

ENGINEERING SERVICES AGREEMENT

1. Engagement; Contract Documents; Proposal Subordinate	1
(a) Engagement.....	1
(b) Project.	2
(c) Contract Documents.....	2
(d) Proposal as Subordinate Attachment.	2
(e) Excluded Proposal Terms.	2
(f) No Guaranteed Work; Non-Exclusive Agreement.....	3
2. Scope of Services.....	3
(a) General Scope.	3
(b) RFQ Scope Included.	3
(c) Task Authorizations Required.....	4
(d) City Control and Approvals.	4
(e) No Construction Contractor Role.....	4
3. Standard of Care; Licensing; Personnel; Subconsultants	5
(a) Standard of Care.....	5
(b) Professional Licensing and Compliance.	5
(c) Key Personnel.	5
(d) Subconsultants.	5
(e) City-Contracted Specialty Services.....	5
(f) Responsiveness and Reporting.....	5
(g) Quality Control.	6
4. Compensation; Invoices; Payment Controls	6
(a) Compensation Only as Authorized.	6
(b) Not-to-Exceed Amounts.	6
(c) Fair and Reasonable Price.....	6
(d) Reimbursable Expenses.	6
(e) Invoices.	6
(f) Payment Timing.....	6
(g) Invoice Rejection and Correction.....	7
(h) No Individual Liability.....	7
(i) Appropriation; Funding Contingency.	7
(j) Sales Tax Exemption.	7
5. Deliverables; Ownership; Use of Documents.....	7
(a) Deliverables.	7
(b) City Ownership and Use.	7
(c) Electronic Files.	7
(d) Consultant Pre-Existing Materials.	8
(e) Reuse and Reliance.	8
(f) Public Duties Not Restricted.....	8
6. Records; Public Information; Confidentiality; Data Security.....	8
(a) Records.....	8
(b) Public Information.	8
(c) City Public Information Decisions.....	8

(d)	Confidential and Sensitive Information.	9
(e)	Cybersecurity and Data Protection.....	9
(f)	Responsible Use of Artificial Intelligence.	9
7.	TWDB, Federal Funding, and Regulatory Compliance.....	9
(a)	Funding Requirements.	9
(b)	TWDB and EPA Requirements.	9
(c)	Equal Opportunity.....	9
(d)	Permits and Regulatory Approvals.	10
(e)	No State or Federal Party.	10
8.	Conflicts of Interest; Ethics; Texas Government Contract Verifications	10
(a)	No Conflicts.	10
(b)	Ongoing Disclosure.....	10
(c)	Mandatory Conflict Forms.	10
(d)	No Gifts or Gratuities.....	10
(e)	Texas Government Contract Verifications.....	10
(f)	No Debarment.	11
9.	Insurance; Risk Allocation; Indemnity	11
(a)	Insurance.	11
(b)	Certificates.	11
(c)	Additional Insured and Waiver of Subrogation.	11
(d)	Indemnification.	11
(e)	Limitation of Liability.....	12
(f)	Engineering Indemnity Savings Clause.	12
(g)	No City Indemnity.	12
(h)	No Waiver of Immunity.	12
10.	Term; Renewal; Suspension; Termination.....	12
(a)	Term.	12
(b)	Project-Based Continuation.	12
(c)	Termination for Convenience.	13
(d)	Termination for Cause.	13
(e)	Compensation Upon Termination.	13
(f)	Suspension.	13
(g)	Transition Assistance.	13
11.	Construction Phase Services; Limitations	13
(a)	Consultant’s Construction Role.	13
(b)	No Control Over Contractor Means and Methods.	14
(c)	Defective Work.	14
(d)	Change Orders.....	14
(e)	Opinions of Probable Cost.	14
12.	Notices; Assignment; Order of Precedence	14
(a)	Assignment.....	14
(b)	Notices.	14
(c)	Change of Address.	14
(d)	Order of Precedence.....	15

(e)	Proposal Subordinate.	15
13.	Governing Law; Venue; Dispute Resolution.....	15
(a)	Governing Law.	15
(b)	Venue.	15
(c)	No Arbitration.	15
(d)	Cumulative Remedies.	15
(e)	Limitations on Claims Against City.....	16
(f)	Survival.	16
14.	General Provisions.....	16
(a)	Entire Agreement.	16
(b)	Amendment.	16
(c)	Severability.	16
(d)	Waiver.....	16
(e)	Counterparts and Electronic Signatures.	16
(f)	Authority.	16
(g)	No Third-Party Beneficiaries.	16
(h)	Force Majeure.	17
(i)	Consequential Damages.	17
(j)	No Price Escalation Unless Approved.	17
(k)	Compliance With Laws.....	17
<u>ATTACHMENT “A”: Consultant’s Proposal/Statement of Qualifications.....</u>		18
1.	Incorporated Document.	18
2.	Limited Incorporation.	18
3.	Subordination.....	18
4.	Excluded Proposal Terms.	18
<u>ATTACHMENT “B” Scope of Services and Task Authorization Form</u>		19
1.	Authorized Services.	19
2.	Form of Task Authorization.....	19
3.	No Work Without Authorization.	19
<u>ATTACHMENT “C” Compensation and Invoicing Requirements</u>		20
1.	Compensation.	20
2.	Required Invoice Detail.	20
3.	Payment Limitations.	20
4.	Audit Rights.....	20
<u>ATTACHMENT “D”: Insurance Requirements</u>		21
1.	Required Coverage.....	21
2.	Policy Requirements.	21
3.	Certificates.	21

4. No Limitation..... 22

ATTACHMENT “E”: TWDB and Federal Funding Requirements 23

1. Funding Compliance..... 23

2. Build America Buy America; Davis-Bacon; American Iron and Steel. 23

3. Environmental and Regulatory Documentation..... 23

4. Record Retention. 23

5. Flow-Down. 23

ENGINEERING SERVICES AGREEMENT

This Engineering Services Agreement (“Agreement”) is entered into effective as of August 18, 2026 (the “Effective Date”), by and between the City of Dripping Springs, a Texas general law municipality (the “City”), and Burgess & Niple, Inc., an Ohio corporation authorized to do business in Texas and registered to provide professional engineering services in Texas (the “Consultant”). The City and Consultant may be referred to individually as a “Party” and collectively as the “Parties”.

