

PROFESSIONAL SERVICES AGREEMENT

This Agreement, made and entered into this, the ~~10th~~^{17th} day of April, 2018 by and between the **City of Dripping Springs**, Texas (hereinafter referred to as the “City”) and **CMA Engineering, Inc.**, (hereinafter referred to as “Contractor”), is understood and agreed to be as set forth herein:

1. **Project Summary:** Contractor proposes to render engineering services to the City in connection with the development of its South Regional Wastewater Facilities and Water Facilities in Hays County, Texas (PROJECT). Work will include providing General Engineering Services to the City regarding the South Regional Wastewater facilities and Water Facilities. The City is expected to furnish Contractor with full information as to the requirements for the PROJECT, and also to make available all pertinent existing data. Contractor shall be able to rely upon the accuracy of all information provided by the City.
2. **Scope of Work:** This shall include but will not be limited to the following:
 - Assisting the City with evaluating potential water and wastewater customers.
 - Assisting the City with preliminary planning of future water and wastewater system expansions.

Work will also include providing general professional and management services for the City’s water and wastewater systems. This may include the following:

- Assisting the City’s wastewater plant and water system operator regarding operational and maintenance issues as requested.
- Meet with the City’s City Council, Mayor, City Administrator, City Engineer, Attorneys or representative as requested by the City.
- Respond to special requests made by the City Council, Mayor, and/or the City Administrator.

3. **Description of Services:** The Contractor shall perform the below duties as needed by the City:
 - (a) Contractor shall deliver written reports to City Hall via mail, in person, facsimile, or other electronic means as appropriate.
 - (b) If the City’s assignment of duties for a specific project is declined by Contractor, then the City may assign said duties to another employee or Contractor at the City’s discretion. Contractor does not have the authority to unilaterally select another contractor to perform the work the Contractor was assigned except as allowed in Attachment “A” as Additional Services. Contractor shall assist the City in the selection of additional contractors when requested by the City.

- (c) Contractor may from time to time be called upon to perform the following services:
 - (1) Attend meetings of the City Council, when requested by the Mayor, City Administrator, or Deputy City Administrator; and/or
 - (2) Attend other public or private meetings involving review of engineering matters related to the duties performed under this Agreement.
 - (d) Contractor shall conduct business in good faith displaying professionalism and a courteous manner in dealings with the staff, citizens, and customers of the City. Contractor agrees to abide by the Texas Engineering Practice Act and Rules as established by the Texas Board of Professional Engineers when professional engineering is used in performance of Contractor's duties and responsibilities.
 - (e) Contractor will report to the Deputy City Administrator, verbally or in writing, any conflicts between Contractor and any citizen or customer in the course of performing said duties and responsibilities.
 - (f) 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 Agreement with the understanding that some records may be subject to state open records laws. Contractor shall comply with the City's public information policies.
 - (g) Performs other related duties as needed.
- 4. Payment for Services:** The City will compensate Contractor in accordance with the fee structure contained in Contractor's Fee Schedule included in Attachment "B". Contractor shall invoice City in accordance with Contractor's attached proposal. Invoices will be submitted monthly and payment is due within 30 days of City's receipt and approval of the invoice. If payment is not received by the 45th day after the invoice is received by the City, then Contractor may suspend services under the Agreement until all invoice amounts due are paid in full. The work schedule shall be extended the total amount of time after Contractor suspends services to the time payments are received.
- 5. Duration:** This Agreement shall be in effect for a period of two years (24 months), unless terminated as provided below or if all work associated with Agreement is completed. Contractor shall start work immediately after the execution of this Agreement.
- 6. Renewal:** This Agreement shall automatically renew for successive one-year periods unless: (a) terminated, as set out below, or (b) either party provides notice of intent not to renew to the other party thirty (30) days prior to the end of the current term.

