

Mr. Leon Barba, P.E.
City Engineer
100 W. Center Street
Kyle, TX 78640

Re: Water Distribution Modeling – Marketplace
Development

January 21, 2022

Dear Mr. Barba,

THIS IS AN AGREEMENT effective as of _____ (“Effective Date”) between City of Kyle, Texas (Owner) and Burgess & Niple, Inc. (B&N). Your signature indicates acceptance of our Proposal and serves as notice to proceed with this instrument as an Agreement between the Owner and B&N.

Owner's Project, of which B&N's services under this Agreement are a part, is generally identified as follows:

- Water Distribution Modeling – Marketplace Development

B&N’s Services under this Agreement are generally identified as follows:

1.01 Scope of Services

A. Task 1 – Project Management, Status Reporting & Invoicing

General project administration, supervision and management. Task also includes the quality assurance/control of data management, hydraulic modeling, engineering evaluations, and technical memorandum preparation.

B. Task 2 – Project Meetings

A total of two (2) remote video conferencing meetings will be provided:

- Kickoff Meeting – Following notice to proceed
- Project Review Meeting – Following completion of the draft technical memorandum

B&N will provide all meeting agendas, handouts, presentation materials, and minutes.

C. Task 3 – Demand Calculations

Average-day, maximum-day, and peak-hour demand calculations will be performed for the proposed Marketplace development using the City of Kyle Utilities Criteria Manual (UCM 2.9.2) and the Austin Water Living Equivalent (LUE) Guidance Document for the following proposed living unit equivalents (LUEs) provided by the City at the time of this evaluation:

- Multi-family: 551 units – 386 LUEs
- Carriage Houses: 12 units – 9 LUEs
- Retail: 30,000 square feet – 18 LUEs

- Live-Work: 15,000 square feet – 15 LUEs

All demands will be modeled in one phase assuming a buildout year of 2022.

D. Task 4 – Water Model Update

B&N will develop a future model scenario for the proposed development within the current water distribution model (2018 demands) using the future demands determined in Task 3 and the following information to be provided by the City:

- Proposed tie-in location(s) from the existing system to the proposed development
- Proposed water main location and sizing with the development, if known.
- Proposed contour elevations within the new development

E. Task 5 – Water Model Evaluation

The following water model simulations will be evaluated:

1. Maximum Day Demand with Existing Development
2. Maximum Day Demand with Proposed Development
3. Maximum Day Demand + Fire Flow with Proposed Development

F. Task 6 – Deliverables

A draft technical memorandum (electronic) will be provided to the City to summarize the following:

1. Purpose and scope, including background information for the proposed development.
2. Summary of demand calculations for the proposed development (Task 3).
3. Hydraulic results for each water model simulation (Task 5) included in the summary and displayed in exhibits. Exhibits will include model results for pressure, velocity, and fire flow.
4. Recommendations for hydraulic improvements needed to adequately serve the proposed development.

The final technical memorandum (electronic) will be completed upon receiving all comments from the City.

Owner and B&N further agree as follows:

2.01 Basic Agreement and Period of Service

- A. B&N shall complete the draft technical memorandum within 30 days from receiving all information requested from the City.
- B. If authorized by Owner, or if required because of changes in the Project, B&N shall furnish services in addition to those set forth above. Owner shall pay B&N for its services as set forth in Section 3 below.

3.01 Basis of Payment—Hourly Rate

- A. Using the Scope of Work outlined in Section 1.01 and procedures set forth below, Owner shall pay B&N as follows:
 1. An hourly-rate basis not-to-exceed the amount of **\$16,450** with an estimate of hours in Exhibit A. The hourly rate schedule by position is noted in the table below.

Rates Schedule

Classification	Hourly Rate Range
Principal	\$275
Project Manager; Director	\$220 – \$235
Civil Engineer	\$130 – \$175
Clerical	\$90 – \$115

- B. The amount billed monthly for B&N's services will be based upon man-hours completed during the billing period.
- C. For additional services B&N will negotiate with the Owner a modification to the fee.

3.02 Invoicing

- A. B&N shall prepare invoices in accordance with its standard invoicing practices and submit the invoices to Owner on a monthly basis. Invoices are due and payable within 30 days of receipt. If Owner fails to make any payment due B&N for services and expenses within 30 days after receipt of B&N's invoice, B&N may suspend services under this Agreement until B&N has been paid in full all amounts due for services, expenses, and other related charges. Owner waives any and all claims against B&N for any such suspension.

