

November 20, 2018

Mayor Todd Purcell  
City of Dripping Springs  
P.O. Box 384  
Dripping Springs, Texas 78620

Re: City of Dripping Springs  
Engineering Services Agreement  
South Regional Wastewater System  
City Wide Wastewater System Expansion  
CMA Job Number ~~1645~~ 1923

Andrea, this should have been CMA Job # 1923. If doesn't change anything contractual, but invoices will reference 1923. Sorry for any

Dear Mayor Purcell:

CMA Engineering, Inc. (ENGINEER), proposes to render engineering services to the City of Dripping Springs (CLIENT) in connection with the development of its South Regional Wastewater Facilities in Hays County, Texas (PROJECT). Work will include Planning and Design of proposed City Wide Wastewater System Expansion. Work will also include providing Construction Phase services for the PROJECT. The CLIENT is expected to furnish ENGINEER with full information as to the requirements for the PROJECT, and also to make available all pertinent existing data. ENGINEER shall be able to rely upon the accuracy of all information provided by the CLIENT.

**SCOPE OF WORK**

The following assumptions and general understanding pertain to the provisions of the Services and form the basis of this Agreement/Proposal:

- A. PROJECT is located within the City of Dripping Springs ETJ and Hays County.
- B. City will provide a topographic and detailed site feature survey for the design improvements. The cost of a new topographical and site feature survey is not included in the Scope of Work or Project Budget.
- C. Surveying services required to develop easements for access, wastewater lines, lift station, force main, and treated effluent line are not included in the Scope of Work or Project Budget.
- D. The estimated cost of professional services identified for this PROJECT are based on the standard approval processes through TWDB, TxDOT, Hays County, City of Dripping Springs, and the TCEQ.
- E. ENGINEER and CLIENT will work together to resolve any variance requests with the City of Dripping Springs, Hays County, TxDOT, or TCEQ. However, none are anticipated or included in this Scope of Work or Project Budget.

- F. Construction surveying and staking will not be included as part of this PROJECT. All construction staking will be by the contractor constructing the improvements.
- G. Geotechnical Engineering services to evaluate geotechnical conditions at the site and to develop geotechnical parameters which will assist in design and construction of the proposed wastewater improvements will be provided by others and are not included in the Scope of Work or Project Budget.
- H. Electrical Engineering services for design of the West Interceptor lift station pumps and controls upgrades are included in the Scope of Work and Project Budget.
- I. Performing investigations and developing related reports regarding Federal Endangered Species Act are not included in the Scope of Work or Project Budget.
- J. It is assumed that the requirement to obtain a site development permit from the City of Dripping Springs Work will be waived, and that work required to develop and obtain a developing site development permits from the City of Dripping Springs is not included in the Scope of Work or Project Budget.
- K. All review, inspection, and recording fees; and public notice costs will be paid by CLIENT or will be considered reimbursable costs and are not included in the Project Budget.
- L. The ENGINEER will at all times have access to the Work wherever it is in preparation or progress.
- M. PROJECT is not located in the Edwards Aquifer Recharge Zone, but is within the Contributing Zone of the Barton Springs Segment of the Edwards Aquifer. Work required for developing a Contributing Zone Permit for submittal to the TCEQ is not included in this Scope of Work and Project Budget as this project is exempt in accordance with Section 30 TAC Chapter 213.24(11)(A)(i).
- N. The Scope of Work or Project Budget does not include addressing the presence of groundwater that may be discovered during the more detailed field investigation or during construction of the proposed improvements.
- O. Developing a Tree Field Inspection Report by an Arborist is not included in the Scope of Work or Project Budget.

Our engineering services and the Scope of Work will consist of planning, design, and construction phase services for the following:

1. Extending the West Interceptor from Caliterra to Arrowhead Ranch.
2. New South Collector from Ranch Road 12 to the existing South Regional WWTP.
3. New East Interceptor from the Highway 290 to the proposed South Collector.
4. Extending the West Interceptor 8 inch force main from Caliterra to the South Collector.

