



## **CITY OF MARSHALL**

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

**MEETING DATE:** October 27, 2016

**PROJECT:** Consider and act on a request to approve an Engineering Services Contract with Hayes Engineers of Longview, Texas for engineering and services related to Water System Master Plan System Evaluation and Hydraulic Modeling. (Public Services Director)

**DESCRIPTION:** On July 14, 2016, the City Commission approved a staff request to negotiate an engineering services agreement with Hayes Engineers of Longview, Texas related to the Water 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 water system and a Capital Improvement Plan (CIP) and schedule for system improvement projects.

Basic scope of services in the Master Plan includes: (All hydraulic analyses shall be performed for each of the 5-year, 10-year, and 20-year planning horizons)

- Analysis of the existing distribution system for standard non-emergency distribution system performance goals.
- Perform hydraulic analysis and evaluation of existing and future pressure zones.
- Perform an analysis of the existing distribution system for standard water quality parameters, including, as a minimum water age, chlorine residual levels, compliance with all new applicable Texas Commission on Environmental Quality (TCEQ) and American Water Works Association (AWWA) minimum water quality parameters.
- Prepare a technical report of the water model analysis to include, as a minimum, preliminary pipeline routes, sizes, and slopes, and an analysis of the entire water distribution and pumping system design and performance for 5-year, 10-year, and 20-year planning horizons.
- Perform condition and reliability assessments for all raw water and high speed pumping equipment and operations.
- Recommended pump station improvements with a focus on the condition and existing efficiency of the VFD pumps at the Big Cypress Pump Station.
- Identify any deficiencies with the existing SCADA system. Review and recommend improvements for the system.

- Identify existing “deadend” water mains in the existing system and recommend improvements for issues regarding pressure, flow, water age, and fire flow capacity.
- Evaluate existing City of Marshall line flushing and fire hydrant testing operations and recommend improvements for on-going system maintenance operations.
- Evaluate existing facilities for system performance and security during normal and emergency operations, including an analysis of raw water facilities, emergency backup facilities, alternate sources of raw water and raw water transmission, alternate pumping facilities and redundancy and provide recommendations designed to ensure continuity of service.
- Review existing City of Marshall Standard Water System Design Criteria and compare the existing data to standards in use at similar and comparable agencies. Prepare recommendations for improvements to the City’s standards.
- Review existing City of Marshall Standard Water System Design Criteria and compare the existing data to all applicable state and federal design standards and criteria. Prepare recommendations for improvements to the City’s standards that will result in compliance with those state and federal regulations.
- Review the City’s existing policies and standards against current Best Management Practices (BMP) for water system operation, water use policies, conservation, maintenance, planning, and finance. Make recommendations for improvements to existing standards and policies.
- Review current industry standard methods for water quality and treatment issues compared to existing City of Marshall standard operating practices and recommend improvements to increase existing water quality and treatment efficiencies.

We have negotiated with Hayes Engineering and determined they can complete the scope of work we need for this project for a cost of \$155,750.

**COST:**  
\$155,750

<b>FUNDING:</b>	<u>Acct. Name &amp; No</u>	<u>Original Budget</u>	<u>Per RFQ</u>
	40-0412-20-03	-0- New Project	\$155,750

**RECOMMENDED**

**ACTION:**

Authorize the City Manager to execute an Agreement with Hayes Engineering for engineering and services related to Water System Master Plan System Evaluation and Hydraulic Modeling at a cost of \$155,750. (Public Services Director)

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

**ATTACHMENTS:**

- Contractual Services Agreement & Fee Schedule

cc: Lisa Agnor, City Manager

Jack Redmon, Support Services Director

Chris Miles, Distribution & Collection Superintendent

Nancy Pasel, Water & Wastewater Treatment Superintendent

This document has important legal consequences; consultation with an attorney is encouraged with respect to its use or modification. This document should be adapted to the particular circumstances of the contemplated Project and the controlling Laws and Regulations.

**DRAFT**

**AGREEMENT  
BETWEEN OWNER AND ENGINEER  
FOR STUDY AND REPORT  
PROFESSIONAL SERVICES**

Prepared by



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**AGREEMENT  
BETWEEN OWNER AND ENGINEER  
FOR STUDY AND REPORT  
PROFESSIONAL SERVICES**

THIS IS AN AGREEMENT effective as of [REDACTED] ("Effective Date") between City of Marshall, Texas ("Owner") and Hayes Engineering, Inc. ("Engineer").

Owner's Project, of which Engineer's services under this Agreement are a part, is generally identified as follows: City of Marshall Water Master Plan ("Project").

Engineer's services under this Agreement are generally identified as follows: Water System Master Plan consisting of update of City's distribution system map, review of historical water system documents, computer analysis of water system using existing and expected future distribution system conditions, perform assessments of existing systems and operations, evaluation, study and report including recommendation for capital improvement projects. ("Study and Report Services").

Other terms used in this Agreement are defined in Article 7.

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Owner and Engineer further agree as follows:

**ARTICLE 1 – SERVICES OF ENGINEER**

**1.01 Scope**

- A. Engineer shall provide, or cause to be provided, the services set forth herein and in Exhibit A.

**ARTICLE 2 – OWNER'S RESPONSIBILITIES**

**2.01 General**

- A. Owner shall pay Engineer as set forth in Article 4 and Appendix 1.
- B. Owner shall provide Engineer with all criteria and full information as to Owner's requirements for the Study and Report Services, including but not limited to design objectives and constraints; space, capacity and performance requirements; flexibility and expandability goals; any anticipated funding sources; and budgetary limitations.
- C. Owner shall furnish to Engineer all existing studies, reports, and other available information pertinent to the Engineer's performance of the Study and Report Services, including reports and data relative to previous designs, construction, or investigation at or adjacent to any Site under consideration.
- D. Following Engineer's assessment of initially-available Project data and information, and receipt of Engineer's advice regarding the need (if any) for additional Project-related data and information, Owner shall either (1) authorize Engineer to undertake Additional Services necessary to obtain such additional Project-related data and information, or (2) obtain, furnish, or otherwise make available (if necessary through title searches, or retention of specialists or consultants) such additional Project-related data and information. Such additional data and information would generally include the following:

Property descriptions.