7. **Termination:** Either party may terminate this Agreement by a thirty (30) day 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 engineering services.
9. **Limitations:** During the period the Consultant is covered by this agreement, the Consultant will contact the City in writing if a potential conflict of interest with a third party client may exist. If the City Council finds that a project for a third party client of the Consultant has a direct conflict with the City, the City Council shall contact the Consultant in writing. If the conflict of interest cannot be resolved to either party's satisfaction, either the Consultant or the City Council may terminate this Agreement with seven (7) days' notice to the other party.
10. **Employees:** Contractor employees, if any, who perform services for City under this Agreement shall also be bound by the provisions of this Agreement. At the request of City, Contractor shall provide adequate evidence that such persons are Contractor's employees.
11. **Mandatory Disclosures:** 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/elf_info_form1295.htm
12. **Injuries/Insurance:** Contractor acknowledges his/her obligation to obtain appropriate insurance coverage for the benefit of Contractor's employees, if any. Contractor waives the rights to recovery from City for any injuries that Contractor and/or Contractor's employees may sustain while performing services under this Agreement. Contractor is to provide a copy of insurance coverage to City at least ten (10) days prior to end of any existing coverage period if Contractor uses the services of any of Contractor's employees for the provision of services to the City.
13. **Indemnification:** Contractor agrees to indemnify and hold City harmless from all claims, losses, expenses, fees, including attorney's fees, costs, and judgments that may be asserted against City that result from acts or omissions of Contractor, Contractor's employees, if any, and Contractor's agents.
14. **Assignment:** Contractor's obligation under this Agreement may not be assigned or

transferred to any other person, firm, or corporation without the prior written consent of City. However, subcontractors may be hired by the Contractor as agreed in Attachment “A” Additional Services.

- 15. Notice:** All notice required or permitted under this Agreement shall be in writing and shall be delivered either in person or deposited in the United States mail, postage prepaid, addressed as follows:

For the City:

Attention: City Administrator
City of Dripping Springs City
P.O. Box 384
Dripping Springs, TX 78620
512-858-4725

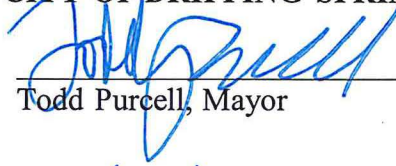
For the Contractor:

Attention: Robert Callegari
CMA Engineering
235 Ledge Stone Drive
Austin, TX 78737
512-432-1000

Either party may change such address from time to time by providing written notice to the other in the manner set forth above. Notice is deemed to have been received three (3) days after deposit in U.S. mail.

- 16. Entire Agreement:** This Agreement contains the entire Agreement of the parties and there are no other promises or conditions in any other Agreement whether oral or written. This Agreement supersedes and prior written agreements between the parties. If a conflict exists between this Agreement and Attachment “A”, this Agreement shall prevail.
- 17. Amendment:** This agreement may be modified or amended only if the amendment is made in writing and is signed by both parties.
- 18. Severability:** If any provision of this Agreement shall be held to be invalid or unenforceable, then such provision shall be deemed to be written, construed, and enforced as so limited.
- 19. Waiver of Contractual Right:** The failure of any party to enforce any provision of this Agreement shall not be construed as a waiver of that party's right to subsequently enforce and compel strict compliance with every provision of the Agreement.
- 20. Applicable Law:** The laws of the State of Texas shall govern this Agreement.
- 21. Venue:** The venue for any and all legal disputes arising under this Agreement shall be Hays County, Texas.

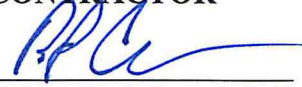
CITY OF DRIPPING SPRINGS:



Todd Purcell, Mayor

4/20/18
Date

CONTRACTOR



Robert P. Callegari, P.E.
CMA Engineering, Inc.

4-10-18
Date

ATTEST:


Andrea Cunningham, City Secretary



ATTACHMENT “A”

ADDITIONAL SERVICES

It is recognized that certain elements within the scope of engineering work cannot be accurately predetermined or controlled entirely by the Contractor. Such engineering work will be performed as Additional Services. Such work may include but not be limited to:

- Assist the City as an expert witness in any litigation with third parties arising from the development of the PROJECT.
- Changes in scope of work after receiving initial directions from the City.
- Change in design as a result of unexpected field conditions discovered during further site investigations or during construction of the PROJECT.
- Assist the City in protracted disputes or negotiations with governmental authorities or other interested parties.

