Joint Special Meeting

Notice is given in accordance with the Texas Open Meetings Act of the following Joint Special Meeting of a City Governmental Body:

City Council
and the
Planning Commission
of the
City of Victoria

107 West Juan Linn Street
(Council Chambers)
Tuesday, October 30, 2018
5:00 p.m.

The subjects listed below, or on the attached agenda, will be considered at the meeting:

April Hilbrich, City Secretary
The City Council of the City of Victoria, Texas will meet, consider, deliberate, and may take action on the following items:¹

Date: October 30, 2018

A. **Call to Order:**
   1. Pledge of Allegiance
   2. Quorum Call
   3. Welcome Citizens

B. **Communication:**
   1. **Items from Council:** With respect to items not listed on this agenda, City Council Members may request specific factual information, a recitation of existing policy, or placement of items on the City Council agenda for discussion at a following meeting.
      a) Update on substandard buildings and property maintenance resulting from Hurricane Harvey. Jeff Bauknight.

2. **Citizen Communication:** At this time, the public is invited to address the City Council and speak on any matter not specifically listed for public hearing in the subsection titled: “Public Hearings,” below. Please note that City Council may not deliberate on topics not included on this agenda.

C. **Items with Public Hearings:**²

   **Public Hearings:** The City Council shall call a public hearing before taking action on each item below in this section. Any person wishing to address the City Council on these items should please come forward when that public hearing is called.

D. **Consent Agenda:** All consent agenda items listed are considered to be routine by the City Council and will be enacted by one motion. There will be no separate discussion of these items unless a Council Member so requests, in which event the item will be removed from the consent agenda and considered after the remainder of the consent agenda. Information concerning consent agenda items is available for public review.

E. **Action Items for Council Discussion:**

   1. A resolution authorizing the City Manager to execute a professional services agreement with CivilCorp, LLC to provide pre-award engineering services for the development of applications for funding through the FEMA Hazard Mitigation Grant Program (HMGP) in an amount not to exceed $40,000.00, and declaring an effective date. John Kaminski.

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¹ Regardless of the agenda heading under which any item is listed, any subject mentioned in any word or phrase of any item listed on this agenda may be deliberated by City Council, and such words or phrases are hereby added as additional subjects to be considered. Resolutions, ordinances, and other actions concerning any word, phrase, or other subject of this meeting include the regulation of animals, construction, signs, unsafe buildings, floodplains, land development, nuisances, mowing, sanitation, food establishments, manufactured house, itinerant vendors, outdoor sales, water conservation practices, and proposed changes to the City Charter. Any descriptions of property or amounts stated herein are descriptive and not restrictive, and property and amounts may be changed in the motions, actions, or documents without further public notice.

² In addition to the items listed under “Public Hearings,” every item on this agenda shall be considered a public hearing.
2. A resolution authorizing the City Manager to execute a professional services agreement with John D. Mercer & Associates, Inc. to provide pre-award and post-award engineering services for the development of applications for funding through the FEMA Hazard Mitigation Grant Program (HMGP) in an amount not to exceed $117,000.00 and declaring an effective date. John Kaminski.

3. A resolution authorizing the City Manager to execute a professional services agreement with Victoria Engineering, Inc. d/b/a Urban Engineering to provide pre-award engineering services for the development of applications for funding through the FEMA Hazard Mitigation Grant Program (HMGP) in an amount not to exceed $50,000.00, and declaring an effective date. John Kaminski.

F. City Manager Reports:
   1. Public Works’ Update on Generators. Donald Reese.

G. Work Session:
   1. Joint Session with the Planning Commission to discuss the Unified Development Code. City Staff.

H. Executive Sessions:
   Staff to be Present: Thomas Gwosdz April Hilbrich Donald Reese
### Topic of Council Item

A resolution authorizing the City Manager to execute a professional services agreement with CivilCorp, LLC to provide pre-award engineering services for the development of applications for funding through the FEMA Hazard Mitigation Grant Program (HMGP) in an amount not to exceed $40,000.00, and declaring an effective date.

### Background Information

On June 19, 2018, City Council authorized a professional services agreement with GrantWorks, Inc. to provide pre-award services (services associated with preparing and submitting grant applications) and post-award services (services associated with administering grant-funded programs) related to the FEMA Hazard Mitigation Grant Program (HMGP) and related disaster recovery programs.

Because most of the potential disaster recovery projects also require engineering services, the City initiated a procurement process in July to select engineering firms to assist with the development of grant applications. On September 4, 2018, City Council approved the selection of CivilCorp, LLC, John D. Mercer & Associates, and Urban Engineering to provide grant-related engineering services as needed.

This resolution will authorize a professional services agreement with CivilCorp, LLC to provide pre-award engineering services for the development of applications for funding through the FEMA Hazard Mitigation Grant Program (HMGP) for the proposed Red River Drainage Improvements Project and Mayfair Terrace Drainage Improvements Project. Pre-award engineering services include the development of preliminary project scopes, preliminary cost estimates and preliminary Benefit Cost Analyses to be incorporated into GrantWorks’ application submittal packages.

Compensation will be on a time and materials basis with a not-to-exceed amount of $40,000.00. This agreement authorizes pre-award services only. Should a grant application (or applications) be approved for HMGP funding by FEMA, a separate contract for post-award engineering services will be presented to City Council for further action.

For pre-award fees, the FEMA/City cost share is 75/25 for projects that are approved for HMGP funding and implemented. For projects that are not funded, the City is responsible for 100% of pre-award costs.

### Cost

<table>
<thead>
<tr>
<th>Amount of Expenditure: $40,000.00</th>
<th>Cost Center #: 21GW-HMGP</th>
</tr>
</thead>
<tbody>
<tr>
<td>Fund #: 1021</td>
<td>Account #: 530000</td>
</tr>
<tr>
<td></td>
<td>Finance Approval: WMJ</td>
</tr>
</tbody>
</table>

### Documents approved by Legal?

- Legal Approval:

### Important Dates for Tickler file:

| Contract Expiration Date:         | Termination Deadline:        |
|                                  |                            |
| Contract Renewal Date:            | Performance Deadlines:       |
| Other (________________):         | Other (________________):     |
|                                  |                            |
Resolution No. 2018-______R

A resolution authorizing the City Manager to execute a professional services agreement with CivilCorp, LLC to provide pre-award engineering services for the development of applications for funding through the FEMA Hazard Mitigation Grant Program (HMGP) in an amount not to exceed $40,000.00, and declaring an effective date.

Whereas this agreement is for pre-award engineering services for the development of applications for funding through the FEMA Hazard Mitigation Grant Program (HMGP) for the proposed Red River Drainage Improvements Project and Mayfair Terrace Drainage Improvements Project; and

Whereas pre-award engineering services include the development of preliminary project scopes, preliminary cost estimates, and preliminary Benefit Cost Analyses to be incorporated into GrantWorks’ application submittal packages;

Now therefore, be it resolved by the City Council of the City of Victoria, Texas:

1. The City Manager is authorized to execute a professional services agreement with CivilCorp, LLC for pre-award engineering services for the development of applications for funding through the FEMA Hazard Mitigation Grant Program (HMGP) in an amount not to exceed $40,000.00, substantially in the form attached hereto as Attachment “A” and incorporated herein, with changes in form as approved by the City Attorney.

2. This resolution shall become effective immediately upon adoption.

Passed, this the 30th day of October, 2018

Ayes:
Nays:
Abstentions:

Approved and adopted, this the 30th day of October, 2018

______________________________________
Paul Polasek, Mayor of the
City of Victoria, Texas

Attest:

Approved as to legal form:

April Hilbrich, City Secretary

Thomas A. Gwosdz, City Attorney

Distribution: Legal Department
Finance Department

Copies Sent: ____________________________
Engineering Services Agreement
Between CivilCorp, LLC and
The City of Victoria

I. Terms of Agreement

THIS AGREEMENT, entered into this _____ day of __________________, 2018, by and between the CITY OF VICTORIA, hereinafter called “CITY”; and CIVILCORP, LLC, hereinafter called “ENGINEER,” do agree as follows:

WHEREAS, the CITY of Victoria desires to construct the Red River Drainage Improvements Project and Mayfair Terrace Drainage Improvements Project with partial funding through the Hazard Mitigation Grant Program (HMGP) of the Federal Emergency Management Agency (hereinafter called “FEMA”) with project administration by GrantWorks; and

WHEREAS, the CITY desires to engage the ENGINEER to render certain engineering services in connection with the Drainage Improvements Project.

NOW THEREFORE, the parties do mutually agree as follows:

1. Scope of Services
   The ENGINEER will perform the services set out in Part II, Scope of Services.

2. Time of Performance - The services of the ENGINEER shall commence on October 31, 2018. In any event, all of the services required and performed hereunder shall be completed no later than December 1, 2018.

3. Local Program Liaison - For purposes of this Agreement, the City Manager of the City of Victoria, Charmelle Garrett, or equivalent authorized person will serve as the Local Program Liaison and primary point of contact for the ENGINEER. All required progress reports and communication regarding the project shall be directed to this liaison.

4. Access to Records – GrantWorks, FEMA, and the CITY, or any of their authorized representatives, shall have access to any documents, papers, or other records of the ENGINEER which are pertinent to the FEMA award, in order to make audits, examinations, excerpts, and transcripts, and to closeout the CITY’s FEMA contract.

5. Retention of Records - The ENGINEER shall retain all required records for four years after the CITY makes its final payment and all pending matters are closed.

6. Compensation and Method of Payment - Compensation and reimbursement to be paid by the CITY to the ENGINEER hereunder shall be based on satisfactory completion of identified milestones in Part III - Payment Schedule of this Agreement.
7. **Indemnification** – The ENGINEER shall comply with the requirements of all applicable laws, rules and regulations, and shall exonerate, indemnify, and hold harmless the CITY and its agency members from and against any and all claims, costs, suits, and damages, including attorney’s fees, arising out of the ENGINEER’s performance or nonperformance of the activities, services or subject matter called for in this Agreement, and shall assume full responsibility for payments of Federal, State and local taxes on contributions imposed or required under the Social Security, worker's compensation and income tax laws.

8. **Miscellaneous Provisions**
   a. This Agreement shall be construed under and accord with the laws of the State of Texas, and all obligations of the parties created hereunder are performable in Victoria County, Texas.
   b. This Agreement shall be binding upon and inure to the benefit of the parties hereto and their respective heirs, executors, administrators, legal representatives, successors and assigns where permitted by this Agreement.
   c. In any case one or more of the provisions contained in this Agreement shall for any reason be held to be invalid, illegal or unenforceable in any respect, such invalidity, illegality, or unenforceability shall not affect any other provision thereof and this Agreement shall be construed as if such invalid, illegal, or unenforceable provision had never been contained herein.
   d. This Agreement may be amended by mutual agreement of the parties hereto and a writing to be attached to an incorporated into this Agreement.

9. **Extent of Agreement** - This Agreement, which includes Parts I-IV, 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 Agreement may be amended only by written instrument signed by authorized representatives of both CITY and the ENGINEER.

IN WITNESSETH WHEREOF, the parties have executed this Agreement by causing the same to be signed on the day and year first above written.

BY: 

City of Victoria, Texas

Charmelle Garrett
(Printed Name)

City Manager
(Title)

BY: 

CivilCorp, LLC

Ben Galvan, P.E., R.P.L.S.
(Printed Name)

President
(Title)
II. **Scope of Services: City of Victoria – HMGP Drainage Improvements Project**

**Pre-Award Scope of Services:**

1. Procurement of Professional Services
2. Preliminary Hydrologic and Hydraulic Analysis
3. Preliminary Scope of Work Development
4. Preliminary Feasibility Analysis
5. Development of Preliminary BCA
6. Preliminary Engineering Design
7. Preliminary Cost Estimate
8. Preliminary Environmental Assessment

**Subcontracts**

1. No work under this Agreement shall be subcontracted by the ENGINEER without prior approval, in writing, from the CITY.

2. The ENGINEER shall, prior to proceeding with the work, notify the CITY in writing of the name of any subcontractors proposed for the work, including the extent and character of the work to be done by each.

3. If any time during progress of the work, the CITY determines that any subcontractor is incompetent or undesirable, the CITY will notify the ENGINEER who shall take reasonable and immediate steps to satisfactorily cure the problem, substitute performance, or cancel such subcontract. Subletting by subcontractors shall be subject to the same regulations. Nothing contained in this Agreement shall create any contractual relation between any subcontractor and the CITY.

4. The ENGINEER will include in all contracts and subcontracts in excess of $10,000 provisions addressing termination for cause and for convenience by the CITY including the manner by which it will be affected and the basis for settlement.

5. The ENGINEER will include in all contracts and subcontracts provisions requiring compliance with the following, if applicable:

   a. Prime construction contracts in excess of $2,000, compliance with the Davis-Bacon Act, as amended (40 U.S.C.3141-3144, 3146-3148) as supplemented by Department of Labor regulations (29 CFR part 5);

   b. Prime construction contracts in excess of $2,000, compliance with the Copeland “Anti-Kickback” Act (40 U.S.C. 3145), as supplemented by Department of Labor regulations (29 CFR part 3)

   c. Contracts greater than $10,000, the inclusion of the Equal Opportunity clause provided under 41 CFR 60-1.4(b) (Executive Order 11246);

   d. Section 3 of the Housing and Urban Development Act of 1968;

   e. Contracts exceeding $100,000, compliance with the Byrd Anti-Lobbying Amendment (31 U.S.C. 1352);
f. For contracts in excess of $100,000 that involve the employment of mechanics or laborers, compliance with the Contract Work Hours and Safety Standards Act (40 U.S.C. 3701–3708), including work week requirements and safety conditions for workers, as supplemented by Department of Labor regulations (29 CFR Part 5); and

g. For procurement of recovered materials where the purchase price of the item exceeds $10,000 or the value of the quantity acquired during the preceding fiscal year exceeded $10,000, compliance with 2 CFR 200.322 and section 6002 of the Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act, which requires procuring only items designated in guidelines of the EPA at 40 CFR part 247 that contain the highest percentage of recovered materials practicable.

6. The ENGINEER will include in all negotiated contracts and subcontracts a provision which indicates that funds will not be awarded under this contract to any party which is debarred, suspended, or otherwise excluded from or ineligible for participation in federal assistance programs under Executive Order 12549 and 2 CFR Part 2424. A certification shall be provided and received from each proposed subcontractor under this contract and its principals.

7. The ENGINEER will include in all negotiated contracts and subcontracts a provision to the effect that the CITY, GrantWorks, or any of their duly authorized representatives, shall have access to any books, documents, papers and records of the contractor which are directly pertinent to that specific contract, for the purpose of making audit, examination, excerpts, and transcriptions.

8. The ENGINEER will include in all contracts and subcontracts a requirement that the contractor maintain all relevant project records for three (3) years after the CITY has made final payment to the contractor and all other pending matters are closed.

### Standard of Performance and Deficiencies

1. All services of the ENGINEER and its independent professional associates, consultants and subcontractors will be performed in a professional, reasonable and prudent manner in accordance with generally accepted professional practice. The ENGINEER represents that it has the required skills and capacity to perform work and services to be provided under this Agreement.

2. The ENGINEER represents that services provided under this Agreement shall be performed within the limits prescribed by the CITY in a manner consistent with that level of care and skill ordinarily exercised by other professional consultants under similar circumstances.