1. Zoning, deed, and other land use restrictions.
  2. Utility information, reports, and mapping.
  3. Property, boundary, easement, right-of-way, topographic, and other special surveys or data, including establishing relevant reference points.
  4. Explorations and tests of subsurface conditions at or adjacent to a Site; geotechnical reports and investigations; drawings of physical conditions relating to existing surface or subsurface structures at a Site; hydrographic surveys, laboratory tests and inspections of samples, materials, and equipment; with appropriate professional interpretation of such information or data.
  5. Environmental assessments, audits, investigations, and impact statements, and other relevant environmental, historical, or cultural studies relevant to the Project, the Site(s), and adjacent areas.
  6. Data or consultations as required for the Project but not otherwise identified in this Agreement.
- E. Owner shall advise Engineer of the identity and scope of services of any independent consultants retained by Owner to perform or furnish services pertinent to the Study and Report Services.
- F. Owner shall arrange for safe access to and make all provisions for Engineer to enter upon public and private property as required for Engineer to perform services under the Agreement.
- G. Owner shall inform Engineer in writing of any specific requirements of safety or security programs that are applicable to Engineer, as a visitor to any Site under study.
- H. Owner shall examine all alternative solutions, studies, reports, sketches, Drawings, Specifications, proposals, and other documents presented by Engineer (including obtaining advice of an attorney, risk manager, insurance counselor, and other advisors or consultants as Owner deems appropriate with respect to such examination) and render in writing timely decisions pertaining thereto.
- I. Owner shall inform Engineer regarding any need for assistance in evaluating the possible use of Project Strategies, Technologies, and Techniques, as defined in Exhibit A.
- J. Owner shall advise Engineer as to whether Engineer's assistance is requested in identifying opportunities for enhancing the sustainability of the Project.
- K. Recognizing and acknowledging that Engineer's services and expertise do not include the following services, Owner shall provide, as required for Engineer's performance of its Study and Report Services:
1. Accounting, bond and financial advisory (including, if applicable, "municipal advisor" services as described in Section 975 of the Dodd-Frank Wall Street Reform and Consumer Protection Act, 2010, and the municipal advisor registration rules issued by the Securities and Exchange Commission), independent cost estimating, and insurance counseling services.
  2. Legal services with regard to issues pertaining to the Project as Owner requires, or Engineer reasonably requests.
- L. Owner shall be responsible for all requirements and instructions that it furnished to Engineer pursuant to this Agreement, and for the accuracy and completeness of all programs, reports, data, and other information furnished by Owner to Engineer pursuant to this Agreement. Engineer may

use and rely upon such requirements, programs, instructions, reports, data, and information in performing or furnishing services under this Agreement, subject to any express limitations or reservations applicable to the furnished items.

- M. Owner shall give prompt written notice to Engineer whenever Owner observes or otherwise becomes aware of:
1. any development that affects the scope or time of performance of Engineer's services;
  2. the presence of any Constituent of Concern at any Site; or
  3. any relevant, material defect or nonconformance in Engineer's services or Owner's performance of its responsibilities under this Agreement.

### **ARTICLE 3 – SCHEDULE FOR RENDERING SERVICES**

#### **3.01 Commencement**

- A. Engineer is authorized to begin rendering services as of the Effective Date.

#### **3.02 Time for Completion**

- A. Engineer shall complete its obligations within a reasonable time. Specific periods of time for rendering services or specific dates by which services are to be completed are provided in Exhibit A, and are hereby agreed to be reasonable.
- B. If, through no fault of Engineer, such periods of time or dates are changed, or the orderly and continuous progress of Engineer's services is impaired, or Engineer's services are delayed or suspended, then the time for completion of Engineer's services, and the rates and amounts of Engineer's compensation, shall be adjusted equitably.

### **ARTICLE 4 – INVOICES AND PAYMENTS**

#### **4.01 Invoices**

- A. *Preparation and Submittal of Invoices:* Engineer shall prepare invoices in accordance with its standard invoicing practices and the terms of this Article and Appendix 1. Engineer shall submit its invoices to Owner on a monthly basis. Invoices are due and payable within 30 days of receipt.

#### **4.02 Payments**

- A. *Application to Interest and Principal:* Payment will be credited first to any interest owed to Engineer and then to principal.
- B. *Failure to Pay:* If Owner fails to make payments due Engineer for services and expenses within 30 days after receipt of Engineer's invoice, then:
1. amounts due Engineer will be increased at the rate of 1.0% per month (or the maximum rate of interest permitted by law, if less) from said thirtieth day; and
  2. Engineer may, after giving seven days written notice to Owner, suspend services under this Agreement until Owner has paid in full all amounts due for services, expenses, and other related charges. Owner waives any and all claims against Engineer for any such suspension.
- C. *Disputed Invoices:* If Owner disputes an invoice, either as to amount or entitlement, then Owner shall promptly advise Engineer in writing of the specific basis for doing so, may withhold only that portion so disputed, and must pay the undisputed portion subject to the terms of Paragraph 4.01.

