

ACTION FORM BRYAN CITY COUNCIL

DATE OF COUNCIL MEETING: January 13, 2015		DATE SUBMITTED: December 29, 2014	
DEPARTMENT OF ORIGIN: Water Services		SUBMITTED BY: J. Barfknecht	
MEETING TYPE:	CLASSIFICATION:	ORDINANCE:	STRATEGIC INITIATIVE:
<input type="checkbox"/> BCD	<input type="checkbox"/> PUBLIC HEARING	<input type="checkbox"/> 1ST READING	<input type="checkbox"/> PUBLIC SAFETY
<input type="checkbox"/> SPECIAL	<input checked="" type="checkbox"/> CONSENT	<input type="checkbox"/> 2ND READING	<input checked="" type="checkbox"/> SERVICE
<input checked="" type="checkbox"/> REGULAR	<input type="checkbox"/> STATUTORY		<input checked="" type="checkbox"/> ECONOMIC DEVELOP.
<input type="checkbox"/> WORKSHOP	<input type="checkbox"/> REGULAR		<input checked="" type="checkbox"/> INFRASTRUCTURE
			<input checked="" type="checkbox"/> QUALITY OF LIFE
AGENDA ITEM DESCRIPTION: Consider approving a professional services contract with CDM Smith Inc. in a not to exceed amount of \$92,400.00 to evaluate options of expanding sewer capacity on the east side of Bryan.			
SUMMARY STATEMENT: Wastewater from the east side of the City of Bryan is conveyed to the Burton Creek Wastewater Treatment Plant (WWTP) for treatment and disposal. The Burton Creek WWTP has a permitted average day capacity of 8.0 mgd and a peak 2-hr discharge capacity of 19.2 mgd. The Burton Creek WWTP currently treats 4.7 mgd on average but can experience peak wet weather flows in excess of 19.2 mgd.			
<p>In 2009, CDM Smith conducted an evaluation of the causes of potential wet weather overflows on the collection system leading to the Burton Creek WWTP. It was determined that the two lines that enter the plant from the east could serve as flow relief under certain circumstances. To address this potential wet weather issue, several alternatives were evaluated. The recommended alternative at that time was to construct an additional lift station on site, a wet weather storage basin and a bar screen/diversion box. These improvements, estimated to cost \$12,000,000 in 2009, would address the existing wet weather flow issues, but would not add additional treatment capacity to the City's system.</p> <p>The Burton Creek WWTP is located near/partially in the floodplain of Burton Creek. It is also in close proximity to multi-family housing. Construction on the existing site and expansion of the existing facility will be difficult without purchase of additional property. Moreover, as the City of Bryan continues to grow eastward, conveying flows to the Burton Creek WWTP will become more difficult and more expensive.</p> <p>A preliminary engineering analysis of options is necessary to assist the City in determining which alternative for addressing potential wet weather flow issues and service to an eastward growing service area is in the best economic interests of the City. The alternatives to be evaluated include:</p> <ol style="list-style-type: none"> 1. The wet weather flow alternative recommended in 2009. This alternative will be evaluated to determine how future flows on the east side of the service area can be conveyed to the Burton Creek WWTP for treatment and disposal. 2. An alternative that includes a new wastewater treatment plant to serve the city's east side service area will be evaluated. This alternative must also address the potential wet weather issues at the Burton Creek WWTP. <p>Current discussions of development on the east side of Bryan are driving the need to refine the options developed in 2009 and possibly scope a project to support this growth. Without a more developed plan, development may be slowed or impacted. These funds were not budgeted in 2015 as development on the east side is driving the study.</p>			

STAFF ANALYSIS AND RECOMMENDATION: Staff recommends approving the proposed contract with CDM Smith Inc. to look at options more closely that were developed in 2009. With future development coming to the east side of Bryan, future wastewater needs to support this growth and to accommodate the wet weather flows are needed to minimize the impact to this growth.

