval or acceptance of, or payment for, any Services shall not be construed to operate as a waiver of any rights under this Agreement, or of any cause of action arising out of the performance of this Agreement.

21. **Termination or Suspension.** The District reserves the exclusive right to terminate or suspend all or a portion of the Services under this Agreement by giving ten (10) days written notice to the Engineer. If any portion of the Services shall be terminated or suspended, the District shall pay the Engineer equitably for all services properly performed pursuant to this Agreement. If the work is suspended and the Engineer is not given an order to resume work within thirty (30) days from the effective date of the suspension, this Agreement will be considered terminated. Upon termination, the Engineer shall immediately deliver to the Board any documents then in existence, that have been prepared by the Engineer pursuant to this Agreement.

22. **Default.** Each and every term and condition of this Agreement shall be deemed to be a material element of this Agreement. In the event either Party shall fail or refuse to perform according to the material terms of this Agreement, such Party may be declared in default by the other Party by a written notice.

23. **Remedies.** In the event a Party has been declared in default, such defaulting Party shall be allowed a period of fifteen (15) days within which to correct or commence correcting the default. In the event that the default has not been corrected or begun to be corrected, or the defaulting Party has ceased to pursue the correction with due diligence, the Party declaring default may elect to (i) terminate this Agreement and seek damages; (ii) treat the Agreement as continuing and require specific performance; or (iii) avail itself of any other remedy at law or in equity. In the event Engineer fails or neglects to perform the Services in accordance with this Agreement, the District may elect to correct such deficiencies and charge Engineer for the full cost of the corrections.

24. **Term.** Unless sooner terminated in accordance with the provisions of paragraph 21 above, this Agreement shall remain in effect until the Services are fully performed, at which time the Agreement shall terminate and be of no further force and effect, except as to those provisions which expressly survive termination, including but not limited to paragraphs 8, 9, 10, and 19.

25. **Force Majeure.** The Parties shall not be responsible for any failure or delay in the performance of any obligations under this Agreement caused by acts of God, flood, fire, war or public enemy or the failure of District to furnish timely information or to approve or disapprove Engineer's instruments of service within a reasonable period of time.

26. **Assignment.** Subject to the provisions of paragraph 12, this Agreement shall bind and inure to the benefit of the Parties and their respective successors and assigns. This Agreement is intended to benefit only the Parties and neither subconsultants, subcontractors nor suppliers of Engineer nor any other person or entity is intended by the Parties to be a third-party beneficiary of this Agreement.

27. **Governing Law.** This Agreement shall be governed by and construed under the laws of the State of Colorado.

28. **Notice.** All notices required or given under this Agreement shall be in writing and shall be deemed effective: (i) when delivered personally to the other Party; or (ii) seven (7) days after being deposited in the United States mail, first-class postage prepaid, properly addressed as follows; or (iii) when sent by facsimile transmission and receipt is confirmed by return facsimile transmission.

If to Engineer:

If to District:

Will Raatz, District Engineer
W2 Engineers, LLC
19255 West 84th Place
Arvada, Colorado 80007

With a copy to:

Timothy J. Flynn
Ireland Stapleton Pryor & Pascoe, PC
1660 Lincoln Street, Suite 3000
Denver, Colorado 80264

Or such other persons or addresses as the Parties may designate in writing.

29. **Governmental Immunity.** The Parties understand and agree that the District is relying upon, and has not waived, the monetary limitations of \$424,000 per person, \$1,195,000 per occurrence, and all other rights, immunities and protections

provided by the Colorado Governmental Immunity Act §24-10-101 et seq., C.R.S., as it may be amended from time to time.

30. **Entire Agreement.** This Agreement constitutes the entire agreement between the District and Engineer and replaces all prior written or oral agreements and understandings. It may be altered, amended or repealed only by a duly executed written instrument.

31. **Effective Date.** This Agreement shall become effective as of _____, 2025, once it is signed by the appropriate representatives of both Parties.

IN WITNESS WHEREOF, the Parties have executed this Agreement in duplicate original as of the date set forth below. This Agreement must have the signature of an authorized person of Engineer on both original copies.

[SIGNATURE PAGE TO FOLLOW]

**HOLLY HILLS WATER AND
SANITATION DISTRICT**

By: _____
Thomas Thomasson, President

ATTEST:

Linda Rhea, Secretary/Treasurer

APPROVED AS TO FORM:

Timothy J. Flynn, Legal Counsel

This Agreement is accepted by:

[NAME OF ENGINEER]

By: _____

Date: _____

By execution, signer certifies that he or she is authorized to accept and bind Engineer to the terms of this Agreement.