4.03 *Payment for Basic Services (Lump Sum Basis) and Additional Services*

A. Using the procedures set forth in this Article, Owner shall pay Engineer for Basic Services as follows:

1. Collect and review data	\$2,000.
2. Utilize base map in State Plane Coordinates developed by others	\$0.
3. Develop system map in State Plane Coordinates	\$10,000.
4. Develop hydraulic model based on new mapping	\$50,000.
5. Develop flow testing program for model calibration	\$2,500.
6. Prepare Technical Report of the model analysis	\$5,000.
7. Prepare CIP Program for identified needs	\$7,500.
8. Perform assessments of existing equipment	\$10,000.
9. Perform assessment of existing SCADA system	\$10,000.
10. Evaluate emergency operations	\$5,000.
11. Prepare Technical Memorandum of assessments	\$5,000.
12. Perform assessment of Design Criteria	\$2,500.
13. Review operational procedures	\$2,500.
14. Evaluate regional water system feasibility	\$2,500.
15. Study and Report with Capital Improvement Plans	\$20,000.
16. In addition to the Lump Sum amounts, reimbursement for the following expenses:	
a. Provide GPS coordinates for all exposed valves (estimated to be 3,000 units @ 5 min/ea = 250 hrs x \$85/hr =	<u>\$21,250.</u>
TOTAL AMOUNT OF BASIC SERVICES	\$155,750.

B. The portion of the compensation amount billed monthly for Engineer's services will be based upon Engineer's estimate of the percentage of the Study and Report Services actually completed during the billing period.

C. For Additional Services, Owner shall pay Engineer an amount equal to the cumulative hours charged to providing the Additional Services by each class of Engineer's employees, times standard hourly rates for each applicable billing class; plus reimbursement of expenses incurred in connection with providing the Additional Services (including but not limited to expenses in the categories listed on the reimbursable expenses schedule in Appendix 1) and Engineer's Consultants' charges, if any.

D. Engineer's standard hourly rates and reimbursable expenses schedule are set forth in Appendix 1.

## ARTICLE 5 – OPINIONS OF COST

### 5.01 *Opinions of Probable Construction Cost*

- A. Engineer's opinions (if any) of probable Construction Cost are to be made on the basis of Engineer's experience, qualifications, and general familiarity with the construction industry. However, because of the limited and preliminary nature of the Study and Report Services, and because Engineer has no control over the cost of labor, materials, equipment, or services furnished by others, or over contractors' methods of determining prices, or over competitive bidding or market conditions, Engineer cannot and does not guarantee that proposals, bids, or actual Construction Cost will not vary from opinions of probable Construction Cost prepared by Engineer. If Owner requires greater assurance as to probable Construction Cost, then Owner agrees to obtain an independent cost estimate.

### 5.02 *Opinions of Total Project Costs*

- A. The services, if any, of Engineer with respect to Total Project Costs shall be limited to assisting the Owner in tabulating the various categories that comprise Total Project Costs. Engineer assumes no responsibility for the accuracy of any opinions of Total Project Costs.

## ARTICLE 6 – GENERAL CONSIDERATIONS

### 6.01 *Standards of Performance*

- A. *Standard of Care:* The standard of care for all professional engineering and related services performed or furnished by Engineer 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. Engineer makes no warranties, express or implied, under this Agreement or otherwise, in connection with any services performed or furnished by Engineer.
- B. *Technical Accuracy:* Owner shall not be responsible for discovering deficiencies in the technical accuracy of Engineer's services. Engineer shall correct deficiencies in technical accuracy without additional compensation, unless such corrective action is directly attributable to deficiencies in Owner-furnished information.
- C. *Consultants:* Engineer may retain such Consultants as Engineer deems necessary to assist in the performance or furnishing of the services, subject to reasonable, timely, and substantive objections by Owner.
- D. *Reliance on Others:* Subject to the standard of care set forth in Paragraph 6.01.A, Engineer 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.
- E. Engineer shall not be required to sign any document, no matter by whom requested, that would result in the Engineer having to certify, guarantee, or warrant the existence of conditions whose existence the Engineer cannot ascertain. Owner agrees not to make resolution of any dispute with the Engineer or payment of any amount due to the Engineer in any way contingent upon the Engineer signing any such document.
- F. Engineer shall not have any construction-related duties under this Agreement. Engineer shall not at any time supervise, direct, control, or have authority over any Constructor's work, nor shall Engineer have authority over or be responsible for the means, methods, techniques, sequences, or procedures of construction selected or used by any Constructor, or the safety precautions and programs incident thereto, for security or safety at any Site, nor for any failure of a Constructor to

comply with Laws and Regulations applicable to that Constructor's furnishing and performing of its work. Engineer shall not be responsible for the acts or omissions of any Constructor.

- G. Engineer is not required to provide and does not have any responsibility for surety bonding or insurance-related advice, recommendations, counseling, or research, or enforcement of construction insurance or surety bonding requirements.
- H. Engineer's services do not include providing legal advice or representation.
- I. Engineer's services do not include (1) serving as a "municipal advisor" for purposes of the registration requirements of Section 975 of the Dodd-Frank Wall Street Reform and Consumer Protection Act (2010) or the municipal advisor registration rules issued by the Securities and Exchange Commission, or (2) advising Owner, or any municipal entity or other person or entity, regarding municipal financial products or the issuance of municipal securities, including advice with respect to the structure, timing, terms, or other similar matters concerning such products or issuances.

#### 6.02 *Use of Documents*

- A. All Documents are instruments of service, and Engineer shall retain an ownership and property interest therein (including the copyright and the right of reuse at the discretion of the Engineer) whether or not the Study and Report Services or the Project is completed.
- B. Owner may make and retain copies of Documents solely for Owner's information and reference in connection with the specific subject matter of the Documents, subject to receipt by Engineer 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 by Owner unless completed by Engineer; (2) if Engineer has completed a Report under this Agreement, and received full payment for such Report, then the Owner may furnish copies of the completed Report to Owner's consultants and design professionals for their reference in proceeding with design or similar services, provided that the Owner informs such consultants and design professionals of Engineer's ownership interests in the Report, and includes with the Report all Engineer's written statements regarding the purpose, scope, use, and limitations of the Report; (3) the Documents are not design or construction documents, (4) no Document shall be altered, modified, or reused by Owner or any third party for any purpose except with Engineer's express written consent; (5) any use, reuse, alteration, or modification of the Documents, except as authorized in this Agreement or by Engineer's written consent, will be at Owner's sole risk and without liability or legal exposure to Engineer or to its officers, directors, members, partners, agents, employees, and Consultants; (6) Owner shall indemnify and hold harmless Engineer 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 unauthorized use, reuse, alteration, or modification of the Documents; and (7) nothing in this paragraph shall create any rights in third parties.