5. Upgrading the West Interceptor lift station to accommodate additional flows from the West Interceptor extension.
6. 12 million gallon effluent holding pond at the City's existing WWTP site.
7. New effluent pump station and extending the 12 inch TE line from Ranch Road 12 at Caliterra to the proposed discharge point.

## **TASK 1 – PLANNING**

Assist the City in planning for the proposed improvements. This will include coordinating environmental engineering services, establishing wastewater line alignments, surveying services, easement acquisition services, and TWDB coordination.

As required, prepare an Engineering Feasibility Report (EFR) for the PROJECT. The EFR will follow the Texas Water Development Board (TWDB) Document ED-002 "Guidelines for the Preparation of SFR/WQEL Engineering Feasibility Report format and requirements.

## **TASK 2 – DESIGN PHASE**

Prepare engineering plans and specifications for the proposed City Wide Wastewater System Improvements. The engineering plans will consist of a cover sheet with vicinity/location map, plan and profiles of the gravity wastewater lines, plan drawings for the force main and treated effluent line extensions, creek boring details, and standard/miscellaneous details. The specifications will include requirements to describe the purchase, construction, and installation of the proposed improvements. It is estimated that there will be five different construction contracts for the City Wide Wastewater System Improvements.

ENGINEER will assist CLIENT in obtaining approval for the construction of the proposed improvements from the reviewing authorities (TWDB, TCEQ, City of Dripping Springs, TxDOT, and/or Hays County). Assistance will include submitting the construction drawings to the reviewing authorities, representing the CLIENT at meetings to present the plans, and addressing staff review comments to assist in obtaining approval from the reviewing authorities. Preparation and assistance in making presentations to reviewing agencies are limited to normal procedures in effect as of the date of execution of this Agreement for obtaining approvals. If additional support by the ENGINEER is required due to prolonged actions by reviewing authorities, making modifications to the plans to address concerns from residents/public input/environmental groups, such work will be performed as Additional Services upon notification and authorization of CLIENT.

ENGINEER will submit a transmittal letter to the TWDB and/or TCEQ as described in 30 TAC, Chapter 217 Design Criteria for Sewerage Systems, Paragraph 217.6(c). The transmittal letter will include a brief summary of the proposed wastewater system improvements. If required by the TCEQ as per 30 TAC, Chapter 217.6(d), ENGINEER will submit the final engineering design report, and plans and specifications to the TCEQ.

ENGINEER will support the CLIENT during bidding of contracts, developing, and issuing any addenda and/or clarifications to the construction bid packages, organizing/preparing and attending

one mandatory pre-bid conference, evaluation of bids, recommending award of the contract, and preparing the contract for signatures by CLIENT and the successful bidder. Services for bidding of the PROJECT is normal bidding and award procedures for this type of construction. If additional support by the ENGINEER is required due to rescheduling of the pre-bid conferences, or making modifications to the plans as result of reduction of construction costs, such work will be performed as Additional Services upon notification and authorization of CLIENT. During bidding of the contracts, contractors will pay (non-refundable) for their bid sets. The non-refundable payments received for bid packages from bidders will be either credited on invoices to the CLIENT, or given directly to the CLIENT.

Engineer will provide to the CLIENT an estimate of probable construction costs (in the form of an Excel spreadsheet) of the proposed improvements, and sets (number to be determined by CLIENT) of the final plans and specifications, and final report to the CLIENT for review.

Work in this Task will also include providing general professional and management services to the CLIENT. This may include the following:

- Coordinating reviews and approvals through the TWDB.
- General management of the TWDB loan and construction contracts.
- Meet with the CLIENT's City Council, Mayor, City Administrator, City Engineer, or representative as requested by the CLIENT to discuss the PROJECT.
- Provide general project management duties as required by the TWDB for the proposed wastewater system improvements.
- Respond to special requests made by the City Council, Mayor, and/or the City Administrator.
- Provide written monthly status reports for the wastewater system improvements as requested.
- Attend regular and special City Council meetings in relation to the proposed wastewater system improvements, as requested.
- Attend other public or private meetings involving the water system improvements, as requested by the City Council, Mayor, and/or the City Administrator.