4.01 Termination

- A. The obligation to continue performance under this Agreement may be terminated:
 - 1. For cause,
 - a. By either party upon 30 days written notice in the event of substantial failure by the other party to perform in accordance with the Agreement's terms through no fault of the terminating party. Failure to pay B&N for its services is a substantial failure to perform and a basis for termination.
 - b. By B&N:
 - 1) Upon seven days written notice if owner demands that B&N furnish or perform services contrary to B&N's responsibilities as a licensed professional; or
 - 2) Upon seven days written notice if B&N's services for the Project are delayed for more than 90 days for reasons beyond B&N's control.

B&N shall have no liability to Owner on account of a termination by B&N under Section 4.01.A.1.b.

- c. Notwithstanding the foregoing, this Agreement will not terminate as a result of a substantial failure under Section 4.01.A.1.a if the party receiving such notice begins, within seven days of receipt of such notice, to correct its substantial failure to perform

and proceeds diligently to cure such failure within no more than 30 days of receipt of notice; provided, however, that if and to the extent such substantial failure cannot be reasonably cured within such 30 day period, and if such party has diligently attempted to cure the same and thereafter continues diligently to cure the same, then the cure period provided for herein shall extend up to, but in no case more than, 60 days after the date of receipt of the notice.

2. For convenience, by Owner effective upon B&N's receipt of written notice from Owner.
- B. The terminating party under Section 4.01.A may set the effective date of termination at a time up to 30 days later than otherwise provided to allow B&N to complete tasks whose value would otherwise be lost, to prepare notes as to the status of completed and uncompleted tasks, and to assemble Project materials in orderly files.
 - C. In the event of any termination under Section 4.01, B&N will be entitled to invoice Owner and to receive full payment for all services performed or furnished in accordance with this Agreement and all reimbursable expenses incurred through the effective date of termination.

5.01 Successors, Assigns, and Beneficiaries

- A. Owner and B&N are hereby bound and the successors, executors, administrators, and legal representatives of Owner and B&N (and to the extent permitted by Section 5.01.B the assigns of Owner and B&N) are hereby bound to the other party to this Agreement and to the successors, executors, administrators, and legal representatives (and said assigns) of such other party, in respect of all covenants, agreements, and obligations of this Agreement.
- B. Neither Owner nor B&N may assign, sublet, or transfer any rights under or interest (including, but without limitation, moneys that are due or may become due) in this Agreement without the written consent of the other, except to the extent that any assignment, subletting, or transfer is mandated or 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.
- C. Unless expressly provided otherwise, nothing in this Agreement shall be construed to create, impose, or give rise to any duty owed by Owner or B&N to any contractor, subcontractor, supplier, other individual or entity, or to any surety for or employee of any of them. All duties and responsibilities undertaken pursuant to this Agreement will be for the sole and exclusive benefit of Owner and B&N and not for the benefit of any other party.

6.01 General Considerations

- A. The standard of care for all professional engineering and related services performed or furnished by B&N under this Agreement will be the care and skill ordinarily used by members of the subject profession practicing under similar circumstances at the same time and in the same locality. B&N makes no warranties, express or implied, under this Agreement or otherwise, in connection with B&N's services. Subject to the foregoing standard of care, B&N and its consultants may use or rely upon design elements and information ordinarily or customarily furnished by others, including, but not limited to, specialty contractors, manufacturers, suppliers, and the publishers of technical standards.