#### 6.03 *Electronic Transmittals*

- A. Owner and Engineer may transmit, and shall accept, Project-related correspondence, Documents, text, data, drawings, information, and graphics, in electronic media or digital format, either directly, or through access to a secure Project website, in accordance with a mutually agreeable protocol.
- B. If this Agreement does not establish protocols for electronic or digital transmittals, then Owner and Engineer shall jointly develop such protocols.

- C. When transmitting items in electronic media or digital format, the transmitting party makes no representations as to long term compatibility, usability, or readability of the items resulting from the recipient's use of software application packages, operating systems, or computer hardware differing from those used in the drafting or transmittal of the items, or from those established in applicable transmittal protocols.

#### 6.04 Insurance

- A. Engineer will maintain insurance coverage for Workers' Compensation, General Liability, Professional Liability, and Automobile Liability and will provide certificates of insurance to Owner upon request.

#### 6.05 Termination

- A. *Termination:* The obligation to provide further services 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.
    - b. By Engineer:
      - 1) upon seven days written notice if Owner demands that Engineer furnish or perform services contrary to Engineer's responsibilities as a licensed professional; or
      - 2) upon seven days written notice if the Engineer's services are delayed for more than 90 days for reasons beyond Engineer's control.
    - c. Engineer shall have no liability to Owner on account of a termination for cause by Engineer.
  - 2. Notwithstanding the foregoing, this Agreement will not terminate as a result of a substantial failure under Paragraph 6.05.A.1.a or 6.05.A.1.b.1 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.
- B. *Termination for Convenience:* Owner may terminate the Agreement for Owner's convenience effective upon the Engineer's receipt of written notice from Owner.
- C. The terminating party under Paragraphs 6.05.A or 6.05.B may set the effective date of termination at a time up to 30 days later than otherwise provided to allow Engineer 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.
- D. In the event of any termination under Paragraph 6.05, Engineer 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.
- E. In the event of termination by Owner for convenience, or by Engineer for cause, Engineer shall be entitled, in addition to invoicing for those items identified in Paragraph 6.05.D, to invoice Owner

and receive payment of a reasonable amount for services and expenses directly attributable to termination, both before and after the effective date of termination, such as reassignment of personnel, costs of terminating contracts with Engineer's Consultants, and other related close-out costs, using methods and rates for Additional Services as set forth in Article 4 and Appendix 1.

**6.06 Controlling Law**

- A. This Agreement is to be governed by the law of the state in which the subject matter of the Study and Report Services is located.
- B. Any controversy or claim arising out of or relating to this Agreement or breach thereof shall be settled in the federal and state courts in Harrison County, Texas.

**6.07 Successors, Assigns, and Beneficiaries**

- A. Owner and Engineer are hereby bound and the successors, executors, administrators, and legal representatives of Owner and Engineer (and to the extent permitted by Paragraph 6.07.B the assigns of Owner and Engineer) 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 Engineer 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 in this Agreement:
  - 1. Nothing in this Agreement shall be construed to create, impose, or give rise to any duty owed by Owner or Engineer to any Constructor, or other third-party individual or entity, or to any surety for or employee of any of them.
  - 2. All duties and responsibilities undertaken pursuant to this Agreement will be for the sole and exclusive benefit of Owner and Engineer and not for the benefit of any other party. Any and all Documents prepared by Engineer, including but not limited to the Report to be prepared pursuant to Exhibit A, are prepared solely for the use and benefit of Owner, unless expressly agreed otherwise by Engineer.

**6.08 Dispute Resolution**

- A. Owner and Engineer 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.

**6.09 Environmental Condition of Site**

- A. Owner represents to Engineer that as of the Effective Date to the best of Owner's knowledge no Constituents of Concern, other than those disclosed in writing to Engineer, exist at or adjacent to any Site under study.
- B. If Engineer encounters or learns of an undisclosed Constituent of Concern at any Site under study, then Engineer shall notify (1) Owner and (2) appropriate governmental officials if Engineer reasonably concludes that doing so is required by applicable Laws or Regulations.

- C. It is acknowledged by both parties that Engineer's scope of services does not include any services related to unknown or undisclosed Constituents of Concern. If Engineer or any other party encounters, uncovers, or reveals an undisclosed Constituent of Concern, then Owner shall promptly determine whether to retain a qualified expert to evaluate such condition or take any necessary corrective action, or provide notice to the owner of the Site.
- D. If investigative or remedial action, or other professional services, are necessary with respect to undisclosed Constituents of Concern, or if investigative or remedial action beyond that reasonably contemplated is needed to address a disclosed or known Constituent of Concern, then Engineer may, at its option and without liability for consequential or any other damages, suspend performance of services on the portion of the Project affected thereby until such portion of the Project is no longer affected.
- E. If the presence at any Site of undisclosed Constituents of Concern adversely affects the performance of Engineer's services under this Agreement, then the Engineer shall have the option of (1) accepting an equitable adjustment in its compensation or in the time of completion, or both; or (2) terminating this Agreement for cause on seven days notice.
- F. Owner acknowledges that Engineer is performing professional services for Owner and that Engineer is not and shall not be required to become an "owner" "arranger," "operator," "generator," or "transporter" of hazardous substances, as defined in the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA), as amended, which are or may be encountered at or near any Site under study in connection with the Study and Report Services.

