

**RESOLUTION NO. 2002- 199 R**

A RESOLUTION AUTHORIZING THE CITY MANAGER TO EXECUTE A CONTRACT WITH VICTORIA ENGINEERING, INC. D/B/A URBAN ENGINEERING FOR THE DEVELOPMENT OF PHASE I OF THE INDUSTRIAL PARK IN AN AMOUNT NOT TO EXCEED \$186,000.00; AND DECLARING AN EFFECTIVE DATE.

The U.S. Department of Commerce Economic Development Administration ( EDA) is funding the construction of the infrastructure to the VSTDC's proposed business park at Lone Tree Road and Loop 463.

IT IS RESOLVED BY THE CITY COUNCIL OF THE CITY OF VICTORIA, TEXAS:

1.

The City Manager is authorized to execute a contract with Victoria Engineering, Inc. d/b/a Urban Engineering for the development of Phase I of the Industrial Park in an amount not to exceed \$186,000.00, in the form attached as **Exhibit "A"** and incorporated herein, with such modifications to form as are approved by the City Attorney, and the City Manager is further authorized to execute amendments to said agreement as are funded by the EDA.

2.

This resolution shall become effective immediately upon adoption.

PASSED, this the 19<sup>th</sup> day of November, 2002.

AYES: 7

NAYS: 0


ABSTENTIONS: 0

APPROVED AND ADOPTED, this the 19<sup>th</sup> day of November, 2002.

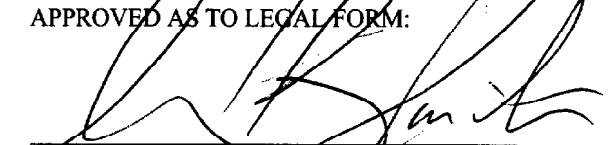


ATTEST:

  
SCARLET SWOBODA, City Secretary

  
GARY MIDDLETON, Mayor of the  
City of Victoria, Texas

APPROVED AS TO LEGAL FORM:

  
DAVID ATMAR SMITH, City Attorney

Distribution: Legal Department  
Finance Department

Copies Sent: NOVEMBER 20, 2002

**Professional Services Agreement between the City of Victoria and  
Victoria Engineering, Inc. d/b/a Urban Engineering for Design, Bidding, and Construction Management of  
Proposed Industrial Park at the Intersection of Lone Tree Road and Loop 463**

**OWNER:** The City of Victoria, Texas, P.O. Box 1758, Victoria, Texas 77902

**ENGINEER:** Victoria Engineering, Inc. d/b/a Urban Engineering, 2004 N. Commerce Street, Victoria, Texas 77901

**EDA:** Economic Development Administration of the U.S. Department of Commerce

**PROJECT:** ENGINEER shall provide professional engineering services to perform Design, Bidding, and Construction Management of Proposed Industrial Park at the Intersection of Lone Tree Road and Loop 463. In performance of these tasks, ENGINEER shall perform these design, bidding, and construction services for the reconstruction and upgrade of approximately 4000 linear feet of Lone Tree Road from Loop 463 (Zac Lentz Parkway) to John Stockbauer Drive. The improvements will include a concrete-paved boulevard street section from Loop 463 to John Stockbauer Drive, 4500 linear feet of 12" water line, 2000 linear feet of concrete-lined drainage ditch and the extension of sanitary sewer service across Loop 463 to the proposed Industrial Park. The current facility consists of 20 foot paved rural road section without City infrastructure or adequate drainage.

**TIMETABLE:** ENGINEER shall complete the following tasks on or before the following dates:

1. Completion of preliminary plans and associated cost estimates—December 31, 2002
2. Completion of final plans, specifications, and cost estimates—January 31, 2003
3. Securing required state and local approvals—February 28, 2003
4. Completion of contract documents for soliciting bids for construction of project—March 1, 2003

**OWNER'S REPRESENTATIVE:** John A. Johnston, Director of Public Works

**PAYMENT:**

a. **PAYMENT FOR BASIC SERVICES**--OWNER agrees to pay the following amounts for Basic Services rendered pursuant to this contract, a total amount not to exceed \$159,500, subject to completion of the following phases:

Phase	Percentage of Project	Amount
Preliminary Design	15%	\$ 23,925.00
Final Design	55%	\$ 87,725.00
Bidding	5%	\$ 7,975.00
Construction— inspection monitoring, completion & acceptance	25%	\$ 39,875.00
<b>Total</b>	<b>100%</b>	<b>\$159,500.00</b>

b. **PAYMENT FOR ADDITIONAL SERVICES**--OWNER shall pay ENGINEER for Additional Services requested and rendered as follows:

(1) Payment for Additional Services of Engineer rendered under this contract and or referenced under paragraph 2.1.1. through 2.1.20. inclusive shall be paid for at the following rate when supported by invoices.