Recitals

- A. The City issued RFQ #2025-20: Engineering Services – Wastewater System Improvement Projects, together with Addendum No. 1 (collectively, the RFQ), to obtain professional engineering services for the designing, constructing, planning, acquiring, extending, upgrading, renovating, rehabilitating, replacing, and improving of the City’s wastewater system, including projects that may be funded through the Texas Water Development Board (TWDB) and other state or federal funding programs.
- B. The City selected Consultant as the preferred proponent based on demonstrated competence and qualifications, including Consultant’s Statement of Qualifications dated December 22, 2025, submitted in response to the RFQ (the Proposal). The Parties intend this Agreement to comply with the Professional Services Procurement Act, including Texas Government Code Section 2254.003, and the prohibition on competitive bidding for professional engineering services reflected in Texas law, including Texas Government Code Chapter 2254.
- C. This Agreement is intended to preserve the City’s governmental discretion, to protect public funds, to subordinate the Proposal to the main body of this Agreement, and to incorporate TWDB, EPA, public information, insurance, ethics, and Texas governmental contracting requirements applicable to the Services.
- D. This Agreement is subject to applicable law, including the Texas Prompt Payment Act, Texas Government Code Section 2251.021, the Texas Public Information Act, including Texas Government Code Section 552.001, local-government contract claim limitations under Texas Local Government Code Sections 271.152 and 271.153, and vendor conflict disclosure requirements, including Texas Local Government Code Section 176.006.

NOW, THEREFORE, for good and valuable consideration, the receipt and sufficiency of which are acknowledged, the Parties agree as follows:

1. Engagement; Contract Documents; Proposal Subordinate

- (a) **Engagement.** The City engages Consultant to provide professional engineering, planning, design, permitting, bidding, construction phase, TWDB coordination, and related professional services for the City’s wastewater system improvement projects as described in this Agreement and as authorized by the City in one or more written task authorizations.

- (b) **Project.** The Project means one or more wastewater system improvement projects selected and authorized by the City during the term of this Agreement, including, without limitation, expansion of the South Regional Wastewater System Facilities, wastewater collection and conveyance improvements, water reclamation facility improvements, reclaimed water and effluent facilities, lift stations, force mains, gravity mains, permitting, property and easement support, and related costs and improvements described in the RFQ.
- (c) **Contract Documents.** The following documents are incorporated into this Agreement only to the extent expressly stated and only to the extent they do not conflict with the main body of this Agreement:
 - (i) this Agreement, excluding attachments;
 - (ii) Attachment “A” - Consultant’s Proposal/Statement of Qualifications;
 - (iii) Attachment “B” - Scope of Services and Task Authorization Form;
 - (iv) Attachment “C” - Compensation and Invoicing Requirements;
 - (v) Attachment “D” - Insurance Requirements;
 - (vi) Attachment “E” – TWDB and Federal Funding Requirements; and
 - (vii) the RFQ and Addendum No. 1, to the extent necessary to define procurement history, funding requirements, and minimum service expectations.
- (d) **Proposal as Subordinate Attachment.** Consultant’s Proposal is incorporated as Attachment “A” for the limited purposes of identifying Consultant’s qualifications, proposed personnel, project approach, experience, staffing, subconsultant information, and background representations. The Proposal is subordinate to this Agreement. No term in the Proposal modifies this Agreement unless expressly incorporated by a written amendment signed by both Parties and approved by the City in the manner required by law.
- (e) **Excluded Proposal Terms.** Any term in the Proposal, transmittal letter, assumptions, qualifications, standard terms, invoice, email, or other Consultant document that would reduce the City’s rights, expand the City’s payment obligations, limit Consultant’s obligations, impose a limitation of liability, require City indemnity, require arbitration or mandatory mediation, change venue or governing law, restrict public information compliance, alter ownership or use of Deliverables, impose automatic price escalation, or otherwise conflict with this Agreement is rejected and superseded. Notwithstanding the foregoing, Consultant’s approved rates, staffing commitments, schedules, assumptions, and technical approach set forth in the Proposal shall remain effective unless expressly modified by a written amendment or task authorization.

- (f) **No Guaranteed Work; Non-Exclusive Agreement.** This Agreement does not guarantee any minimum amount of work, compensation, or Project authorization. The City may issue, withhold, revise, suspend, or terminate task authorizations in its discretion, subject to this Agreement. This Agreement is non-exclusive, and the City may retain other engineers, consultants, contractors, attorneys, advisors, and professionals at any time.

2. Scope of Services

- (a) **General Scope.** Consultant shall provide timely and professional engineering services for designing, constructing, planning, acquiring, extending, upgrading, renovating, rehabilitating, replacing, and improving the City's wastewater system. Services may include planning documents, preliminary engineering reports, geotechnical coordination, design surveys, environmental coordination, permitting, construction plans, technical specifications, contract documents, bidding support, construction staking coordination, construction phase services, operations and maintenance manuals, warranty inspections, TWDB closeout support, and other services authorized by the City.
- (b) **RFQ Scope Included.** Unless limited by a task authorization, the Services may include all services identified in RFQ Section 1.8, including:
 - (i) preliminary conferences with the City, TWDB personnel, regulatory agencies, and interested parties;
 - (ii) assistance with applications and supporting documents for grants, loans, advances, and other funding;
 - (iii) assistance with environmental assessments, environmental information documents, impact statements, and approvals by authorities having jurisdiction;
 - (iv) preliminary engineering feasibility reports and related conceptual layouts, sketches, design criteria, alternatives, cost opinions, schedules, and exhibits;
 - (v) support for determining property, easement, right-of-way, title, appraisal, survey, and acquisition needs;
 - (vi) engineering data and applications for routine local, state, and federal permits, including TCEQ, TPDES, SWP3, TWDB, floodplain, utility, TxDOT, and other permits or approvals applicable to a task;
 - (vii) field surveys, office computations, drafting, and coordination with surveyors retained by the City or Consultant as authorized;
 - (i) geotechnical investigation coordination if authorized by the City;