#### 6.10 *Indemnification and Mutual Waiver*

- A. *Indemnification by Engineer:* To the fullest extent permitted by Laws and Regulations, Engineer 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) arising from third-party claims or actions relating to the Agreement, the Study and Report Services, or 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, including the loss of use resulting therefrom, but only to the extent caused by any negligent act or omission of Engineer or Engineer's officers, directors, members, partners, agents, employees, or Consultants.
- B. *Indemnification by Owner:* To the fullest extent permitted by Laws and Regulations, Owner shall indemnify and hold harmless Engineer and its officers, directors, members, partners, agents, employees, and Consultants as required by Laws and Regulations. In addition, to the fullest extent permitted by law, Owner shall indemnify and hold harmless Engineer and its officers, directors, members, partners, agents, Consultants, and employees from reasonable claims, costs, losses, and damages arising out of or relating to the Study and Report Services, the Agreement, or the Project, provided that any such claim, cost, loss, or damage is attributable to bodily injury, sickness, disease, or death, or to injury to or destruction of tangible property, including the loss of use resulting therefrom, but only to the extent caused by any negligent act or omission of Owner or Owner's officers, directors, members, partners, agents, consultants, employees, or others retained by or under contract to the Owner with respect to the Project.
- C. *Environmental Indemnification:* To the fullest extent permitted by Laws and Regulations, Owner shall indemnify and hold harmless Engineer and its officers, directors, members, partners, agents, employees, and Consultants from all claims, costs, losses, damages, actions, and judgments

(including reasonable consultants' and attorneys' fees and expenses) caused by, arising out of, relating to, or resulting from a Constituent of Concern at, on, or under any Site under study, provided that (1) any such claim, cost, loss, damages, action, or judgment is attributable to bodily injury, sickness, disease, or death, or to injury to or destruction of tangible property, including the loss of use resulting therefrom, and (2) nothing in this paragraph shall obligate Owner to indemnify any individual or entity from and against the consequences of that individual's or entity's own negligence or willful misconduct.

- D. *No Defense Obligation:* The indemnification commitments in this Agreement do not include a defense obligation by the indemnitor unless such obligation is expressly stated.
- E. *Percentage Share of Negligence:* To the fullest extent permitted by Laws and Regulations, a party's total liability to the other party and anyone claiming by, through, or under the other party for any cost, loss, or damages caused in part by the negligence of the party and in part by the negligence of the other party or any other negligent entity or individual, shall not exceed the percentage share that the party's negligence bears to the total negligence of Owner, Engineer, and all other negligent entities and individuals.
- F. *Mutual Waiver:* To the fullest extent permitted by Laws and Regulations, Owner and Engineer waive against each other, and the other's employees, officers, directors, members, agents, insurers, partners, and consultants, any and all claims for or entitlement to special, incidental, indirect, or consequential damages arising out of, resulting from, or in any way related to the Agreement, the Study and Report Services, or the Project, from any cause or causes.

#### 6.11 *Limitation of Engineer's Liability*

- A. To the fullest extent permitted by law, the total liability, in the aggregate, of Engineer and Engineer's officers, directors, partners, members, employees, agents, and Consultants, or any of them, to Owner and anyone claiming by, through, or under Owner, for any and all injuries, losses, damages and expenses whatsoever arising out of, resulting from, or in any way related to the Study and Report Services this Agreement, or the Project from any cause or causes including but not limited to the negligence, professional errors or omissions, strict liability, or breach of contract or warranty, express or implied, of Engineer or Engineer's officers, directors, partners, members, employees, agents, or Consultants, or any of them, shall not exceed the total amount of \$100,000 or the total compensation paid to Engineer under this Agreement, whichever is greater.

#### 6.12 *Records Retention*

- A. Engineer shall maintain on file in legible form, for a period of five years following completion or termination of its services, all Documents, records (including cost records), and design calculations related to Engineer's services or pertinent to Engineer's performance under this Agreement. Upon Owner's request, Engineer shall provide a copy of any such item to Owner at cost.

#### 6.13 *Miscellaneous Provisions*

- A. *Notices:* Any notice required under this Agreement will be in writing, addressed to the appropriate party at its address on the signature page and given personally, by registered or certified mail postage prepaid, or by a commercial courier service. All notices shall be effective upon the date of receipt.
- B. *Survival:* All express representations, waivers, indemnifications, and limitations of liability included in this Agreement will survive its completion or termination for any reason.
- C. *Severability:* Any provision or part of the Agreement held to be void or unenforceable under any Laws or Regulations shall be deemed stricken, and all remaining provisions shall continue to be

valid and binding upon Owner and Engineer, which agree that the Agreement shall be reformed to replace such stricken provision or part thereof with a valid and enforceable provision that comes as close as possible to expressing the intention of the stricken provision.

- D. *Waiver*: A party's non-enforcement of any provision shall not constitute a waiver of that provision, nor shall it affect the enforceability of that provision or of the remainder of this Agreement.
- E. *Accrual of Claims*: To the fullest extent permitted by Laws and Regulations, all causes of action arising under this Agreement shall be deemed to have accrued, and all statutory periods of limitation shall commence, no later than the date of completion of the Study and Report Services.
- F. *Scanned Reproductions*: The parties agree and stipulate that the original of this Agreement, including the signature page and any attachments, may be scanned and stored in a computer database or similar device, and that any printout or other output readable by sight, the reproduction of which is shown to accurately reproduce the original, may be used for any purpose just as if it were the original, including proof of the content of the original writing.