Out of scope and additional services will be reimbursable per hour based on the attached fee schedule Attachment B, plus expenses. Expenses for out of scope and additional services will include direct expenses incurred by Contractor. Such expenses will include subcontractors, reproduction costs, mileage, postage and delivery, etc., as required to complete the PROJECT. Billing for all additional professional services will be based upon the actual amount of time required to complete the additional work. Out of Scope services and additional services will only be performed with approval from City.

City understands that Contractor cannot be held accountable in the case that the plans and specifications are not approved for construction by the TCEQ and/or the City of Dripping Springs or any other reviewing authority, provided Engineer utilizes sound professional practices.

This Agreement is subject to the General Provisions included as Attachment B may only be modified in writing when signed by both parties.

ATTACHMENT “B”

GENERAL PROVISIONS AND FEE SCHEDULE

COMPENSATION

Contractor will perform the work on a reimbursable time and expenses basis at the hourly rates included as Attachment B, plus expenses. Expenses will include direct expenses incurred by Contractor plus 10%. Billing for professional services will be based upon the actual amount of time required to complete the work. Upon mutual agreement of City and Contractor, rates included on Attachment B may be amended annually.

TERMINATION

Either Party may terminate this Agreement upon giving written notice to the other Party at least thirty (30) days prior to the date of termination. In the event of termination, the Contractor shall deliver to the City one (1) reproducible copy of all finished documents, data, studies, surveys, drawings, maps, CADD files, models, reports, etc. prepared by the Contractor and paid by the City under this Agreement. Additional copies of these materials shall be made available to City upon City compensating Contractor for time and expenses required to produce same. The Contractor shall be entitled to receive just and equitable compensation for any work performed in accordance with the provisions of this Agreement prior to termination notice. If the Contractor has completed the specified Tasks and phases prior to termination, Contractor will be entitled to the fees stipulated under this Agreement for such work completed. If termination should occur prior to the completion of a Task or phase, the Contractor shall be reimbursed for his work under that particular Task and phase based on the hours completed for that particular Task and phase.

OWNERSHIP OF DOCUMENTS

The City acknowledges the Contractor's Report, including electronic files, as the work papers of the Contractor are the Contractor's instruments of professional service. Nevertheless, upon completion of the services and payment in full of all monies due to the Contractor, the City shall receive ownership of the Report, and related materials prepared under this Agreement, for City's use and related wastewater system planning. The City agrees, to the fullest extent permitted by law, to defend, indemnify and hold harmless the Contractor, its officers, directors, employees and subconsultants (collectively, Contractor) against any damages, liabilities or costs, including reasonable attorneys' fees and defense costs, arising from or allegedly arising from or in any way related to or connected with the unauthorized reuse or modification of the Report by the City or any person or entity that acquires or obtains the Report from or through the City without the written authorization of the Contractor.

CONFIDENTIALITY

All information and all materials, records, data, drawings, specifications, engineering and other documents and all other products of the services provided under this Agreement produced by, or coming into the possession of Contractor (including its subcontractors) in connection with the performance of the services shall be maintained in absolute confidence, and Contractor shall not at any time, except at the direction of City, its legal counsel or by order of an authorized judicial authority, disseminate, transmit, publicize, or divulge to anyone any portion of such information, except as necessary to carry

out the services pursuant to this Agreement.

MISCELLANEOUS

CONTROLLING LAW - THIS AGREEMENT IS TO BE GOVERNED BY AND CONSTRUED IN ACCORDANCE WITH THE LAWS OF THE STATE OF TEXAS, AS THEY APPLY TO CONTRACTS PERFORMED WITHIN THE STATE OF TEXAS. THE PARTIES ACKNOWLEDGE THAT THIS AGREEMENT IS PERFORMABLE IN HAYS COUNTY, TEXAS, AND HEREBY SUBMIT TO THE JURISDICTION OF THE COURTS OF HAYS COUNTY, AND HEREBY AGREE THAT SUCH COURTS ARE THE PROPER FORUM FOR THE DETERMINATION OF ANY DISPUTE ARISING UNDER THIS AGREEMENT.