OPTIONS (In Suggested Order of Staff Preference):

1. Approve the contract with CDM Smith Inc.
2. Do not approve a contract.

ATTACHMENTS: Contract

FUNDING SOURCE: Water Services Operating budget

APPROVALS: Jayson E. Barfknecht 12/29/14

APPROVED FOR SUBMITTAL: CITY MANAGER Kean Register, 12-30-2014

APPROVED FOR SUBMITTAL: CITY ATTORNEY Janis K. Hampton, 1-5-2015

Revised 05/2013

CONTRACT FOR ENGINEERING SERVICES
CDM Smith, INC.

This Contract, dated _____, 2015, is between the **City of Bryan**, a Texas home-rule municipal corporation, (the City) and CDM Smith Inc., a corporation (the Engineer), whereby the Engineer agrees to provide the City with certain professional services as described herein and the City agrees to pay the Engineer for those services.

1. Scope of Services

In consideration of the compensation stated in paragraph 2, the Engineer agrees to provide the City with the professional services as described in Attachment A, the Scope of Services, which is incorporated herein by reference for all purposes, and which services may be more generally described as follows: Study of options to convey and treat wastewater from east of SH 6 either at the Burton Creek WWTP or at a new facility located on the east side of SH 6.

2. Payment

In consideration of the Engineer's provision of the professional services in compliance with all terms and conditions of this Contract, the City shall pay the Engineer according to the terms set forth in Attachment B. Except in the event of a duly authorized change order, approved by the City in writing, the total cost of all professional services provided under this Contract may not exceed Ninety-Two Thousand Four Hundred and No/100 Dollars (\$92,400.00).

3. Time of Performance

- A. All design work and other professional services provided under this Contract must be completed by the following date: May 15, 2015. The City Engineer may agree to an extension of the time for completion. Any extension of the time for completion approved by the City Engineer, however, shall only be effective upon the execution of an instrument in writing stating the terms of the extension and signed by both the City Engineer and the Engineer. The Schedule is more fully defined in Attachment C.
- B. **Time is of the essence of this Contract.** The Engineer shall be prepared to provide the professional services in the most expedient and efficient manner possible in order to complete the work by the times specified.

4. Warranty, Indemnification, & Release

- A. As an experienced and qualified design professional, the Engineer warrants that the information provided by the Engineer reflects high professional and industry standards, procedures, and performances. The Engineer warrants the design preparation of drawings, the designation or selection of materials and equipment, the selection and supervision of personnel, and the performance of other services under this Contract, is pursuant to a high standard of performance in the profession. The Engineer warrants that the Engineer will exercise diligence and due care and perform in a good and workmanlike manner all of the services pursuant to this Contract. Approval of the City shall not constitute, or be deemed, a release of the responsibility and liability of the Engineer, its employees, agents, or associates for the exercise of skill and diligence to promote the accuracy and competency of their designs, information, plans, specifications or any other document, nor shall the City's approval be deemed to be the assumption of responsibility by the City for any defect or error in the aforesaid documents prepared by the Engineer, its

employees, associates, agents, or subcontractors.