## ARTICLE 7 – DEFINITIONS

### 7.01 Defined Terms

- A. Wherever used in this Agreement (including the Exhibits and Appendix) terms (including the singular and plural forms) printed with initial capital letters have the meanings indicated in the text above, in the exhibits, or in the following provisions:
  - 1. *Additional Services*—The services to be performed for or furnished to Owner by Engineer in accordance with Part 2 of Exhibit A of this Agreement.
  - 2. *Agreement*—This written contract for study and report professional services between Owner and Engineer, including all exhibits identified in Paragraph 8.01 and any duly executed amendments.
  - 3. *Basic Services*—The services to be performed for or furnished to Owner by Engineer in accordance with Part 1 of Exhibit A of this Agreement.
  - 4. *Constituent of Concern*—Asbestos, petroleum, radioactive material, polychlorinated biphenyls (PCBs), hazardous waste, and any substance, product, waste, or other material of any nature whatsoever that is or becomes listed, regulated, or addressed pursuant to (a) the Comprehensive Environmental Response, Compensation and Liability Act, 42 U.S.C. §§9601 et seq. ("CERCLA"); (b) the Hazardous Materials Transportation Act, 49 U.S.C. §§5101 et seq.; (c) the Resource Conservation and Recovery Act, 42 U.S.C. §§6901 et seq. ("RCRA"); (d) the Toxic Substances Control Act, 15 U.S.C. §§2601 et seq.; (e) the Clean Water Act, 33 U.S.C. §§1251 et seq.; (f) the Clean Air Act, 42 U.S.C. §§7401 et seq.; or (g) any other federal, State, or local statute, law, rule, regulation, ordinance, resolution, code, order, or decree regulating, relating to, or imposing liability or standards of conduct concerning, any hazardous, toxic, or dangerous waste, substance, or material.
  - 5. *Construction Cost*—The cost to Owner of the construction of a recommended solution presented in the Report furnished by Engineer under Exhibit A, or of a specific portion of the Project for which Engineer has agreed to provide opinions of cost. Construction Cost includes the cost of construction labor, services, materials, equipment, insurance, and bonding, and allows for contingencies. Construction Cost does not include costs of services of Engineer or other design professionals and consultants; cost of land or rights-of-way, or compensation for damages to property; Owner's costs for legal, accounting, insurance counseling, or auditing services; interest or financing charges incurred in connection with the Project; or the cost of

other services to be provided by others to Owner. Construction Cost is one of the items comprising Total Project Costs.

6. *Constructor*—Any person or entity (not including the Engineer, its employees, agents, representatives, and consultants), performing or supporting construction activities relating to the Project, including but not limited to contractors, subcontractors, suppliers, Owner's work forces, utility companies, construction managers, testing firms, shippers, and truckers, and the employees, agents, and representatives of any or all of them.
7. *Consultants*—Individuals or entities having a contract with Engineer to furnish services with respect to this Agreement as Engineer's independent professional associates and consultants; subcontractors; or vendors.
8. *Documents*—Data, studies, reports (including the Report referred to in Exhibit A), and other deliverables, whether in printed or electronic format, provided or furnished by Engineer to Owner pursuant to this Agreement.
9. *Effective Date*—The date indicated in this Agreement on which it becomes effective, but if no such date is indicated, the date on which this Agreement is signed and delivered by the last of the parties to sign and deliver.
10. *Engineer*—The individual or entity named as such in this Agreement.
11. *Laws and Regulations; Laws or Regulations*—Any and all applicable laws, statutes, rules, regulations, ordinances, codes, and orders of any and all governmental bodies, agencies, authorities, and courts having jurisdiction.
12. *Owner*—The individual or entity with which Engineer has entered into this Agreement and for which Engineer's services are to be performed.
13. *Project*—The total undertaking to be accomplished for Owner by engineers, contractors, and others, including planning, study, design, construction, testing, commissioning, and start-up, and of which the Study and Report Services to be performed or furnished by Engineer under this Agreement are a part.
14. *Site*—One or more lands or areas that Engineer studies as the location or possible location of the Project.
15. *Total Project Costs*—The total cost of planning, studying, designing, constructing, testing, commissioning, and start-up of the Project, including Construction Cost and all other Project labor, services, materials, equipment, insurance, and bonding costs, allowances for contingencies, and the total costs of services of Engineer and other design professionals and consultants, together with such other Project-related costs that Owner furnishes to Engineer for inclusion, including but not limited to cost of land, rights-of-way, compensation for damages to property, Owner's costs for legal, accounting, insurance counseling, and auditing services, interest and financing charges incurred in connection with the Project, and the cost of other services to be provided by others to Owner.

## **ARTICLE 8 – EXHIBITS AND SPECIAL PROVISIONS**

### **8.01 Exhibits Included**

- A. Exhibit A, Engineer's Services.
- B. Appendix 1, Standard Hourly Rates and Reimbursable Expenses

#### 8.02 *Total Agreement*

- A. This Agreement, (together with the exhibits included above) constitutes the entire agreement between Owner and Engineer and supersedes all prior written or oral understandings. This Agreement may only be amended, supplemented, modified, or canceled by a written instrument duly executed by both parties.

#### 8.03 *Designated Representatives*

- A. With the execution of this Agreement, Engineer and Owner shall designate specific individuals to act as Engineer's and Owner's representatives with respect to the Agreement. Such an individual shall have authority to transmit instructions, receive information, and render decisions relative to the Agreement on behalf of the respective party that the individual represents.

#### 8.04 *Engineer's Certifications*

- A. Engineer certifies that it has not engaged in corrupt, fraudulent, or coercive practices in competing for or in executing the Agreement. For the purposes of this Paragraph 8.04:
  - 1. "corrupt practice" means the offering, giving, receiving, or soliciting of any thing of value likely to influence the action of a public official in the selection process or in the Agreement execution;
  - 2. "fraudulent practice" means an intentional misrepresentation of facts made (a) to influence the selection process or the execution of the Agreement to the detriment of Owner, or (b) to deprive Owner of the benefits of free and open competition;
  - 3. "coercive practice" means harming or threatening to harm, directly or indirectly, persons or their property to influence their participation in the selection process or affect the execution of the Agreement.