Work required to perform Construction Phase Services is not included in this Task.

### **TASK 3 – CONSTRUCTION PHASE**

After award of the construction contract ENGINEER will perform construction phase services during construction of the City Wide Wastewater System Improvements. Construction phase services will include review and approval of Contractor submittals and shop drawings, inspection during construction, processing change orders as required and requested, reviewing Contractor pay estimates, developing a punch list for Contractor(s), observation during testing as specified in the contract documents and specifications, and start up assistance of the new facilities. ENGINEER will also represent the CLIENT at meetings with the contractors and governmental entities to discuss construction schedules, invoices, and testing as required and requested by CLIENT.

### **General Administration**

The ENGINEER will provide administration of the Construction Contract between the CLIENT and the Contractor, and shall be a representative of and shall advise and consult with the CLIENT during construction of the proposed improvements. The ENGINEER shall have authority to act on behalf of the CLIENT only to the extent provided in this Agreement unless otherwise modified by written amendment.

It is estimated that there will be five different construction contracts for the City Wide Wastewater System Improvements.

### **Shop Drawing Review**

The ENGINEER will review and approve or take other appropriate action on the Contractor submittals, such as shop drawings, product data, samples and other data, which the Contractor is required to submit, but only for the limited purpose of checking for conformance with the design concept and the information shown in the Construction Documents. This review shall not include review of the accuracy or completeness of details, such as quantities, dimensions, weights or gauges, fabrication processes, construction means or methods, coordination of the work with other trades or construction safety precautions, all of which are the sole responsibility of the Contractor. The ENGINEER's review will be conducted with reasonable promptness while allowing sufficient time in the ENGINEER's judgment to permit adequate review. Review of a specific item shall not indicate that the ENGINEER has reviewed the entire assembly of which the item is a component. The ENGINEER shall not be responsible for any deviations from the Construction Documents not brought to the attention of the ENGINEER in writing by the Contractor. The ENGINEER will not be required to review partial submissions or those for which submissions of correlated items have not been received.

If professional design services or certifications by a design professional related to systems, materials or equipment are specifically required of the Contractor by the Contract Documents, the ENGINEER shall specify appropriate performance and design criteria that such services must satisfy. Shop Drawings and other submittals related to the Work designed or certified by the design professional retained by the Contractor shall bear such professional's written approval when submitted to the ENGINEER. The ENGINEER shall be entitled to rely upon the adequacy, accuracy and completeness of the services, certifications or approvals performed by such design professionals.

### **Construction Observation**

The ENGINEER will visit the site at intervals appropriate to the stage of construction, or as otherwise agreed to by the CLIENT and the ENGINEER, in order to observe the progress and quality of the Work completed by the Contractor. Such visits and observation are not intended to be an exhaustive check or a detailed inspection of the Contractor's work but rather are to allow the ENGINEER, as an experienced professional, to become generally familiar with the Work in progress and to determine, in general, if the Work is proceeding in accordance with the Contract Documents.

Based on this observation, the ENGINEER will keep the CLIENT informed about the progress of the Work and will endeavor to guard the CLIENT against deficiencies in the Work.

The ENGINEER will not supervise, direct or have control over the Contractor's work nor have any responsibility for the construction means, methods, techniques, sequences or procedures selected by the Contractor nor for the Contractor's safety precautions or programs in connection with the Work. These rights and responsibilities are solely those of the Contractor in accordance with the Contract Documents.

The ENGINEER shall not be responsible for any acts or omissions of the Contractor, subcontractor, any entity performing any portions of the Work, or any agents or employees of any of them. The ENGINEER does not guarantee the performance of the Contractor and shall not be responsible for the Contractor's failure to perform its Work in accordance with the Contract Documents or any applicable laws, codes, rules or regulations.

