

## AGREEMENT FOR PROFESSIONAL SERVICES

This AGREEMENT made and entered into this 16th day of April, 2019 by and between the City of Dripping Springs, TX, (hereinafter "CITY"), and Carollo Engineers, Inc., (hereinafter "ENGINEER").

WITNESSETH:

WHEREAS, the CITY and the ENGINEER wish to enter into an Agreement (hereinafter "Agreement") for the furnishing of Engineering Services, including the planning, design, bid, and construction phase services related to the City of Dripping Springs New Water Reclamation Project (hereinafter "Project"), and

WHEREAS, the CITY has retained ENGINEER, who is qualified and prepared to perform the necessary professional services in connection with the Project.

NOW THEREFORE, in consideration of the mutual promises and covenants of the parties hereto, it is agreed as follows:

### SECTION 1 - PROFESSIONAL SERVICES/SCOPE OF SERVICES

- 1.1 ENGINEER shall provide professional engineering services in all phases of the Project to which this Agreement applies. The services furnished by the ENGINEER will be defined by Task Orders which will set forth the Engineer's Services, Time of Performance, and Payment.
- 1.2 It is intended that each Task Order, after execution by both parties shall become a supplement to and a part of this Agreement.

### SECTION 2 - PAYMENT TO ENGINEER

- 2.1 As consideration for providing the services referred to in Section 1, the CITY shall pay ENGINEER on the basis to be established in the Task Order for Services.
- 2.2 The ENGINEER is not responsible for damage or delay in performance caused by events beyond the control of

ENGINEER. In the event ENGINEER's services are suspended, delayed or interrupted for the convenience of the CITY or delays occur beyond the control of ENGINEER, an equitable adjustment in ENGINEER's time of performance and cost of ENGINEER's personnel and subcontractors shall be made.

- 2.3 CITY reserves the right to direct revision of ENGINEER's services as may be necessary. When ENGINEER is directed to make revisions under this section of the agreement, ENGINEER shall advise CITY of the probable costs involved in completing engineering services and the time of performance for such completion. Extra services also include those that are required for defense of claims, in which event ENGINEER shall bill CITY on an hourly basis together with cost of material.
- 2.4 In the event CITY and ENGINEER cannot agree on equitable compensation for services rendered in making revisions, then, at CITY's option, ENGINEER shall

either continue performance under the revised Agreement and an equitable adjustment in ENGINEER's time of performance and cost of ENGINEER's personnel shall be made at completion of the revised work or ENGINEER shall not be obligated to continue performance under this Agreement.

- 2.5 If ENGINEER's work products require revisions prior to construction bidding due to ENGINEER's errors or omissions, the exclusive remedy will be limited to revisions made by ENGINEER without compensation.

- 2.6 The ENGINEER shall bill the CITY monthly invoicing the services performed and the cost of such services.

CITY agrees to pay invoices within 45 days of their date. Payments not received by ENGINEER within 45 days shall be considered delinquent and subject to a finance charge of 1 percent per month for each month unpaid after the date of invoice. ENGINEER may suspend services should an invoice remain delinquent for 75 days from date of invoice.

- 2.7 All notices shall be made in writing and may be given by personal delivery or by mail. Notices sent by mail shall be addressed to the designated responsible person or office:

TO CITY:

Ginger Faught  
PO Box 384  
Dripping Spring, TX 78620

TO ENGINEER:

Eva Steinle-Darling  
8911 N Capital of Texas Hwy, Suite 2200  
Austin, TX 78759

When so addressed, notices shall be deemed given upon deposit in the United States Mail, postage prepaid. In all other instances, notices and invoices shall be deemed given at the time of actual delivery.

All payments are to be mailed to:

Carollo Engineers, Inc.  
P.O. Box 30835  
Salt Lake City, UT 84130-0835

unless otherwise informed on the face of the invoice.

### SECTION 3 - MISCELLANEOUS

- 3.1 The CITY shall furnish the ENGINEER available studies, reports and other data pertinent to ENGINEER's services; obtain or authorize ENGINEER to obtain or provide additional reports and data as required; furnish to ENGINEER services of others required for the performance of ENGINEER's services hereunder, and ENGINEER shall be entitled to use and rely upon all such information and services provided by CITY or others in performing ENGINEER's services under this Agreement.

