

PROFESSIONAL SERVICES AGREEMENT

THIS AGREEMENT made and entered into this, the 15th day of May 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:** Update Wastewater Capital Improvements Plan (CIP)
2. **Scope of Work:** Engineering services and the scope of work will consist of preparing the second amendment to the approved Wastewater Capital Improvements Plan (CIP) for the financing of capital improvements of the South Regional Wastewater Facilities. Facilities will include the wastewater collection, treatment, and disposal facilities utilized by the City to serve the City of Dripping Springs over the CIP planning period. Scope of Work includes all work in Attachment “A”.
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.

1. **Payment for Services:** The City will compensate Contractor in accordance with the fee structure contained in Contractor's proposal attached as Attachment "A". 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.
2. **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.
3. **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.
4. **Termination:** Either party may terminate this Agreement by a thirty (30) day written notice.
5. **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.
6. **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.
7. **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.

- 8. 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
- 9. 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.
- 10. 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.
- 11. 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.
- 12. 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:

City of Dripping Springs
Attn: City Administrator
PO Box 384
Dripping Springs, TX 78620
(512) 858-4725

CMA Engineering, Inc.:

CMA Engineering, Inc.
Attn: Felix J. Manka, P.E.
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.

- 13. 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.

- 14. **Amendment:** This agreement may be modified or amended only if the amendment is made in writing and is signed by both parties.
- 15. **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.
- 16. **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.
- 17. **Applicable Law:** The laws of the State of Texas shall govern this Agreement.
- 18. **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

May 18, 2018

Date

CMA ENGINEERING, INC.:

Felix J. Manka

Date

ATTEST:



Andrea Cunningham, City Secretary



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16. 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.

17. Applicable Law: The laws of the State of Texas shall govern this Agreement.

18. 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

May 18, 2018
Date

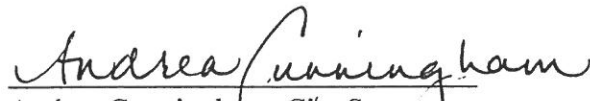
CMA ENGINEERING, INC.:



Felix J. Manka

05.22.18
Date

ATTEST:



Andrea Cunningham, City Secretary



CMA Engineering, Inc.

Firm Registration No. F-3053

Robert P. Callegari, P.E.
Felix J. Manka, P.E.

May 1, 2018

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

Re: City of Dripping Springs
Engineering Services Agreement
Second Amendment to the Wastewater Capital Improvements Plan
CMA Job Number 1881-001

Dear Mayor Purcell:

CMA Engineering, Inc. (ENGINEER) proposes to render engineering services to the City of Dripping Springs (CLIENT) in connection with its South Regional Wastewater Facilities in Hays County, Texas (PROJECT). The CLIENT is expected to furnish ENGINEER with full information as to the requirements for the PROJECT, and to make available all pertinent existing data. ENGINEER shall be able to rely upon the accuracy of all information provided by the CLIENT.

Engineering services and the scope of work will consist of preparing the second amendment to the approved Wastewater Capital Improvements Plan (CIP) for the financing of capital improvements of the South Regional Wastewater Facilities. Facilities will include the wastewater collection, treatment, and disposal facilities utilized by the City to serve the City of Dripping Springs over the CIP planning period.

More specifically the amendment to the plan will include the following:

- Revise the service area in which wastewater service will be provided
- Project land uses within the service area to determine densities, population, and living unit equivalents over a 10-year planning period
- Identify the necessary wastewater collection, treatment, and disposal facilities required to provide service within the revised service area
- Identify the construction cost of the wastewater facilities, the legal, surveying, and engineering fees associated with the facilities and the plan, the costs associated with the financing of the items related to the wastewater facilities, and other related and permitted project costs
- Determine the impact fee to be charged to generate revenue for funding or recouping the cost or a portion of the cost of the items related to the construction and financing of the wastewater facilities

235 Ledge Stone Drive
Phone: (512) 432-1000

Austin, Texas 78737
Fax (512) 432-1015

COMPENSATION

ENGINEER will perform the work on a reimbursable time and expenses basis at the hourly rates included in Attachment A, plus expenses. Expenses will include direct expenses incurred by ENGINEER plus 10%. Such expenses will include reproduction costs, mileage, postage and delivery, etc., as required to complete the PROJECT. Billing for professional services will be based upon the actual amount of time required to complete the work. Invoices will be submitted monthly and payment is due within 30 days of CLIENT's receipt of the invoice. The estimated engineering budget is \$32,000.

ADDITIONAL SERVICES

It is 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.

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 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.

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

Very truly yours,

CMA Engineering, Inc.



Felix J. Manka, P.E.
Principal

City of Dripping Springs

Todd Purcell
Mayor City of Dripping Springs

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	IRS Rate

ATTACHMENT B

GENERAL PROVISIONS

TERMINATION

Either party may terminate this Agreement upon giving written notice to the other party at least ten (10) days prior to the date of termination. In the event of termination, the ENGINEER shall deliver to the CLIENT within 20 days from the date the notice of termination is given one (1) reproducible copy of all 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

All documents including drawings and specifications prepared or furnished by ENGINEER pursuant to this Agreement are instruments of service in respect of the PROJECT and ENGINEER shall retain ownership and property interest therein. CLIENT shall be granted an irrevocable, nontransferable license for all work completed by ENGINEER and paid for by CLIENT. In the event of termination, CLIENT may use the work done by ENGINEER in any manner necessary to complete the PROJECT however, if the ENGINEER for any reason is not allowed to complete all the services call for by this Agreement, the ENGINEER shall not be held responsible for the accuracy, completeness or constructability of the construction documents prepared by the ENGINEER if used, changed, or completed by the ENGINEER or by another party. Accordingly, the CLIENT agrees, to the fullest extent permitted by law, to indemnify and hold harmless the ENGINEER, its officers, directors, employees and subcontractors and subconsultants from any damages, liabilities or costs, including reasonably attorneys' fees and defense costs, arising or allegedly arising from such use, change or completion by any other party of any construction documents prepared by the ENGINEER. Such documents are not intended or represented to be suitable for reuse by CLIENT or others on extensions of the PROJECT or on any other project. Any reuse on any other Project without written verification or adaption by ENGINEER for the specific purpose intended will be at CLIENT's sole risk and without liability or legal exposure to ENGINEER, and CLIENT shall hold harmless ENGINEER from all claims arising out of or resulting therefrom. Any such verification or adaption, if performed by ENGINEER, will entitle ENGINEER to further compensation at rates to be agreed upon by CLIENT and ENGINEER.

MISCELLANEOUS

CONTROLLING LAW - This Agreement is to be governed by the law 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 owner and anyone claiming by, through and under owner, 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 of received by ENGINEER under this agreement, or the total amount of \$100,000.00, 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 judgement 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 will be considered Additional Services and paid for as such by CLIENT.

SUCCESSORS AND ASSIGNS - CLIENT and ENGINEER each bind 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 or 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.

DISPUTE RESOLUTION - Any claims or disputes between the CLIENT and ENGINEER, 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 CLIENT and ENGINEER.