- B. The Engineer shall promptly correct any defective designs or specifications furnished by the Engineer at no cost to the City. The City's approval, acceptance, use of, or payment for, all or any part of the Engineer's services hereunder or of the Project itself shall in no way alter the Engineer's obligations or the City's rights hereunder.
- C. In all activities or services performed hereunder, the Engineer is an independent contractor and not an agent or employee of the City. The Engineer and its employees are not the agents, servants, or employees of the City. As an independent contractor, the Engineer shall be responsible for the professional services and the final work product contemplated under this Contract. Except for materials furnished by the City, the Engineer shall supply all materials, equipment, and labor required for the professional services to be provided under this Contract. The Engineer shall have ultimate control over the execution of the professional services. The Engineer shall have the sole obligation to employ, direct, control, supervise, manage, discharge, and compensate all of its employees or subcontractors, and the City shall have no control of or supervision over the employees of the Engineer or any of the Engineer's subcontractors.
- D. The Engineer must at all times exercise reasonable precautions on behalf of, and be solely responsible for, the safety of its officers, employees, agents, subcontractors, licensees, and other persons, as well as their personal property, while in the vicinity of the Project or any of the work being done on or for the Project. It is expressly understood and agreed that the City shall not be liable or responsible for the negligence of the Engineer, its officers, employees, agents, subcontractors, invitees, licensees, and other persons.
- E. Responsibility for damage claims (indemnification): Engineer shall defend, indemnify and save harmless the City and all its officers, agents, and employees from all suits, actions, or claims of any character, name and description brought for or on account of any injuries or damages received or sustained by any person or persons or property resulting from the Engineer's negligent performance of the work, or by or on account of any claims or amounts recovered under the Workmen's Compensation Law or any other law, ordinance, order or decree, and his sureties shall be held until such suit or suits, action or actions, claim or claims for injury or damages as aforesaid shall have been settled and satisfactory evidence to the effect furnished the City. Engineer shall defend, indemnify and save harmless the City, its officers, agents and employees in accordance with this indemnification clause only for that portion of the damage caused by Engineer's negligence.
- F. Release. The Engineer releases, relinquishes, and discharges the City, its officers, agents, and employees from all claims, demands, and causes of action of every kind and character, including the cost of defense thereof, for any injury to, sickness or death of the Engineer or its employees and any loss of or damage to any property of the Engineer or its employees that is caused by or alleged to be caused by, arises out of, or is in connection with the Engineer's negligent performance of the work. Both the City and the Engineer expressly intend that this release shall apply regardless of whether said claims, demands, and causes of action are covered, in whole or in part, by insurance.

5. Engineer's Insurance

The Engineer agrees to maintain, on a primary basis, for the duration of this contract the insurance coverages and limits as described below. See Attachment D for insurance example. The Engineer

must deliver to the City a certificate(s) of insurance evidencing that such policies are in full force and effect within 5 business days of notification of the City's intent to award a contract. Failure to meet the insurance requirements and provide the required certificate(s) and any necessary endorsements within five business days **may cause the contract to be rejected.** The City reserves the right to obtain complete, certified copies of all required insurance policies at any time.

The requirements as to types and limits, as well as the City's review or acceptance of insurance coverage to be maintained by Engineer, is not intended to nor shall in any manner limit or qualify the liabilities and obligations assumed by the Engineer under the Agreement.

A. **Commercial General Liability Insurance** – Limit of liability not less than \$1,000,000 per occurrence Engineer agrees to maintain a standard ISO version Commercial General Liability occurrence form, or its equivalent providing coverage for, but not limited to, Bodily Injury and Property Damage, Premises/Operations, Products/Completed Operations, Independent Engineers.

B. **Professional Liability Insurance** – Limit of liability not less than \$1,000,000 per occurrence Engineer agrees to maintain Professional (Errors & Omissions) Liability to pay on behalf of the insured all sums which the insured shall become legally obligated to pay as damages by reason of any act, malpractice, error or omission of the Engineer or any person employed or acting on the Engineer's behalf (including but not limited to sub-contractors). For policies written on a "claims-made" basis, Engineer agrees to maintain a retroactive date prior to or equal to the effective date of this contract and that continuous coverage will be maintained or a supplemental extended reporting period will be purchased with a minimum reporting period not less than two years after the completion of this contract. The Engineer is solely responsible for any additional premium for the supplemental extended reporting period.

No "claims made" policies are acceptable without prior approval by the City Attorney. If approved, coverage must be maintained for two years after the completion of this contract.

C. **Business Automobile Liability Insurance** – Limit of liability not less than \$1,000,000 per occurrence Engineer agrees to maintain a standard ISO version Business Automobile Liability, or its equivalent, providing coverage for all owned, non-owned and hired automobiles. Should the Engineer not own any automobiles, the business auto liability requirement shall be amended to allow the Engineer to agree to maintain only Hired & Non-Owned Auto Liability. This amended coverage requirement may be satisfied by way of endorsement to the Commercial General Liability, or separate Business Auto policy.