### **Contractor Pay Requests**

The ENGINEER shall review monthly Contractor Pay Requests, and certify the amounts due the Contractor for work performed each month. The ENGINEER's certification for payment shall constitute a representation to the CLIENT, based on the ENGINEER's evaluation of the Work as agreed, and on the data comprising the Contractor's Application for Payment that the Work has progressed to the point indicated and that, to the best of the ENGINEER's knowledge, information and belief, the quality of the Work is in accordance with the Contract Documents. The foregoing representations are subject (1) to an evaluation of the Work for conformance with the Contract Documents upon Substantial Completion, (2) to results of subsequent tests and inspections, (3) to correction of minor deviations from the Contract Documents prior to completion, and (4) to specific qualifications expressed by the ENGINEER.

The issuance of a Certificate for Payment shall not be a representation that the ENGINEER has (1) made exhaustive or continuous on-site inspections to check the quality or quantity of the Work, (2) reviewed construction means, methods, techniques, sequences or procedures, (3) reviewed copies of requisitions received from Subcontractors and material suppliers and other data requested by the CLIENT to substantiate the Contractor's right to payment, or (4) ascertained how or for what purpose the Contractor has used money previously paid on account of the Contract Sum.

### **Changes in the Work**

The ENGINEER will prepare Change Orders and Construction Change Directives for the CLIENT's approval and execution in accordance with the Contract Documents. The ENGINEER may authorize minor changes in the Work not involving an adjustment in Contract Sum or an extension of the Contract Time, which are consistent with the intent of the Contract Documents. If necessary, the ENGINEER will prepare, reproduce, and distribute Drawings and Specifications to describe Work to be added, deleted or modified.

The ENGINEER will review properly prepared, timely requests by the CLIENT or Contractor for changes in the Work, including adjustments to the Contract Sum or Contract Time. A properly prepared request for a change in the Work will be accompanied by sufficient supporting data and information to permit the ENGINEER to make a reasonable determination without extensive investigation or preparation of additional drawings or specifications. If the ENGINEER determines that requested changes in the Work are not materially different from the requirements of the Contract Documents, the ENGINEER may issue an order for a minor change in the Work or recommend to the CLIENT that the requested change be denied.

If the ENGINEER determines that implementation of the requested changes would result in a material change to the Contract that may cause an adjustment in the Contract Time or Contract Sum, the ENGINEER will make a recommendation to the CLIENT, who may authorize further investigation of such change. Upon such authorization, and based upon information furnished by the Contractor, if any, the ENGINEER will estimate the additional cost and time that might result from such change, including any additional costs attributable to a Change in Services of the ENGINEER. With the CLIENT's approval, the ENGINEER will incorporate those estimates into a Change Order or other appropriate documentation for the CLIENT's execution or negotiation with the Contractor.

### **Project Completion**

The ENGINEER will conduct a onetime final inspection for each Project to determine the date or dates of Substantial Completion and the date of final completion, shall receive from the Contractor and forward to the CLIENT for the CLIENT's review and records, written warranties and related documents required by the Contract Documents and assembled by the Contractor, and shall issue a final Certificate for Payment based upon a final inspection indicating the Work complies with the requirements of the Contract Documents.

The ENGINEER's inspection shall be conducted with the CLIENT's Designated Representative to check conformance of the Work with the requirements of the Contract Documents and to verify the accuracy and completeness of the list submitted by the Contractor of Work to be completed or corrected.

When the Work is found to be substantially complete, the ENGINEER shall inform the CLIENT about the balance of the Contract Sum remaining to be paid the Contractor, including any amounts needed to pay for final completion or correction of the Work. In addition, the ENGINEER shall develop a "punch list" of items to be completed before Work on the Project can be accepted by CLIENT for Final Payment.

### **Rejection of Work**

The ENGINEER shall have authority to reject Work that does not conform to the Contract Documents. Whenever the ENGINEER considers it necessary or advisable, the ENGINEER will have authority to require inspection or testing of the Work in accordance with the provisions of the Contract Documents, whether or not such Work is fabricated, installed or completed. However, neither this authority of the ENGINEER nor a decision made in good

faith either to exercise or not to exercise such authority shall give rise to a duty or responsibility of the ENGINEER to the Contractor, Subcontractors, material and equipment suppliers, their agents or employees or other persons or entities performing portions of the Work.