LIMITATION OF LIABILITY - To the fullest extent permitted by law, the total liability, in the aggregate, of Contractor and Contractor's officers, directors, employees, agents and independent professional associates and consultants, and any of them, to City and anyone claiming by, through and under City, for any and all injuries, claims, losses, expenses or damages whatsoever arising out of or in any way related to Contractor'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 Contractor or Contractor's officers, directors, employees, agents and independent professional associates and consultants, and any of them, shall not exceed the total compensation received by Contractor under this Agreement, or the total amount of \$100,000, whichever is greater.

OPINIONS OF COST - Since Contractor has no control over the cost of labor, materials, equipment or services furnished by others, or over a contractor's methods of determining prices, or over competitive bidding or market conditions, Contractor's opinions of probable construction costs provided herein are to be made on the basis of Contractor's experience and qualifications and represent Contractor's best judgment as an experienced and qualified professional engineer, familiar with the construction industry; but Contractor cannot and does not guarantee that actual proposals, bids or construction costs will not vary from opinions of probable cost prepared by Contractor. If City wishes greater assurance as to total future construction costs, City shall employ an independent cost estimator to modify the contract documents to bring the construction cost within any limitation established by City and will be considered Additional Services and paid for as such by City.

SUCCESSORS AND ASSIGNS - City and Contractor each binds himself and his partners, successors, executors, administrators, assigns and legal representatives to the other Party to this Agreement and to the partners, successors, executors, administrators, assigns and legal representatives of such other Party, in respect to all covenants, agreements and obligations of this Agreement.

- a. Neither City nor Contractor shall assign, sublet or transfer any rights under or interest in (including, but without limitation, monies that may become due or monies that are due) this Agreement without the written consent of the other, except as stated above and except prior to the extent that the effect of the limitation may be restricted by law. Unless specifically stated to the contrary in any written consent to an assignment, no assignment will release or discharge the assignor from any duty or responsibility under this Agreement. Nothing contained in the paragraph shall prevent the Contractor from employing such independent consultants, associates and subcontractors as he may deem appropriate to assist him in the performance of services hereunder.

- b. Nothing herein shall be construed to give any rights or benefits hereunder to anyone other than City and Contractor.

ATTORNEY'S FEES - If any action be brought to either Party against the other, the prevailing Party shall be entitled to recover reasonable attorney fees.

DISPUTE RESOLUTION - Any claims or disputes between the City and Contractor, made during or after providing engineering services, shall be first submitted to non-binding mediation, thereby providing for mediation as the primary method for dispute resolution between the City and Contractor.

2018 BILLING RATES FOR PROFESSIONAL SERVICES

Principal	\$200.00/hour
Project Engineer II (More than 15 years of experience)	\$190.00/hour
Project Engineer I (Less than or equal to 15 years of experience)	\$165.00/hour
Assistant Engineer II (More than 5 years of experience)	\$150.00/hour
Assistant Engineer I (Less than or equal to 5 years of experience)	\$135.00/hour
Senior Engineering Technician	\$150.00/hour
Engineering Technician	\$110.00/hour
Field Construction Representative II	\$120.00/hour
Field Construction Representative I	\$ 95.00/hour
Administrative Assistant	\$ 55.00/hour
Surveyor	\$160.00/hour
Survey Technician	\$135.00/hour
Survey Crew	\$155.00/hour
Copies	\$ 0.10/copy
24" x 36" Bond Plots (black and white)	\$ 1.00/sheet
Bond Plots (color)	\$ 2.00/square foot
24" x 36" Mylar Plots	\$ 12.00/sheet
CMA/personnel vehicle mileage	max allowed by
IRS	

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

Certificate Number:
2018-336984

Date Filed:
04/10/2018

Date Acknowledged:

1 Name of business entity filing form, and the city, state and country of the business entity's place of business.
CMA Engineering, Inc.
Austin, TX United States

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

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.
CMA04102018
General Engineering Services

4	Name of Interested Party	City, State, Country (place of business)	Nature of interest (check applicable)	
			Controlling	Intermediary
	Callegari, Robert	Austin, TX United States	X	
	Manka, Felix	Austin, TX United States	X	

5 Check only if there is NO Interested Party.


6 UNSWORN DECLARATION

My name is Robert Callegari, and my date of birth is 7-8-1963.