Engineer - Principal	\$115.00
EIT/Senior Designer	\$ 80.00
Senior Registered Land Surveyor	\$100.00
Registered Land Surveyor	\$ 80.00
Survey Technician	\$ 60.00
Clerical	\$ 50.00
CADD Technician	\$ 40.00
CADD Designer	\$ 55.00
GPS Crew	\$185.00
Field Crew - 2 man	\$ 90.00
3 man	\$110.00

4 man \$130.00  
Mileage Expense (outside 50 mile radius of Victoria) . . . . . \$ 0.365/mile  
Actual cost of materials required for the job and expenses shall be charged at cost plus 10%.  
Overnight Expense/man — Actual Expenses

(2) For expenses for Additional Services, ENGINEER shall be compensated as follows:

For furnishing soil and foundation tests and borings as provided by Section 2.1.9, a fixed lump sum fee of \$6,500.00.

For engineering surveys as provided by Section 2.1.5, a fixed lump sum fee of \$20,000.00.

All other additional expenses—actual cost to ENGINEER based on rates referenced above or as previously agreed upon in writing.

Where field parties are used, expenses shall include charges for the use of any special instruments and equipment, including marine equipment, and expendable items such as stakes and monuments.

**c. TIMES OF PAYMENTS:**

(1) Times of Payments—ENGINEER shall submit monthly statements for Basic and Additional Services rendered. For Basic Services, the statements will be based upon ENGINEER'S estimate of the proportion of the total services actually completed at the time of billing. OWNER shall make prompt monthly payments in response to ENGINEER'S monthly statements. Upon conclusion of each phase of Basic Services, OWNER shall pay such additional amount, if any, as may be necessary to bring total compensation paid on account of such phase to the following percentages of total compensation payable for all phases of Basic Services:

(2) Past-due Payments—OWNER agrees to pay a charge of ½% per month on all invoiced amounts not paid within 30 days of the date of the invoice, calculated from the date of the invoice. In addition, ENGINEER may, after giving seven days' written notice to OWNER, suspend services under this Agreement until the ENGINEER has been paid in full all amounts due for services and expenses.

**1. BASIC SERVICES OF ENGINEER**

**1.1 General.**

1.1.1. ENGINEER shall perform professional engineering services as hereinafter stated which include customary incidental engineering services.

**1.2. Preliminary Design Phase. ENGINEER shall:**

1.2.1. Consult with OWNER to clarify and define OWNER'S requirements for the Project and review available data.

1.2.2. Advise OWNER of the need to provide or obtain from others data or services of the types described in paragraph 2.1.13, and act as OWNER'S representative in connection with any such services.

1.2.3. Prepare preliminary design documents consisting of final design criteria, preliminary drawings and outline specifications.

1.2.4. Based on the information contained in the preliminary design documents, submit a revised opinion of probable Project Cost.

1.2.5. Furnish one copy of the above preliminary design documents and review them in person with OWNER'S REPRESENTATIVE.

**1.3. Final Design Phase. ENGINEER shall:**

1.3.1. On the basis of the accepted preliminary design documents and the revised opinion of probable Project Cost,

prepare for incorporation in the Contract final drawings (hereinafter called "Drawings") and Specifications to show the character and extent of the Project. The ENGINEER shall maintain all relevant project records for three years after the OWNER has made final payment to the contractor and all other pending matters are closed. The timetable for the project is listed on Page 1, and shall be followed unless a written request is made to the OWNER and is approved in writing:

1.3.2. Furnish to OWNER'S REPRESENTATIVE assistance in the preparation of required documents so that OWNER may apply for approvals of governmental authorities having jurisdiction over the Project, and assistance in negotiations with appropriate authorities. Drawings and documents shall comply with all applicable standards, orders or requirements issued under the Clean Water Act (42 U.S.C. 7401 et. Seq.) and the Federal Water Pollution Control Act (33 U.S.C. 1251 et. Seq., as amended). The contract documents shall also include all provisions regarding the Equal Opportunity Act, the Copeland Act, the Davis Bacon Act, notice(s) involving research, developmental, experimental or demonstration work. The ENGINEER shall comply with all other federal statutes relating to non-discrimination.

1.3.3. Advise OWNER'S REPRESENTATIVE of any adjustments to the revised opinion of probable Project Cost caused by changes in the Project and furnish a final opinion of probable Project Cost based on the final Drawings and Specifications.

1.3.4. Prepare documents to comprise the contract for construction of the Project (hereinafter the "Contract") for review and approval by OWNER'S REPRESENTATIVE, including agreement forms, general, special and supplementary conditions, bidding documents, and other related documents. ENGINEER shall use forms provided by OWNER where applicable.