### **Jobsite Safety**

Neither the professional activities of the ENGINEER, nor the presence of the ENGINEER or its employees and subconsultants at a construction/project site, shall relieve the General Contractor of its obligations, duties and responsibilities including, but not limited to, construction means, methods, sequence, techniques or procedures necessary for performing, superintending and coordinating the Work in accordance with the Contract Documents and any health or safety precautions required by any regulatory agencies. The ENGINEER and its personnel have no authority to exercise any control over any construction contractor or its employees in connection with their work or any health or safety programs or procedures. The CLIENT agrees that the General Contractor shall be solely responsible for jobsite safety, and warrants that this intent shall be carried out in the CLIENT's contract with the General Contractor. The CLIENT also agrees that the CLIENT, the ENGINEER and the ENGINEER's subconsultants shall be indemnified by the General Contractor and shall be made additional insureds under the General Contractor's policies of general liability insurance.

### **Record Documents**

Upon completion of the Work, the ENGINEER will compile for and deliver to the CLIENT a reproducible set of Record Documents based upon the marked-up record drawings, addenda, change orders and other data furnished by the Contractor. These Record Documents will show significant changes made during construction. Because these Record Documents are based on unverified information provided by other parties, which the ENGINEER shall assume will be reliable, the ENGINEER cannot and does not warrant their accuracy.

### **Claims Arbitrator Service**

The ENGINEER shall not be responsible for interpreting and/or rendering decisions on matters concerning performance of the CLIENT and the Contractor under the requirements of the Contract Documents.

## **SCHEDULE**

ENGINEER acknowledges the importance to the CLIENT of the PROJECT schedule and agrees to put forth reasonable efforts in performing the services with due diligence under this Agreement. The CLIENT understands, however, that the performance must be governed by sound professional practices. ENGINEER will start work on the PROJECT immediately after execution of this Agreement, and upon obtaining permission from landowners upstream of the proposed lift station site to access property, and after identifying future customers of the proposed Regional Lift Station and Interceptor.



## COMPENSATION

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

Invoices will be submitted monthly and payment is due within 30 days of CLIENT's receipt and approval of the invoice. If payment is not received by the 45th day after the invoice date, then ENGINEER may suspend services under the Agreement until all invoice amounts due are paid in full. The PROJECT schedule shall be extended the total amount of time after ENGINEER suspends services to the time payments are received.

## ENGINEERING BUDGET

<b>TASK 1 – PLANNING</b>	<b>\$ 100,000</b>
<b>TASK 2 – DESIGN PHASE</b>	<b>\$ 1,575,000</b>
<b>TASK 3 – CONSTRUCTION PHASE SERVICES</b>	<b><u>\$ 300,000</u></b>
<b>Total Amount of This Contract Not to Exceed</b>	<b>\$ 1,975,000</b>

## ADDITIONAL SERVICES

It is recognized that certain items required for completion may require the services of subcontractors and are not included in the Project Budget. Such services may include surveying, agronomy consulting, geotechnical engineering, environmental engineering, and environmental investigations, etc.

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

- Assist the CLIENT 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 CLIENT.
- Assist the CLIENT in protracted disputes or negotiations with governmental authorities or other interested parties.
- Change in design as a result of unexpected field conditions discovered that will affect the application, reports, and/or final design.
- Support the CLIENT during a prolonged regulatory agency (City, and/or TCEQ) review processes as required and requested by CLIENT.

Out of Scope and Additional Services will be reimbursable per hour based on the attached fee schedule Attachment A, plus expenses. Expenses for Out of Scope and Additional Services will include direct expenses incurred by ENGINEER plus 10%. 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 CLIENT.

CLIENT understands that ENGINEER cannot be held accountable in the case that the plans and specifications are not approved for construction by Hays County, TCEQ and/or TxDOT or any other reviewing authority.

This Proposal is subject to the General Provisions included as Attachment B and may only be modified in writing when signed by both Parties. The Proposal is in addition to any other agreement regarding Wastewater System improvements.


