



## **CITY OF MARSHALL**

### **COMMISSION AGENDA INFORMATION SHEET:**

**MEETING DATE:** July 14, 2016

**PROJECT:** Consider and act on a request to approve an Engineering Services Contract with Burgess Niple Inc. Engineers for engineering and services related to Wastewater System Master Plan System Evaluation and Hydraulic Modeling. (Public Services Director)

**DESCRIPTION:** On June 09, 2016, the City Commission approved a staff request to negotiate an engineering services agreement with Burgess Niple who is including KSA Engineers of Longview, Texas in the team related to the Wastewater System Master Plan System Evaluation and Hydraulic Modeling project. The scope of work is rather long, and is intended to provide the City of Marshall with a detailed hydraulic model and inventory of our wastewater system and a Capital Improvement Plan (CIP) and schedule for system improvement projects.

Basic scope of services in the RFQ includes:

- Data collection and evaluation of the existing wastewater collection system.
- Review existing wastewater collection system and treatment design criteria.
- Identify and recommend hydraulic modeling software for future city use.
- Design a new hydraulic model with 5, 10, and 20 year performance needs.
- Develop detailed plan for inflow/infiltration of water into the distribution system.
- Develop a detailed 5, 10, and 20 year Capital Improvements Plan (CIP).
- Evaluate wastewater pipe sizing and capacity in low flow and high flow calculations.
- Recommend solutions to the top chronic system trouble areas.
- Evaluate condition of SCADA (system reporting software and equipment) system.
- Develop short and long range funding strategies, sources, and costs.
- Evaluate compliance with state and federal standards.
- Prepare a written report documenting the findings of the study to City Staff and Commission.
- Assist with education of City staff and the public of methods to reduce grease in the system.

We have negotiated with Burgess Niple and determined they can complete the scope of work we need for this project for a cost of \$124,860.

**COST:**  
\$124,860.00

<b>FUNDING:</b>	<b><u>Acct. Name &amp; No</u></b>	<b><u>Original Budget</u></b>	<b><u>Per RFQ</u></b>
	40-0411-20-03	-0- New Project	\$124,860.00

**RECOMMENDED  
ACTION:**

Authorize the City Manager to execute an Agreement with Burgess Niple Inc. for engineering and services related to Wastewater System Master Plan System Evaluation and Hydraulic Modeling at a cost of \$124,860,00. (Public Services Director)

**CITY CONTACT:** J. C. Hughes, Public Services Director 903-503-4503

**ATTACHMENTS:**

- Contractual Services Agreement
- Scope of Work – Project Work Plan and Compensation
- Fee Schedule and Rates
- RFQ – Marshall Wastewater Master Plan

cc: Lisa Agnor, City Manager  
Jack Redmon, Support Services Director  
Chris Miles, Distribution & Collection Superintendent  
Nancy Pasel, Water & Wastewater Treatment Superintendent



**Article 3. Compensation**

For all services to be rendered by CONSULTANT under this Contract, CITY shall pay to CONSULTANT an amount based on the schedule set forth in the attached Exhibit "A."

CONSULTANT shall submit a statement for the services rendered. CITY shall make payment upon said statements within thirty (30) days following approval thereof.

**Article 4. Contract Amendments**

Changes in the terms and conditions of this Contract can be made only by written amendment executed by the parties hereto prior to the changes being made.

**Article 5. Additional Work**

If the CONSULTANT is of the opinion that any work it has been directed to perform is beyond the scope of this Contract and constitutes additional work, the CONSULTANT shall promptly notify the CITY in writing. In the event that the CITY finds that such work constitutes additional work, the CITY shall do one of the following: (a) advise the CONSULTANT of the CITY's decision and provide compensation for doing the additional work on the same basis as the original work; or (b) advise the CONSULTANT not to perform the work. If the compensation for the additional work will cause the maximum amount payable to be exceeded, a written amendment will be executed.