- B. All documents prepared or furnished by B&N are instruments of service, and B&N retains an ownership and property interest (including the copyright and the right of reuse) in such documents, whether or not the Project is completed. Owner shall have a limited license to use the documents on the Project, extensions of the Project, and for related uses of the Owner, subject to receipt by B&N of full payment for all services relating to preparation of the documents and subject to the following limitations: (1) Owner acknowledges that such documents are not intended or represented to be suitable for use on the Project unless completed by B&N, or for use or reuse by Owner or others on extensions of the Project, on any other project, or for any other use or purpose, without written verification or adaptation by B&N; (2) any such use or reuse, or any modification of the documents, without written verification, completion, or adaptation by B&N, as appropriate for the specific purpose intended, will be at Owner's sole risk and without liability or legal exposure to B&N or to its officers, directors, members, partners, agents, employees, and consultants; (3) Owner shall indemnify and hold harmless B&N and its officers, directors, members, partners, agents, employees, and consultants from all claims, damages, losses, and expenses, including attorneys' fees, arising out of or resulting from any use, reuse, or modification of the documents without written verification, completion, or adaptation by B&N; and (4) such limited license to Owner shall not create any rights in third parties.
- C. Insurance: The insurance maintained by B&N is summarized below:
1. B&N shall comply with all Workers' Compensation laws and, if required, provide certificates of coverage in connection with this Agreement.
 2. During the term of this Agreement, B&N will maintain in full force and effect liability insurance coverage, and will provide to the Owner certificates confirming such coverage, upon request.
- J. Indemnification by B&N: To the fullest extent permitted by Laws and Regulations, B&N shall indemnify and hold harmless Owner, and Owner's officers, directors, members, partners, agents, consultants, and employees, from losses, damages, and judgments (including reasonable consultants' and attorneys' fees and expenses) arising from third-party claims or actions relating to the Project, provided that any such claim, action, loss, damages, or judgment is attributable to bodily injury, sickness, disease, or death, or to injury to or destruction of tangible property (other than the Work itself), including the loss of use resulting therefrom, but only to the extent caused by any negligent act or omission of B&N or B&N's officers, directors, members, partners, agents, employees, or Consultants.
- K. Indemnification by Owner: Notwithstanding any other provisions of this Agreement, the Owner agrees, to the fullest extent permitted by law, to indemnify and hold harmless B&N, its officers, directors, employees, and subconsultants, (collectively, B&N) against all damages, liabilities or costs including reasonable attorneys' fees and defense costs, arising out of or in any way connected with this project or the performance by any of the parties above named of the services under this Agreement, excepting only those damages, liabilities, or costs attributable to the negligent acts or negligent failure to act by B&N.
- L. Owner and B&N agree to negotiate each dispute between them in good faith during the 30 days after notice of dispute. If negotiations are unsuccessful in resolving the dispute, then the dispute shall be mediated. If mediation is unsuccessful, then the parties may exercise their rights at law.

7.01 Total Agreement

- A. This Agreement (including any expressly incorporated attachments), constitutes the entire agreement between Owner and B&N and supersedes all prior written or oral understandings. This Agreement may only be amended, supplemented, modified, or canceled by a duly executed written instrument.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement, the Effective Date of which is indicated on page 1.

OWNER: CITY OF KYLE, TX

ENGINEER: BURGESS & NIPLE, INC.



By: _____

By: Kellen Hurst, P.E.

Title: _____

Title: District Director – Austin, Vice President

Date Signed: _____

Date Signed: 1/21/2022

Address for giving notices:

Address for giving notices:

9601 Amberglen Blvd., Suite 275
Austin, TX 78729

EXHIBIT A - KYLE WATER DISTRIBUTION MODELING - MARKETPLACE DEVELOPMENT							
Task	Task Description	Team Member Hours					Total Costs
		Principal	Project Manager	Modeling Engineer	Graduate Engineer	Administrative Assistant	
1	Project Management, Status Reporting and Invoicing						
	Reporting, Supervision, Administration and Management		8	4		8	\$ 3,500.00
						Task 1 Total	\$ 3,500.00
2	Project Meetings						
	Kickoff Meeting		2	2			\$ 820.00
	Project Review Meeting		4	4			\$ 1,640.00
						Task 2 Total	\$ 2,460.00
3	Demand Calculations						
	Demand Calculations		2	4			\$ 1,170.00
						Task 3 Total	\$ 1,170.00
4	Water Model Update						
	Future piping layout			8			\$ 1,400.00
	Future demand scenario			2			\$ 350.00
						Task 4 Total	\$ 1,750.00
5	Water Model Evaluation						
	Maximum Day Demand with Existing Development			2			\$ 350.00
	Maximum Day Demand with Proposed Development			4			\$ 700.00
	Maximum Day Demand + Fire Flow with Proposed Development			4			\$ 700.00
						Task 5 Total	\$ 1,750.00
6	Deliverables						
	Background Information Summary			2			\$ 350.00
	Demand Summary			2			\$ 350.00
	Hydraulic Results Summary			8			\$ 1,400.00
	Hydraulic Results Exhibit			8			\$ 1,400.00
	Recommendations			4			\$ 700.00
	Tech Memo Revisions			4		8	\$ 1,620.00
						Task 6 Total	\$ 5,820.00
	Project Estimated Total Hours and Fee	0	16	62	0	16	\$ 16,450.00