If this Proposal satisfactorily sets forth your understanding of our agreement, please sign both copies of the letter in the space provided below, and return one copy to us. This Proposal is valid for 60 days.

Very truly yours,

**CMA Engineering, Inc.**

**City of Dripping Springs**

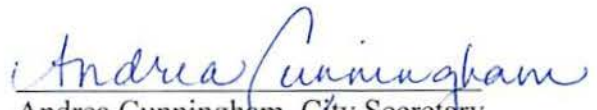
\_\_\_\_\_  
Robert P. Callegari, P.E.  
Principal

  
\_\_\_\_\_  
Todd Purcell  
Mayor

Accepted this 12<sup>th</sup> day of February, 2018:19

**Attest:**



  
\_\_\_\_\_  
Andrea Cunningham, City Secretary

Mayor Todd Purcell  
City of Dripping Springs  
November 20, 2018  
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Out of Scope and Additional Services will be reimbursable per hour based on the attached fee schedule Attachment A, plus expenses. Expenses for Out of Scope and Additional Services will include direct expenses incurred by ENGINEER plus 10%. 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 CLIENT.

CLIENT understands that ENGINEER cannot be held accountable in the case that the plans and specifications are not approved for construction by Hays County, TCEQ and/or TxDOT or any other reviewing authority.

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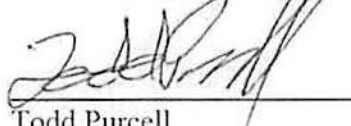
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Very truly yours,

CMA Engineering, Inc.


  
\_\_\_\_\_  
Robert P. Callegari, P.E.  
Principal

City of Dripping Springs

  
\_\_\_\_\_  
Todd Purcell  
Mayor

Accepted this 12<sup>th</sup> day of February, 2018: 19

Attest:

  
\_\_\_\_\_  
Andrea Cunningham, City Secretary

**ATTACHMENT A  
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

## **ATTACHMENT B GENERAL PROVISIONS**

### **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 ENGINEER shall deliver to the CLIENT one (1) reproducible copy of all finished documents, data, studies, surveys, drawings, maps, CADD files, models, reports, etc. prepared by the ENGINEER and paid by the CLIENT under this Agreement. Additional copies of these materials shall be made available to CLIENT upon CLIENT compensating ENGINEER for time and expenses required to produce same. The ENGINEER 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 ENGINEER has completed the specified Tasks and phases prior to termination, ENGINEER 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 ENGINEER 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 CLIENT acknowledges the ENGINEER's Engineering Report, and Plans and Specifications, including electronic files, as the work papers of the ENGINEER are the ENGINEER's instruments of professional service. Nevertheless, upon completion of the services and payment in full of all monies due to the ENGINEER, the CLIENT shall receive ownership of the Engineering Report, and Plans and Specifications prepared under this Agreement. The CLIENT agrees, to the fullest extent permitted by law, to defend, indemnify and hold harmless the ENGINEER, its officers, directors, employees and subconsultants (collectively, ENGINEER) 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 and/or permit application by the CLIENT or any person or entity that acquires or obtains the Report and/or permit application from or through the CLIENT without the written authorization of the ENGINEER.

### **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 ENGINEER (including its subcontractors) in connection with the performance of the services shall be maintained in absolute confidence, and ENGINEER shall not at any time, except at the direction of CLIENT or its legal counsel, 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**

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

**MANDATORY DISCLOSURES** - Texas law requires that vendors make certain disclosures. Prior to the effective date of this Contract, the Engineer 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). The Engineer 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](https://www.ethics.state.tx.us/whatsnew/elf_info_form1295.htm)

**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.

**LIMITATIONS** - If the contractor represents a person or business entity that has any pending applications with the city, the contractor shall file a notice with the city secretary stating such representation at least two weeks prior to the date of any consideration of such application by the appropriate body of the city. The city shall determine whether such representation causes a conflict of interest pursuant to Section 2.02.002 of the City of Dripping Springs Code of Ordinances. The City shall provide a written acknowledgement and waiver if the city determines there is no conflict.