- (viii) detailed construction plans, specifications, bid documents, contract documents, and estimates of probable construction cost;
 - (ix) bidding and award support, including advertisement assistance, bid opening attendance, bid tabulation, bidder responsiveness review, and recommendation of award;
 - (x) preparation and coordination of formal construction contract documents and TWDB notice-to-proceed requirements;
 - (xi) construction phase consulting, site observation, shop drawing and submittal review, RFI responses, pay application review, change order assistance, progress meetings, contractor coordination, and recommendations to the City;
 - (xii) review operations and maintenance manuals, startup support, operator training assistance, and performance review;
 - (xiii) substantial completion, final inspection, certificate of substantial completion, final payment recommendations, record drawings, and TWDB certificate of completion support; and
 - (xiv) warranty inspection and written recommendations concerning warranty issues and project performance.
- (c) **Task Authorizations Required.** Consultant shall not begin work, incur costs, or invoice the City for a Project, phase, or additional service unless authorized by a written task authorization, purchase order, notice to proceed, or written amendment approved by the City. Each task authorization shall identify the scope, deliverables, schedule, compensation method, not-to-exceed amount, key personnel, subconsultants, and special funding requirements.
- (d) **City Control and Approvals.** Consultant shall perform Services only as authorized by the City Council, City Administrator, City Engineer, City Attorney, or other City representative designated in writing. Consultant shall not commit the City to any expenditure, construction contract, funding obligation, permit condition, schedule, settlement, change order, design alternative, easement acquisition, or legal position without appropriate City authorization.
- (e) **No Construction Contractor Role.** Consultant shall not engage in construction contracting or supply goods, materials, or equipment for construction of a Project except as expressly authorized in writing by the City and permitted by law. Consultant shall avoid conflicts between professional engineering services and construction contractor interests.

3. **Standard of Care; Licensing; Personnel; Subconsultants**

- (a) **Standard of Care.** Consultant shall perform the Services in a timely, courteous, professional, and workmanlike manner consistent with the professional skill, care, diligence, and judgment ordinarily exercised by qualified professional engineers providing similar services for Texas municipalities, wastewater systems, TWDB-funded projects, and comparable public infrastructure projects under similar circumstances.
- (b) **Professional Licensing and Compliance.** Consultant represents and warrants that it is authorized to do business in Texas and is registered with the Texas Board of Professional Engineers and Land Surveyors under firm registration number F-10834, or such successor registration as may apply. Consultant shall maintain all licenses, registrations, seals, certifications, and authorizations required for the Services and shall ensure that engineering documents are prepared, signed, sealed, and delivered by properly licensed professionals when required by law.
- (c) **Key Personnel.** The City is relying on the qualifications and experience of Consultant's proposed team, including Robby Callegari, P.E., and William "Bill" Ball, P.E., as Program/Project Managers, and the other personnel identified in the Proposal. Consultant shall not materially reduce the availability of key personnel or substitute lead personnel without prior notice to and approval by the City, which approval may be withheld if the City determines the replacement does not provide comparable qualifications, experience, responsiveness, or familiarity with the City and TWDB requirements.
- (d) **Subconsultants.** Consultant may use subconsultants only as identified in the Proposal or as approved in writing by the City. Consultant remains fully responsible for the acts, omissions, performance, schedules, deliverables, and compliance obligations of all subconsultants. No subconsultant shall have a contractual claim against the City unless the City enters into a separate written agreement with that subconsultant.
- (e) **City-Contracted Specialty Services.** The City may elect, in its sole discretion, to contract directly with survey, geotechnical, environmental, right-of-way, appraisal, easement acquisition, inspection, testing, or other specialty firms. Consultant shall cooperate and coordinate with City-contracted firms as reasonably required for the Project, but Consultant shall not mark up, manage payment to, or assume contractual responsibility for those firms unless expressly stated in a task authorization.
- (f) **Responsiveness and Reporting.** Consultant shall keep the City reasonably informed of progress, schedules, budget status, risks, funding deadlines, permit requirements, design issues, construction issues, and required City actions. Consultant shall promptly respond to reasonable communications from the City and shall provide written status reports upon request or as required by a task authorization.

- (g) **Quality Control.** Consultant shall implement and maintain a quality assurance and quality control process appropriate for each task, including senior technical review, constructability review when appropriate, cost estimate review, regulatory compliance review, and documentation of material design decisions. The City's review or approval of a submittal does not relieve Consultant of responsibility for professional quality, completeness, coordination, or compliance with this Agreement. **City review shall not be construed as an independent technical verification of Consultant's professional services.**

4. Compensation; Invoices; Payment Controls

- (a) **Compensation Only as Authorized.** The City shall compensate Consultant only in accordance with a written task authorization, purchase order, or amendment approved by the City. Each task authorization shall state whether compensation is lump sum, hourly not-to-exceed, unit-price, reimbursable, or another approved method. No oral authorization, course of dealing, invoice notation, or Consultant assumption shall increase the City's payment obligations.
- (b) **Not-to-Exceed Amounts.** All not-to-exceed amounts are maximum amounts and shall not be exceeded without prior written approval by the City. Consultant assumes the risk of performing unauthorized work or incurring costs in excess of an approved amount.
- (c) **Fair and Reasonable Price.** The Parties acknowledge that compensation has been or will be negotiated after selection based on demonstrated competence and qualifications and is intended to be fair and reasonable and consistent with Texas Government Code Chapter 2254.
- (d) **Reimbursable Expenses.** The City shall reimburse only reasonable, actual, necessary, and documented out-of-pocket expenses expressly permitted by a task authorization. Travel, mileage, lodging, meals, printing, delivery, outside vendor charges, permit fees, and other reimbursable expenses require documentation and shall not include markup unless expressly approved in writing by the City.
- (e) **Invoices.** Consultant shall submit invoices in a form acceptable to the City and in sufficient detail for the City to verify the Services performed, personnel or labor categories used, hours billed, deliverables completed, percent complete, Project or task authorization number, approved budget, amount previously invoiced, current invoice amount, remaining budget, and reimbursable expenses. Invoices shall include supporting documentation reasonably requested by the City or required by TWDB or another funding source.
- (f) **Payment Timing.** Subject to the Texas Prompt Payment Act, applicable law, funding-source requirements, and the City's right to dispute invoices, the City shall pay undisputed amounts within thirty (30) days after receipt of a complete, accurate, and approved invoice.