3. Any deficiency in ENGINEER's work and services performed under this contract shall be subject to the provisions of applicable state and federal law. Any deficiency discovered shall be corrected upon notice from CITY and at the ENGINEER's expense if the deficiency is due to ENGINEER's negligence. The CITY shall notify the ENGINEER in writing of any such deficiency and provide an opportunity for mutual investigation and resolution of the problem prior to pursuit of any judicial remedy. In any case, this provision shall in no way limit the judicial remedies available to the CITY under applicable state or federal law.

4. The ENGINEER agrees to and shall hold harmless the CITY, its officers, employees, and agents from all claims and liability of whatsoever kind or character due to or arising solely out of the negligent acts or omissions of the ENGINEER, its officers, agents, employees, subcontractors, and others acting for or under the direction of the ENGINEER doing the work herein contracted for or by or in consequence of any negligence in the performance of this Agreement, or by or on account of any omission in the performance of this Agreement.
III. Payment Schedule

CITY shall reimburse the ENGINEER for Pre-Award Services on an hourly basis in accordance with Exhibit A. Invoices will be presented to CITY for payment monthly that reflect the charges for the preceding billing period.

The total of all Pre-Award Engineering charges will not exceed $40,000, without prior written approval from CITY.

IV. Terms and Conditions

1. Termination of Agreement for Cause. - If the ENGINEER fails to fulfill in a timely and proper manner its obligations under this Agreement, or if the ENGINEER violates any of the covenants, conditions, agreements, or stipulations of this Agreement, the CITY shall have the right to terminate this Agreement by giving written notice to the ENGINEER of such termination and specifying the effective date thereof, which shall be at least five days before the effective date of such termination. In the event of termination for cause, all finished or unfinished documents, data, studies, surveys, drawings, maps, models, photographs and reports prepared by the ENGINEER pursuant to this Agreement shall, at the option of the CITY, be turned over to the CITY and become the property of the CITY. In the event of termination for cause, the ENGINEER shall be entitled to receive reasonable compensation for any necessary services actually and satisfactorily performed prior to the date of termination.

Notwithstanding the above, the ENGINEER shall not be relieved of liability to the CITY for damages sustained by the CITY by virtue of any breach of the Agreement by the ENGINEER, and the CITY may set-off the damages it incurred as a result of the ENGINEER’s breach of the contract from any amounts it might otherwise owe the ENGINEER.

2. Termination for Convenience of the CITY. - CITY may at any time and for any reason terminate Contractor’s services and work at CITY’s convenience upon providing written notice to the Contractor specifying the extent of termination and the effective date. Upon receipt of such notice, Contractor shall, unless the notice directs otherwise, immediately discontinue the work and placing of orders for materials, facilities and supplies in connection with the performance of this Agreement.

Upon such termination, Contractor shall be entitled to payment only as follows: (1) the actual cost of the work completed in conformity with this Agreement; plus, (2) such other costs actually incurred by Contractor as are permitted by the prime contract and approved by CITY; (3) plus ten percent (10%) of the cost of the work referred to in subparagraph (1) above for overhead and profit. There shall be deducted from such sums as provided in this subparagraph the amount of any payments made to Contractor prior to the date of the termination of this Agreement. Contractor shall not be entitled to any claim or claim of lien against CITY for any additional compensation or damages in the event of such termination and payment.

3. Changes. - The CITY may, from time to time, request changes in the services the ENGINEER will perform under this Agreement. Such changes, including any increase or decrease in the amount of the ENGINEER's compensation, must be agreed to by all parties and finalized through a signed, written amendment to this Agreement.
4. **Resolution of Program Non-Compliance and Disallowed Costs.** - In the event of any dispute, claim, question, or disagreement arising from or relating to this Agreement, or the breach thereof, including determination of responsibility for any costs disallowed as a result of non-compliance with federal, state or FEMA program requirements, the parties hereto shall use their best efforts to settle the dispute, claim, question or disagreement. To this effect, the parties shall consult and negotiate with each other in good faith within 30 days of receipt of a written notice of the dispute or invitation to negotiate, and attempt to reach a just and equitable solution satisfactory to both parties. If the matter is not resolved by negotiation within 30 days of receipt of written notice or invitation to negotiate, the parties agree first to try in good faith to settle the matter by mediation administered by the American Arbitration Association under its Commercial Mediation Procedures before resorting to arbitration, litigation, or some other dispute resolution procedure. The parties may enter into a written amendment to this Amendment and choose a mediator that is not affiliated with the American Arbitration Association. The parties shall bear the costs of such mediation equally. If the matter is not resolved through such mediation within 60 days of the initiation of that procedure, either party may proceed to file suit.

5. **Personnel.**
   
   a. The ENGINEER represents that he/she/it has, or will secure at its own expense, all personnel required in performing the services under this Agreement. Such personnel shall not be employees of or have any contractual relationship with the CITY.
   
   b. All of the services required hereunder will be performed by the ENGINEER or under its supervision and all personnel engaged in the work shall be fully qualified and shall be authorized or permitted under State and Local law to perform such services.
   
   c. None of the work or services covered by this Agreement shall be subcontracted without the prior written approval of the CITY. Any work or services subcontracted hereunder shall be specified by written contract or agreement and shall be subject to each provision of this Agreement.

6. **Assignability.** - The ENGINEER shall not assign any interest on this Agreement and shall not transfer any interest in the same (whether by assignment or novation), without the prior written consent of the CITY thereto; Provided, however, that claims for money by the ENGINEER from the CITY under this Agreement may be assigned to a bank, trust company, or other financial institution without such approval. Written notice of any such assignment or transfer shall be furnished promptly to the CITY.

7. **Reports and Information.** - The ENGINEER, at such times and in such forms as the CITY may require, shall furnish the CITY such periodic reports as it may request pertaining to the work or services undertaken pursuant to this Agreement, the costs and obligations incurred or to be incurred in connection therewith, and any other matters covered by this Agreement.

8. **Records and Audits.** - The ENGINEER shall insure that the CITY maintains fiscal records and supporting documentation for all expenditures of funds made under this contract in a manner that conforms to 2 CFR 200.300-.309, 24 CFR 570.490, and this Agreement. Such records must include data on the racial, ethnic, and gender characteristics of persons who are applicants for, participants in, or beneficiaries of the funds provided under this Agreement. The ENGINEER and the CITY shall retain such records, and any supporting documentation, for the greater of three years from closeout of the Agreement or the period required by other applicable laws and regulations.
9. Findings Confidential. - All of the reports, information, data, etc., prepared or assembled by the ENGINEER under this contract are confidential and the ENGINEER agrees that they shall not be made available to any individual or organization without the prior written approval of the CITY.

10. Copyright. - No report, maps, or other documents produced in whole or in part under this Agreement shall be the subject of an application for copyright by or on behalf of the ENGINEER.

11. Compliance with Local Laws. - The ENGINEER shall comply with all applicable laws, ordinances and codes of the State and local governments, and the ENGINEER shall save the CITY harmless with respect to any damages arising from any tort done in performing any of the work embraced by this Agreement.

12. Conflicts of Interest.
   a. Governing Body. - No member of the governing body of the CITY and no other officer, employee, or agent of the CITY, who exercises any functions or responsibilities in connection with administration, construction, engineering, or implementation of FEMA award between GrantWorks and the CITY, shall have any personal financial interest, direct or indirect, in the ENGINEER or this Agreement; and the ENGINEER shall take appropriate steps to assure compliance.
   
   b. Other Local Public Officials. - No other public official, who exercises any functions or responsibilities in connection with the planning and carrying out of administration, construction, engineering or implementation of the FEMA award between GrantWorks and the CITY, shall have any personal financial interest, direct or indirect, in the ENGINEER or this Agreement; and the ENGINEER shall take appropriate steps to assure compliance.
   
   a. The ENGINEER and Employees. - The ENGINEER warrants and represents that it has no conflict of interest associated with the FEMA award between GrantWorks and the CITY or this Agreement. The ENGINEER further warrants and represents that it shall not acquire an interest, direct or indirect, in any geographic area that may benefit from the FEMA award between GrantWorks and the CITY or in any business, entity, organization or person that may benefit from the award. The ENGINEER further agrees that it will not employ an individual with a conflict of interest as described herein.

13. Debarment and Suspension (Executive Orders 12549 and 12689) - The ENGINEER certifies, by entering into this Agreement, that neither it nor its principals are presently debarred, suspended, or otherwise excluded from or ineligible for participation in federally-assisted programs under Executive Orders 12549 (1986) and 12689 (1989). The term “principal” for purposes of this Agreement is defined as an officer, director, owner, partner, key employee, or other person with primary management or supervisory responsibilities, or a person who has a critical influence on or substantive control over the operations of the ENGINEER. The ENGINEER understands that it must not make any award or permit any award (or contract) at any tier to any party which is debarred or suspended or is otherwise excluded from or ineligible for participation in Federal assistance programs under Executive Order 12549, “Debarment and Suspension.”

14. Equal Opportunity Clause (applicable to federally assisted construction contracts and subcontracts over $10,000). - During the performance of this contract, the ENGINEER agrees as follows:
a. The ENGINEER will not discriminate against any employee or applicant for employment because of race, color, religion, sex, sexual orientation, gender identity, or national origin. The ENGINEER will take affirmative action to ensure that applicants are employed, and that employees are treated during employment without regard to their race, color, religion, sex, sexual orientation, gender identity, or national origin. Such action shall include, but not be limited to the following: Employment, upgrading, demotion, or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. The ENGINEER agrees to post in conspicuous places, available to employees and applicants for employment, notices to be provided setting forth the provisions of this nondiscrimination clause.

b. The ENGINEER will, in all solicitations or advertisements for employees placed by or on behalf of the ENGINEER, state that all qualified applicants will receive considerations for employment without regard to race, color, religion, sex, sexual orientation, gender identity, or national origin.

c. The ENGINEER will not discourage or in any other manner discriminate against any employee or applicant for employment because such employee or applicant has inquired about, discussed, or disclosed the compensation of the employee or applicant or another employee or applicant. This provision shall not apply to instances in which an employee who has access to the compensation information of other employees or applicants as a part of such employee’s essential job functions discloses the compensation of such other employees or applicants to individuals who do not otherwise have access to such information, unless such disclosure is in response to a formal complaint or charge, in furtherance of an investigation, proceeding, hearing, or action, including an investigation conducted by the employer, or is consistent with the contractor’s legal duty to furnish information.

d. The ENGINEER will send to each labor union or representative of workers with which he has a collective bargaining agreement or other contract or understanding, a notice to be provided advising the said labor union or workers' representatives of the ENGINEER's commitments under this section, and shall post copies of the notice in conspicuous places available to employees and applicants for employment.


f. The ENGINEER will furnish all information and reports required by Executive Order 11246 of September 24, 1965, and by rules, regulations, and orders of the Secretary of Labor, or pursuant thereto, and will permit access to his books, records, and accounts by the administering agency and the Secretary of Labor for purposes of investigation to ascertain compliance with such rules, regulations, and orders.

g. In the event of the ENGINEER's noncompliance with the nondiscrimination clauses of this contract or with any of the said rules, regulations, or orders, this contract may be canceled, terminated, or suspended in whole or in part and the ENGINEER may be declared ineligible for further Government contracts or federally assisted construction contracts in accordance with procedures authorized in Executive Order 11246 of September 24, 1965, and such other sanctions may be imposed and remedies invoked as provided in Executive Order 11246 of September 24, 1965, or by rule, regulation, or order of the Secretary of Labor, or as otherwise provided by law.
h. The ENGINEER will include the portion of the sentence immediately preceding paragraph (a) and the provisions of paragraphs (a) through (h) in every subcontract or purchase order unless exempted by rules, regulations, or orders of the Secretary of Labor issued pursuant to section 204 of Executive Order 11246 of September 24, 1965, so that such provisions will be binding upon each subcontractor or vendor. The ENGINEER will take such action with respect to any subcontract or purchase order as the administering agency may direct as a means of enforcing such provisions, including sanctions for noncompliance: Provided, however, That in the event a ENGINEER becomes involved in, or is threatened with, litigation with a subcontractor or vendor as a result of such direction by the administering agency the ENGINEER may request the United States to enter into such litigation to protect the interests of the United States.

15. Economic Opportunities for Section 3 Residents and Section 3 Business Concerns.

a. The work to be performed under this contract is subject to the requirements of section 3 of the Housing and Urban Development Act of 1968, as amended, 12 U.S.C. 1701u (section 3). The purpose of section 3 is to ensure that employment and other economic opportunities generated by HUD assistance or HUD-assisted projects covered by section 3, shall, to the greatest extent feasible, be directed to low- and very low-income persons, particularly persons who are recipients of HUD assistance for housing.

b. The parties to this Agreement agree to comply with HUD's regulations in 24 CFR part 135, which implement section 3. As evidenced by their execution of this contract, the parties to this Agreement certify that they are under no contractual or other impediment that would prevent them from complying with the part 135 regulations.

c. The ENGINEER agrees to send to each labor organization or representative of workers with which the ENGINEER has a collective bargaining agreement or other understanding, if any, a notice advising the labor organization or workers' representative of the ENGINEER's commitments under this section 3 clause, and will post copies of the notice in conspicuous places at the work site where both employees and applicants for training and employment positions can see the notice. The notice shall describe the section 3 preference, shall set forth minimum number and job titles subject to hire, availability of apprenticeship and training positions, the qualifications for each; and the name and location of the person(s) taking applications for each of the positions; and the anticipated date the work shall begin.

d. The ENGINEER agrees to include this section 3 clause in every subcontract subject to compliance with regulations in 24 CFR part 135, and agrees to take appropriate action, as provided in an applicable provision of the subcontract or in this section 3 clause, upon a finding that the subcontractor is in violation of the regulations in 24 CFR part 135. The ENGINEER will not subcontract with any subcontractor where the ENGINEER has notice or knowledge that the subcontractor has been found in violation of the regulations in 24 CFR part 135.

e. The ENGINEER will certify that any vacant employment positions, including training positions, that are filled (1) after the ENGINEER is selected but before the contract is executed, and (2) with persons other than those to whom the regulations of 24 CFR part 135 require employment opportunities to be directed, were not filled to circumvent the ENGINEER's obligations under 24 CFR part 135.

f. Noncompliance with HUD's regulations in 24 CFR part 135 may result in sanctions, termination of this Agreement for default, and debarment or suspension from future HUD assisted contracts.
g. With respect to work performed in connection with section 3 covered Indian housing assistance, section 7(b) of the Indian Self-Determination and Education Assistance Act (25 U.S.C. 450e) also applies to the work to be performed under this Agreement. Section 7(b) requires that to the greatest extent feasible (i) preference and opportunities for training and employment shall be given to Indians, and (ii) preference in the award of contracts and subcontracts shall be given to Indian organizations and Indian-owned Economic Enterprises. Parties to this contract that are subject to the provisions of section 3 and section 7(b) agree to comply with section 3 to the maximum extent feasible, but not in derogation of compliance with section 7(b).

16. Reporting Requirements - The Contractor shall comply with the requirements and regulations pertaining to reporting (24 CFR 85.36 (i) (7)).

17. Patent Rights - The Contractor shall comply with the requirements and regulations pertaining to patent rights with respect to any discovery or invention which arises or is developed in the course of or under such contract. (24 CFR 85.36 (i) (8)).

18. Copyrights and Rights in Data - The Contractor shall comply with the requirements and regulations pertaining to copyrights and rights in data. (24 CFR 85.36 (i) (9)).