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

Owner:  
City of Marshall, Texas  
By: \_\_\_\_\_  
Print name: Lisa Agnor  
Title: City Manager  
Date Signed: \_\_\_\_\_

Engineer:  
Hayes Engineering, Inc.  
By: \_\_\_\_\_  
Print name: Stanley R. Hayes, P.E.  
Title: Principal  
Date Signed: \_\_\_\_\_

Engineer License or Firm's Certificate No. (if required):

F-1465

State of: Texas

Address for Owner's receipt of notices:

P.O. Box 698  
Marshall, TX 75671

Address for Engineer's receipt of notices:

2126 Alpine Road  
Longview, TX 75601

This is **EXHIBIT A**, Engineer's Services, referred to in and part of the Agreement between Owner and Engineer for Study and Report Professional Services dated \_\_\_\_\_.

**Engineer's Services**

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Article 1 of the Agreement is supplemented to include the following agreement of the parties:

Engineer shall provide Basic Services and Additional Services as set forth below.

**PART 1 – BASIC SERVICES**

**Task A: Develop, Calibrate, and Analyze a Hydraulic Model of the Distribution System for the Entire Water Distribution System.**

1. Collect and review all previous water system studies, plans, and evaluations pertaining to the City's water system including previous leak detection testing records, fire flow testing records, system pressure records water use records, pump run times, and water treatment plant production records.
2. Using existing information, update existing GIS mapping to show all existing water distribution lines, pump station locations, raw water pipeline routes and diameters and other related information needed for a system analysis. Prepare system-wide supply and demand projects for a 5-year, 10-year, and 20-year planning horizon.
3. Develop and provide to the City of Marshall a flow testing program including testing locations. The City will perform flow testing at these locations and provide the test results to the Proposer for the calibration of the model. A total of 30 flow tests are assumed for model calibration.
4. Prepare and calibrate a computer model of the existing distribution system which shall include all existing water mains 8" and larger and some 6" lines where larger lines are non-existent, automated valves, tanks and pumps. Computer modeling of the distribution system will assume elevations from existing data or utilize available publicly available information where this existing data is determined to be incorrect or insufficient. The City will provide existing pump curve, tank level, and customer demand data. This hydraulic model shall be calibrated for steady state and extended period simulations. Steady-State Calibration shall include a comparison of field tests to the model results and revising the model's pipe roughness factors as needed. Results will be summarized in a table presenting and comparing revised model results with field data. For extended period simulation calibration, the model will be reviewed and revised as necessary, all modeled demand patterns, pump controls, tank operations, valve controls. The model shall be calibrated against the existing tank operating levels to ensure accurate modeling of existing system performance parameters. The City of Marshall shall provide all available SCADA records for tanks, pumps and automated valves.

All hydraulic analyses shall be performed for each of the 5-year, 10-year, and 20-year planning horizons. Perform hydraulic analysis of the existing distribution system for standard non-emergency distribution system performance goals, including:

- a. All transmission mains (16" and larger) shall have headlosses under 3 ft per 1,000 ft of main.
- b. All other pipes shall have headlosses no greater than 10 ft per 1,000 ft of main under peak hour demand conditions.
- c. All pipes shall have velocities less than 5 ft/s.
- d. Maintain 35 psi or greater under all demand conditions except fires or main breaks.
- e. Identify areas of the system with pressures above 100 psi.

Perform hydraulic analysis of the existing distribution system for standard emergency distribution system performance goals, including:

- f. System-wide fire flow.
- g. Compliance with design minimum fire flow developed from 2009 International Fire Code, Table B105.1 "Minimum Fire Flow and Duration Required for Buildings" for each of the various city zoning designations. All fire flows shall be calculated with a minimum system pressure of 25 psi and storage at their daily lows.
- h. Identify areas where the design fire flow is not met. Prioritize all deficient areas based on severity of the modeled deficiencies.
- i. Evaluate existing system storage against these fire flow requirements to determine if there is any area of the system with deficient fire storage in accordance with AWWA and ISO requirements.

Perform hydraulic analysis and evaluation of existing and future pressure zones, including the following analyses:

- j. The model shall be used to determine the proper locations for pressure zone boundary valves to be closed to provide the best performance in all existing and future pressure zones. Steady-state and extended period scenarios will be used to locate any recommended changes to the current zone boundaries as well as additional loop piping improvements to ensure all performance goals for the system are met when the boundary is closed.
- k. Redundant and emergency water sources shall be reviewed with the computer model to determine their capacity and performance for all pressure zones.

Perform an analysis of the existing distribution system for standard water quality parameters, including, as a minimum:

- l. Water age
- m. Chlorine residual levels.
- n. Compliance with all applicable Texas Commission on Environmental Quality (TCEQ) and American Water Works Association (AWWA) minimum water quality parameters.

The calibrated water distribution system model will be used to analyze the existing needs of the City of Marshall and to identify areas of the system that require immediate remediation with regard to pressure, flow, water age, and fire flow capacity. The model will also be used to identify areas of the system that require future improvements with regard to pressure, flow, water age, and fire flow capacity based on the 5-year, 10-year, and 20-year planning horizons.