- (g) **Invoice Rejection and Correction.** The City may reject any invoice that is incomplete, inaccurate, unsupported, unauthorized, inconsistent with this Agreement or a task authorization, or otherwise disputed in good faith. The City shall provide notice of the reason for rejection, and Consultant shall correct and resubmit the invoice. The payment period for rejected amounts shall begin upon the City's receipt of the corrected invoice.
- (h) **No Individual Liability.** No elected official, officer, employee, volunteer, or representative of the City shall have personal liability for amounts owed under this Agreement.
- (i) **Appropriation; Funding Contingency.** This Agreement and each task authorization are subject to the City's budgeting, appropriation, and funding requirements and may be contingent upon release of funds by TWDB or another funding source. The City does not waive any constitutional, statutory, charter, budgetary, debt, or appropriation limitation. If funds are not appropriated, released, or otherwise lawfully available, the City may terminate or suspend affected Services without penalty, subject only to payment of undisputed amounts lawfully owed for authorized Services performed before termination or suspension.
- (j) **Sales Tax Exemption.** The City is exempt from payment of sales, use, rental, and certain excise taxes under Texas law. Consultant shall not include such taxes in invoices to the City and shall cooperate with the City in documenting the City's tax-exempt status.

5. Deliverables; Ownership; Use of Documents

- (a) **Deliverables.** Deliverables include all reports, studies, preliminary engineering reports, environmental documents, calculations, models, cost estimates, schedules, plans, drawings, specifications, bid documents, contract documents, permit materials, memoranda, meeting materials, inspection reports, certifications, record drawings, operations and maintenance manuals, correspondence, data, and other work product prepared specifically for the City under this Agreement.
- (b) **City Ownership and Use.** Upon payment of amounts properly due and owing for the applicable Services, the City shall own the Deliverables prepared specifically for the City, subject to Consultant's rights in pre-existing materials under Section 5(d). The City has a perpetual, irrevocable, royalty-free right to use, copy, retain, archive, reproduce, distribute, disclose, and rely on the Deliverables for City governmental, financing, grant, regulatory, permitting, construction, operation, maintenance, audit, public information, and recordkeeping purposes.
- (c) **Electronic Files.** Consultant shall provide Deliverables in usable electronic format reasonably requested by the City, including native files when available and appropriate, together with PDF copies suitable for recordkeeping, bidding, review, or filing. Consultant may include reasonable disclaimers for native files, but no disclaimer may prevent the City from using Deliverables for City purposes.

- (d) **Consultant Pre-Existing Materials.** Consultant retains ownership of its pre-existing templates, standard details, standard specifications, know-how, proprietary tools, internal methodologies, and materials developed independently of this Agreement. To the extent such materials are incorporated into Deliverables, Consultant grants the City the license and use rights necessary to use the Deliverables as described in this Agreement.
- (e) **Reuse and Reliance.** The City may use and rely on Deliverables for the Project and for related City wastewater system planning, financing, regulatory, and operational purposes. If the City reuses signed and sealed engineering Deliverables for a different project or materially altered purpose without Consultant's involvement, the City shall be responsible for obtaining appropriate professional review required by law. **Reuse, modification, or transfer of Deliverables by the City for any project, purpose, phase, or facility other than that for which such Deliverables were originally prepared, without Consultant's written participation, shall be at the City's sole risk. Consultant shall have no responsibility or liability arising from such reuse, modification, or transfer.**
- (f) **Public Duties Not Restricted.** Consultant shall not assert copyright, confidentiality, proprietary rights, or other restrictions to prevent the City from complying with applicable law, maintaining public records, completing or administering a Project, making required disclosures, responding to auditors or regulators, or using Deliverables for City purposes.

6. **Records; Public Information; Confidentiality; Data Security**

- (a) **Records.** Consultant shall maintain complete and accurate records of Services performed, invoices, expenses, subconsultant work, communications, draft and final Deliverables, design decisions, construction phase documentation, and funding compliance documentation in accordance with prudent professional practices and any recordkeeping requirements applicable to the City, TWDB, EPA, or another funding source.
- (b) **Public Information.** Consultant acknowledges that records relating to this Agreement may be subject to the Texas Public Information Act and public contracting information requirements applicable to governmental contracts. Consultant shall cooperate with the City in responding to public information requests, subpoenas, audits, grant reviews, or regulatory requests relating to this Agreement.
- (c) **City Public Information Decisions.** The City, through the City Attorney or other authorized official, retains authority to determine how the City will respond to public information requests. Consultant shall not independently release City records or non-public City information unless authorized by the City or required by law after notice to the City.

- (d) **Confidential and Sensitive Information.** Consultant shall protect confidential, security-sensitive, personal, financial, proprietary, utility-security, and non-public information obtained through the Services and shall use such information only for purposes of performing the Services or as otherwise authorized by the City or required by law.
- (e) **Cybersecurity and Data Protection.** Consultant shall use commercially reasonable administrative, technical, and physical safeguards to protect City data, Project files, and funding compliance records in Consultant's possession or control. Consultant shall promptly notify the City of any unauthorized access, disclosure, loss, compromise, or misuse of City data or records.
- (f) **Responsible Use of Artificial Intelligence.** Consultant may use artificial intelligence, machine learning, automated drafting, automated research, or similar technologies only in a manner consistent with professional judgment, confidentiality, cybersecurity, public information obligations, and applicable law. Consultant shall not input confidential, security-sensitive, personal, financial, non-public, or privileged City information into any public or externally trained AI tool without the City's prior written consent. Consultant remains fully responsible for the accuracy, completeness, quality, originality, legal compliance, and professional sufficiency of all Services and Deliverables, regardless of whether AI tools are used.