**Article 6. Indemnification**

The CONSULTANT shall protect, indemnify and save harmless the CITY and the CITY's agents, officers, employees, subcontractors, or assigns from all claims and liability due to the acts or omissions of the CONSULTANT, its agents, officers, employees, subcontractors, or assigns in the performance of this Contract. The CONSULTANT also agrees to protect, indemnify and save harmless the CITY and the CITY's agents, officers, employees, subcontractors, or assigns from any and all expenses, including attorney fees, all court costs and awards for damages, incurred by the CITY or the CITY's agents, officers, employees, subcontractors, or assigns in litigation or otherwise resisting such claims or liabilities as a result of any activities of the CONSULTANT, its agents, officers, employees, subcontractors, or assigns in the performance of this Contract.

**Article 7. Noncollusion**

The CONSULTANT warrants that the CONSULTANT has not employed or retained any company or person, other than a bona fide employee working for the CONSULTANT, to solicit or secure this Contract, and that the CONSULTANT has not paid or agreed to pay any company or person, other than a bona fide employee, any fee, commission, percentage, brokerage fee, gift, or any other

consideration contingent upon or resulting from the award or making of this Contract. If the CONSULTANT breaches or violates this warranty, the CITY shall have the right to annul this Contract without liability or, at its discretion, to deduct from the Contract price or consideration, or otherwise recover the full amount of such fee, commission, brokerage fee, gift, or contingent fee.

**Article 8. Termination**

The CITY may terminate this Contract, with or without cause, in part or in whole, at any time before the date of completion of the work covered by this Contract. The CITY shall give written notice to the CONSULTANT at least seven (7) days prior to the effective date of termination specifying the effective date of termination.

If both parties to this Contract agree that the continuation of the Contract in whole or in part would not produce beneficial results commensurate with the further expenditure of funds, the parties shall agree upon the termination conditions, including the effective date and, in the case of partial terminations, the portion to be terminated.

Upon termination of this Contract, whether with or without cause, all finished or unfinished documents, data, studies, surveys, reports, maps, drawings, models, photographs, etc., prepared by the CONSULTANT shall, at the option of the CITY, be delivered to the CITY with no restriction on future use.

If this Contract is terminated by the CITY, the CITY shall compensate the CONSULTANT for services performed in accordance with the terms provided in Exhibit "A", "Professional Service Fees

**Article 9. Insurance**

CONSULTANT shall maintain, at no expense to CITY, a professional liability (errors and omissions) insurance policy placed with a company authorized to do business in Texas, in an amount not less than one million dollars (\$1 million) for each occurrence, one million dollars (\$1 million) in the aggregate (Claims Made Policy); and,

The Contractor will indemnify and save harmless the City, its officers, and employees from and against any and all suits, actions, legal proceedings, claims, demands, damages, costs, expenses, and attorneys fees arising out of a willful or negligent act or omission of the Contractor in the performance of this contract. The City will not be responsible for negligence of Contractor, or any of its agents, employees, or customers.

Contractor shall procure and maintain for the duration of the contract insurance against claims for injuries to persons or damages to property, which may arise from or in conjunction with the performance of the work hereunder by the Contractor, his agents, representatives, employees, or subcontractors. The

insurance must name the City as additional insured and shall insure the City in the same general terms and the same general effect. It shall be the responsibility of the Contractor to maintain adequate insurance coverage at all times. Failure of the Contractor to maintain adequate coverage shall not relieve Contractor of any contractual responsibility or obligation. The cost of such insurance shall be borne by the Contractor and a Certificate of Insurance evidencing that such insurance has been procured and is in force will be forwarded to the City before commencement of work hereunder.

**MINIMUM INSURANCE LIMITS**

<b>Type of Coverage</b>	<b>Minimum Per Occurrence</b>	<b>Aggregate Minimum</b>
Workers Compensation	As required by law and shall cover all employees including drivers.	As required by law.
Comprehensive & General Public Liability	\$1,000,000	\$1,000,000
Property Damage	\$1,000,000	\$1,000,000
Comprehensive Auto Liability Bodily Injury	\$1,000,000	
Comprehensive Auto Liability- Property Damage	\$500,000	

**Article 10. Controlling Law**

Without regard to any rules on conflicts of law, this Contract shall be subject to and interpreted in conformance with the laws of the State of Texas and the ordinances of the City of Marshall, Texas, unless expressly provided otherwise by federal law or regulations. Venue for any action arising hereunder shall lie exclusively in Harrison County, Texas, for actions in state court and in the Eastern District of Texas, for actions in federal court.