19. Energy Efficiency - The Contractor shall comply with the mandatory standards and policies relating to energy efficiency which are contained in the state energy conservation plan issued in compliance with the Energy Policy and Conservation Act (Pub. L. 94A 163, 89 Stat. 871). (24 CFR 85.36 (i) (13)).

20. Suspension and Debarment

a. This contract is a covered transaction for purposes of 2 C.F.R. pt. 180 and 2 C.F.R. pt. 3000. As such the contractor is required to verify that none of the contractor, its principals (defined at 2 C.F.R. § 180.995), or its affiliates (defined at 2 C.F.R. § 180.905) are excluded (defined at 2 C.F.R. § 180.940) or disqualified (defined at 2 C.F.R. § 180.935).

b. The contractor must comply with 2 C.F.R. pt. 180, subpart C and 2C.F.R. pt. 3000, subpart C and must include a requirement to comply with these regulations in any lower tier covered transaction it enters into.

c. This certification is a material representation of fact relied upon by (insert name of subrecipient). If it is later determined that the contractor did not comply with 2 C.F.R. pt. 180, subpart C and 2 C.F.R. pt. 3000, subpart C, in addition to remedies available to (name of state agency serving as recipient and name of subrecipient), the Federal Government may pursue available remedies, including but not limited to suspension and/or debarment.

d. The bidder or proposer agrees to comply with the requirements of 2 C.F.R. pt. 180, subpart C and 2 C.F.R. pt. 3000, subpart C while this offer is valid and throughout the period of any contract that may arise from this offer. The bidder or proposer further agrees to include a provision requiring such compliance in its lower tier covered transactions.”

21. Procurement of Recovered Materials

a. Applicability: This requirement applies to all FEMA grant and cooperative agreement programs.

c. The requirements of Section 6002 include procuring only items designated in guidelines of the EPA at 40 C.F.R. Part 247 that contain the highest percentage of recovered materials practicable, consistent with maintaining a satisfactory level of competition, where the purchase price of the item exceeds $10,000 or the value of the quantity acquired by the preceding fiscal year exceeded $10,000; procuring solid waste management services in a manner that maximizes energy and resource recovery; and establishing an affirmative procurement program for procurement of recovered materials identified in the EPA guidelines.

22. Access to Records. The following access to records requirements apply to this contract:

a. The contractor agrees to provide (insert name of state agency or local or Indian tribal government), (insert name of recipient), the FEMA Administrator, the Comptroller General of the United States, or any of their authorized representatives access to any books, documents, papers, and records of the Contractor which are directly pertinent to this contract for the purposes of making audits, examinations, excerpts, and transcriptions.

b. The Contractor agrees to permit any of the foregoing parties to reproduce by any means whatsoever or to copy excerpts and transcriptions as reasonably needed.

c. The contractor agrees to provide the FEMA Administrator or his authorized representatives access to construction or other work sites pertaining to the work being completed under the contract.

23. DHS Seal, Logo, and Flags.

a. All non-Federal entities must place in their contracts a provision that a contractor shall not use the DHS seal(s), logos, crests, or reproductions of flags or likenesses of DHS agency officials without specific FEMA pre-approval. See DHS Standard Terms and Conditions, v 3.0, ¶ XXV (2013).

b. The following provides a contract clause regarding DHS Seal, Logo, and Flags: “The contractor shall not use the DHS seal(s), logos, crests, or reproductions of flags or likenesses of DHS agency officials without specific FEMA pre-approval.

24. Compliance with Federal Law, Regulations, and Executive Orders. - This is an acknowledgement that FEMA financial assistance will be used to fund the contract only. The contractor will comply will all applicable federal law, regulations, executive orders, FEMA policies, procedures, and directives.

25. No Obligation by Federal Government. - The Federal Government is not a party to this contract and is not subject to any obligations or liabilities to the non-Federal entity, contractor, or any other party pertaining to any matter resulting from the contract.
26. **Program Fraud and False or Fraudulent Statements or Related Acts.** - The contractor acknowledges that 31 U.S.C. Chap. 38 (Administrative Remedies for False Claims and Statements) applies to the contractor’s actions pertaining to this contract.

27. **Civil Rights Act of 1964.** - Under Title VI of the Civil Rights Act of 1964, no person shall, on the grounds of race, color, religion, sex, or national origin, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any program or activity receiving Federal financial assistance.

28. **Section 504 of the Rehabilitation Act of 1973, as amended.** - The ENGINEER agrees that no otherwise qualified individual with disabilities shall, solely by reason of his/her disability, be denied the benefits of, or be subjected to discrimination, including discrimination in employment, under any program or activity receiving federal financial assistance.

29. **Age Discrimination Act of 1975.** - The ENGINEER shall comply with the Age Discrimination Act of 1975 which provides that no person in the United States shall on the basis of age be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any program or activity receiving federal financial assistance.

30. **Verification No Boycott Israel.** - As required by Chapter 2270, Government Code, the ENGINEER hereby verifies that it does not boycott Israel and will not boycott Israel through the term of this Agreement. For purposes of this verification, “boycott Israel” means refusing to deal with, terminating business activities with, or otherwise taking any action that is intended to penalize, inflict economic harm on, or limit commercial relations specifically with Israel, or with a person or entity doing business in Israel or in an Israeli-controlled territory, but does not include an action made for ordinary business purposes.

31. **Foreign Terrorist Organizations.** - Pursuant to Chapter 2252, Texas Government Code, the ENGINEER represents and certifies that, at the time of execution of this Agreement neither the ENGINEER, nor any wholly owned subsidiary, majority-owned subsidiary, parent company or affiliate of the same (i) engages in business with Iran, Sudan, or any foreign terrorist organization as described in Chapters 806 or 807 of the Texas Government Code, or Subchapter F of Chapter 2252 of the Texas Government Code, or (ii) is a company listed by the Texas Comptroller of Public Accounts under Sections 806.051, 807.051, or 2252.153 of the Texas Government Code. The term "foreign terrorist organization" in this paragraph has the meaning assigned to such term in Section 2252.151 of the Texas Government Code.

32. **Contracting with Small and Minority Businesses, Women's Business Enterprises, and Labor Surplus Area Firms.**

   a. The non-Federal entity must take all necessary affirmative steps to assure that minority businesses, women's business enterprises, and labor surplus area firms are used when possible.

   b. Affirmative steps must include:

      i. Placing qualified small and minority businesses and women's business enterprises on solicitation lists;

      ii. Assuring that small and minority businesses, and women's business enterprises are solicited whenever they are potential sources;
iii. Dividing total requirements, when economically feasible, into smaller tasks or quantities to permit maximum participation by small and minority businesses, and women's business enterprises;

iv. Establishing delivery schedules, where the requirement permits, which encourage participation by small and minority businesses, and women's business enterprises;

v. Using the services and assistance, as appropriate, of such organizations as the Small Business Administration and the Minority Business Development Agency of the Department of Commerce; and

vi. Requiring the prime contractor, if subcontracts are to be let, to take the affirmative steps listed in paragraphs (1) through (5) of this section

33. Clean Air Act (42 U.S.C. 7401-7671q.) and the Federal Water Pollution Control Act (33 U.S.C. 1251-1387) - Clean Air Act (42 U.S.C. 7401-7671q.) and the Federal Water Pollution Control Act (33 U.S.C. 1251-1387), as amended—Contracts and subgrants of amounts in excess of $150,000 must contain a provision that requires the non-Federal award to agree to comply with all applicable standards, orders or regulations issued pursuant to the Clean Air Act (42 U.S.C. 7401-7671q) and the Federal Water Pollution Control Act as amended (33 U.S.C. 1251-1387). Violations must be reported to the Federal awarding agency and the Regional Office of the Environmental Protection Agency (EPA).

34. Texas Department of Emergency Management. - ENGINEER agrees to comply with appropriate and applicable provisions of the “Grant Terms, Assurances and Conditions” being a part of the CITY’s HMGP contract for the Drainage Improvements Project.
October 4, 2018

Mr. John Kaminski  
Assistant City Manager  
City of Victoria

Re: Disaster Recovery Engineering Services  
HMGP Drainage Improvement Applications for Harvey  
Proposal for Professional Services

Dear John:

It is with pleasure that we submit this proposal for professional services to assist the City of Victoria with preparation of HMGP Drainage Improvement Applications for Red River and Mayfair Terrace drainage system improvements. These services are for the “Pre-award” phase which includes developing a project scope, project costs, and a preliminary benefit cost analysis to be incorporated into Grantworks’ submittal package. This proposal does not include scope identified as Phase 1 and 2 in the documents submitted to CivilCorp. These Phase 1 and 2 services, including but not limited to detailed surveys/studies/design, construction plan preparation, bidding, and construction management, will be part of a separate agreement with the City if funding is approved for one or both projects.

Compensation for the Pre-award phase services will be on a time and materials basis with a not-to-exceed amount of $40,000. This amount will not be exceeded without prior approval from the City.

- Red River Drainage Improvements $20,000
- Mayfair Terrace Drainage Improvements $20,000

**Total** $40,000

**Rates for Engineering Services**

<table>
<thead>
<tr>
<th>Position</th>
<th>Rate</th>
</tr>
</thead>
<tbody>
<tr>
<td>Principal Engineer</td>
<td>$175.00</td>
</tr>
<tr>
<td>Senior Engineer</td>
<td>$160.00</td>
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<tr>
<td>Registered Professional Engineer</td>
<td>$135.00</td>
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<tr>
<td>Registered Professional Land Surveyor</td>
<td>$130.00</td>
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<tr>
<td>Engineer in Training</td>
<td>$105.00</td>
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<tr>
<td>Senior Designer</td>
<td>$100.00</td>
</tr>
<tr>
<td>Designer</td>
<td>$ 90.00</td>
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<tr>
<td>Clerical</td>
<td>$ 65.00</td>
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<tr>
<td>CADD Technician</td>
<td>$ 85.00</td>
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<tr>
<td>GPS Crew</td>
<td>$200.00</td>
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<tr>
<td>Field Crew - 2 man</td>
<td>$140.00</td>
</tr>
<tr>
<td>3 man</td>
<td>$175.00</td>
</tr>
</tbody>
</table>

Please let me know if you need any additional information. We are looking forward to working with you and City staff on this project.

Sincerely,

Randy P. Janak, P.E.  
Vice President – Victoria Office
Request for Council Agenda Item

Department: City Manager  
Person presenting to Council: John Kaminski


Topic of Council Item

A resolution authorizing the City Manager to execute a professional services agreement with John D. Mercer & Associates, Inc. to provide pre-award and post-award engineering services for the development of applications for funding through the FEMA Hazard Mitigation Grant Program (HMGP) in an amount not to exceed $117,000.00 and declaring an effective date.

Background information

On June 19, 2018, City Council authorized a professional services agreement with GrantWorks, Inc. to provide pre-award services (services associated with preparing and submitting grant applications) and post-award services (services associated with administering grant-funded programs) related to the FEMA Hazard Mitigation Grant Program (HMGP) and related disaster recovery programs.

Because most of the potential disaster recovery projects also require engineering services, the City initiated a procurement process in July to select engineering firms to assist with the development of grant applications. On September 4, 2018, City Council approved the selection of CivilCorp, LLC, John D. Mercer & Associates and Urban Engineering to provide grant-related engineering services as needed.

This resolution will authorize a professional services agreement with John D. Mercer & Associates, Inc. to provide pre-award and post-award engineering services for the development of applications for funding through the FEMA Hazard Mitigation Grant Program (HMGP) for proposed emergency generator projects at the Victoria Police Department and Victoria Community Center.

Pre-award engineering services include the development of preliminary project scopes, preliminary design, preliminary cost estimates and preliminary Benefit Cost Analyses to be incorporated into GrantWorks’ application submittal packages. If a grant application is approved by FEMA, post-award engineering services will include a final Cost Benefit Analysis, final engineering plans and budget, bidding services and construction oversight, inspection and related services.

Council will note that this contract includes both pre-award and post-award services, whereas the contracts with Urban Engineering and CivilCorp only include pre-award services. This is because in the HMGP program, generators are not considered to be “Phased” projects. If FEMA approves a generator project, the project is funded with one grant award that covers everything from final engineering design to implementation/construction. Drainage projects are typically implemented as “Phased” projects. If FEMA approves a drainage project, they award funding for Phase 1 work, which includes a final Benefit Cost Analysis, environmental and historic resources surveys, final engineering/design, and final cost estimate. Phase 2 funding for construction is not awarded until all Phase 1 activities are complete and the project has a satisfactory Benefit Cost Ratio. Because of the complexity of these projects, engineers cannot provide an accurate schedule of fees for post-award services until preliminary design and cost estimates are developed in the pre-award step.

Compensation for pre-award services will be on a time and materials basis with a not-to-exceed amount of $10,000.00. Compensation for post-award Fees (if a grant application is approved by FEMA) will be in accordance with the milestones listed in the attached payment schedule, in an amount not to exceed $107,000.00.

For pre-award fees, the FEMA/City cost share is 75/25 for projects that are approved for HMGP funding and implemented. For projects that are not funded, the City is responsible for 100% of pre-award costs.
The FEMA/City cost share is 75/25 for post-award fees.

<table>
<thead>
<tr>
<th>Cost</th>
<th></th>
</tr>
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<tbody>
<tr>
<td>Amount of Expenditure: $117,000.00</td>
<td></td>
</tr>
<tr>
<td>Fund #: 1021</td>
<td>Cost Center #: 21GW-HMGP</td>
</tr>
<tr>
<td>Account #: 530000</td>
<td>Finance Approval: WMJ</td>
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</table>

**Documents approved by Legal?**

<table>
<thead>
<tr>
<th>Legal Approval:</th>
<th></th>
</tr>
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</table>
Resolution No. 2018-_______R

A resolution authorizing the City Manager to execute a professional services agreement with John D. Mercer & Associates, Inc. to provide pre-award and post-award engineering services for the development of applications for funding through the FEMA Hazard Mitigation Grant Program (HMGP) in an amount not to exceed $117,000.00 and declaring an effective date.

Whereas this agreement is for pre-award engineering services for the development of applications for funding through the FEMA Hazard Mitigation Grant Program (HMGP) for proposed emergency generator projects at the Victoria Police Department and Victoria Community Center;

Whereas pre-award engineering services include the development of preliminary project scopes, preliminary cost estimates, and preliminary Benefit Cost Analyses to be incorporated into GrantWorks’ application submittal packages; and

Whereas if a grant application is approved by FEMA, post-award engineering services will include a final Cost Benefit Analysis, final engineering plans and budget, bidding services and construction oversight, inspection and related services;

Now therefore, be it resolved by the City Council of the City of Victoria, Texas:

1. The City Manager is authorized to execute a professional services agreement with John D. Mercer & Associates, Inc. for pre-award and post-award engineering services for the development of applications for funding through the FEMA Hazard Mitigation Grant Program (HMGP) in an amount not to exceed $117,000.00, substantially in the form attached hereto as Attachment “A” and incorporated herein, with changes in form as approved by the City Attorney.