**DURATION** - This Agreement shall be in effect unless terminated as provided below or if all work associated with Agreement is completed. Engineer shall start work immediately after the execution of this Agreement.

**INJURIES/INSURANCE** - Engineer acknowledges his obligation to obtain appropriate insurance coverage for the benefit of Engineer's employees, if any. Engineer waives the rights to recovery from City for any injuries that Engineer and/or Engineer's employees may sustain while performing services under this Agreement. Engineer is to provide a copy of insurance coverage to City at least ten (10) days prior to end of any existing coverage period if Engineer uses the services of any of Engineer's employees for the provision of services to the City.

**INDEMNIFICATION** - Engineer 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 Engineer, Engineer's employees, if any, and Engineer's agents.

**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 Engineer:

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

**CONTROLLING LAW** - This Agreement is to be governed by the laws of Hays County, Texas, and venue for any suit in conjunction with this Agreement shall be in the District Courts of Hays County, Texas.

**LIMITATION OF LIABILITY** - To the fullest extent permitted by law, the total liability, in the aggregate, of ENGINEER and ENGINEER's officers, directors, employees, agents and independent professional associates and consultants, and any of them, to CLIENT and anyone claiming by, through and under

CLIENT, for any and all injuries, claims, losses, expenses or damages whatsoever arising out of or in any way related to ENGINEER'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 ENGINEER or ENGINEER's officers, directors, employees, agents and independent professional associates and consultants, and any of them, shall not exceed the total compensation received by ENGINEER under this Agreement, or the total amount of \$500,000.00, whichever is lesser.

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

SUCCESSORS AND ASSIGNS - CLIENT and ENGINEER 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 CLIENT nor ENGINEER 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 ENGINEER 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 CLIENT and ENGINEER.

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.

# CERTIFICATE OF INTERESTED PARTIES

FORM 1295

1 of 1

Complete Nos. 1 - 4 and 6 if there are interested parties.  
 Complete Nos. 1, 2, 3, 5, and 6 if there are no interested parties.

**OFFICE USE ONLY  
 CERTIFICATION OF FILING**

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

Certificate Number:  
 2019-453078

Date Filed:  
 02/14/2019

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

Date Acknowledged:

**3 Provide the identification number used by the governmental entity or state agency to track or identify the contract, and provide a description of the services, goods, or other property to be provided under the contract.**  
 CMA02122019  
 City Wide WW System Expansion Design and CPS

4	Name of Interested Party	City, State, Country (place of business)	Nature of interest (check applicable)	
			Controlling	Intermediary


5 Check only if there is NO Interested Party.

**6 UNSWORN DECLARATION**

My name is Robert Callegari and my date of birth is 7-8-63  
 My address is 3270 Creech Road, Dripping Springs, TX, 78620, USA  
(street) (city) (state) (zip code) (country)

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

Executed in Blair County, State of TX, on the 14 day of Feb, 2019  
(month) (year)

  
 Signature of authorized agent of contracting business entity  
 (Declarant)



# CERTIFICATE OF INTERESTED PARTIES

FORM 1295

1 of 1

Complete Nos. 1 - 4 and 6 if there are interested parties.  
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City of Dripping Springs

Date Acknowledged:  
02/21/2019

**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.**  
CMA02122019  
City Wide WW System Expansion Design and CPS

4	Name of Interested Party	City, State, Country (place of business)	Nature of interest (check applicable)	
			Controlling	Intermediary

**5 Check only if there is NO Interested Party.**

**6 UNSWORN DECLARATION**

My name is \_\_\_\_\_, and my date of birth is \_\_\_\_\_.

My address is \_\_\_\_\_ (street), \_\_\_\_\_ (city), \_\_\_\_\_ (state), \_\_\_\_\_ (zip code), \_\_\_\_\_ (country).

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

Executed in \_\_\_\_\_ County, State of \_\_\_\_\_, on the \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_.  
(month) (year)

\_\_\_\_\_  
Signature of authorized agent of contracting business entity  
(Declarant)