

PROFESSIONAL SERVICES AGREEMENT AMENDMENT NO. 4

This **Professional Services Agreement Amendment No. 4** (the “**Amendment**”) is entered into effective as of the date of last execution, (the “**Effective Date**”) by and between the **City of Dripping Springs**, a Texas general law municipality (the “**City**”), and **HDR Engineering, Inc.**, a [entity type / individual] (the “**Contractor**”). The City and **Contractor** may be referred to individually as a “**Party**” and collectively as the “**Parties**”.

WHEREAS, the City and the Contractor entered into the Agreement for engineering services related to the Tax Increment Reinvestment Zones in January 2022;

WHEREAS, tasks have changed, including the need for project-management tasks based on City staffing changes; and

WHEREAS, the parties desire to add new tasks.

NOW, THEREFORE, the City and Contractor agree as follows:

1. Description of Services

- (a) Contractor shall deliver reports to City Hall by mail, in person, or by other electronic means, as appropriate.
- (b) Contractor shall attend meetings of the City Council, TIRZ Board, and related committee meetings as needed to update the City on services.
- (c) Contractor shall conduct business in good faith, displaying professionalism and a courteous manner in dealings with the staff, vendors, citizens, and customers of the City.
- (d) Contractor shall report to the City Administrator, verbally or in writing, any conflicts between Contractor and any citizen, customer, or vendor in the course of performing the duties and responsibilities under this Amendment.
- (e) Contractor shall maintain complete and accurate records of work performed for the City. Contractor shall manage both public and confidential records that Contractor obtains pursuant to this Amendment with the understanding that some records may be subject to state open records laws. Contractor shall comply with the City’s public-information policies and state law.

2. Scope of Work

Project-management and related services are set out in **Exhibit A**. Additional services may be agreed to in writing by both parties and billed at a negotiated rate as listed in the Professional Services Agreement for Engineering Services entered into on or around January 2022 and Professional Services Agreement for Engineering Services Amendments approved by the City. The schedule shall be as set out in the Scope of Work in Exhibit A.

3. Payment for Services

The City will pay the Contractor for the performance of this Amendment in current funds, not to exceed **\$112,384.40**. Invoices shall be sent each month and will be paid within 30 days of the City's receipt and approval of each invoice. Payment shall be made in current funds to the address specified by the Contractor in the invoice, provided the invoiced services have been satisfactorily completed. If additional work is needed, payments in excess of the cap must be approved by the City in writing.

4. Sales Tax Exemption

The City is exempt from payment of sales, use, rental, and certain excise taxes in accordance with Chapter 151 of the Texas Tax Code. Contractor acknowledges and agrees that no such tax shall be included in any invoice or request for payment. City shall cooperate with the Contractor in providing any necessary documentation to evidence the City's tax-exempt status, including providing a completed Texas Sales and Use Tax Exemption Certification form upon request.

5. Invoice Rejection and Correction

The City reserves the right to reject any invoice that is incomplete, inaccurate, or not in compliance with the terms of this Amendment. In the event of an invoice rejection, the City will provide written notice to the Contractor specifying the reasons for rejection. The Contractor shall correct and resubmit the invoice within ten (10) business days after receipt of the rejection notice. The City's payment timeline will recommence upon receipt of the corrected invoice.

6. Duration

The work will commence upon execution of this Amendment and be completed according to a timeframe to be agreed upon within 30 days after execution of this Amendment. This Amendment shall remain in effect through completion of the services and payment for those services, unless terminated as provided below or if all work associated with this Amendment is completed.

7. Termination

Either party may terminate this Amendment by 30 days' written notice.

8. Relationship of Parties

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 Contractor. The City may contract with other individuals or firms for services of any kind.

9. Employees

Contractor employees, if any, who perform services for City under this Amendment shall also be bound by the provisions of this Amendment. At the request of City, Contractor shall provide adequate evidence that those persons are Contractor's employees.