2. This resolution shall become effective immediately upon adoption.

Passed, this the 30th day of October, 2018

Ayes:
Nays:
Abstentions:

Approved and adopted, this the 30th day of October, 2018

____________________________________
Paul Polasek, Mayor of the
City of Victoria, Texas

Attest:

April Hilbrich, City Secretary

Approved as to legal form:

Thomas A. Gwosdz, City Attorney

Distribution: Legal Department
Finance Department

Copies Sent: ____________________________
Attachment “A”

Engineering Services Agreement
Between John D. Mercer & Associates, Inc. and
The City of Victoria

I. Terms of Agreement

THIS AGREEMENT, entered into this _____ day of _________________, 2018, by and between the CITY OF VICTORIA, hereinafter called “CITY”, and JOHN D. MERCER & ASSOCIATES, INC. hereinafter called "ENGINEER,” do agree as follows:

WHEREAS, the CITY of Victoria desires to construct a project of emergency generators with partial funding through the Hazard Mitigation Grant Program (HMGP) of the Federal Emergency Management Agency (hereinafter called “FEMA”) with project administration by GrantWorks; and

WHEREAS, the CITY desires to engage the ENGINEER to render certain engineering services in connection with the Generator Project.

NOW THEREFORE, the parties do mutually agree as follows:

1. Scope of Services
   The ENGINEER will perform the services set out in Part II, Scope of Services.

2. Time of Performance - The services of the ENGINEER shall commence on date above given. In any event, all of the services required and performed hereunder shall be completed no later than that ending date established by the CITY’s HMGP Contract for this project.

3. Local Program Liaison - For purposes of this Agreement, the City Manager of the City of Victoria, Charmelle Garrett, or equivalent authorized person will serve as the Local Program Liaison and primary point of contact for the ENGINEER. All required progress reports and communication regarding the project shall be directed to this liaison.

4. Access to Records – GrantWorks, FEMA, and the CITY, or any of their authorized representatives, shall have access to any documents, papers, or other records of the ENGINEER which are pertinent to the FEMA award, in order to make audits, examinations, excerpts, and transcripts, and to closeout the CITY’s FEMA contract.

5. Retention of Records - The ENGINEER shall retain all required records for four years after the CITY makes its final payment and all pending matters are closed.

6. Compensation and Method of Payment - Compensation and reimbursement to be paid by the CITY to the ENGINEER hereunder shall be based on satisfactory completion of identified milestones in Part III - Payment Schedule of this Agreement.

7. Indemnification – The ENGINEER shall comply with the requirements of all applicable laws, rules and regulations, and shall exonerate, indemnify, and hold harmless the CITY and its agency members
from and against any and all claims, costs, suits, and damages, including attorney’s fees, arising out of the ENGINEER’s performance or nonperformance of the activities, services or subject matter called for in this Agreement, and shall assume full responsibility for payments of Federal, State and local taxes on contributions imposed or required under the Social Security, worker's compensation and income tax laws.

8. **Miscellaneous Provisions**
   a. This Agreement shall be construed under and accord with the laws of the State of Texas, and all obligations of the parties created hereunder are performable in Victoria County, Texas.
   b. This Agreement shall be binding upon and inure to the benefit of the parties hereto and their respective heirs, executors, administrators, legal representatives, successors and assigns where permitted by this Agreement.
   c. In any case one or more of the provisions contained in this Agreement shall for any reason be held to be invalid, illegal or unenforceable in any respect, such invalidity, illegality, or unenforceability shall not affect any other provision thereof and this Agreement shall be construed as if such invalid, illegal, or unenforceable provision had never been contained herein.
   d. This Agreement may be amended by mutual agreement of the parties hereto and a writing to be attached to an incorporated into this Agreement.

9. **Extent of Agreement** - This Agreement, which includes Parts I-V, 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 Agreement may be amended only by written instrument signed by authorized representatives of both CITY and the ENGINEER.

IN WITNESSETH WHEREOF, the parties have executed this Agreement by causing the same to be signed on the day and year first above written.

BY: 

City of Victoria, Texas 

(Printed Name) 

(Title) 


John D. Mercer, PE 

(Printed Name) 

(Title)
II. Scope of Services: City of Victoria – HMGP Generator Project

Pre-Award Scope of Services:

1. Attend preliminary conference with CITY and GrantWorks regarding project requirements.
2. Assist, as may be needed, with preparation of the grant application.
3. Provide a preliminary engineering study to establish the following:
   a. A need for property boundary or easement surveys;
   b. Proposed locations of permanent installation;
   c. Size/capacity of generators;
   d. Potential for other electrical installations that would economically reduce generator size/capacity;
   e. Requirements for site improvements necessary for generator operation and maintenance.
4. Assist with preparation of preliminary environmental and historical assessments of project sites as applicable.
5. Perform surveys as may be required.
6. Prepare a preliminary Scope of Work.
7. Assist with preparation of Preliminary Benefit/Cost Analysis for each installation using FEMA and BCA software program.
8. Prepare preliminary plans and specifications for the proposed installations.
9. Prepare a preliminary project budget.

Post-Award Scope of Services:

Basic Services

3. Assist with a comprehensive environmental and historical assessment as applicable.
4. Prepare Preliminary Plans and Specifications and review with CITY.
5. Prepare final project plans and specifications and review with CITY.
6. Obtain approvals as required from reviewing authorities.
7. Prepare a final budget for construction.
9. During Bid Phase of Project:
   a. Attend and assist with bid opening;
   b. Tabulate, analyze and review bids;
   c. Make recommendation for bid award.

Additional Services

10. Services to make measured drawings of or to investigate existing conditions or facilities, or to verify the accuracy of drawings or other information furnished by CITY.
11. During Construction Phase of Project:
   a. Attend and assist with a Pre-Construction Conference.
   b. Issue a Notice to Proceed to construction contractor.
c. Make periodic visits, no less than every 30 days during the construction period, to the site to observe the progress and quality of the work, and to determine, in general, if the work is proceeding in accordance with the Agreement.

d. Consult with and advise the CITY during construction; issue to contractors all instructions requested by the CITY; prepare routine change orders, if required, at no charge for engineering services to the CITY when the change order is required to correct errors or omissions by the ENGINEER; provide price analysis for change orders; process change orders approved by CITY and the ENGINEER and submit to GrantWorks for approval prior to execution with the construction contractor.

e. Review shop and working drawings furnished by contractors for compliance with design concept and with information given in contract documents (contractors will be responsible for dimensions to be confirmed and correlated at job site).

f. Resolve all payment requests within 14 days of receipt of signed pay request from the construction contractor.

g. Based on the ENGINEER's on-site observations and review of the contractor's applications for payment, determine the amount owed to the contractor in such amounts; such approvals of payment to constitute a representation to the CITY, based on such observations and review, that the work has progressed to the point indicated and that the quality of work is in accordance with the plans, specifications and contract documents.

h. Recommend that an appropriate retainage be withheld from all payments on construction contracts until final acceptance by the CITY and approval by GrantWorks, unless State or local law provides otherwise.

i. Prepare Certificate of Construction Completion and Clean Lien Certificate. A Clean Lien Certificate may be prepared for each of the Prime Contractor(s) and each of the subcontractor(s).

j. Conduct interim/final inspections.

k. Revise contract drawings to show the work as actually constructed and furnish the CITY with "record drawings" in a format acceptable to CITY.

l. Assist CITY and GrantWorks with documentation as necessary for project close-out.

**Subcontracts**

1. No work under this Agreement shall be subcontracted by the ENGINEER without prior approval, in writing, from the CITY.

2. The ENGINEER shall, prior to proceeding with the work, notify the CITY in writing of the name of any subcontractors proposed for the work, including the extent and character of the work to be done by each.

3. If any time during progress of the work, the CITY determines that any subcontractor is incompetent or undesirable, the CITY will notify the ENGINEER who shall take reasonable and immediate steps to satisfactorily cure the problem, substitute performance, or cancel such subcontract. Subletting by subcontractors shall be subject to the same regulations. Nothing contained in this Agreement shall create any contractual relation between any subcontractor and the CITY.
4. The ENGINEER will include in all contracts and subcontracts in excess of $10,000 provisions addressing termination for cause and for convenience by the CITY including the manner by which it will be affected and the basis for settlement.

5. The ENGINEER will include in all contracts and subcontracts provisions requiring compliance with the following, if applicable:
   
   a. Prime construction contracts in excess of $2,000, compliance with the Davis-Bacon Act, as amended (40 U.S.C. 3141-3144, 3146-3148) as supplemented by Department of Labor regulations (29 CFR part 5);
   
   b. Prime construction contracts in excess of $2,000, compliance with the Copeland “Anti-Kickback” Act (40 U.S.C. 3145), as supplemented by Department of Labor regulations (29 CFR part 3)
   
   c. Contracts greater than $10,000, the inclusion of the Equal Opportunity clause provided under 41 CFR 60-1.4(b) (Executive Order 11246);
   
   d. Section 3 of the Housing and Urban Development Act of 1968;
   
   e. Contracts exceeding $100,000, compliance with the Byrd Anti-Lobbying Amendment (31 U.S.C. 1352);
   
   f. For contracts in excess of $100,000 that involve the employment of mechanics or laborers, compliance with the Contract Work Hours and Safety Standards Act (40 U.S.C. 3701–3708), including work week requirements and safety conditions for workers, as supplemented by Department of Labor regulations (29 CFR Part 5); and
   
   g. For procurement of recovered materials where the purchase price of the item exceeds $10,000 or the value of the quantity acquired during the preceding fiscal year exceeded $10,000, compliance with 2 CFR 200.322 and section 6002 of the Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act, which requires procuring only items designated in guidelines of the EPA at 40 CFR part 247 that contain the highest percentage of recovered materials practicable.

6. The ENGINEER will include in all negotiated contracts and subcontracts a provision which indicates that funds will not be awarded under this contract to any party which is debarred, suspended, or otherwise excluded from or ineligible for participation in federal assistance programs under Executive Order 12549 and 2 CFR Part 2424. A certification shall be provided and received from each proposed subcontractor under this contract and its principals.

7. The ENGINEER will include in all negotiated contracts and subcontracts a provision to the effect that the CITY, GrantWorks, or any of their duly authorized representatives, shall have access to any books, documents, papers and records of the contractor which are directly pertinent to that specific contract, for the purpose of making audit, examination, excerpts, and transcriptions.

8. The ENGINEER will include in all contracts and subcontracts a requirement that the contractor maintain all relevant project records for three (3) years after the CITY has made final payment to the contractor and all other pending matters are closed.
**Standard of Performance And Deficiencies**

1. All services of the ENGINEER and its independent professional associates, consultants and subcontractors will be performed in a professional, reasonable and prudent manner in accordance with generally accepted professional practice. The ENGINEER represents that it has the required skills and capacity to perform work and services to be provided under this Agreement.

2. The ENGINEER represents that services provided under this Agreement shall be performed within the limits prescribed by the CITY in a manner consistent with that level of care and skill ordinarily exercised by other professional consultants under similar circumstances.

3. Any deficiency in ENGINEER's work and services performed under this contract shall be subject to the provisions of applicable state and federal law. Any deficiency discovered shall be corrected upon notice from CITY and at the ENGINEER's expense if the deficiency is due to ENGINEER's negligence. The CITY shall notify the ENGINEER in writing of any such deficiency and provide an opportunity for mutual investigation and resolution of the problem prior to pursuit of any judicial remedy. In any case, this provision shall in no way limit the judicial remedies available to the CITY under applicable state or federal law.

4. The ENGINEER agrees to and shall hold harmless the CITY, its officers, employees, and agents from all claims and liability of whatsoever kind or character due to or arising solely out of the negligent acts or omissions of the ENGINEER, its officers, agents, employees, subcontractors, and others acting for or under the direction of the ENGINEER doing the work herein contracted for or by or in consequence of any negligence in the performance of this Agreement, or by or on account of any omission in the performance of this Agreement.
III. Payment Schedule

Pre-Award Services:

CITY shall reimburse the ENGINEER for Pre-Award Services on an hourly basis in accordance with the “PART V – SCHEDULE OF HOURLY RATES”. Invoices will be presented to CITY for payment monthly that reflect the charges for the preceding billing period.

The total of all Pre-Award Engineering charges will not exceed $10,000 without prior written approval from CITY.

Post-Award Services:

CITY shall reimburse ENGINEER for Post-Award Basic Engineering Services on a monthly basis according to ENGINEER’s estimate of the percentage completed of the following project milestones. Payments shall not exceed the amount for 100% completion of the milestone.

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<thead>
<tr>
<th>Milestone</th>
<th>% of Contract Fee</th>
<th>% of Basic Services Fee</th>
</tr>
</thead>
<tbody>
<tr>
<td>Approval of Preliminary Engineering Plans and Specifications by CITY.</td>
<td>32%</td>
<td>$71,360.00</td>
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<tr>
<td>Approval of Final Plans and Specifications by CITY.</td>
<td>63%</td>
<td>$140,490.00</td>
</tr>
<tr>
<td>Award of Contract by CITY and Notice of Award to Contractor.</td>
<td>4%</td>
<td>$11,150.00</td>
</tr>
<tr>
<td><strong>Total</strong></td>
<td><strong>100%</strong></td>
<td><strong>$107,000.00</strong></td>
</tr>
</tbody>
</table>

All Basic Services after award of contract by CITY shall be invoiced based on “PART V – SCHEDULE OF HOURLY RATES”. The following estimates of total charges are not to be considered maximum amounts. The Basic Services for the Construction Phase will begin with the issuance of a Notice to Proceed to the contractor and end with Final Closeout of the Project.

Construction Phase Services (Hourly) Estimate $18,900

Other Additional Services (Hourly) Estimate $17,000
IV. Terms And Conditions

1. Termination of Agreement for Cause. - If the ENGINEER fails to fulfill in a timely and proper manner its obligations under this Agreement, or if the ENGINEER violates any of the covenants, conditions, agreements, or stipulations of this Agreement, the CITY shall have the right to terminate this Agreement by giving written notice to the ENGINEER of such termination and specifying the effective date thereof, which shall be at least five days before the effective date of such termination. In the event of termination for cause, all finished or unfinished documents, data, studies, surveys, drawings, maps, models, photographs and reports prepared by the ENGINEER pursuant to this Agreement shall, at the option of the CITY, be turned over to the CITY and become the property of the CITY. In the event of termination for cause, the ENGINEER shall be entitled to receive reasonable compensation for any necessary services actually and satisfactorily performed prior to the date of termination.

Notwithstanding the above, the ENGINEER shall not be relieved of liability to the CITY for damages sustained by the CITY by virtue of any breach of the Agreement by the ENGINEER, and the CITY may set-off the damages it incurred as a result of the ENGINEER’s breach of the contract from any amounts it might otherwise owe the ENGINEER.

2. Termination for Convenience of the CITY. - CITY may at any time and for any reason terminate Contractor’s services and work at CITY’s convenience upon providing written notice to the Contractor specifying the extent of termination and the effective date. Upon receipt of such notice, Contractor shall, unless the notice directs otherwise, immediately discontinue the work and placing of orders for materials, facilities and supplies in connection with the performance of this Agreement.

Upon such termination, Contractor shall be entitled to payment only as follows: (1) the actual cost of the work completed in conformity with this Agreement; plus, (2) such other costs actually incurred by Contractor as are permitted by the prime contract and approved by CITY; (3) plus ten percent (10%) of the cost of the work referred to in subparagraph (1) above for overhead and profit. There shall be deducted from such sums as provided in this subparagraph the amount of any payments made to Contractor prior to the date of the termination of this Agreement. Contractor shall not be entitled to any claim or claim of lien against CITY for any additional compensation or damages in the event of such termination and payment.

3. Changes. - The CITY may, from time to time, request changes in the services the ENGINEER will perform under this Agreement. Such changes, including any increase or decrease in the amount of the ENGINEER's compensation, must be agreed to by all parties and finalized through a signed, written amendment to this Agreement.