- 3.2 The CITY shall arrange for access to and make all provisions for ENGINEER to enter upon public and private property as required for ENGINEER to perform services hereunder.

- 3.3 Documents, including drawings and specifications, prepared by ENGINEER pursuant to this Agreement are not intended or represented to be suitable for reuse by CITY or others for this Project or on any other project. Any reuse of completed documents or use of partially completed documents without written verification or concurrence by ENGINEER for the specific purpose intended will be at CITY's sole risk and without liability or legal exposure to

ENGINEER; and CITY shall indemnify and hold harmless ENGINEER from all claims, damages, losses and expenses, including attorney's fees arising out of or resulting therefrom.

- 3.4 The ENGINEER maintains, at its own expense, Worker's Compensation and Employers Liability, Comprehensive General Liability, Automobile Liability and Professional Liability policies with limits at or above that which is reasonably required of other engineering firms and will, upon request, furnish insurance certificates to CITY.

#### **SECTION 4 - LEGAL RELATIONS**

- 4.1 The ENGINEER shall be responsible for professional negligence, which is failure to exercise skill and ability as ordinarily required of engineers under the same or similar circumstances. The ENGINEER shall not be responsible for warranties, guarantees, fitness for a particular purpose, breach of fiduciary duty, loss of anticipated profits or for economic, incidental, or consequential damages and shall only indemnify for failure to perform in accordance with the generally accepted engineering and consulting standards. Additionally, ENGINEER shall not be responsible for acts and decisions of third parties, including governmental agencies, other than ENGINEER's subconsultants, that impact project completion and/or success.

- 4.2 The ENGINEER agrees to indemnify and hold the CITY harmless from all claims, losses, expenses, fees, including attorney's fees, costs, and judgments that may be asserted against the CITY to the extent caused by the negligent acts or omissions of ENGINEER, ENGINEER'S employees, if any, and ENGINEER'S agents, except as limited in this Agreement.

- 4.3 Hazardous materials or asbestos may exist at a site where there is no reason to believe they could or should be present. The ENGINEER and CITY agree that the discovery of unanticipated hazardous materials or asbestos constitutes a changed condition mandating a renegotiation of ENGINEER's services.

- 4.4 The ENGINEER has no control over the cost of labor, materials, equipment or services furnished by others, or over Contractor's methods of determining prices, or other competitive bidding or market conditions, practices or bidding strategies. Cost estimates are based on ENGINEER's opinion based on experience and judgment. ENGINEER cannot and does not guarantee that proposals, bids or actual Project construction costs will not vary from cost estimates prepared by ENGINEER.

- 4.5 If the project involves construction of any kind, the parties agree that CITY and ENGINEER shall be indemnified to the fullest extent permitted by law for all claims, damages, losses and expense including attorney's fees arising out of or resulting from Contractor's performance of work including injury to any worker on the job site except for the sole negligence of CITY or ENGINEER. Both CITY and ENGINEER shall be named as additional primary insured(s) by Contractor's General Liability and Builders All Risk insurance policies without offset and all Construction Documents and insurance certificates shall include wording acceptable to the parties herein with reference to such provisions.

- 4.6 ENGINEER shall not be responsible for the means, methods, techniques, sequences, or procedures of construction selected by contractors or the safety precautions and programs incident to the work of contractors and will not be

responsible for Contractor's failure to carry out work in accordance with the Contract Documents.

4.7 The services to be performed by ENGINEER are intended solely for the benefit of the CITY. No person or entity not a signatory to this Agreement shall be entitled to rely on the ENGINEER's performance of its services hereunder, and no right to assert a claim against the ENGINEER by assignment of indemnity rights or otherwise shall accrue to a third party as a result of this Agreement or the performance of the ENGINEER's services hereunder.

4.8 The ENGINEER's instruments of service hereunder are the printed hard copy drawings and specifications issued for the Project, whereas electronic media, including CADD files, are tools for their preparation. As a convenience to the CITY, the ENGINEER shall furnish to the CITY both printed hard copies and electronic media. In the event of a conflict in their content, the printed hard copies shall take precedence over the electronic media.

Because data stored in electronic media form can be altered, inadvertently, it is agreed that the CITY shall hold ENGINEER harmless from liability arising out of changes or modifications to ENGINEER's data in electronic media form in the CITY's possession or released to others by the OWNER.