**Article 11. Compliance with Laws**

The CONSULTANT shall comply with all Federal, State, and local laws, statutes, ordinances, rules and regulations, and the orders and decrees of any courts or administrative bodies or tribunals in any manner affecting the performance of this Contract, including, without limitation, workers' compensation laws, minimum and maximum salary and wage statutes and regulations, and licensing laws and regulations. When required, the CONSULTANT shall furnish the CITY with satisfactory proof of its compliance therewith.

**Article 12. Successors and Assigns**

CITY and CONSULTANT each is hereby bound and the partners, successors, executors, administrators and legal representatives of CITY and CONSULTANT (and to the extent permitted by this Article, the assigns of CITY and

CONSULTANT) are hereby bound to the other party to this Contract and to the partners, successors, executors, administrators and legal representatives (and said assigns) of such other party, in respect of all covenants, Contracts and obligations of this Contract.

Neither CITY nor CONSULTANT shall assign, sublet or transfer any rights under or interest in (including, but without limitation, moneys that may become due or moneys that are due) this Contract without the written consent of the other, except to the extent that any assignment, subletting or transfer is mandated by law or the effect of this 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 Contract. Nothing contained in this paragraph shall prevent CONSULTANT from employing such independent professional associates and consultants as CONSULTANT may deem appropriate to assist in the performance of services hereunder, provided such independent associates or consultants are approved in writing in advance by CITY and are paid by CONSULTANT.

**Article 13. No Third-party Beneficiaries**

Nothing under this Contract shall be construed to give any rights or benefits in this Contract to anyone other than CITY and CONSULTANT, and all duties and responsibilities undertaken pursuant to this Contract will be for the sole and exclusive benefit of CITY and CONSULTANT and not for the benefit of any other party.

**Article 14. Special Provisions**

Any other provisions of this Contract or other documents included by reference herein to the contrary notwithstanding, the following provisions shall apply to this Contract and the respective duties and responsibilities of CITY and CONSULTANT affected thereby:

As to the contractual relationship between CONSULTANT and CITY, CONSULTANT is and shall be considered in all things an independent contractor.

This Contract shall not be subject to binding arbitration.

**Article 15. Exhibits**

The following exhibit is attached to and made a part of this Contract:

Exhibit "A," CONSULTANT's Agreement of services. However, where the terms and provisions of the above referenced exhibit shall conflict with the terms and provisions of this standard contract, this standard contract shall control.

Exhibit "B," CITY OF MARSHALL's RFQ Wastewater System Master Plan System Evaluation and Hydraulic Modeling No. WU-2016-2-WWMP. However,

where the terms and provisions of the above referenced exhibit shall conflict with the terms and provisions of this standard contract, this standard contract shall control.

**Article 16. Entire Contract**

This Contract, together with the exhibit(s) identified in Article 15, constitute the entire Contract between CITY and CONSULTANT and supersede all prior or oral understandings.

**Article 17. Term of Contract**

Project shall be completed no later than 90 days from execution of the agreement.

**Article 18. Signatory Warranty**

The signatories to this Contract warrant that each has the authority to enter into this Contract on behalf of the party he or she represents.

IN WITNESS WHEREOF, the parties hereto have made and executed this Contract as of the day and year first above written.

CITY:  
CITY OF MARSHALL, TEXAS  
401 SOUTH ALAMO  
MARSHALL, TX 75760

CONSULTANT:  
Burgess & Niple, Inc.  
4029 S. Capital of Texas Highway,  
Suite 220  
Austin, Texas 78704

By: \_\_\_\_\_  
Lisa Agnor  
City Manager

By: \_\_\_\_\_  
Printed Name: David Koberlein, P.E.  
Title: Vice President

ATTEST:

ATTEST:

\_\_\_\_\_  
Elaine Altman  
City Secretary

\_\_\_\_\_  
Printed Name: Leigh Cerda  
Title: Associate/Senior Project  
Manager

APPROVED AS TO FORM:

\_\_\_\_\_  
Todd Fitts  
City Attorney

*(execute two originals)*