4. Resolution of Program Non-Compliance and Disallowed Costs. - In the event of any dispute, claim, question, or disagreement arising from or relating to this Agreement, or the breach thereof, including determination of responsibility for any costs disallowed as a result of non-compliance with federal, state or FEMA program requirements, the parties hereto shall use their best efforts to settle the dispute, claim, question or disagreement. To this effect, the parties shall consult and negotiate with each other in good faith within 30 days of receipt of a written notice of the dispute or invitation to negotiate, and attempt to reach a just and equitable solution satisfactory to both parties. If the matter is not resolved by negotiation within 30 days of receipt of written notice or invitation to negotiate, the parties agree first to try in good faith to settle the matter by mediation administered by the American Arbitration Association under its Commercial Mediation Procedures before resorting to arbitration, litigation, or some other dispute resolution procedure. The parties
may enter into a written amendment to this Amendment and choose a mediator that is not affiliated with the American Arbitration Association. The parties shall bear the costs of such mediation equally. If the matter is not resolved through such mediation within 60 days of the initiation of that procedure, either party may proceed to file suit.

5. **Personnel.**

   a. The ENGINEER represents that he/she/it has, or will secure at its own expense, all personnel required in performing the services under this Agreement. Such personnel shall not be employees of or have any contractual relationship with the CITY.
   
   b. All of the services required hereunder will be performed by the ENGINEER or under its supervision and all personnel engaged in the work shall be fully qualified and shall be authorized or permitted under State and Local law to perform such services.
   
   c. None of the work or services covered by this Agreement shall be subcontracted without the prior written approval of the CITY. Any work or services subcontracted hereunder shall be specified by written contract or agreement and shall be subject to each provision of this Agreement.

6. **Assignability.** - The ENGINEER shall not assign any interest on this Agreement and shall not transfer any interest in the same (whether by assignment or novation), without the prior written consent of the CITY thereto; Provided, however, that claims for money by the ENGINEER from the CITY under this Agreement may be assigned to a bank, trust company, or other financial institution without such approval. Written notice of any such assignment or transfer shall be furnished promptly to the CITY.

7. **Reports and Information.** - The ENGINEER, at such times and in such forms as the CITY may require, shall furnish the CITY such periodic reports as it may request pertaining to the work or services undertaken pursuant to this Agreement, the costs and obligations incurred or to be incurred in connection therewith, and any other matters covered by this Agreement.

8. **Records and Audits.** - The ENGINEER shall insure that the CITY maintains fiscal records and supporting documentation for all expenditures of funds made under this contract in a manner that conforms to 2 CFR 200.300-.309, 24 CFR 570.490, and this Agreement. Such records must include data on the racial, ethnic, and gender characteristics of persons who are applicants for, participants in, or beneficiaries of the funds provided under this Agreement. The ENGINEER and the CITY shall retain such records, and any supporting documentation, for the greater of three years from closeout of the Agreement or the period required by other applicable laws and regulations.

9. **Findings Confidential.** - All of the reports, information, data, etc., prepared or assembled by the ENGINEER under this contract are confidential and the ENGINEER agrees that they shall not be made available to any individual or organization without the prior written approval of the CITY.

10. **Copyright.** - No report, maps, or other documents produced in whole or in part under this Agreement shall be the subject of an application for copyright by or on behalf of the ENGINEER.

11. **Compliance with Local Laws.** - The ENGINEER shall comply with all applicable laws, ordinances and codes of the State and local governments, and the ENGINEER shall save the CITY harmless with respect to any damages arising from any tort done in performing any of the work embraced by this Agreement.
12. Conflicts of Interest.

a. **Governing Body.** - No member of the governing body of the CITY and no other officer, employee, or agent of the CITY, who exercises any functions or responsibilities in connection with administration, construction, engineering, or implementation of FEMA award between GrantWorks and the CITY, shall have any personal financial interest, direct or indirect, in the ENGINEER or this Agreement; and the ENGINEER shall take appropriate steps to assure compliance.

b. **Other Local Public Officials.** - No other public official, who exercises any functions or responsibilities in connection with the planning and carrying out of administration, construction, engineering or implementation of the FEMA award between GrantWorks and the CITY, shall have any personal financial interest, direct or indirect, in the ENGINEER or this Agreement; and the ENGINEER shall take appropriate steps to assure compliance.

c. **The ENGINEER and Employees.** - The ENGINEER warrants and represents that it has no conflict of interest associated with the FEMA award between GrantWorks and the CITY or this Agreement. The ENGINEER further warrants and represents that it shall not acquire an interest, direct or indirect, in any geographic area that may benefit from the FEMA award between GrantWorks and the CITY or in any business, entity, organization or person that may benefit from the award. The ENGINEER further agrees that it will not employ an individual with a conflict of interest as described herein.

13. **Debarment and Suspension (Executive Orders 12549 and 12689)** - The ENGINEER certifies, by entering into this Agreement, that neither it nor its principals are presently debarred, suspended, or otherwise excluded from or ineligible for participation in federally-assisted programs under Executive Orders 12549 (1986) and 12689 (1989). The term “principal” for purposes of this Agreement is defined as an officer, director, owner, partner, key employee, or other person with primary management or supervisory responsibilities, or a person who has a critical influence on or substantive control over the operations of the ENGINEER. The ENGINEER understands that it must not make any award or permit any award (or contract) at any tier to any party which is debarred or suspended or is otherwise excluded from or ineligible for participation in Federal assistance programs under Executive Order 12549, “Debarment and Suspension.”

14. **Equal Opportunity Clause** (applicable to federally assisted construction contracts and subcontracts over $10,000) - During the performance of this contract, the ENGINEER agrees as follows:

a. The ENGINEER will not discriminate against any employee or applicant for employment because of race, color, religion, sex, sexual orientation, gender identity, or national origin. The ENGINEER will take affirmative action to ensure that applicants are employed, and that employees are treated during employment without regard to their race, color, religion, sex, sexual orientation, gender identity, or national origin. Such action shall include, but not be limited to the following: Employment, upgrading, demotion, or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. The ENGINEER agrees to post in conspicuous places, available to employees and applicants for employment, notices to be provided setting forth the provisions of this nondiscrimination clause.

b. The ENGINEER will, in all solicitations or advertisements for employees placed by or on behalf of the ENGINEER, state that all qualified applicants will receive considerations for employment without regard to race, color, religion, sex, sexual orientation, gender identity, or national origin.
c. The ENGINEER will not discourage or in any other manner discriminate against any employee or applicant for employment because such employee or applicant has inquired about, discussed, or disclosed the compensation of the employee or applicant or another employee or applicant. This provision shall not apply to instances in which an employee who has access to the compensation information of other employees or applicants as a part of such employee’s essential job functions discloses the compensation of such other employees or applicants to individuals who do not otherwise have access to such information, unless such disclosure is in response to a formal complaint or charge, in furtherance of an investigation, proceeding, hearing, or action, including an investigation conducted by the employer, or is consistent with the contractor’s legal duty to furnish information.

d. The ENGINEER will send to each labor union or representative of workers with which he has a collective bargaining agreement or other contract or understanding, a notice to be provided advising the said labor union or workers' representatives of the ENGINEER's commitments under this section, and shall post copies of the notice in conspicuous places available to employees and applicants for employment.


f. The ENGINEER will furnish all information and reports required by Executive Order 11246 of September 24, 1965, and by rules, regulations, and orders of the Secretary of Labor, or pursuant thereto, and will permit access to his books, records, and accounts by the administering agency and the Secretary of Labor for purposes of investigation to ascertain compliance with such rules, regulations, and orders.

g. In the event of the ENGINEER's noncompliance with the nondiscrimination clauses of this contract or with any of the said rules, regulations, or orders, this contract may be canceled, terminated, or suspended in whole or in part and the ENGINEER may be declared ineligible for further Government contracts or federally assisted construction contracts in accordance with procedures authorized in Executive Order 11246 of September 24, 1965, and such other sanctions may be imposed and remedies invoked as provided in Executive Order 11246 of September 24, 1965, or by rule, regulation, or order of the Secretary of Labor, or as otherwise provided by law.

h. The ENGINEER will include the portion of the sentence immediately preceding paragraph (a) and the provisions of paragraphs (a) through (h) in every subcontract or purchase order unless exempted by rules, regulations, or orders of the Secretary of Labor issued pursuant to section 204 of Executive Order 11246 of September 24, 1965, so that such provisions will be binding upon each subcontractor or vendor. The ENGINEER will take such action with respect to any subcontract or purchase order as the administering agency may direct as a means of enforcing such provisions, including sanctions for noncompliance: Provided, however, That in the event a ENGINEER becomes involved in, or is threatened with, litigation with a subcontractor or vendor as a result of such direction by the administering agency the ENGINEER may request the United States to enter into such litigation to protect the interests of the United States.
15. Economic Opportunities for Section 3 Residents and Section 3 Business Concerns.

a. The work to be performed under this contract is subject to the requirements of section 3 of the Housing and Urban Development Act of 1968, as amended, 12 U.S.C. 1701u (section 3). The purpose of section 3 is to ensure that employment and other economic opportunities generated by HUD assistance or HUD-assisted projects covered by section 3, shall, to the greatest extent feasible, be directed to low- and very low-income persons, particularly persons who are recipients of HUD assistance for housing.

b. The parties to this Agreement agree to comply with HUD's regulations in 24 CFR part 135, which implement section 3. As evidenced by their execution of this contract, the parties to this Agreement certify that they are under no contractual or other impediment that would prevent them from complying with the part 135 regulations.

c. The ENGINEER agrees to send to each labor organization or representative of workers with which the ENGINEER has a collective bargaining agreement or other understanding, if any, a notice advising the labor organization or workers' representative of the ENGINEER's commitments under this section 3 clause, and will post copies of the notice in conspicuous places at the work site where both employees and applicants for training and employment positions can see the notice. The notice shall describe the section 3 preference, shall set forth minimum number and job titles subject to hire, availability of apprenticeship and training positions, the qualifications for each; and the name and location of the person(s) taking applications for each of the positions; and the anticipated date the work shall begin.

d. The ENGINEER agrees to include this section 3 clause in every subcontract subject to compliance with regulations in 24 CFR part 135, and agrees to take appropriate action, as provided in an applicable provision of the subcontract or in this section 3 clause, upon a finding that the subcontractor is in violation of the regulations in 24 CFR part 135. The ENGINEER will not subcontract with any subcontractor where the ENGINEER has notice or knowledge that the subcontractor has been found in violation of the regulations in 24 CFR part 135.

e. The ENGINEER will certify that any vacant employment positions, including training positions, that are filled (1) after the ENGINEER is selected but before the contract is executed, and (2) with persons other than those to whom the regulations of 24 CFR part 135 require employment opportunities to be directed, were not filled to circumvent the ENGINEER's obligations under 24 CFR part 135.

f. Noncompliance with HUD's regulations in 24 CFR part 135 may result in sanctions, termination of this Agreement for default, and debarment or suspension from future HUD assisted contracts.

g. With respect to work performed in connection with section 3 covered Indian housing assistance, section 7(b) of the Indian Self-Determination and Education Assistance Act (25 U.S.C. 450e) also applies to the work to be performed under this Agreement. Section 7(b) requires that to the greatest extent feasible (i) preference and opportunities for training and employment shall be given to Indians, and (ii) preference in the award of contracts and subcontracts shall be given to Indian organizations and Indian-owned Economic Enterprises. Parties to this contract that are subject to the provisions of section 3 and section 7(b) agree to comply with section 3 to the maximum extent feasible, but not in derogation of compliance with section 7(b).
16. **Reporting Requirements** - The Contractor shall comply with the requirements and regulations pertaining to reporting (24 CFR 85.36 (i) (7)).

17. **Patent Rights** - The Contractor shall comply with the requirements and regulations pertaining to patent rights with respect to any discovery or invention which arises or is developed in the course of or under such contract. (24 CFR 85.36 (i) (8)).

18. **Copyrights and Rights in Data** - The Contractor shall comply with the requirements and regulations pertaining to copyrights and rights in data. (24 CFR 85.36 (i) (9)).

19. **Energy Efficiency** - The Contractor shall comply with the mandatory standards and policies relating to energy efficiency which are contained in the state energy conservation plan issued in compliance with the Energy Policy and Conservation Act (Pub. L. 94A 163, 89 Stat. 871). (24 CFR 85.36 (i) (13)).

20. **Suspension and Debarment**
   
a. This contract is a covered transaction for purposes of 2 C.F.R. pt. 180 and 2 C.F.R. pt. 3000. As such the contractor is required to verify that none of the contractor, its principals (defined at 2 C.F.R. § 180.995), or its affiliates (defined at 2 C.F.R. § 180.905) are excluded (defined at 2 C.F.R. § 180.940) or disqualified (defined at 2 C.F.R. § 180.935).
   
b. The contractor must comply with 2 C.F.R. pt. 180, subpart C and 2C.F.R. pt. 3000, subpart C and must include a requirement to comply with these regulations in any lower tier covered transaction it enters into.
   
c. This certification is a material representation of fact relied upon by (insert name of subrecipient). If it is later determined that the contractor did not comply with 2 C.F.R. pt. 180, subpart C and 2 C.F.R. pt. 3000, subpart C, in addition to remedies available to (name of state agency serving as recipient and name of subrecipient), the Federal Government may pursue available remedies, including but not limited to suspension and/or debarment.
   
d. The bidder or proposer agrees to comply with the requirements of 2 C.F.R. pt. 180, subpart C and 2 C.F.R. pt. 3000, subpart C while this offer is valid and throughout the period of any contract that may arise from this offer. The bidder or proposer further agrees to include a provision requiring such compliance in its lower tier covered transactions.”

21. **Procurement of Recovered Materials**
   
a. Applicability: This requirement applies to all FEMA grant and cooperative agreement programs.
   
   
c. The requirements of Section 6002 include procuring only items designated in guidelines of the EPA at 40 C.F.R. Part 247 that contain the highest percentage of recovered materials practicable, consistent with maintaining a satisfactory level of competition, where the purchase price of the item exceeds $10,000 or the value of the quantity acquired by the preceding fiscal year exceeded
$10,000; procuring solid waste management services in a manner that maximizes energy and resource recovery; and establishing an affirmative procurement program for procurement of recovered materials identified in the EPA guidelines.

22. **Access to Records.** The following access to records requirements apply to this contract:

   a. The contractor agrees to provide (insert name of state agency or local or Indian tribal government), (insert name of recipient), the FEMA Administrator, the Comptroller General of the United States, or any of their authorized representatives access to any books, documents, papers, and records of the Contractor which are directly pertinent to this contract for the purposes of making audits, examinations, excerpts, and transcriptions.

   b. The Contractor agrees to permit any of the foregoing parties to reproduce by any means whatsoever or to copy excerpts and transcriptions as reasonably needed.

   c. The contractor agrees to provide the FEMA Administrator or his authorized representatives access to construction or other work sites pertaining to the work being completed under the contract.

23. **DHS Seal, Logo, and Flags.**

   a. All non-Federal entities must place in their contracts a provision that a contractor shall not use the DHS seal(s), logos, crests, or reproductions of flags or likenesses of DHS agency officials without specific FEMA pre-approval. See DHS Standard Terms and Conditions, v 3.0, ¶ XXV (2013).

   b. The following provides a contract clause regarding DHS Seal, Logo, and Flags: “The contractor shall not use the DHS seal(s), logos, crests, or reproductions of flags or likenesses of DHS agency officials without specific FEMA pre-approval.