D. **Workers' Compensation Insurance & Employers' Liability Insurance** – Statutory & \$500,000/\$500,000/\$500,000. The Engineer agrees to maintain Worker's Compensation Insurance & Employers Liability. In the event any work is sublet, the Engineer shall require the subcontractor similarly to provide the same coverage and shall himself acquire evidence of such coverage on behalf of the subcontractor.

E. **Additional Insured Endorsements** The Engineer agrees to endorse the City as an Additional Insured on each insurance policy required to be maintained, with the exception of the worker's compensation, employer's liability and professional liability policy.

F. **Waiver Of Subrogation** Waiver of subrogation in favor of the City of Bryan for each required policy. When required by the insurer or should a policy condition not permit Engineer to enter into a pre-loss agreement to waive subrogation without an endorsement, then Engineer agrees to notify the insurer and request the policy be endorsed with a Waiver of Transfer of rights of

Recovery Against Others, or its equivalent. This Waiver of Subrogation requirement shall not apply to any policy, which includes a condition specifically prohibiting such an endorsement, or voids coverage should Engineer enter into such an agreement on a pre-loss basis.

- G. **Deductibles, Coinsurance Penalties, & Self-Insured Retention** Engineer shall agree to be fully and solely responsible for any costs or expenses as a result of a coverage deductible, coinsurance penalty, or self-insured retention; including any loss not covered because of the operation of such deductible, coinsurance penalty, or self-insured retention.
- H. **Subcontractor's Insurance** The Engineer shall agree to cause each subcontractor employed by Engineer to purchase and maintain insurance of the type specified, provided the Engineer's insurance does not afford coverage on behalf of the subcontractor.
- I. **Certificate Of Insurance** Engineer shall furnish the City with a certificate(s) of insurance, executed by a duly authorized representative of each insurer, showing compliance with the insurance requirements. The certificate must be from a company with an A.M. Best rating of "A-VI" or better and/or otherwise acceptable to the City. Certificates must be submitted using the ACORD form and all endorsements must be included with the submittal. Engineer has the affirmative obligation to advise City at the address listed below within 5 business days of the cancellation or substantial change of any required insurance policy, and failure to do so shall be construed as a breach of this contract.

Failure of the City to demand such certificate(s) or other evidence of full compliance with these insurance requirements or failure of the City to identify a deficiency from evidence that is provided shall not be construed as a waiver of Contractor's obligation to maintain such insurance.

In the event the City is notified that a required insurance coverage will cancel or non-renew during the contract period, the Engineer shall agree to furnish prior to the expiration of such insurance, a new or revised certificate(s) as proof that equal and like coverage is in effect. The City reserves the right, but not the obligation, to withhold payment to Engineer until coverage is reinstated. If the Engineer fails to maintain the required insurance, the City shall have the right, but not the obligation, to purchase the required insurance at Engineer's expense.

Certificates and notices should be given to the City at the following address:

**City of Bryan
Attn: Risk Management Department
300 S. Texas Ave.
Bryan, TX 77803**

RIGHT TO REVIEW AND ADJUST The City reserves the right to review these requirements and to modify insurance coverage and their limits when deemed necessary and prudent. Furthermore, the City reserves the right, but not the obligation, to review and reject any insurer providing coverage because of poor financial condition.

6. Termination

- A. The City may terminate this Contract at any time upon **thirty (30)** calendar days written notice. Upon the Engineer's receipt of such notice, the Engineer shall cease work immediately. The Engineer shall be compensated for the services satisfactorily performed prior to the termination date.

- B. If, through any cause, the Engineer fails to fulfill its obligations under this Contract, or if the Engineer violates any of the agreements of this Contract, the City has the right to terminate this Contract by giving the Engineer **five (5)** calendar days written notice to the Engineer. The Engineer will be compensated for the services satisfactorily performed before the termination date.
- C. No term or provision of this Contract shall be construed to relieve the Engineer of liability to the City for damages sustained by the City because of any breach of contract by the Engineer. The City may withhold payments to the Engineer for the purpose of setoff until the exact amount of damages due the City from the Engineer is determined and paid.