7. TWDB, Federal Funding, and Regulatory Compliance

- (a) **Funding Requirements.** Consultant acknowledges that one or more Projects may be funded in whole or in part by TWDB loans, principal forgiveness, grants, or other state or federal financial assistance. Consultant shall comply with all requirements applicable to Consultant's Services under the funding source and shall provide documentation reasonably required by the City, TWDB, EPA, or other agencies.
- (b) **TWDB and EPA Requirements.** To the extent applicable to the Services or Project funding, Consultant shall comply with TWDB requirements, EPA requirements, Clean Water State Revolving Fund requirements, Drinking Water State Revolving Fund requirements, Build America Buy America documentation requirements, Davis-Bacon and related labor compliance support requirements applicable to Consultant's role, environmental review requirements, procurement documentation requirements, and other funding conditions identified by the City or funding agency.
- (c) **Equal Opportunity.** Consultant shall comply with applicable equal employment opportunity requirements, including Executive Order 11246, as amended, and applicable Department of Labor regulations, to the extent applicable to this Agreement.

- (d) **Permits and Regulatory Approvals.** Consultant shall identify permits and approvals reasonably necessary for each authorized task and shall assist the City in preparing and submitting engineering data and applications for routine permits and approvals. Consultant shall promptly advise the City of material regulatory risks, delays, comments, or conditions affecting a Project.
- (e) **No State or Federal Party.** Neither the State of Texas, TWDB, EPA, nor any of their departments, agencies, officers, or employees is a party to this Agreement unless expressly required by a funding document signed by that entity. Consultant shall not represent otherwise.

8. Conflicts of Interest; Ethics; Texas Government Contract Verifications

- (a) **No Conflicts.** Consultant represents that, as of the Effective Date and based on its conflicts review, it has no conflict of interest that would materially impair its performance of the Services for the City. Consultant shall not represent or assist any person or entity in a manner that creates an actual conflict with Consultant's duties to the City under this Agreement.
- (b) **Ongoing Disclosure.** Consultant shall promptly disclose in writing to the City Administrator and City Attorney any actual, potential, or apparent conflict of interest involving the City, a Project, a property owner, a contractor, a subconsultant, a regulatory agency, a funding agency, or another transaction participant.
- (c) **Mandatory Conflict Forms.** Consultant shall timely submit and update all conflict and disclosure forms required by the City, the Texas Ethics Commission, Texas Local Government Code Chapter 176, Texas Government Code Section 2252.908, and any other applicable law, including Conflict of Interest Questionnaire forms and Certificate of Interested Parties Form 1295, as applicable.
- (d) **No Gifts or Gratuities.** Consultant shall not offer or provide any gift, favor, benefit, gratuity, political contribution, commission, or thing of value to a City officer, employee, or agent as an inducement to secure work or in violation of law or City policy.
- (e) **Texas Government Contract Verifications.** To the extent applicable to this Agreement and only to the extent consistent with federal law, Consultant verifies and represents that:
 - (i) it does not boycott Israel and will not boycott Israel during the term of this Agreement, as contemplated by Texas Government Code Chapter 2271, including Texas Government Code Section 2271.002;
 - (ii) it is not identified on a list prepared and maintained by the Texas Comptroller of Public Accounts under Texas Government Code Chapter 2252 relating to companies with business operations in Sudan, companies with business operations in Iran, or foreign terrorist organizations;

- (iii) if applicable, it does not have a policy or practice of discriminating against a firearm entity or firearm trade association; and
- (iv) if applicable, it does not boycott energy companies.
- (f) **No Debarment.** Consultant represents that neither Consultant nor any principal or key personnel assigned to the Services is suspended, debarred, excluded, or otherwise prohibited from participating in federal, state, TWDB, or local government contracts or professional practice.

9. Insurance; Risk Allocation; Indemnity

- (a) **Insurance.** Consultant shall maintain insurance coverage during the term of this Agreement and any renewal or extension in the types and amounts stated in Attachment “D” - Insurance Requirements, including commercial general liability, automobile liability, workers’ compensation, employer’s liability, and professional liability/errors and omissions insurance.
- (b) **Certificates.** Consultant shall provide certificates of insurance within ten (10) calendar days after notice of award or execution of this Agreement, upon renewal or replacement of any required policy, and upon City request. Insurance companies providing required coverage shall be authorized to transact business in Texas and rated at least A- VII by AM Best or an equivalent rating service, unless otherwise approved by the City.
- (c) **Additional Insured and Waiver of Subrogation.** To the extent applicable to the type of coverage and commercially available, the City shall be named as an additional insured on commercial general liability and automobile liability policies, and policies shall provide a waiver of subrogation only to the extent available by endorsement and without material additional premium in favor of the City. Professional liability coverage is not required to name the City as an additional insured if such endorsement is not available for professional liability coverage.
- (d) **Indemnification.** To the fullest extent permitted by law, Consultant shall indemnify and hold harmless the City, its officers, officials, employees, agents, and volunteers from and against claims, damages, losses, liabilities, fines, penalties, costs, and expenses, including reasonable attorney’s fees, to the extent arising out of or resulting from Consultant’s negligent acts or omissions, willful misconduct, fraud, violation of law, infringement of third-party rights, or breach of this Agreement. This indemnity does not apply to the extent a claim is caused by the City’s gross negligence or willful misconduct.

- (e) **Limitation of Liability.** To the fullest extent permitted by law, the total liability, in the aggregate, of Consultant and Consultant's officers, directors, employees, agents and independent professional associates and consultants, and any of them, to the City and anyone claiming by, through and under the City, for any and all injuries, claims, losses, expenses or damages whatsoever arising **out** of or in any way related to Consultant's services, the Project or this Agreement from any cause or causes whatsoever, including but not limited to the negligence, errors, omissions, strict liability or breach of contract of Consultant or Consultant's officers, directors, employees, agents and independent professional associates and consultants, and any of them, shall not exceed the total compensation received by Consultant under this Agreement, or the total amount of \$500,000.00, whichever is lesser.
- (f) **Engineering Indemnity Savings Clause.** To the extent Chapter 271 of the Texas Local Government Code or any other Texas law limits indemnity obligations in an engineering or public works contract, this Agreement shall be construed to require only the indemnity permitted by applicable law and shall not require Consultant to indemnify the City for claims caused by the negligence, fault, breach, or violation of law of the City or a third party beyond the extent permitted by law.
- (g) **No City Indemnity.** The City does not indemnify Consultant or any other person. Any provision in an attachment, Proposal, invoice, task authorization, or other document requiring the City to indemnify, defend, or hold harmless Consultant is void and unenforceable.
- (h) **No Waiver of Immunity.** Nothing in this Agreement waives or limits any governmental immunity, sovereign immunity, official immunity, statutory cap, limitation of liability, defense, or other protection available to the City or its officers, officials, employees, agents, or volunteers under Texas law.