24. **Compliance with Federal Law, Regulations, and Executive Orders.** - This is an acknowledgement that FEMA financial assistance will be used to fund the contract only. The contractor will comply will all applicable federal law, regulations, executive orders, FEMA policies, procedures, and directives.

25. **No Obligation by Federal Government.** - The Federal Government is not a party to this contract and is not subject to any obligations or liabilities to the non-Federal entity, contractor, or any other party pertaining to any matter resulting from the contract.

26. **Program Fraud and False or Fraudulent Statements or Related Acts.** - The contractor acknowledges that 31 U.S.C. Chap. 38 (Administrative Remedies for False Claims and Statements) applies to the contractor’s actions pertaining to this contract.”

27. **Civil Rights Act of 1964.** - Under Title VI of the Civil Rights Act of 1964, no person shall, on the grounds of race, color, religion, sex, or national origin, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any program or activity receiving Federal financial assistance.

28. **Section 504 of the Rehabilitation Act of 1973, as amended.** - The ENGINEER agrees that no otherwise qualified individual with disabilities shall, solely by reason of his/her disability, be
denied the benefits of, or be subjected to discrimination, including discrimination in employment, under any program or activity receiving federal financial assistance.

29. **Age Discrimination Act of 1975.** - The ENGINEER shall comply with the Age Discrimination Act of 1975 which provides that no person in the United States shall on the basis of age be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any program or activity receiving federal financial assistance.

30. **Verification No Boycott Israel.** - As required by Chapter 2270, Government Code, the ENGINEER hereby verifies that it does not boycott Israel and will not boycott Israel through the term of this Agreement. For purposes of this verification, “boycott Israel” means refusing to deal with, terminating business activities with, or otherwise taking any action that is intended to penalize, inflict economic harm on, or limit commercial relations specifically with Israel, or with a person or entity doing business in Israel or in an Israeli-controlled territory, but does not include an action made for ordinary business purposes.

31. **Foreign Terrorist Organizations.** - Pursuant to Chapter 2252, Texas Government Code, the ENGINEER represents and certifies that, at the time of execution of this Agreement neither the ENGINEER, nor any wholly owned subsidiary, majority-owned subsidiary, parent company or affiliate of the same (i) engages in business with Iran, Sudan, or any foreign terrorist organization as described in Chapters 806 or 807 of the Texas Government Code, or Subchapter F of Chapter 2252 of the Texas Government Code, or (ii) is a company listed by the Texas Comptroller of Public Accounts under Sections 806.051, 807.051, or 2252.153 of the Texas Government Code. The term "foreign terrorist organization" in this paragraph has the meaning assigned to such term in Section 2252.151 of the Texas Government Code.

32. **Contracting with Small and Minority Businesses, Women's Business Enterprises, and Labor Surplus Area Firms.**

   a. The non-Federal entity must take all necessary affirmative steps to assure that minority businesses, women's business enterprises, and labor surplus area firms are used when possible.

   b. Affirmative steps must include:
      i. Placing qualified small and minority businesses and women's business enterprises on solicitation lists;
      ii. Assuring that small and minority businesses, and women's business enterprises are solicited whenever they are potential sources;
      iii. Dividing total requirements, when economically feasible, into smaller tasks or quantities to permit maximum participation by small and minority businesses, and women's business enterprises;
      iv. Establishing delivery schedules, where the requirement permits, which encourage participation by small and minority businesses, and women's business enterprises;
      v. Using the services and assistance, as appropriate, of such organizations as the Small Business Administration and the Minority Business Development Agency of the Department of Commerce; and
      vi. Requiring the prime contractor, if subcontracts are to be let, to take the affirmative steps listed in paragraphs (1) through (5) of this section.

33. **Clean Air Act (42 U.S.C. 7401-7671q.) and the Federal Water Pollution Control Act (33 U.S.C. 1251-1387).** - Clean Air Act (42 U.S.C. 7401-7671q.) and the Federal Water Pollution Control Act (33 U.S.C. 1251-1387), as amended—Contracts and subgrants of amounts in excess of $150,000
must contain a provision that requires the non-Federal award to agree to comply with all applicable standards, orders or regulations issued pursuant to the Clean Air Act (42 U.S.C. 7401-7671q) and the Federal Water Pollution Control Act as amended (33 U.S.C.1251-1387). Violations must be reported to the Federal awarding agency and the Regional Office of the Environmental Protection Agency (EPA).

34. Texas Department of Emergency Management. - ENGINEER agrees to comply with appropriate and applicable provisions of the “Grant Terms, Assurances and Conditions” being a part of the CITY’s HMGP contract for the Generator Project.
## V. Schedule of Hourly Rates

### Engineering, Planning:

- **Principal of Firm (PE5)**: $190.00/hr.
- **Associate Engineer, Planner IV (PE4)**: $165.00/hr.
- **Associate Engineer, Planner III (PE3)**: $140.00/hr.
- **Associate Engineer, Planner II (PE2)**: $125.00/hr.
- **Associate Engineer, Planner I (PE1)**: $120.00/hr.
- **Engineer, Planner III (EIT3)**: $115.00/hr.
- **Engineer, Planner II (EIT2)**: $105.00/hr.
- **Engineer, Planner I (EIT1)**: $90.00/hr.
- **Engineer Tech IV (ET4)**: $110.00/hr.
- **Engineer Tech III (ET3)**: $100.00/hr.
- **Engineer Tech II (ET2)**: $85.00/hr.
- **Engineer Tech I (ET1)**: $80.00/hr.
- **Construction Observer II**: $95.00/hr.
- **Construction Observer I**: $80.00/hr.
- **Administrative Assistant**: $60.00/hr.

### Drafting, CADD:

- **CADD Operator III**: $75.00/hr.
- **CADD Operator II**: $70.00/hr.
- **CADD Operator I**: $60.00/hr.

### Survey:

- **Professional Surveyor**: $190.00/hr.
- **Director of Survey Parties**: $165.00/hr.
- **Field Crew (2 man)**: $146.00/hr.
- **Field Crew (3 man)**: $178.00/hr.
- **GPS & Field Crew (1 man)**: $139.00/hr.
- **GPS & Field Crew (2 man)**: $216.00/hr.
- **GPS & Field Crew (3 man)**: $233.00/hr.

### Expenses:

- Transportation - current IRS mileage rate
- Reproduction work - prevailing commercial rates
- Subcontractors, Consultants, etc. - cost plus 20% handling
- All other expenses - cost plus 20% handling

Charges are due and payable within twenty (20) days after receipt of the invoice. Late payments may be charged an interest rate of 1.0% per month of the unpaid balance.
A resolution authorizing the City Manager to execute a professional services agreement with Victoria Engineering, Inc. d/b/a Urban Engineering to provide pre-award engineering services for the development of applications for funding through the FEMA Hazard Mitigation Grant Program (HMGP) in an amount not to exceed $50,000.00, and declaring an effective date.

Background information

On June 19, 2018, City Council authorized a professional services agreement with GrantWorks, Inc. to provide pre-award services (services associated with preparing and submitting grant applications) and post-award services (services associated with administering grant-funded programs) related to the FEMA Hazard Mitigation Grant Program (HMGP) and related disaster recovery programs.

Because most of the potential disaster recovery projects also require engineering services, the City initiated a procurement process in July to select engineering firms to assist with the development of grant applications. On September 4, 2018, City Council approved the selection of CivilCorp, LLC, John D. Mercer & Associates and Urban Engineering to provide grant-related engineering services as needed.

This resolution will authorize a professional services agreement with Urban Engineering to provide pre-award engineering services for the development of applications for funding through the FEMA Hazard Mitigation Grant Program (HMGP) for the proposed Flood Gate Hardening/Replacement Project and Storm Water Pump Station Project. Pre-award engineering services include the development of preliminary project scopes, preliminary cost estimates and preliminary Benefit Cost Analyses to be incorporated into GrantWorks’ application submittal packages.

Compensation will be on a time and materials basis with a not-to-exceed amount of $50,000.00. This agreement authorizes pre-award services only. Should a grant application (or applications) be approved for HMGP funding by FEMA, a separate contract for post-award engineering services will be presented to City Council for further action.

For pre-award fees, the FEMA/City cost share is 75/25 for projects that are approved for HMGP funding and implemented. For projects that are not funded, the City is responsible for 100% of pre-award costs.
Resolution No. 2018-______R

A resolution authorizing the City Manager to execute a professional services agreement with Victoria Engineering, Inc. d/b/a Urban Engineering to provide pre-award engineering services for the development of applications for funding through the FEMA Hazard Mitigation Grant Program (HMGP) in an amount not to exceed $50,000.00, and declaring an effective date.

Whereas this agreement is for pre-award engineering services for the development of applications for funding through the FEMA Hazard Mitigation Grant Program (HMGP) for the proposed Flood Gate Hardening/Replacement Project and Storm Water Pump Station Project; and

Whereas pre-award engineering services include the development of preliminary project scopes, preliminary cost estimates, and preliminary Benefit Cost Analyses to be incorporated into GrantWorks’ application submittal packages;

Now therefore, be it resolved by the City Council of the City of Victoria, Texas:

1. The City Manager is authorized to execute a professional services agreement with Victoria Engineering, Inc. d/b/a Urban Engineering for pre-award engineering services for the development of applications for funding through the FEMA Hazard Mitigation Grant Program (HMGP) in an amount not to exceed $50,000.00, substantially in the form attached hereto as Attachment “A” and incorporated herein, with changes in form as approved by the City Attorney.

2. This resolution shall become effective immediately upon adoption.

Passed, this the 30th day of October, 2018

Ayes:

Nays:

Abstentions:

Approved and adopted, this the 30th day of October, 2018

____________________________________
Paul Polasek, Mayor of the
City of Victoria, Texas

Attest:

Approved as to legal form:

____________________________________
April Hilbrich, City Secretary

Thomas A. Gwosdz, City Attorney

Distribution: Legal Department
Finance Department

Copies Sent: ____________________________
I. Terms of Agreement

THIS AGREEMENT, entered into this _____ day of ________________, 2018, by and between the CITY OF VICTORIA, hereinafter called “CITY”, and VICTORIA ENGINEERING, INC., d/b/a, Urban Engineering, hereinafter called “ENGINEER,” do agree as follows:

WHEREAS, the CITY of Victoria desires to construct a Flood Gate Hardening/Replacement Project and Storm Water Pump Station Project (“Projects”) with partial funding through the Hazard Mitigation Grant Program (HMGP) of the Federal Emergency Management Agency (hereinafter called “FEMA”) with project administration by GrantWorks; and

WHEREAS, the CITY desires to engage the ENGINEER to render certain engineering services in connection with the Projects.

NOW THEREFORE, the parties do mutually agree as follows:

1. Scope of Services
   The ENGINEER will perform the services set out in Part II, Scope of Services.

2. Time of Performance - The services of the ENGINEER shall commence on October 31, 2018. In any event, all of the services required and performed hereunder shall be completed no later than December 1, 2018.

3. Local Program Liaison - For purposes of this Agreement, the City Manager of the City of Victoria, Charmelle Garrett, or equivalent authorized person will serve as the Local Program Liaison and primary point of contact for the ENGINEER. All required progress reports and communication regarding the project shall be directed to this liaison.

4. Access to Records – GrantWorks, FEMA, and the CITY, or any of their authorized representatives, shall have access to any documents, papers, or other records of the ENGINEER which are pertinent to the FEMA award, in order to make audits, examinations, excerpts, and transcripts, and to closeout the CITY’s FEMA contract.

5. Retention of Records - The ENGINEER shall retain all required records for four years after the CITY makes its final payment and all pending matters are closed.

6. Compensation and Method of Payment - Compensation and reimbursement to be paid by the CITY to the ENGINEER hereunder shall be based on satisfactory completion of identified milestones in Part III - Payment Schedule of this Agreement.
7. **Indemnification** – The ENGINEER shall comply with the requirements of all applicable laws, rules and regulations, and shall exonerate, indemnify, and hold harmless the CITY and its agency members from and against any and all claims, costs, suits, and damages, including attorney’s fees, arising out of the ENGINEER’s performance or nonperformance of the activities, services or subject matter called for in this Agreement, and shall assume full responsibility for payments of Federal, State and local taxes on contributions imposed or required under the Social Security, worker's compensation and income tax laws.

8. **Miscellaneous Provisions**
   a. This Agreement shall be construed under and accord with the laws of the State of Texas, and all obligations of the parties created hereunder are performable in Victoria County, Texas.
   b. This Agreement shall be binding upon and inure to the benefit of the parties hereto and their respective heirs, executors, administrators, legal representatives, successors and assigns where permitted by this Agreement.
   c. In any case one or more of the provisions contained in this Agreement shall for any reason be held to be invalid, illegal or unenforceable in any respect, such invalidity, illegality, or unenforceability shall not affect any other provision thereof and this Agreement shall be construed as if such invalid, illegal, or unenforceable provision had never been contained herein.
   d. This Agreement may be amended by mutual agreement of the parties hereto and a writing to be attached to an incorporated into this Agreement.

9. **Extent of Agreement** - This Agreement, which includes Parts I-IV, 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 Agreement may be amended only by written instrument signed by authorized representatives of both CITY and the ENGINEER.

IN WITNESSETH WHEREOF, the parties have executed this Agreement by causing the same to be signed on the day and year first above written.

**BY:**

City of Victoria, Texas  
Charmelle Garrett  
(Printed Name)  
City Manager  
(Title)  

**BY:**

Urban Engineering  
Thomas A. Schmidt, P.E.  
(Printed Name)  
President  
(Title)
II. Scope of Services: City of Victoria – HMGP Flood Gate and Storm Water Pump Station Projects

Pre-Award Scope of Services:

1. Procurement of Professional Services
2. Preliminary Hydrologic and Hydraulic Analysis
3. Preliminary Scope of Work Development
4. Preliminary Feasibility Analysis
5. Development of Preliminary BCA
6. Preliminary Engineering Design
7. Preliminary Cost Estimate
8. Preliminary Environmental Assessment

Subcontracts

1. No work under this Agreement shall be subcontracted by the ENGINEER without prior approval, in writing, from the CITY.

2. The ENGINEER shall, prior to proceeding with the work, notify the CITY in writing of the name of any subcontractors proposed for the work, including the extent and character of the work to be done by each.

3. If any time during progress of the work, the CITY determines that any subcontractor is incompetent or undesirable, the CITY will notify the ENGINEER who shall take reasonable and immediate steps to satisfactorily cure the problem, substitute performance, or cancel such subcontract. Subletting by subcontractors shall be subject to the same regulations. Nothing contained in this Agreement shall create any contractual relation between any subcontractor and the CITY.

4. The ENGINEER will include in all contracts and subcontracts in excess of $10,000 provisions addressing termination for cause and for convenience by the CITY including the manner by which it will be affected and the basis for settlement.