My address is 235 Ledge Stone Drive, Austin, TX, 78737, USA.
(street) (city) (state) (zip code) (country)

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

Executed in Hays County, State of TX, on the 10 day of April, 2018.
(month) (year)



Signature of authorized agent of contracting business entity
(Declarant)

Client#: 158353

CMAENGIN

ACORD™

CERTIFICATE OF LIABILITY INSURANCE

DATE (MM/DD/YYYY)
1/29/2018

THIS CERTIFICATE IS ISSUED AS A MATTER OF INFORMATION ONLY AND CONFERS NO RIGHTS UPON THE CERTIFICATE HOLDER. THIS CERTIFICATE DOES NOT AFFIRMATIVELY OR NEGATIVELY AMEND, EXTEND OR ALTER THE COVERAGE AFFORDED BY THE POLICIES BELOW.

IMPORTANT: If the certificate holder is an ADDITIONAL INSURED, the policy(ies) must have ADDITIONAL INSURED provisions or be endorsed. If SUBROGATION IS WAIVED, subject to the terms and conditions of the policy, certain policies may require an endorsement.

PRODUCER: USI Southwest, 7600-B N. Cap of Tx. Hwy. #200, Austin, Texas 78731
CONTACT NAME: Debi Wylie
PHONE (A/C, No, Ext): 512-651-4159
FAX (A/C, No): 610-537-2782
E-MAIL ADDRESS: debra.wylie@usi.com
INSURER(S) AFFORDING COVERAGE: Argonaut Insurance Company
NAIC #: 19801

COVERAGES CERTIFICATE NUMBER: REVISION NUMBER:

THIS IS TO CERTIFY THAT THE POLICIES OF INSURANCE LISTED BELOW HAVE BEEN ISSUED TO THE INSURED NAMED ABOVE FOR THE POLICY PERIOD INDICATED. NOTWITHSTANDING ANY REQUIREMENT, TERM OR CONDITION OF ANY CONTRACT OR OTHER DOCUMENT WITH RESPECT TO WHICH THIS CERTIFICATE MAY BE ISSUED OR MAY PERTAIN, THE INSURANCE AFFORDED BY THE POLICIES DESCRIBED HEREIN IS SUBJECT TO ALL THE TERMS, EXCLUSIONS AND CONDITIONS OF SUCH POLICIES. LIMITS SHOWN MAY HAVE BEEN REDUCED BY PAID CLAIMS.

Table with columns: INSR LTR, TYPE OF INSURANCE, ADDL INSR, SUBR WVD, POLICY NUMBER, POLICY EFF (MM/DD/YYYY), POLICY EXP (MM/DD/YYYY), LIMITS. Includes rows for Commercial General Liability, Automobile Liability, Umbrella Liab, Excess Liab, Workers Compensation and Employers' Liability, and Professional Liab.

DESCRIPTION OF OPERATIONS / LOCATIONS / VEHICLES (ACORD 101, Additional Remarks Schedule, may be attached if more space is required)

CERTIFICATE HOLDER: City of Dripping Springs, Attn: Ginger Faught, P.O. Box 384, Dripping Springs, TX 78620
CANCELLATION: SHOULD ANY OF THE ABOVE DESCRIBED POLICIES BE CANCELLED BEFORE THE EXPIRATION DATE THEREOF, NOTICE WILL BE DELIVERED IN ACCORDANCE WITH THE POLICY PROVISIONS. AUTHORIZED REPRESENTATIVE: James E. Zimmerman