

# CMA Engineering, Inc.

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

October 15, 2007

Fern Bluff Municipal Utility District  
c/o Winstead PC  
Attention Phil Haag  
401 Congress Avenue  
Suite 2100  
Austin, Texas 78701

Re: Engineering Services Agreement  
Fern Bluff Municipal Utility District  
CMA Job Number 1375

Dear Board of Directors:

CMA Engineering, Inc. (ENGINEER), proposes to render engineering services to Fern Bluff MUD (CLIENT) in connection with the development and operation of the District's water, wastewater, drainage, roadway, and detention systems, and other facilities (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.

## ENGINEERING SERVICES

ENGINEER'S services and the scope of work will consist of the following:

1. Assist the District in determining water and wastewater capacities for the District, and defining water and wastewater infrastructure needs.
2. Attendance at regular and special Board of Directors meetings as required or requested by the Board.
3. Attendance at other public or private meetings involving District engineering matters as requested by the Board of Directors.
4. As directed by the Board, provide information that is readily available from the District's engineering files to interested parties, including the District's other consultants, the members of the Board, landowners within the District, prospective purchasers of land, and appraisers.
5. Routine telephone conversations regarding normal District business with the District's other consultants, the members of the Board, and other interested parties.

6. Development, operation and maintenance overview of the District's infrastructure.
7. Review of submissions to District, including plats and construction plans.
8. Special requests made by the members of the Board.
9. Provide general project management duties as required by the Board of Directors in regard to development of the District's infrastructure and facilities.

ENGINEER'S scope of work under this Agreement shall not include design work, unless such design work is agreed to otherwise by a written agreement signed by both Parties.

### 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 in a manner consistent with the CLIENT's PROJECT schedules. 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.

### COMPENSATION

ENGINEER will perform the work on a reimbursable time and expenses basis at the hourly rates included as Attachment A, plus Expenses. For purposes of this Agreement, the term "Expenses" shall include those actual expenses listed hereafter incurred by ENGINEER in connection with work for the CLIENT, plus 10%: supplies; transportation; equipment; travel; communications; subsistence and lodging away from home; reproduction of reports, drawings, specifications, bidding documents, or other documents created or obtained pursuant to this Agreement; and other similar incidentals in connection with work for CLIENT. Billing for professional services for work to be performed will be based upon the actual amount of time required to complete the work. Rates included on Attachment A may be amended annually, based on the date of execution of this Agreement.

Invoices for work performed will be submitted monthly and payment is due within 30 days of the invoice date. 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.

It is recognized that certain items required for completion may require the services of subcontractors and will be billed as Expenses plus 10%, in the same manner as set forth above. Such services may include, but not limited to, site surveying, electrical/instrumentation engineering, structural engineering, and geotechnical engineering.

### ADDITIONAL SERVICES

It is recognized that certain elements within the scope of engineering work cannot be accurately predetermined or controlled entirely by the ENGINEER. Engineering work not listed in the "ENGINEERING SERVICES" section above will be performed as "Additional Services". Such Additional Services 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.
- Change in design as a result of unexpected field conditions discovered during construction of the PROJECT.
- Assist the CLIENT in protracted disputes or negotiations with governmental authorities or other interested parties.

Additional Services will be reimbursable per hour based on the attached fee schedule Attachment A, plus Expenses. Expenses for Additional Services shall be reimbursed in the same manner as set forth in the "COMPENSATION" section above. Billing for all additional professional services will be based upon the actual amount of time required to complete the additional work. Additional Services will only be performed with written notice from the CLIENT.

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 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.

Very truly yours,

**CMA Engineering, Inc.**



Robert P. Callegari, P.E.  
Principal

Accepted this 22nd day of October, 2007.

**Fern Bluff MUD**

Janey Miller  
Printed Name

President  
Title

Janey Miller  
Signature

**ATTACHMENT A – Rates**  
Rates for Professional Services

Principal	\$150.00/hour
Senior Consultant	\$150.00/hour
Project Manager/Project Engineer	\$130.00/hour
Senior Engineering Technician	\$100.00/hour
Assistant Engineer I	\$ 95.00/hour
Assistant Engineer II	\$ 80.00/hour
Engineering Technician	\$ 75.00/hour
Secretary	\$ 40.00/hour
Faxes Sent	\$ 0.50/page
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" Vellum Plots	\$ 5.00/sheet
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 sixty (60) 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, models, reports, etc. prepared by the ENGINEER and paid by the CLIENT under this Agreement. 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. 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 under this Agreement, the ENGINEER shall be reimbursed for his work under that particular task and phase based on the hours completed for that particular task and/or phase; *provided however*, that if CLIENT and ENGINEER have agreed otherwise regarding a particular task and/or phase, such agreement will control the reimbursement amount and procedure.

#### 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 shall remain in possession of ENGINEER throughout the duration of this Agreement, but CLIENT shall retain ownership and property interest therein. CLIENT may make and retain copies of such drawings, specifications, or other documents for information and reference in connection with the use and occupancy of the PROJECT by the CLIENT and others; however, 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 for a purpose other than the specific purpose intended, without written verification or adaption by ENGINEER, will be at CLIENT's sole risk and without liability or legal exposure to ENGINEER, and to the extent authorized by applicable law, CLIENT shall indemnify and hold harmless ENGINEER from all claims arising out of or resulting therefrom. Any such verification or adaption 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 Williamson County, Texas and venue for any suit in conjunction with this Agreement shall be in the District Courts of Williamson 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, but not including design work, 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 amount of the total compensation paid or to be paid to ENGINEER under this Agreement, or the total amount of \$250,000.00, whichever is greater.

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 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 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.

ARBITRATION - If the CLIENT and ENGINEER fail to reach agreement among themselves or through non-binding mediation, all claims, disputes, and other matters in question arising out of, or thereof may be decided by arbitration in accordance with the rules of the American Arbitration Association. Either CLIENT or ENGINEER may initiate a request for such arbitration, but consent of the other party to such procedure shall not be mandatory. No arbitration arising out of, or relating to, this Agreement may include, by consolidation, joinder, or in any other manner, any additional party not a party to this authorization.

Board of Directors  
Fern Bluff MUD  
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AMENDMENT – This Agreement may not be amended except upon written consent of both parties.