5. The ENGINEER will include in all contracts and subcontracts provisions requiring compliance with the following, if applicable:
   a. Prime construction contracts in excess of $2,000, compliance with the Davis-Bacon Act, as amended (40 U.S.C. 3141-3144, 3146-3148) as supplemented by Department of Labor regulations (29 CFR part 5);
   b. Prime construction contracts in excess of $2,000, compliance with the Copeland “Anti-Kickback” Act (40 U.S.C. 3145), as supplemented by Department of Labor regulations (29 CFR part 3)
   c. Contracts greater than $10,000, the inclusion of the Equal Opportunity clause provided under 41 CFR 60-1.4(b) (Executive Order 11246);
   d. Section 3 of the Housing and Urban Development Act of 1968;
   e. Contracts exceeding $100,000, compliance with the Byrd Anti-Lobbying Amendment (31 U.S.C. 1352);
f. For contracts in excess of $100,000 that involve the employment of mechanics or laborers, compliance with the Contract Work Hours and Safety Standards Act (40 U.S.C. 3701–3708), including work week requirements and safety conditions for workers, as supplemented by Department of Labor regulations (29 CFR Part 5); and

g. For procurement of recovered materials where the purchase price of the item exceeds $10,000 or the value of the quantity acquired during the preceding fiscal year exceeded $10,000, compliance with 2 CFR 200.322 and section 6002 of the Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act, which requires procuring only items designated in guidelines of the EPA at 40 CFR part 247 that contain the highest percentage of recovered materials practicable.

6. The ENGINEER will include in all negotiated contracts and subcontracts a provision which indicates that funds will not be awarded under this contract to any party which is debarred, suspended, or otherwise excluded from or ineligible for participation in federal assistance programs under Executive Order 12549 and 2 CFR Part 2424. A certification shall be provided and received from each proposed subcontractor under this contract and its principals.

7. The ENGINEER will include in all negotiated contracts and subcontracts a provision to the effect that the CITY, GrantWorks, or any of their duly authorized representatives, shall have access to any books, documents, papers and records of the contractor which are directly pertinent to that specific contract, for the purpose of making audit, examination, excerpts, and transcriptions.

8. The ENGINEER will include in all contracts and subcontracts a requirement that the contractor maintain all relevant project records for three (3) years after the CITY has made final payment to the contractor and all other pending matters are closed.

Standard of Performance and Deficiencies

1. All services of the ENGINEER and its independent professional associates, consultants and subcontractors will be performed in a professional, reasonable and prudent manner in accordance with generally accepted professional practice. The ENGINEER represents that it has the required skills and capacity to perform work and services to be provided under this Agreement.

2. The ENGINEER represents that services provided under this Agreement shall be performed within the limits prescribed by the CITY in a manner consistent with that level of care and skill ordinarily exercised by other professional consultants under similar circumstances.

3. Any deficiency in ENGINEER's work and services performed under this contract shall be subject to the provisions of applicable state and federal law. Any deficiency discovered shall be corrected upon notice from CITY and at the ENGINEER's expense if the deficiency is due to ENGINEER's negligence. The CITY shall notify the ENGINEER in writing of any such deficiency and provide an opportunity for mutual investigation and resolution of the problem prior to pursuit of any judicial remedy. In any case, this provision shall in no way limit the judicial remedies available to the CITY under applicable state or federal law.

4. The ENGINEER agrees to and shall hold harmless the CITY, its officers, employees, and agents from all claims and liability of whatsoever kind or character due to or arising solely out of the negligent acts or omissions of the ENGINEER, its officers, agents, employees, subcontractors, and others acting for or under the direction of the ENGINEER doing the work herein contracted for or by or in consequence of any negligence in the performance of this Agreement, or by or on account of any omission in the performance of this Agreement.
III. Payment Schedule

CITY shall reimburse the ENGINEER for Pre-Award Services on an hourly basis in accordance with Exhibit A. Invoices will be presented to CITY for payment monthly that reflect the charges for the preceding billing period.

The total of all Pre-Award Engineering charges will not exceed $50,000, without prior written approval from CITY.

IV. Terms and Conditions

1. Termination of Agreement for Cause. - If the ENGINEER fails to fulfill in a timely and proper manner its obligations under this Agreement, or if the ENGINEER violates any of the covenants, conditions, agreements, or stipulations of this Agreement, the CITY shall have the right to terminate this Agreement by giving written notice to the ENGINEER of such termination and specifying the effective date thereof, which shall be at least five days before the effective date of such termination. In the event of termination for cause, all finished or unfinished documents, data, studies, surveys, drawings, maps, models, photographs and reports prepared by the ENGINEER pursuant to this Agreement shall, at the option of the CITY, be turned over to the CITY and become the property of the CITY. In the event of termination for cause, the ENGINEER shall be entitled to receive reasonable compensation for any necessary services actually and satisfactorily performed prior to the date of termination.

Notwithstanding the above, the ENGINEER shall not be relieved of liability to the CITY for damages sustained by the CITY by virtue of any breach of the Agreement by the ENGINEER, and the CITY may set-off the damages it incurred as a result of the ENGINEER’s breach of the contract from any amounts it might otherwise owe the ENGINEER.

2. Termination for Convenience of the CITY. - CITY may at any time and for any reason terminate Contractor’s services and work at CITY’s convenience upon providing written notice to the Contractor specifying the extent of termination and the effective date. Upon receipt of such notice, Contractor shall, unless the notice directs otherwise, immediately discontinue the work and placing of orders for materials, facilities and supplies in connection with the performance of this Agreement.

Upon such termination, Contractor shall be entitled to payment only as follows: (1) the actual cost of the work completed in conformity with this Agreement; plus, (2) such other costs actually incurred by Contractor as are permitted by the prime contract and approved by CITY; (3) plus ten percent (10%) of the cost of the work referred to in subparagraph (1) above for overhead and profit. There shall be deducted from such sums as provided in this subparagraph the amount of any payments made to Contractor prior to the date of the termination of this Agreement. Contractor shall not be entitled to any claim or claim of lien against CITY for any additional compensation or damages in the event of such termination and payment.

3. Changes. - The CITY may, from time to time, request changes in the services the ENGINEER will perform under this Agreement. Such changes, including any increase or decrease in the amount of the ENGINEER’s compensation, must be agreed to by all parties and finalized through a signed, written amendment to this Agreement.
4. **Resolution of Program Non-Compliance and Disallowed Costs.** - In the event of any dispute, claim, question, or disagreement arising from or relating to this Agreement, or the breach thereof, including determination of responsibility for any costs disallowed as a result of non-compliance with federal, state or FEMA program requirements, the parties hereto shall use their best efforts to settle the dispute, claim, question or disagreement. To this effect, the parties shall consult and negotiate with each other in good faith within 30 days of receipt of a written notice of the dispute or invitation to negotiate, and attempt to reach a just and equitable solution satisfactory to both parties. If the matter is not resolved by negotiation within 30 days of receipt of written notice or invitation to negotiate, the parties agree first to try in good faith to settle the matter by mediation administered by the American Arbitration Association under its Commercial Mediation Procedures before resorting to arbitration, litigation, or some other dispute resolution procedure. The parties may enter into a written amendment to this Amendment and choose a mediator that is not affiliated with the American Arbitration Association. The parties shall bear the costs of such mediation equally. If the matter is not resolved through such mediation within 60 days of the initiation of that procedure, either party may proceed to file suit.

5. **Personnel.**

   a. The ENGINEER represents that he/she/it has, or will secure at its own expense, all personnel required in performing the services under this Agreement. Such personnel shall not be employees of or have any contractual relationship with the CITY.

   b. All of the services required hereunder will be performed by the ENGINEER or under its supervision and all personnel engaged in the work shall be fully qualified and shall be authorized or permitted under State and Local law to perform such services.

   c. None of the work or services covered by this Agreement shall be subcontracted without the prior written approval of the CITY. Any work or services subcontracted hereunder shall be specified by written contract or agreement and shall be subject to each provision of this Agreement.

6. **Assignability.** - The ENGINEER shall not assign any interest on this Agreement and shall not transfer any interest in the same (whether by assignment or novation), without the prior written consent of the CITY thereto; Provided, however, that claims for money by the ENGINEER from the CITY under this Agreement may be assigned to a bank, trust company, or other financial institution without such approval. Written notice of any such assignment or transfer shall be furnished promptly to the CITY.

7. **Reports and Information.** - The ENGINEER, at such times and in such forms as the CITY may require, shall furnish the CITY such periodic reports as it may request pertaining to the work or services undertaken pursuant to this Agreement, the costs and obligations incurred or to be incurred in connection therewith, and any other matters covered by this Agreement.

8. **Records and Audits.** - The ENGINEER shall insure that the CITY maintains fiscal records and supporting documentation for all expenditures of funds made under this contract in a manner that conforms to 2 CFR 200.300-.309, 24 CFR 570.490, and this Agreement. Such records must include data on the racial, ethnic, and gender characteristics of persons who are applicants for, participants in, or beneficiaries of the funds provided under this Agreement. The ENGINEER and the CITY shall retain such records, and any supporting documentation, for the greater of three years from closeout of the Agreement or the period required by other applicable laws and regulations.
9. **Findings Confidential.** - All of the reports, information, data, etc., prepared or assembled by the ENGINEER under this contract are confidential and the ENGINEER agrees that they shall not be made available to any individual or organization without the prior written approval of the CITY.

10. **Copyright.** - No report, maps, or other documents produced in whole or in part under this Agreement shall be the subject of an application for copyright by or on behalf of the ENGINEER.

11. **Compliance with Local Laws.** - The ENGINEER shall comply with all applicable laws, ordinances and codes of the State and local governments, and the ENGINEER shall save the CITY harmless with respect to any damages arising from any tort done in performing any of the work embraced by this Agreement.

12. **Conflicts of Interest.**

   a. **Governing Body.** - No member of the governing body of the CITY and no other officer, employee, or agent of the CITY, who exercises any functions or responsibilities in connection with administration, construction, engineering, or implementation of FEMA award between GrantWorks and the CITY, shall have any personal financial interest, direct or indirect, in the ENGINEER or this Agreement; and the ENGINEER shall take appropriate steps to assure compliance.

   b. **Other Local Public Officials.** - No other public official, who exercises any functions or responsibilities in connection with the planning and carrying out of administration, construction, engineering or implementation of the FEMA award between GrantWorks and the CITY, shall have any personal financial interest, direct or indirect, in the ENGINEER or this Agreement; and the ENGINEER shall take appropriate steps to assure compliance.

   a. **The ENGINEER and Employees.** - The ENGINEER warrants and represents that it has no conflict of interest associated with the FEMA award between GrantWorks and the CITY or this Agreement. The ENGINEER further warrants and represents that it shall not acquire an interest, direct or indirect, in any geographic area that may benefit from the FEMA award between GrantWorks and the CITY or in any business, entity, organization or person that may benefit from the award. The ENGINEER further agrees that it will not employ an individual with a conflict of interest as described herein.

13. **Debarment and Suspension (Executive Orders 12549 and 12689)** - The ENGINEER certifies, by entering into this Agreement, that neither it nor its principals are presently debarred, suspended, or otherwise excluded from or ineligible for participation in federally-assisted programs under Executive Orders 12549 (1986) and 12689 (1989). The term “principal” for purposes of this Agreement is defined as an officer, director, owner, partner, key employee, or other person with primary management or supervisory responsibilities, or a person who has a critical influence on or substantive control over the operations of the ENGINEER. The ENGINEER understands that it must not make any award or permit any award (or contract) at any tier to any party which is debarred or suspended or is otherwise excluded from or ineligible for participation in Federal assistance programs under Executive Order 12549, “Debarment and Suspension.”.

14. **Equal Opportunity Clause** (applicable to federally assisted construction contracts and subcontracts over $10,000). - During the performance of this contract, the ENGINEER agrees as follows:
a. The ENGINEER will not discriminate against any employee or applicant for employment because of race, color, religion, sex, sexual orientation, gender identity, or national origin. The ENGINEER will take affirmative action to ensure that applicants are employed, and that employees are treated during employment without regard to their race, color, religion, sex, sexual orientation, gender identity, or national origin. Such action shall include, but not be limited to the following: Employment, upgrading, demotion, or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. The ENGINEER agrees to post in conspicuous places, available to employees and applicants for employment, notices to be provided setting forth the provisions of this nondiscrimination clause.

b. The ENGINEER will, in all solicitations or advertisements for employees placed by or on behalf of the ENGINEER, state that all qualified applicants will receive considerations for employment without regard to race, color, religion, sex, sexual orientation, gender identity, or national origin.

c. The ENGINEER will not discourage or in any other manner discriminate against any employee or applicant for employment because such employee or applicant has inquired about, discussed, or disclosed the compensation of the employee or applicant or another employee or applicant. This provision shall not apply to instances in which an employee who has access to the compensation information of other employees or applicants as a part of such employee’s essential job functions discloses the compensation of such other employees or applicants to individuals who do not otherwise have access to such information, unless such disclosure is in response to a formal complaint or charge, in furtherance of an investigation, proceeding, hearing, or action, including an investigation conducted by the employer, or is consistent with the contractor’s legal duty to furnish information.

d. The ENGINEER will send to each labor union or representative of workers with which he has a collective bargaining agreement or other contract or understanding, a notice to be provided advising the said labor union or workers' representatives of the ENGINEER's commitments under this section, and shall post copies of the notice in conspicuous places available to employees and applicants for employment.


f. The ENGINEER will furnish all information and reports required by Executive Order 11246 of September 24, 1965, and by rules, regulations, and orders of the Secretary of Labor, or pursuant thereto, and will permit access to his books, records, and accounts by the administering agency and the Secretary of Labor for purposes of investigation to ascertain compliance with such rules, regulations, and orders.

g. In the event of the ENGINEER's noncompliance with the nondiscrimination clauses of this contract or with any of the said rules, regulations, or orders, this contract may be canceled, terminated, or suspended in whole or in part and the ENGINEER may be declared ineligible for further Government contracts or federally assisted construction contracts in accordance with procedures authorized in Executive Order 11246 of September 24, 1965, and such other sanctions may be imposed and remedies invoked as provided in Executive Order 11246 of September 24, 1965, or by rule, regulation, or order of the Secretary of Labor, or as otherwise provided by law.
h. The ENGINEER will include the portion of the sentence immediately preceding paragraph (a) and the provisions of paragraphs (a) through (h) in every subcontract or purchase order unless exempted by rules, regulations, or orders of the Secretary of Labor issued pursuant to section 204 of Executive Order 11246 of September 24, 1965, so that such provisions will be binding upon each subcontractor or vendor. The ENGINEER will take such action with respect to any subcontract or purchase order as the administering agency may direct as a means of enforcing such provisions, including sanctions for noncompliance: Provided, however, That in the event a ENGINEER becomes involved in, or is threatened with, litigation with a subcontractor or vendor as a result of such direction by the administering agency the ENGINEER may request the United States to enter into such litigation to protect the interests of the United States.