10. Mandatory Disclosures

Texas law requires vendors to make certain disclosures. Before the effective date of this Amendment, Contractor has submitted to the City a copy of the Conflict of Interest Questionnaire form approved by the Texas Ethics Commission under Texas Local Government Code Chapter 176. Contractor also represents that it is in compliance with all Texas requirements related to government contracts, including: (1) no boycott of Israel; (2) not being listed as a foreign terrorist organization by the Texas Comptroller of Public Accounts; (3) having no policy or practice of discriminating against firearm entities or firearm trade associations; (4) not boycotting energy companies; and (5) compliance with all other Texas laws, including any additional disclosure requirements.

11. Injuries/Insurance

Contractor acknowledges its obligation to obtain appropriate insurance coverage with the City named as an additional named insured. Required insurance is set out in Attachment B. Contractor waives the right to recover from City for any injuries Contractor may sustain while performing services under this Amendment. Contractor shall provide a copy of insurance coverage to City at least ten (10) days before the end of any existing coverage period if Contractor uses any Contractor employees to provide services to the City. The City shall be named as an additional named insured on the insurance.

12. Indemnification

Despite anything to the contrary in this Amendment, and in accordance with applicable law and the Texas Constitution, the City does not agree to indemnify Contractor for any expenses in any way connected with this Amendment. **CONTRACTOR AGREES TO INDEMNIFY AND HOLD HARMLESS THE CITY OF DRIPPING SPRINGS FROM AND AGAINST ANY AND ALL CLAIMS, DAMAGES, LOSSES, LIABILITIES, COSTS, AND EXPENSES (INCLUDING REASONABLE ATTORNEY'S FEES) ARISING OUT OF OR IN CONNECTION WITH THIS AMENDMENT, EXCEPT TO THE EXTENT SUCH CLAIMS ARE CAUSED BY THE CITY'S GROSS NEGLIGENCE OR WILLFUL MISCONDUCT.**

13. Assignment

Contractor's obligations under this Amendment may not be assigned or transferred to any other person, firm, or corporation without the prior written consent of City.

14. Notice

All notices required or permitted under this Amendment shall be in writing and shall be delivered either in person or deposited in the United States mail, postage prepaid, addressed as follows. Either party may change its address from time to time by providing written notice to the other in the manner set out above. Notice is deemed received three (3) days after deposit in the United States mail.

To the City:

City of Dripping Springs
Attn: City Administrator
PO Box 384
Dripping Springs, TX 78620

To Contractor:

HDR Engineering, Inc.
Attn: Justin Word, P.E., Sr. Vice President
504 Lavaca St
Austin, TX 78701
Email: Justin.Word@hdrinc.com
Telephone: (512) 685-2978

15. Entire Agreement

This Amendment contains the entire agreement of the parties, and there are no other promises or conditions in any other agreement, whether oral or written. This Amendment supersedes prior written agreements between the parties. If a conflict exists between this Amendment and the attachments, this Amendment shall prevail.

16. Amendment

This Amendment may be modified or amended only if the amendment is made in writing and signed by both parties.

17. Severability

If any provision of this Amendment is held invalid or unenforceable, that provision shall be deemed written, construed, and enforced as so limited.

18. Waiver of Contractual Right

The failure of either party to enforce any provision of this Amendment shall not be construed as a waiver of that party's right to subsequently enforce and compel strict compliance with every provision of this Amendment.

19. Governing Law and Venue

This Amendment shall be construed under and in accordance with the laws of the State of Texas. Venue for any and all legal disputes arising under this Amendment shall be in a court of competent jurisdiction located in Hays County, Texas. Despite anything to the contrary in this Amendment, no disputes arising out of or related to this Amendment shall be subject to arbitration or non-binding mediation unless both parties agree in writing to submit a specific dispute to arbitration or non-binding mediation after the dispute arises.

20. Consequential Damages

Neither party shall be liable to the other for loss of profits or revenue; loss of use or opportunity; loss of goodwill; cost of substitute facilities, goods, or services; cost of capital; or any special, consequential, indirect, punitive, or exemplary damages.

21. Force Majeure

Neither party shall be liable for any delay or failure in performance to the extent caused by a Force Majeure Event, provided that the affected party promptly notifies the other in writing and uses diligent efforts to resume performance. A **Force Majeure Event** means an event or circumstance beyond the reasonable control of the affected party, including acts of God, war, terrorism, pandemics, natural disasters, or governmental actions prohibiting performance, but excluding: (a) changes in market conditions; (b) increases in the cost of materials, labor, or transportation; (c) tariffs, duties, taxes, or other governmental assessments imposed after the effective date; and (d) shortages or delays caused by Contractor's subcontractors or suppliers.