7. Miscellaneous Terms

- A. This Contract has been made under and shall be governed by the laws of the State of Texas. The parties agree that performance and all matters related thereto shall be in Brazos County, Texas.
- B. Notices shall be mailed to the addresses designated herein or as may be designated in writing by the parties from time to time and shall be deemed received when sent postage prepaid U.S. Mail to the following addresses:

The City of Bryan
Attn: Jayson E. Barfknecht, P.E., Ph.D
P.O. Box 1000
Bryan, Texas 77805

The Engineer:
Attn: Allen D. Woelke, P.E.
12357-A Riata Trace Pkwy, Ste 210
Austin, TX 78727

- C. No waiver by either party hereto of any term or condition of this Contract shall be deemed or construed to be a waiver of any other term or condition or subsequent waiver of the same term or condition.
- D. This Contract represents the entire and integrated agreement between the City and the Engineer and supersedes all prior negotiations, representations, or agreements, either written or oral. This Contract may only be amended by written instrument approved and executed by the parties.
- E. This Contract and all rights and obligations contained herein may not be assigned by the Engineer without the prior written approval of the City.
- F. The Engineer, its agents, employees, and subcontractors must comply with all applicable federal and state laws, the charter and ordinances of the City of Bryan, and with all applicable rules and regulations promulgated by local, state, and national boards, bureaus, and agencies. The Engineer must obtain all necessary permits and licenses required in completing the work and providing the services required by this Contract.
- G. The parties acknowledge that they have read, understood, and intend to be bound by the terms and conditions of this Contract.

ATTEST:

By: _____
Mary Lynne Stratta, City Secretary

Approved as to Form:

Janis K. Hampton, City Attorney

Approved for Processing:

Jayson Barfknecht, P.E., Ph.D
Director of Public Works

Kean Register, City Manager

Party of the First Part
CITY OF BRYAN, TEXAS:

By: _____
Jason P. Bienski, Mayor

Date: _____

Party of the Second Part
ENGINEER:

By: _____
Printed Name: Allen D. Woelke
Title: Vice President
Date: _____
Firm's License No.: F-3043

Witness

ATTACHMENT “A” SCOPE OF SERVICES

PROJECT UNDERSTANDING

Wastewater from the east side of the City of Bryan is conveyed to the Burton Creek Wastewater Treatment Plant (WWTP) for treatment and disposal. The Burton Creek WWTP has a permitted average day capacity of 8.0 mgd and a peak 2-hr discharge capacity of 19.2 mgd. The Burton Creek WWTP currently treats 4.7 mgd on average but can experience peak wet weather flows in excess of 19.2 mgd.

In 2009 CDM Smith conducted an evaluation of the causes of potential wet weather overflows on the collection system leading to the Burton Creek WWTP. It was determined that the two lines that enter the plant from the east could serve as flow relief under certain circumstances. To address this potential wet weather issue, several alternatives were evaluated. The recommended alternative at that time was to construct an additional lift station on site, a wet weather storage basin and a bar screen/diversion box. These improvements, estimated to cost \$12,000,000 in 2009, would address the existing wet weather flow issues, but would not add additional treatment capacity to the City’s system.

The Burton Creek WWTP is located near/partially in the floodplain of Burton Creek. It is also in close proximity to multi-family housing. Construction on the existing site and expansion of the existing facility will be difficult without purchase of additional property. Moreover, as the City of Bryan continues to grow eastward, conveying flows to the Burton Creek WWTP will become more difficult and more expensive.

A preliminary engineering analysis of options is necessary to assist the City in determining which alternative for addressing potential wet weather flow issues and service to an eastward growing service area is in the best economic interests of the City. The alternatives to be evaluated include:

3. The wet weather flow alternative recommended in 2009. This alternative will be evaluated to determine how future flows on the east side of the service area can be conveyed to the Burton Creek WWTP for treatment and disposal.
4. An alternative that includes a new wastewater treatment plant to serve the city’s east side service area will be evaluated. This alternative must also address the potential wet weather issues at the Burton Creek WWTP.