10. **Term; Renewal; Suspension; Termination**

- (a) **Term.** This Agreement begins on the Effective Date and continues for an initial term ending September 30, 2031, unless earlier terminated under this Agreement. The Agreement may be renewed for additional terms by written agreement approved by the City.
- (b) **Project-Based Continuation.** If a task authorization is issued before expiration of the term, the Agreement shall continue as to that task authorization until completion, expiration, or termination of that task authorization, unless the City directs otherwise in writing.

- (c) **Termination for Convenience.** The City may terminate this Agreement or any task authorization, in whole or in part, at any time and for any reason by written notice to Consultant. Consultant may terminate this Agreement only upon at least thirty (30) days' written notice and only if termination will not prejudice the City's interests, funding obligations, permitting deadlines, or construction administration needs. In the event of termination for convenience, Consultant shall be compensated in accordance with Section 10(e).
- (d) **Termination for Cause.** The City may terminate this Agreement or any task authorization immediately upon written notice if Consultant materially breaches this Agreement, has an unwaived conflict of interest, loses required licensure or insurance, fails to perform in a timely or professional manner, violates applicable law or funding requirements, makes a material misrepresentation, or fails to cure a material default within the time specified by the City.
- (e) **Compensation Upon Termination.** If this Agreement or a task authorization is terminated, Consultant shall be paid only undisputed amounts earned and payable for authorized Services satisfactorily performed before the effective date of termination, plus approved reimbursable expenses actually incurred before termination. Consultant shall be paid for all authorized Services performed through the effective date of termination, including Services in progress, reasonable demobilization costs, approved commitments to subconsultants, and reimbursable expenses properly incurred before termination.
- (f) **Suspension.** The City may suspend any or all Services by written notice. During suspension, Consultant shall stop work as directed and shall not incur additional costs unless authorized by the City. The City may resume Services by written notice.
- (g) **Transition Assistance.** Upon termination, suspension, expiration, or City request, Consultant shall reasonably cooperate with the City and any successor consultant to avoid prejudice to the City, including by providing current files, Deliverables, status reports, pending deadlines, permit comments, construction issues, funding compliance documentation, and other information reasonably necessary for continuity.

11. Construction Phase Services; Limitations

- (a) **Consultant's Construction Role.** When construction phase services are authorized, Consultant shall provide professional services described in the applicable task authorization, which may include observation, administration, submittal review, RFI responses, pay application review, change order assistance, progress meetings, substantial completion inspection, final inspection, and record drawing preparation.

- (b) **No Control Over Contractor Means and Methods.** Consultant is not responsible for and does not control construction means, methods, techniques, sequences, procedures, site safety programs, contractor labor, or contractor compliance with safety laws. Consultant's site visits or observations are for the purpose of assisting the City in determining general conformance with the contract documents and do not make Consultant responsible for the contractor's performance.
- (c) **Defective Work.** Consultant shall promptly notify the City of defective, nonconforming, unsafe, or questionable work observed by Consultant. Consultant may recommend rejection, correction, testing, or further investigation of work, but the City retains authority over contractual enforcement against contractors.
- (d) **Change Orders.** Consultant may prepare or review change orders only as authorized by the City. No change order, field order, directive, or recommendation by Consultant is binding on the City unless approved by the City in the manner required by the construction contract and City policy.
- (e) **Opinions of Probable Cost.** Consultant's opinions of probable construction cost are professional opinions based on information reasonably available at the time and are not guarantees of bid prices or construction costs. Consultant shall use reasonable care in preparing cost opinions, update them at appropriate milestones, and promptly advise the City of material cost risks or changes. Consultant does not warrant or guarantee that bids, negotiated prices, or construction costs will not vary from Consultant's opinions of probable construction cost.

12. Notices; Assignment; Order of Precedence

- (a) **Assignment.** Consultant may not assign, transfer, delegate, or subcontract this Agreement or any material obligation under it without the City's prior written consent. Any attempted assignment without consent is void.
- (b) **Notices.** All notices required or permitted under this Agreement shall be in writing and shall be delivered by hand delivery, nationally recognized overnight courier, certified mail, or email with confirmation of transmission, addressed as follows:

To the City:

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

To Consultant:

Burgess & Niple, Inc.
Attn: Robby Callegari, P.E./William Ball, P.E.
235 Ledge Stone Drive
Austin, TX 78737
Robby.Callegari@burgessniple.com;
William.Ball@burgessniple.com

- (c) **Change of Address.** Either Party may change its notice address by giving written notice to the other Party. Notice is deemed received upon delivery if delivered by hand or email, one (1) business day after deposit with an overnight courier, or three (3) days after deposit in the United States mail, postage prepaid.

- (d) **Order of Precedence.** In the event of any conflict, inconsistency, ambiguity, or additional term among the documents comprising this Agreement, the following order of precedence controls:
 - (i) this Agreement, excluding attachments;
 - (ii) written amendments signed by both Parties and approved by the City;
 - (iii) written task authorizations signed by authorized representatives of both Parties;
 - (iv) Attachment “C” - Compensation and Invoicing Requirements;
 - (v) Attachment “B” - Scope of Services and Task Authorization Form;
 - (vi) Attachment “D” - Insurance Requirements;
 - (vii) Attachment “E” - TWDB, Federal Funding, and DBE Requirements;
 - (viii) the RFQ and Addendum No. 1, to the extent incorporated; and
 - (ix) Attachment “A” - Consultant’s Proposal/Statement of Qualifications.
- (e) **Proposal Subordinate.** The Proposal is last in order of precedence and is included for background, qualifications, staffing, approach, and scope detail only. Any Proposal term inconsistent with or less favorable to the City than this Agreement is superseded.