1.3.5. Furnish one copy of the above documents and review them in person with the OWNER'S REPRESENTATIVE.

1.4. Bidding Phase. ENGINEER shall:

1.4.1. Assist OWNER in obtaining bids for a contract for construction of the Project.

1.4.2. Consult with OWNER'S REPRESENTATIVE as to the acceptability of subcontractors proposed by the prime contractor (hereinafter called "Contractor") when such acceptability is required by the bidding documents.

1.4.3. Consult with OWNER'S REPRESENTATIVE as to the acceptability of substitute materials and equipment proposed by Contractor when substitution prior to the award of the Contract is allowed by the bidding documents.

1.4.4. Assist OWNER'S REPRESENTATIVE in evaluating bids and in assembling and awarding the Contract.

1.5. Construction Phase. ENGINEER shall:

1.5.1. Consult with OWNER and act as its representative as provided in the Construction Contract; act on behalf of the OWNER to the extent provided in the Construction Contract except as otherwise provided herein.

1.5.2. Provide initial staking when necessary to allow Contractor to construct the Project. The ENGINEER shall set vertical and horizontal controls only.

1.5.3. Make visits to the site at intervals appropriate to the various stages of construction to observe the progress and quality of the Contractor's work and to determine if the work is proceeding in accordance with the plans and specifications. The frequency of such visits shall not be less than 3 visits per week and of a duration sufficient to ensure that the Contractor is building the project according to plans and specifications. Such visits to the site shall be carried on in the presence of the City Inspector. Such visits shall be followed by a weekly written report describing observed progress, submitted no later than 3 work days after the third weekly visit. ENGINEER shall keep OWNER informed of the progress of the work, and shall endeavor to protect the OWNER against defects and deficiencies in the work. ENGINEER does not guarantee the performance of the Contractor and is not responsible for the actual supervision of construction operations or for safety measures that the Contractor takes or should take. ENGINEER shall inform OWNER'S REPRESENTATIVE of any work failing to conform to the Contract, and shall disapprove or reject any such work and require it to be corrected.

1.5.4. Review and approve or take other appropriate action regarding Shop Drawings and samples, the results of tests and inspections and other data which Contractor is required to submit, for conformance with the design concept of the

Project and compliance with the Contract; determine the acceptability of substitute materials and equipment proposed by Contractor; and review maintenance and operating instructions, schedules, guarantees, bonds and certificates of inspection which are provided by Contractor in accordance with the plans and specifications.

1.5.5. Issue all instructions of OWNER to Contractor; issue necessary interpretations and clarifications of the plans and specifications; prepare change orders as required; require special inspection or testing of the work; act as judge of the acceptability of the Contractor's work.

1.5.6. Based on ENGINEER'S on-site observations and on review of Contractor applications for payment, determine the amounts owing to Contractor and recommend in writing payments to Contractor in such amounts. These recommendations of payment will constitute a representation to OWNER that the work has progressed to the point indicated; that the quality of the work is in accordance with the plans and specifications (subject to the results of any subsequent tests called for in the Contract, and to any qualifications stated in its recommendation), and that payment of the amount recommended is due Contractor. All letters recommending payment shall include a certification from the ENGINEER that all work performed to the date on which payment is requested is in compliance with the plans and specifications.

1.5.7. Conduct an inspection to determine if the Project is substantially complete, and a final inspection to determine if the Project has been completed in accordance with the plans and specifications. If Contractor has fulfilled all of its obligations, ENGINEER shall recommend, in writing, final payment to Contractor and shall give written notice to OWNER and the Contractor that the work is acceptable and meets plans and specifications as developed by the ENGINEER (subject to any conditions therein expressed).

1.5.8. Furnish two sets of reproducible as-built record prints of the Project to the OWNER'S REPRESENTATIVE upon project completion. At least one set shall be hard copy and one set shall be in a digital format as specified by the OWNER'S REPRESENTATIVE.

1.5.9. Ensure that all change orders have written approval from the Economic Development Administration (EDA) and perform necessary cost or price analysis in accordance with EDA requirements.

## **2. ADDITIONAL SERVICES OF ENGINEER:**

### **2.1 General.**

If authorized in writing by OWNER, ENGINEER shall furnish or obtain from others Additional Services of the following types; these will be paid for by the OWNER as indicated in the PAYMENT section of this contract.

2.1.1. Preparation of applications for governmental grants, loans or advances in connection with the Project; preparation or review of environmental assessments and impact statements; review of the effect on the Project of any such statements and documents prepared by others; and assistance in obtaining approvals of authorities having jurisdiction over the anticipated environmental impact of the Project.

2.1.2. Services to make detailed investigation of existing conditions or facilities, or to verify the accuracy of drawings or other information furnished by OWNER, except as necessary for the proper design and construction of the Project.

2.1.3. Services resulting from significant changes in extent of the Project or its design including, but not limited to, changes in size, complexity, OWNER'S schedule, or character of construction; and revising previously accepted studies, reports, design documents or Contract Documents when such revisions are due to causes beyond ENGINEER'S control.