15. Economic Opportunities for Section 3 Residents and Section 3 Business Concerns.

a. The work to be performed under this contract is subject to the requirements of section 3 of the Housing and Urban Development Act of 1968, as amended, 12 U.S.C. 1701u (section 3). The purpose of section 3 is to ensure that employment and other economic opportunities generated by HUD assistance or HUD-assisted projects covered by section 3, shall, to the greatest extent feasible, be directed to low- and very low-income persons, particularly persons who are recipients of HUD assistance for housing.

b. The parties to this Agreement agree to comply with HUD's regulations in 24 CFR part 135, which implement section 3. As evidenced by their execution of this contract, the parties to this Agreement certify that they are under no contractual or other impediment that would prevent them from complying with the part 135 regulations.

c. The ENGINEER agrees to send to each labor organization or representative of workers with which the ENGINEER has a collective bargaining agreement or other understanding, if any, a notice advising the labor organization or workers' representative of the ENGINEER's commitments under this section 3 clause, and will post copies of the notice in conspicuous places at the work site where both employees and applicants for training and employment positions can see the notice. The notice shall describe the section 3 preference, shall set forth minimum number and job titles subject to hire, availability of apprenticeship and training positions, the qualifications for each; and the name and location of the person(s) taking applications for each of the positions; and the anticipated date the work shall begin.

d. The ENGINEER agrees to include this section 3 clause in every subcontract subject to compliance with regulations in 24 CFR part 135, and agrees to take appropriate action, as provided in an applicable provision of the subcontract or in this section 3 clause, upon a finding that the subcontractor is in violation of the regulations in 24 CFR part 135. The ENGINEER will not subcontract with any subcontractor where the ENGINEER has notice or knowledge that the subcontractor has been found in violation of the regulations in 24 CFR part 135.

e. The ENGINEER will certify that any vacant employment positions, including training positions, that are filled (1) after the ENGINEER is selected but before the contract is executed, and (2) with persons other than those to whom the regulations of 24 CFR part 135 require employment opportunities to be directed, were not filled to circumvent the ENGINEER's obligations under 24 CFR part 135.

f. Noncompliance with HUD's regulations in 24 CFR part 135 may result in sanctions, termination of this Agreement for default, and debarment or suspension from future HUD assisted contracts.
g. With respect to work performed in connection with section 3 covered Indian housing assistance, section 7(b) of the Indian Self-Determination and Education Assistance Act (25 U.S.C. 450e) also applies to the work to be performed under this Agreement. Section 7(b) requires that to the greatest extent feasible (i) preference and opportunities for training and employment shall be given to Indians, and (ii) preference in the award of contracts and subcontracts shall be given to Indian organizations and Indian-owned Economic Enterprises. Parties to this contract that are subject to the provisions of section 3 and section 7(b) agree to comply with section 3 to the maximum extent feasible, but not in derogation of compliance with section 7(b).

16. Reporting Requirements - The Contractor shall comply with the requirements and regulations pertaining to reporting (24 CFR 85.36 (i) (7)).

17. Patent Rights - The Contractor shall comply with the requirements and regulations pertaining to patent rights with respect to any discovery or invention which arises or is developed in the course of or under such contract. (24 CFR 85.36 (i) (8)).

18. Copyrights and Rights in Data - The Contractor shall comply with the requirements and regulations pertaining to copyrights and rights in data. (24 CFR 85.36 (i) (9)).

19. Energy Efficiency - The Contractor shall comply with the mandatory standards and policies relating to energy efficiency which are contained in the state energy conservation plan issued in compliance with the Energy Policy and Conservation Act (Pub. L. 94A 163, 89 Stat. 871). (24 CFR 85.36 (i) (13)).

20. Suspension and Debarment

a. This contract is a covered transaction for purposes of 2 C.F.R. pt. 180 and 2 C.F.R. pt. 3000. As such the contractor is required to verify that none of the contractor, its principals (defined at 2 C.F.R. § 180.995), or its affiliates (defined at 2 C.F.R. § 180.905) are excluded (defined at 2 C.F.R. § 180.940) or disqualified (defined at 2 C.F.R. § 180.935).

b. The contractor must comply with 2 C.F.R. pt. 180, subpart C and 2C.F.R. pt. 3000, subpart C and must include a requirement to comply with these regulations in any lower tier covered transaction it enters into.

c. This certification is a material representation of fact relied upon by (insert name of subrecipient). If it is later determined that the contractor did not comply with 2 C.F.R. pt. 180, subpart C and 2 C.F.R. pt. 3000, subpart C, in addition to remedies available to (name of state agency serving as recipient and name of subrecipient), the Federal Government may pursue available remedies, including but not limited to suspension and/or debarment.

d. The bidder or proposer agrees to comply with the requirements of 2 C.F.R. pt. 180, subpart C and 2 C.F.R. pt. 3000, subpart C while this offer is valid and throughout the period of any contract that may arise from this offer. The bidder or proposer further agrees to include a provision requiring such compliance in its lower tier covered transactions.”

21. Procurement of Recovered Materials

a. Applicability: This requirement applies to all FEMA grant and cooperative agreement programs.

c. The requirements of Section 6002 include procuring only items designated in guidelines of the EPA at 40 C.F.R. Part 247 that contain the highest percentage of recovered materials practicable, consistent with maintaining a satisfactory level of competition, where the purchase price of the item exceeds $10,000 or the value of the quantity acquired by the preceding fiscal year exceeded $10,000; procuring solid waste management services in a manner that maximizes energy and resource recovery; and establishing an affirmative procurement program for procurement of recovered materials identified in the EPA guidelines.

22. Access to Records. The following access to records requirements apply to this contract:

a. The contractor agrees to provide (insert name of state agency or local or Indian tribal government), (insert name of recipient), the FEMA Administrator, the Comptroller General of the United States, or any of their authorized representatives access to any books, documents, papers, and records of the Contractor which are directly pertinent to this contract for the purposes of making audits, examinations, excerpts, and transcriptions.

b. The Contractor agrees to permit any of the foregoing parties to reproduce by any means whatsoever or to copy excerpts and transcriptions as reasonably needed.

c. The contractor agrees to provide the FEMA Administrator or his authorized representatives access to construction or other work sites pertaining to the work being completed under the contract.

23. DHS Seal, Logo, and Flags.

a. All non-Federal entities must place in their contracts a provision that a contractor shall not use the DHS seal(s), logos, crests, or reproductions of flags or likenesses of DHS agency officials without specific FEMA pre-approval. See DHS Standard Terms and Conditions, v 3.0, ¶ XXV (2013).

b. The following provides a contract clause regarding DHS Seal, Logo, and Flags: “The contractor shall not use the DHS seal(s), logos, crests, or reproductions of flags or likenesses of DHS agency officials without specific FEMA pre-approval.

24. Compliance with Federal Law, Regulations, and Executive Orders. - This is an acknowledgement that FEMA financial assistance will be used to fund the contract only. The contractor will comply will all applicable federal law, regulations, executive orders, FEMA policies, procedures, and directives.

25. No Obligation by Federal Government. - The Federal Government is not a party to this contract and is not subject to any obligations or liabilities to the non-Federal entity, contractor, or any other party pertaining to any matter resulting from the contract.
26. **Program Fraud and False or Fraudulent Statements or Related Acts.** - The contractor acknowledges that 31 U.S.C. Chap. 38 (Administrative Remedies for False Claims and Statements) applies to the contractor’s actions pertaining to this contract.

27. **Civil Rights Act of 1964.** - Under Title VI of the Civil Rights Act of 1964, no person shall, on the grounds of race, color, religion, sex, or national origin, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any program or activity receiving Federal financial assistance.

28. **Section 504 of the Rehabilitation Act of 1973, as amended.** - The ENGINEER agrees that no otherwise qualified individual with disabilities shall, solely by reason of his/her disability, be denied the benefits of, or be subjected to discrimination, including discrimination in employment, under any program or activity receiving federal financial assistance.

29. **Age Discrimination Act of 1975.** - The ENGINEER shall comply with the Age Discrimination Act of 1975 which provides that no person in the United States shall on the basis of age be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any program or activity receiving federal financial assistance.

30. **Verification No Boycott Israel.** - As required by Chapter 2270, Government Code, the ENGINEER hereby verifies that it does not boycott Israel and will not boycott Israel through the term of this Agreement. For purposes of this verification, “boycott Israel” means refusing to deal with, terminating business activities with, or otherwise taking any action that is intended to penalize, inflict economic harm on, or limit commercial relations specifically with Israel, or with a person or entity doing business in Israel or in an Israeli-controlled territory, but does not include an action made for ordinary business purposes.

31. **Foreign Terrorist Organizations.** - Pursuant to Chapter 2252, Texas Government Code, the ENGINEER represents and certifies that, at the time of execution of this Agreement neither the ENGINEER, nor any wholly owned subsidiary, majority-owned subsidiary, parent company or affiliate of the same (i) engages in business with Iran, Sudan, or any foreign terrorist organization as described in Chapters 806 or 807 of the Texas Government Code, or Subchapter F of Chapter 2252 of the Texas Government Code, or (ii) is a company listed by the Texas Comptroller of Public Accounts under Sections 806.051, 807.051, or 2252.153 of the Texas Government Code. The term "foreign terrorist organization" in this paragraph has the meaning assigned to such term in Section 2252.151 of the Texas Government Code.

32. **Contracting with Small and Minority Businesses, Women's Business Enterprises, and Labor Surplus Area Firms.**
   
a. The non-Federal entity must take all necessary affirmative steps to assure that minority businesses, women's business enterprises, and labor surplus area firms are used when possible.

   b. Affirmative steps must include:
      
i. Placing qualified small and minority businesses and women's business enterprises on solicitation lists;
   
ii. Assuring that small and minority businesses, and women's business enterprises are solicited whenever they are potential sources;
iii. Dividing total requirements, when economically feasible, into smaller tasks or quantities to permit maximum participation by small and minority businesses, and women's business enterprises;

iv. Establishing delivery schedules, where the requirement permits, which encourage participation by small and minority businesses, and women's business enterprises;

v. Using the services and assistance, as appropriate, of such organizations as the Small Business Administration and the Minority Business Development Agency of the Department of Commerce; and

vi. Requiring the prime contractor, if subcontracts are to be let, to take the affirmative steps listed in paragraphs (1) through (5) of this section

33. **Clean Air Act (42 U.S.C. 7401-7671q.) and the Federal Water Pollution Control Act (33 U.S.C. 1251-1387)** - Clean Air Act (42 U.S.C. 7401-7671q.) and the Federal Water Pollution Control Act (33 U.S.C. 1251-1387), as amended—Contracts and subgrants of amounts in excess of $150,000 must contain a provision that requires the non-Federal award to agree to comply with all applicable standards, orders or regulations issued pursuant to the Clean Air Act (42 U.S.C. 7401-7671q) and the Federal Water Pollution Control Act as amended (33 U.S.C.1251-1387). Violations must be reported to the Federal awarding agency and the Regional Office of the Environmental Protection Agency (EPA).

34. **Texas Department of Emergency Management.** - ENGINEER agrees to comply with appropriate and applicable provisions of the “Grant Terms, Assurances and Conditions” being a part of the CITY’s HMGP contract for the Projects.
October 12, 2018

Mr. John Kaminski, Assistant City Manager
City of Victoria
P.O. Box 1758
Victoria, TX 77902-1758

RE: City of Victoria – Hazard Mitigation (FEMA Disaster #DR-4332)
Storm Water Pump Station
Victoria, Texas

Dear Mr. Kaminski:

Thank you for allowing Urban Engineering the opportunity to submit a proposal to perform professional engineering services associated with the proposed storm water pump station construction project and in conjunction with the Hazard Mitigation Grant Program of the Federal Emergency Management Agency. The location of the proposed storm water pump station is at the intersection of Second and Glass Streets.

The scope of work and fee summary are detailed below.

SCOPE OF WORK

Urban Engineering’s responsibilities will include the following pre-award tasks:

1. Procurement of Professional Services
2. Preliminary Hydrologic and Hydraulic Analysis
3. Preliminary Scope of Work Development
4. Preliminary Feasibility Analysis
5. Development of Preliminary BCA
6. Preliminary Engineering Design
7. Preliminary Cost Estimate
8. Preliminary Environmental Assessment

We will also attend project meetings, as necessary, and conduct site visits, as needed.

FEE SUMMARY

The fee for services associated with this project will be hourly, not to exceed $25,000.00 without additional authorization. (See Attached Rate Schedule)

The dedicated and experienced professionals at Urban Engineering will strive to provide you with excellent service, reliability and satisfaction.
Urban Engineering fully complies with all applicable engineering practice requirements of federal, state and local statutes, codes, regulations and ordinances.

If I can provide additional information, please do not hesitate to contact me at (361) 578-9836 or by email at rbridges@urbanvictoria.com.

Sincerely,

[Signature]

Ray M. Bridges, P.E.
Vice President

RMB/dmf

Attachment

cc: Mr. Ken Gill, P.E., City Engineer, City of Victoria
### 2018 STANDARD RATE SCHEDULE

<table>
<thead>
<tr>
<th>Position</th>
<th>Rate</th>
</tr>
</thead>
<tbody>
<tr>
<td>Registered Professional Engineer</td>
<td>$170.00-$220.00</td>
</tr>
<tr>
<td>EIT (Level 1-5)</td>
<td>$120.00-$160.00</td>
</tr>
<tr>
<td>Designer (Level 1-9)</td>
<td>$90.00-$130.00</td>
</tr>
<tr>
<td>Project Inspector (Level 1-9)</td>
<td>$75.00-$155.00</td>
</tr>
<tr>
<td>Clerical (Level 1-5)</td>
<td>$75.00-$95.00</td>
</tr>
<tr>
<td>CAD Technician (Level 1-5)</td>
<td>$75.00-$95.00</td>
</tr>
</tbody>
</table>

Cost of materials, reproductions, postage, and other related expenses required for the project will be charged at cost plus 10%.

Overtime required and authorized by owner will be charged at higher than regular rates.

Authorized out of area travel and lodging in connection with the project will be charged at cost plus 10%.

Fees paid for securing approval of authorities having jurisdiction over the project will be charged at cost plus 10%.
DISCLAIMER
City of Victoria makes no warranty, representation, or guarantee as to the content, accuracy, timeliness, or completeness of any of the database information provided herein. Any use or reliance on this information contained or in any part of this site is at the party’s own risk and without liability to the City of Victoria, its officials, or its employees for any expenses, actions, or sanctions that may exist.
October 12, 2018

Mr. John Kaminski, Assistant City Manager  
City of Victoria  
P.O. Box 1758  
Victoria, TX 77902-1758

RE: City of Victoria – Hazard Mitigation (FEMA Disaster #DR-4332)  
Hardening or Replacement of Flood Gates  
Victoria, Texas

Dear Mr. Kaminski:

Thank you for allowing Urban Engineering the opportunity to submit a proposal to perform professional engineering services associated with the hardening or replacement of five (5) flood gates project and in conjunction with the Hazard Mitigation Grant Program of the Federal Emergency Management Agency. The flood gates are located near the intersections of W. Church and S. Victoria Streets, Second and Glass Streets, at the dead end of Water Street, at the dead end of Peach Tree Street and on Memorial Drive in front of the Texas Zoo.

The scope of work and fee summary are detailed below.

**SCOPE OF WORK**

Urban Engineering’s responsibilities will include the following pre-award tasks:

1. Procurement of Professional Services  
2. Preliminary Hydrologic and Hydraulic Analysis  
3. Preliminary Scope of Work Development  
4. Preliminary Feasibility Analysis  
5. Development of Preliminary BCA  
6. Preliminary Engineering Design  
7. Preliminary Cost Estimate  
8. Preliminary Environmental Assessment

We will also attend project meetings and conduct site visits, as necessary.

**FEE SUMMARY**

The fee for services associated with this project will be hourly, not to exceed $25,000.00 without additional authorization. (See Attached Rate Schedule)
The dedicated and experienced professionals at Urban Engineering will strive to provide you with excellent service, reliability and satisfaction.

Urban Engineering fully complies with all applicable engineering practice requirements of federal, state and local statutes, codes, regulations and ordinances.

If I can provide additional information, please do not hesitate to contact me at (361) 578-9836 or by email at rbridges@urbanvictoria.com.

Sincerely,

Ray M. Bridges, P.E.
Vice President

RMB/dmf

Attachment

cc: Mr. Ken Gill, P.E., City Engineer, City of Victoria
2018 STANDARD RATE SCHEDULE

Registered Professional Engineer (Level 1-6) $170.00-$220.00

EIT (Level 1-5) $120.00-$160.00

Designer (Level 1-9) $ 90.00-$130.00

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