13. Governing Law; Venue; Dispute Resolution

- (a) **Governing Law.** This Agreement shall be governed by and construed in accordance with the laws of the State of Texas, without regard to conflict-of-law principles.
- (b) **Venue.** Mandatory and exclusive venue for any suit, claim, or proceeding arising out of or relating to this Agreement shall lie in a court of competent jurisdiction in Hays County, Texas.
- (c) **No Arbitration.** No dispute arising out of or relating to this Agreement shall be subject to arbitration or mandatory mediation unless the City agrees in writing after the dispute arises.
- (d) **Cumulative Remedies.** The City’s rights and remedies under this Agreement are cumulative and are in addition to rights and remedies available at law or in equity.

- (e) **Limitations on Claims Against City.** Any claim against the City is subject to applicable Texas law, including any notice requirements, immunity, damages limitations, exclusions of consequential damages, and limitations under Texas Local Government Code Chapter 271, Subchapter I, to the extent applicable. Nothing in this Agreement creates a waiver of immunity or liability beyond that expressly provided by Texas law.
- (f) **Survival.** Provisions that by their nature should survive termination or expiration survive, including provisions concerning payment limitations, records, public information, confidentiality, data security, ownership and use rights, indemnity, insurance, conflicts, funding compliance, governing law, venue, no waiver of immunity, and order of precedence.

14. General Provisions

- (a) **Entire Agreement.** This Agreement contains the entire agreement of the Parties regarding the Services and supersedes all prior or contemporaneous agreements, proposals, negotiations, representations, and understandings, whether oral or written, relating to the Services. This provision shall not terminate or supersede any separate agreement between the Parties unless expressly identified therein.
- (b) **Amendment.** This Agreement may be modified only by a written amendment signed by both Parties and approved by the City in the manner required by law and City policy.
- (c) **Severability.** If any provision of this Agreement is held invalid or unenforceable, the provision shall be enforced to the maximum extent permitted by law and the remaining provisions shall remain in effect.
- (d) **Waiver.** The failure of either Party to enforce any provision of this Agreement is not a waiver of the right to enforce that provision or any other provision later.
- (e) **Counterparts and Electronic Signatures.** This Agreement may be executed in counterparts and by electronic signature, each of which is deemed an original and all of which together constitute one instrument.
- (f) **Authority.** Each person signing this Agreement represents that the person has authority to sign on behalf of the Party identified below.
- (g) **No Third-Party Beneficiaries.** Except for the City indemnitees expressly protected under this Agreement, this Agreement is for the sole benefit of the Parties and does not create rights in any third party.

- (h) **Force Majeure.** Neither Party is liable for delay or failure in performance to the extent caused by an event beyond the reasonable control of the affected Party, including acts of God, war, terrorism, pandemic, natural disaster, or governmental action prohibiting performance, provided the affected Party promptly notifies the other Party and uses diligent efforts to resume performance. Force majeure does not entitle Consultant to increased compensation, price escalation, or payment for unauthorized work.
- (i) **Consequential Damages.** Neither Party shall be liable to the other for special, consequential, indirect, punitive, or exemplary damages, except to the extent such damages are expressly recoverable under Consultant's indemnity obligations set forth in Section 9(d), or liability for willful misconduct, fraud, infringement, or knowing violation of law.
- (j) **No Price Escalation Unless Approved.** Consultant assumes the risk of cost increases unless a written task authorization or amendment expressly provides otherwise. No fuel surcharge, labor escalation, material escalation, overhead adjustment, tariff charge, or similar increase is payable by the City unless approved in advance in writing by the City.
- (k) **Compliance With Laws.** Consultant shall comply with all federal, state, and local laws, regulations, ordinances, rules, professional standards, funding requirements, and City policies applicable to the Services.

IN WITNESS WHEREOF, the Parties have executed this Agreement as of the Effective Date.

CITY OF DRIPPING SPRINGS

BURGESS & NIPLE, INC.

**ATTACHMENT “A”:
CONSULTANT’S PROPOSAL/STATEMENT OF QUALIFICATIONS**

1. **Incorporated Document.** Consultant’s Statement of Qualifications submitted in response to RFQ #2025-20: Engineering Services – Wastewater System Improvement Projects, dated December 22, 2025, is incorporated by reference as Attachment “A”.
2. **Limited Incorporation.** Attachment “A” is incorporated only for the following limited purposes:
 - (a) identifying Consultant’s qualifications, experience, registrations, proposed personnel, and proposed project approach;
 - (b) supplementing the scope of Services to the extent consistent with this Agreement and an approved task authorization;
 - (c) confirming representations regarding insurance, conflicts, resources, experience with the City, experience with TWDB and TCEQ requirements, and subconsultant relationships; and
 - (d) documenting procurement history and the basis for selection.
3. **Subordination.** Attachment “A” is subordinate to the main body of this Agreement and all higher-priority Contract Documents. No term in Attachment “A” modifies the Agreement unless expressly stated in a written amendment signed by both Parties and approved by the City.
4. **Excluded Proposal Terms.** Without limiting the foregoing, any term in Attachment “A” that would reduce the City’s rights, expand the City’s payment obligations, limit Consultant’s obligations, impose a limitation of liability, require City indemnity, require arbitration, change venue, change governing law, impose confidentiality beyond applicable law, restrict public information compliance, alter ownership or use of Deliverables, make fees payable without City authorization, or conflict with this Agreement is superseded and of no effect.