5. Prepare a technical report of the model analysis to include, as a minimum, the following:
  - a. Preliminary pipeline routes, sizes, and slopes
  - b. An analysis of the entire water distribution and pumping system design and performance for 5-year, 10-year, and 20-year planning horizons.
  - c. Model results for each of the identified hydraulic and system atlases identified above for each of the 5-year, 10-year, and 20-year planning horizons.
  - d. An analysis of various alternatives for expanding the existing distribution system and water treatment plant vs. extending the distribution system and adding an additional treatment plant in order to provide water service to an expanded service boundary.
  - e. An analysis of required system improvements driven by future changes in land use, populations, and service boundaries 5-year, 10-year, and 20-year planning horizons.
  - f. Identification of areas exhibiting higher than average incidents of repairs and line failures. Determine the most probable reason(s) for these conditions and recommend remediation methods.
  - g. Identification of areas with probable lead service connections in the existing distribution system. Recommend remediation methods for these conditions.
  - h. Existing design capacity for all modeled water mains and pumping facilities.
  - i. Recommended overall system improvements required to resolve all existing system performance issues for the 5-year, 10-year, and 20-year planning horizons.
  - j. Recommended any improvements that must be undertaken immediately to resolve system issues regarding pressure, flow, water age, and fire flow capacity
  - k. Recommended phased improvements for each planning horizon. All recommended improvements must meet current and future anticipated TCEQ requirements
  - l. Estimates of probable cost, including consideration of engineering and legal costs, for each identified system improvement
  - m. Package system improvements into optimized groups of improvements to be let as future design projects by the City of Marshall

The modeling software must integrate seamlessly with current versions of AUTOCAD and mapping shall include shape files compatible with ESRI's ArcGIS system. All computer files related to the model building, calibration and analysis shall be transferred to the City of Marshall at the conclusion of the project. All information to be included in the modeling technical report shall be presented in both tabular and graphical (mapping) formats. The final model technical report shall bear the seal of a licensed professional engineer in the State of Texas.

**Task B: Perform Various Assessments of the Existing Distribution System Infrastructure.**

The purpose of this effort is to perform various assessments of existing equipment, identify deficiencies, and recommend improvements for current and future infrastructure system configurations. This effort shall include, as a minimum, the following tasks:

- Perform condition and reliability assessments for all raw water and high speed pumping equipment and operations.
- Recommended pump station improvements with a focus on the condition and existing efficiency of the VFD pumps at the Big Cypress Pump Station.
- Identify any deficiencies with the existing SCADA system. Review and recommend improvements for the system.
- Identify existing “deadend” water mains in the existing system and recommend improvements for issues regarding pressure, flow, water age, and fire flow capacity.
- Evaluate existing City of Marshall line flushing and fire hydrant testing operations and recommend improvements for on-going system maintenance operations.
- Evaluate existing facilities for system performance and security during normal and emergency operations including an analysis of raw water facilities, emergency backup facilities, alternate sources of raw water and raw water transmission, alternate pumping facilities and redundancy and provide recommendations designed to ensure continuity of service.

A brief technical memorandum shall be prepared detailing the methods used to perform the above assessments, the results from the assessments, and recommendations for improvements of any identified deficiencies. This information shall be incorporated into the final Master Planning documents.

#### **Task C: Review and Assess Existing Water Design Criteria.**

1. Review existing City of Marshall Standard Water System Design Criteria and compare the existing data to standards in use at similar and comparable agencies. Prepare recommendations for improvements to the City’s standards.

2. Review existing City of Marshall Standard Water System Design Criteria and compare the existing data to all applicable state and federal design standards and criteria. Prepare recommendations for improvements to the City's standards that will result in compliance with those state and federal regulations. .
3. Review the City's existing policies and standards against current Best Management Practices (BMP) for water system operation, water use policies, conservation, maintenance, planning, and finance. Make recommendations for improvements to existing standards and policies.
4. Review current industry standard methods for water quality and treatment issues compared to existing City of Marshall standard operating practices and recommend improvements to increase existing water quality and treatment efficiencies.
5. Evaluate water surplus and potential wholesale customers/partners
6. Regional water system feasibility

**Task D: Project Reporting and Master Plan Document.**

Prepare a draft and final report detailing the tasks accomplished for this project, including all relevant analyses computations, assumptions, sources of data, limitations of the data and conclusions, and recommendations for improvements. The draft and final reports shall be provided in both hardcopy and digital formats acceptable to the City of Marshall. The reports shall include the following data and information, as a minimum:

- Description of all activities, including results and conclusions, conducted for this project, including all field operations, testing and evaluation activities
- Identification of all known or observed structural related, pressure, flow, water age, and fire flow capacity related, and O&M related system deficiencies
- Long range Capital Improvement Plan for the 5-year, 10-year, and 20-year planning horizons. Planning horizons shall include provisions for population growth and service area expansion
- Characterization of distribution system performance and prioritized recommendations for improvements
- Cost summaries for recommended improvements
- Individual project descriptions, including projected impact on the distribution system, timeline for completion, and expected cost
- Recap of all Technical Reports prepared for individual tasks included in this project
- Recap of all system assessments, investigations, and recommendations developed under Section 2.0.

**Task E: Other Services**

1. Collection and verify the X, Y, and Z spatial location of all existing water valves, and other accessories or other items and assign a unique identification number to each location, where required. This information must be compatible with the City's existing GIS Water Mapping data. Fire Hydrant locations will be provided by City of Marshall.

This is **Appendix 1, Standard Hourly Rates and Reimbursable Expenses**, referred to in and part of the **Agreement Between Owner and Engineer for Study and Report Professional Services** dated \_\_\_\_\_

**Part One: Standard Hourly Rates Schedule**

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**A. Standard Hourly Rates:**

1. Standard Hourly Rates are set forth in this Appendix 1 and include salaries and wages paid to personnel in each billing class plus the cost of customary and statutory benefits, general and administrative overhead, non-project operating costs, and operating margin or profit.
2. The Standard Hourly Rates apply only as specified in Article 4 of the Agreement, and are subject to annual review and adjustment.

**B. Schedule:**

Hourly rates for services performed on or after the Effective Date are attached.

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