BASIC SCOPE OF SERVICES

The basic scope of services proposed for this project includes the following:

Task 1 Data Collection and Review

The Engineer will collect flow data, water billing geocoded data, land use data, land development data and other economic data the City may have regarding the east side of the wastewater service area. The Engineer will use the flow data utilized in the 2009 study to establish dry weather and wet weather flows in the major wastewater interceptors. The flows will be adjusted based on an increase in water meters in each of the major interceptor service area to reflect 2014 conditions. Future conditions will be based on the land use data and land development data provided by the City. The Engineer will prepare a technical

memorandum summarizing the dry weather and wet weather flow projections for the City to review and approve before moving the alternative evaluation task.

Task 2 Burton Creek WWTP Expansion

The Burton Creek WWTP will be evaluated for its ability to address the existing and future dry weather and wet weather flows from the east side service area. Existing wet weather issues were evaluated in the 2009 study. That work will be updated to include projected dry weather and wet weather flows. The dry weather flows will be compared to the existing capacity and the 75% and 90% capacity benchmarks contained in the TPDES discharge permit. If projected dry weather flows exceed 90% of the permitted capacity, alternatives to expand the dry weather treatment capacity of the plant will be evaluated.

Costs for this alternative will include costs to convey flows from the east side service area to the plant, improvements to address the potential wet weather issues, and improvements to address future dry weather flows, if necessary.

Task 3 New Treatment Plant

A new treatment plant that initially will be sized to treat flows from the service area east of the Burton Creek WWTP and address the potential wet weather flow issues will be evaluated. The City will provide potential locations for the new plant site. The initial plant size will be based on the existing and projected dry weather flows produced in the east side service area and wet weather flows received at the Burton Creek WWTP in excess of its permitted peak 2-hour flow. The new plant will be laid out so that it could be expanded to replace the Burton Creek WWTP if that was ever necessary. The Engineer will determine what the potential discharge permit limits for a new plant will be. The Engineer will size the treatment plant components using a typical activated sludge process similar to Thompsons Creek WWTP.

Costs for this alternative will include costs to convey flows from the east side service area to the plant, improvements to convey excess wet weather flows from the Burton Creek WWTP to the plant, site development costs, treatment plant construction costs.

Task 4 Draft and Final Report

The Engineer will prepare a report that includes a description of the two alternatives evaluated. The description will include the costs determined for each alternative. The report will also address any permitting, land acquisition, or construction issues associated with implementation of the alternatives.

The Engineer will submit five copies of the draft report to the City for review and comment. The Engineer will meet with the City to discuss the results contained in the report and receive the City's comments. The Engineer will prepare five copies of the Final Report for submission to the City.

ATTACHMENT 'B'
FEE SUMMARY & ESTIMATED MONTHLY FEE SCHEDULE

Payment to the ENGINEER will be made as follows:

A. Invoice and Time of Payment

Monthly invoices will be issued by the ENGINEER for all work performed under this Agreement. Invoices are due and payable on receipt. Invoices will be prepared in a format approved by the CITY prior to submission of the first monthly invoice. Monthly payment of the fee will be in proportion to percent completion of the total work for each fee item outlined below.

B. Upon completion of services enumerated in Attachment A, Scope of Services, the final payment of any balance will be due upon receipt of the final invoice.

BASIC SERVICES

Task 1 Data Collection and Review	\$26,800
Task 2 Burton Creek WWTP Expansion	25,900
Task 3 New Treatment Plant	22,900
Task 4 Draft and Final Report	16,800
Total	\$92,400

(Not to Exceed Fee)

**ATTACHMENT “C”
PROJECT SCHEDULE**

SCHEDULE:

TIME PERIOD FOR PERFORMANCE

The time periods for the performance of ENGINEER's services as set forth in Article 3 of said Agreement are as follows:

Basic Services	125 Days from Notice to Proceed to Delivery of Draft Report
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