ATTACHMENT “B”
SCOPE OF SERVICES AND TASK AUTHORIZATION FORM

1. **Authorized Services.** Services shall be performed only under written task authorizations approved by the City. Each task authorization may include any services described in the Agreement, the RFQ, and Attachment “A”, including planning, funding support, environmental support, surveying coordination, geotechnical coordination, permitting, design, bidding, construction phase services, closeout, and warranty-phase support.
2. **Form of Task Authorization.** Each task authorization should substantially include the following:
 - (a) Task Authorization No.
 - (b) Project Name
 - (c) City Project/Funding No.
 - (d) Effective Date
 - (e) City Representative
 - (f) Consultant Project Manager
 - (g) Scope of Services
 - (h) Deliverables
 - (i) Schedule and Milestones
 - (j) Compensation Method and Not-to-Exceed Amount
 - (k) Reimbursable Expenses Authorized
 - (l) Subconsultants Authorized
 - (m) Funding Requirements/TWDB Requirements
 - (n) Special Conditions:
 - (o) City Approver’s Signature and Date of Signature
 - (p) Consultant Approver’s Signature and Date of Signature
3. **No Work Without Authorization.** No task authorization is effective unless signed by authorized representatives of both Parties or otherwise approved in writing by the City in a manner that clearly authorizes Consultant to proceed.

ATTACHMENT “C” COMPENSATION AND INVOICING REQUIREMENTS

1. **Compensation.** Compensation shall be negotiated and stated in each task authorization. The City is not obligated to pay Consultant for any Services unless those Services are authorized in writing and performed in accordance with this Agreement.
2. **Required Invoice Detail.** Each invoice shall include, at a minimum:
 - (a) Agreement title and task authorization number;
 - (b) Project name and funding number, if applicable;
 - (c) invoice period;
 - (d) description of Services performed during the invoice period;
 - (e) personnel, labor categories, hours, rates, and extended amounts, if hourly;
 - (f) percent complete and amount billed by task, if lump sum or percent complete;
 - (g) approved budget, previously billed amount, current amount, and remaining balance;
 - (h) reimbursable expenses with receipts or other documentation;
 - (i) subconsultant invoices, if applicable;
 - (j) DBE, TWDB, or funding-source documentation required for payment; and
 - (k) certification that the invoice is accurate, the Services were authorized, and the Services comply with this Agreement.
3. **Payment Limitations.** The City is not required to pay for unauthorized work, unsupported charges, duplicate charges, markup not approved in writing, overhead not included in an approved rate, costs caused by Consultant’s correction of defective or negligent work, or charges that exceed an approved not-to-exceed amount.
4. **Audit Rights.** Consultant shall maintain records sufficient to support all invoices and shall make such records available to the City, TWDB, EPA, auditors, or other authorized reviewers upon reasonable request. Audit rights survive final payment for the period required by applicable law or funding requirements. Any audit shall be conducted during normal business hours upon reasonable advance notice and shall be limited to records directly related to the applicable Project, invoice, or funding requirement. Consultant may withhold legally privileged, proprietary, or confidential information not directly relevant to the audit purpose.

ATTACHMENT “D”: INSURANCE REQUIREMENTS

1. **Required Coverage.** During the term of this Agreement and any renewal or extension, Consultant shall maintain at least the following insurance coverage, unless the City approves different limits in writing:
 - (a) **Workers’ Compensation:** statutory workers’ compensation insurance as required by Texas law, with employer’s liability limits of not less than \$1,000,000 each accident, \$1,000,000 disease each employee, and \$1,000,000 disease policy limit;
 - (b) **Commercial General Liability:** not less than \$1,000,000 per occurrence and \$2,000,000 general aggregate for bodily injury, personal injury, property damage, contractual liability, and products/completed operations;
 - (c) **Automobile Liability:** not less than \$1,000,000 combined single limit for owned, hired, and non-owned vehicles used in connection with the Services;
 - (d) **Professional Liability/Errors and Omissions:** not less than \$2,000,000 per claim and in the aggregate, covering professional engineering services; and
 - (e) **Umbrella or Excess Liability:** if necessary to meet the required limits or if required by a task authorization or funding source.
2. **Policy Requirements.** All required insurance shall:
 - (a) be issued by insurers authorized to transact business in Texas and rated at least A-VII by AM Best or an equivalent rating service, unless otherwise approved by the City;
 - (b) name the City as an additional insured on commercial general liability and automobile liability policies to the extent applicable and commercially available;
 - (c) provide waiver of subrogation in favor of the City to the extent covered by insurance and commercially available;
 - (d) be primary and non-contributory to insurance maintained by the City to the extent applicable to Consultant’s obligations; and
 - (e) provide at least ten (10) days’ prior written notice to the City for cancellation, non-renewal, or material change, to the extent available from the insurer.
3. **Certificates.** Consultant shall provide certificates of insurance evidencing required coverage within ten (10) calendar days after notice of award or execution of this Agreement, upon renewal, and upon request by the City.

4. **No Limitation.** Insurance requirements are independent contractual obligations and shall not be construed to increase Consultant's liability beyond that otherwise imposed by this Agreement or applicable law.

**ATTACHMENT “E”:
TWDB AND FEDERAL FUNDING REQUIREMENTS**

1. **Funding Compliance.** Consultant shall comply with all TWDB, EPA, federal, state, and local requirements applicable to Consultant’s Services for a Project, including requirements identified in the RFQ, Addendum No. 1, funding agreements, loan commitments, environmental approvals, and written instructions from the City.
2. **Build America Buy America; Davis-Bacon; American Iron and Steel.** To the extent applicable to a Project and Consultant’s role, Consultant shall assist the City with documentation and coordination related to Build America Buy America, Davis-Bacon and related labor standards, American Iron and Steel requirements, and similar federal or state funding requirements. Consultant is not responsible for contractor compliance failures except to the extent caused by Consultant’s negligent acts or omissions or by Consultant’s failure to perform Services expressly assigned to Consultant.
3. **Environmental and Regulatory Documentation.** Consultant shall assist with environmental and regulatory documentation required for TWDB or other funding programs when authorized by task authorization, including environmental information documents, environmental assessments, findings, agency coordination, public participation support, and permit submittals.
4. **Record Retention.** Consultant shall retain funding compliance records for the period required by TWDB, EPA, the City, or applicable law, whichever is longer, and shall provide copies to the City upon request.
5. **Flow-Down.** Consultant shall include applicable funding, recordkeeping, audit, and compliance requirements in subconsultant agreements to the extent required by the City, TWDB, EPA, or applicable law.