#### **SECTION 5 - TERMINATION OF AGREEMENT**

5.1 This Agreement might be terminated by either Party without cause with thirty (30) days written notice to the other.

5.2 If this Agreement is terminated with or without cause, in either event, CITY shall provide:

- a. not less than five (5) working days' written notice of intent to terminate, and
- b. an opportunity for good faith consultation prior to termination.

#### **SECTION 6 - DISPUTE RESOLUTION**

6.1 All claims, disputes, and other matters in controversy between CITY and ENGINEER arising out of or in any way related to this Agreement will be submitted to Alternative Dispute Resolution (ADR) before, and as a condition precedent to other remedies provided by law. The method for resolving disputes will be agreed to between the parties and each party shall use its best efforts to reach a resolution.

#### **SECTION 7 - ENTIRE AGREEMENT**

7.1 This Agreement, including attachments incorporated herein by reference, represents the entire Agreement and understanding between the parties and any negotiations, proposals or oral agreements are intended to be integrated herein and to be superseded by this written Agreement. Any supplement or amendment to this Agreement to be effective shall be in writing and signed by the CITY and ENGINEER.

#### **SECTION 8 - GOVERNING LAW**

8.1 This Agreement is to be governed by and construed in accordance with the laws of the State of Texas. Venue for any dispute arising from the performance of this Agreement is proper in Hays, County.

## SECTION 9 - MANDATORY DISCLOSURES

- 9.1 Texas law requires that vendors make certain disclosures. Prior to the effective date of this Contract, the Contractor has submitted to the City a copy of the Conflict of Interest Questionnaire form (CIQ Form) approved by the Texas Ethics Commission (Texas Local Government Code Chapter 176) and the Affidavit regarding Prohibition on Contracts with Companies Boycotting Israel (Texas Government Code Chapter 2270).

The Contractor must also fill out Form 1295, as required by the Texas Ethics Commission, and submit it to the City. The form may be found here: <https://www.ethics.state.tx.us/whatsnew/elfinfoform1295.htm>

## SECTION 10 - RELATIONSHIP OF PARTIES


- 10.1 It is understood by the Parties that Contractor is an independent contractor with respect to the City and not an employee of the City. City will not provide fringe benefits, including health insurance benefits, paid vacation, or any employee benefit, for the benefit of Engineer. The City may contract with other individuals or firms for engineering services.

IN WITNESS WHEREOF, duly authorized representatives of the parties have signed in confirmation of this Agreement, with effective date the day and year first above written.

CAROLLO ENGINEERS, INC.

By:   
Eva Steinle-Darling, PhD, PE  
Associate Vice President

PE# 113317

By:   
Scott Hoff, PE  
Senior Vice President

PE# 89056

CITY OF DRIPPING SPRINGS

By:   
Bill Foulds, Mayor Pro Tem



# 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.

Carollo Engineers, Inc.  
Austin, TX United States

Certificate Number:  
2019-472934

Date Filed:  
04/05/2019

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

City of Dripping Springs

Date Acknowledged:

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.

CAR04092019  
Engineering services for the New Water Reclamation Project

4	Name of Interested Party	City, State, Country (place of business)	Nature of interest (check applicable)	
			Controlling	Intermediary
	Hart, Vincent	Broomfield, CO United States	X	
	Wason, Ash	Costa Mesa, CA United States	X	
	Wachter, Russell	Phoenix, AZ United States	X	
	Hagstrom, James	Walnut Creek, CA United States	X	
	Carella, Louis	Walnut Creek, CA United States	X	
	Narayanan, Balakrishnan	Walnut Creek, CA United States	X	
	Barnes, Michael	Walnut Creek, CA United States	X	

5 Check only if there is NO Interested Party.

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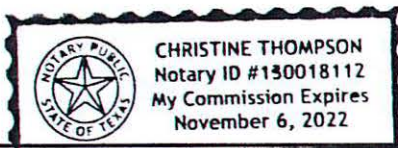
### 6 UNSWORN DECLARATION

My name is SCOTT P. HOFF, and my date of birth is 9/19/70.

My address is 5329 SUMMER STAR LN, FRISCO, TX, 75036, USA.  
(street) (city) (state) (zip code) (country)

I declare under penalty of perjury that the foregoing is true and correct.

Executed in Dallas County, State of Texas, on the 8<sup>th</sup> day of April, 2019.  
(month) (year)



[Signature]  
Signature of authorized agent of contracting business entity  
(Declarant)