22. Allocation of Price Risk

Contractor assumes all risk of cost increases, including increases in the price of raw materials, fuel, transportation, and any tariffs, duties, or import/export restrictions imposed or increased after the effective date of this Amendment. Under no circumstances shall the City be responsible for any price escalation or surcharge arising from those changes. Contractor warrants that the contract price is firm, fixed, and inclusive of all applicable current and future tariffs and similar charges.

23. No Extension or Adjustment

No Force Majeure Event shall entitle Contractor to an increase in the contract price or other compensation, nor an extension of the performance schedule, except where the City, in its sole discretion, agrees in writing. Despite the foregoing, Contractor shall continue to perform its obligations to the extent not affected by the Force Majeure Event.

24. Termination for Extended Force Majeure

If a Force Majeure Event prevents performance for more than 30 consecutive days, the City may terminate this Amendment without liability, penalty, or further obligation by providing written notice to Contractor.

25. Site Access and Safety

City shall secure all necessary site-related approvals, permits, licenses, and consents necessary to commence and complete the services and will execute any necessary site-access agreement. Contractor will be responsible for supervision and site-safety measures for its own employees, but shall not be responsible for the supervision or health and safety precautions for any third parties, including City's contractors, subcontractors, or other parties present at the site.

CITY OF DRIPPING SPRINGS

HDR ENGINEERING, INC.

EXHIBIT A
ADDITIONAL ENGINEERING SERVICES TO BE PROVIDED BY THE ENGINEER

A.1 Roadway Improvements on Old Fitzhugh Road, Dripping Springs, Texas

The scope of services will consist of Construction Administration (**CA**), Construction Engineering and Inspection (**CEI**) support, and local-government coordination support. OWNER will lead CEI services and engage a materials-testing laboratory separately. The following items summarize the CEI services ENGINEER will provide.

A.2 Project Management

ENGINEER will provide project management throughout the construction phase, including:

1. Develop monthly invoices and progress reports.
2. Perform quality-control reviews and documentation of ENGINEER deliverables.

A.3 Construction Administration

ENGINEER will provide pre-construction engineering and construction-administration services, including:

1. Review contractor submittals for compliance with contract documents. This includes submittal reviews outside the 20 submittals scoped in the current project.
2. Interpret plans and specifications and coordinate responses to Contractor Requests for Information (**RFIs**) with the Engineer of Record (**EOR**). This includes reviews outside the 10 RFIs scoped in the current project.
3. Review proposed construction plans, including project schedules.
4. Review contractor submittals and materials-testing methods and test results as requested by OWNER.
5. Attend construction progress meetings. Biweekly meetings are assumed, with 50% in-person and 50% virtual meetings.
6. Prepare technical information for change orders as required, including review of pricing and quantities in change orders and negotiation of change-order requests as required to obtain change-order pricing acceptable to OWNER.
7. OWNER will serve as primary contact for TxDOT. Support OWNER in determining necessary documentation for TxDOT Local Government Project Procedures (**LGPP**) requirements.

A.4 Construction Engineering and Inspection

OWNER will provide CEI for the project. ENGINEER will provide CEI support as follows:

1. Support OWNER in on-site construction inspection during construction to monitor the progress and quality of the work completed by the Contractor. A maximum of two hours per month is assumed.
2. Support OWNER in interpreting construction documents.

A.5 Materials Sampling and Testing

Materials testing will be provided by an independent testing laboratory. OWNER will coordinate with the testing laboratory.

A.6 Project Acceptance and Close-Out

1. Jointly perform substantial-completion and final-completion inspection walkthroughs with OWNER, TxDOT, and Contractor. Compile and distribute a punch list requiring corrections.
2. Compile final as-built drawings in coordination with Contractor. Provide copies to OWNER and TxDOT.

A.7 Key Assumptions

1. OWNER will perform CEI and materials-testing services. ENGINEER will provide support to OWNER.
2. Review of Contractor submittals, such as shop drawings, product data, and samples, is only for conformance with the design concept of the project and compliance with the information given in the contract documents. Such reviews do not extend to means, methods, techniques, sequences, or procedures of construction or to safety precautions and programs incident to construction. Review of a specific item does not indicate review of an assembly of which the item is a component.
3. Questions or requests for information shall be submitted in written form as RFIs. ENGINEER will respond to RFIs in writing.
4. Preparation of as-built drawings is included in the original Old Fitzhugh Road contract.

A.8 OWNER Responsibilities

OWNER will furnish or assist ENGINEER in obtaining the following items and services:

1. Designation of an authorized representative for coordination of the project with ENGINEER.
2. Ongoing guidance, timely reviews, and decisions necessary to provide the services required by this Amendment.

A.9 Period of Service

The associated fee outlined in this scope is based on a construction period of 23 months starting with Contractor's Notice to Proceed.

A.10 Fee Schedule

The fee estimate is based on providing the services of the personnel shown below at the hours indicated. It is based on a preliminary construction schedule of 23 months. Hours per month are estimated, and staff-augmentation need may vary by month throughout the contract duration.

Job classification	2028 rate	Total hours worked	Labor cost
Project Principal (LGP support)	\$380.00	4	\$1,520.00
Sr. Project Manager (LGP/engineering meetings/project management)	\$350.00	136.5	\$47,775.00
Project Manager (LGP/engineering meetings/project management)	\$320.00	42	\$13,440.00
Sr. Project Engineer (SME support)	\$325.00	63	\$20,475.00
Sr. Utility Coordinator (SME support)	\$210.00	0	\$0.00
Electrical Designer (SME support)	\$185.00	0	\$0.00
Project Engineer	\$190.00	0	\$0.00
EIT (SME support)	\$155.00	76	\$11,780.00
Sr. CADD Technician	\$180.00	0	\$0.00
CADD Technician	\$145.00	0	\$0.00
Senior Inspector	\$168.00	28	\$4,704.00

Job classification	2028 rate	Total hours worked	Labor cost
Inspector II/III	\$130.00	0	\$0.00
Records Keeper	\$130.00	0	\$0.00
Admin/Account	\$140.00	46	\$6,440.00
Quality Auditor	\$170.00	25	\$4,250.00
LABOR SUBTOTAL		420.5	\$110,384.00
Other direct expense	Rate/quantity	Amount	
Vehicle	\$200 per month for 6 months	\$1,200.00	
Mileage	\$0.73 per mile; 1,104 miles	\$800.40	
OTHER DIRECT EXPENSES SUBTOTAL		\$2,000.40	
TOTAL		\$112,384.40	

EXHIBIT B
CITY OF DRIPPING SPRINGS CONTRACTOR INSURANCE REQUIREMENTS

A firm providing goods, materials, and services for the City of Dripping Springs shall, during the term of its contract with the City of Dripping Springs or any renewal or extension, provide and maintain the types and amounts of insurance set out below. All insurance and certificates of insurance shall contain the following provisions:

1. Name the City of Dripping Springs as an additional named insured as to all applicable coverage.
2. Provide at least ten (10) days' prior written notice to the City of Dripping Springs of cancellation, non-renewal, or material change of the insurance.
3. Provide a waiver of subrogation against the City of Dripping Springs for injuries, including death, property damage, or any other loss to the extent the same is covered by insurance proceeds.

B.1 Insurance Company Qualification

All insurance companies providing the required insurance shall be authorized to transact business in Texas and rated at least "A" by AM Best or another equivalent rating service.

B.2 Certificate of Insurance

Certificates of insurance evidencing all required insurance coverages shall be submitted with the Firm's submission. Copies of any modifications, amendments, renewals, or terminations of coverage shall be promptly submitted to the City. If the City of Dripping Springs extends the contract, certificates of insurance evidencing all required insurance coverages shall be provided to the City before the extension date.

B.3 Type of Contract and Amount of Insurance

1. Statutory Workers' Compensation insurance as required by state law.
2. Commercial General Liability with minimum limits of \$500,000 per occurrence for bodily injury, personal injury, and property damage.
3. Automobile Liability with a minimum \$500,000 combined single limit.