2.1.4. Providing renderings or models for OWNER'S use.

2.1.5. Providing engineering surveys required to properly design the Project.

2.1.6. Furnishing land surveys establishing boundaries and monuments, and related office computations and drafting.

2.1.7. Preparation of property or easement descriptions.

2.1.8. Preparation of any special reports required for marketing of bonds.

- 2.1.9. Furnishing soil and foundation tests and borings.
- 2.1.10. Furnishing all reports and maps to establish or revise Flood Plain boundaries in a format acceptable to FEMA.
- 2.1.11. Providing detailed mill, shop and/or laboratory inspection of materials or equipment.
- 2.1.12. Investigations involving detailed consideration of operation and maintenance expenses; the preparation of feasibility studies and appraisals; and assistance in obtaining financing for the Project.
- 2.1.13. Furnishing the services of special consultants for purposes other than the normal engineering incidental to the Project, and providing data or services of the types described in paragraph 4.9.2 when OWNER authorizes ENGINEER to provide such data or services in lieu of OWNER furnishing them. For the purposes of this Contract, services of a special consultant will be allowed only when the need is confirmed by the OWNER'S REPRESENTATIVE.
- 2.1.14. Apply for permits from all governmental authorities having jurisdiction over the Project and furnish such approvals and consents from others as may be necessary for completion of the Project.
- 2.1.15. Services resulting from the award of more than one prime contract for construction, materials, equipment or services for the Project, and services resulting from the arranging for performance by persons other than the Contractor and administering OWNER'S contracts for such services.
- 2.1.16. Services in connection with change orders to reflect changes requested by OWNER if the resulting change in compensation for Basic Services is not commensurate with the change in services rendered; services after the award of the Contract in evaluating substitutions proposed by the Contractor which require extensive revisions to Drawings and Specifications; and services resulting from significant delays, changes or price increases occurring as a result of material, equipment or energy shortages.
- 2.1.17. Services during out-of-town travel required of ENGINEER other than visits to the site as required by Section 1.
- 2.1.18. Additional or extended services during construction made necessary by (1) work damaged by fire or other cause during construction, (2) a significant amount of defective or neglected work of Contractor, (3) prolongation of the contract time of the Contract by more than sixty days, (4) acceleration of the progress schedule involving services beyond normal working hours, and (5) default by Contractor.
- 2.1.19. Services after completion of the Construction Phase, such as inspections during any guarantee period called for in the Contract.
- 2.1.20. Serving as a consultant or witness for OWNER in any litigation, public hearing or other legal or administrative proceeding involving the Project except as agreed to under Basic Services.
- 2.2 Whenever the need for any Additional Services described herein results from any negligence, mistake, oversight or other fault on the part of ENGINEER, the cost of these services shall be deemed to be included in OWNER'S payments to ENGINEER for Basic Services. Any such Additional Services not performed by ENGINEER that would otherwise be paid separately by OWNER shall be paid for by ENGINEER.

### **3. CONSTRUCTION COST AND OPINIONS OF COST**

#### **3.1. Construction Cost.**

The construction cost of the Project means the total cost of the Project to OWNER, but it does not include ENGINEER'S compensation and expenses, the cost of land, rights-of-way, or compensation for or damages to properties, nor does it include OWNER'S legal, accounting, insurance counseling or auditing services, or laboratory of testing services, or interest and financing charges incurred in connection with the Project. Construction Cost is one of the items comprising Project Cost which is defined in paragraph 1.2.4.

#### **3.2. Opinions of Cost.**

3.2.1. ENGINEER'S opinions of probable Project Cost and Construction Cost represent its best judgment as a professional engineering firm, familiar with the construction industry; but ENGINEER does not guarantee that proposals, bids or actual Project or Construction Cost will not vary from its opinions of probable cost.

3.2.2. If a Construction Cost limit is established between OWNER and ENGINEER, the following will apply:

3.2.2.1. The acceptance by OWNER at any time during the Basic Services of a revised opinion of probable Project or Construction Cost in excess of the then established cost limit will constitute a corresponding revision in the Construction Cost limit.

3.2.2.2. ENGINEER will be permitted to determine what materials, equipment, component systems and types of construction are to be included in the Drawings and Specifications and to make reasonable adjustments in the extent of the Project to bring it within the cost limit.

3.2.2.3. If the OWNER does not solicit bids for the Project within six months after completion of the Final Design Phase, the established Construction Cost limit will not be binding on ENGINEER, and OWNER shall consent to an adjustment in cost limit commensurate with any applicable change in the general level of prices in the construction industry between the date of completion of the Final Design Phase and the date on which bids are sought.

3.2.2.4. If the lowest bona fide bid exceeds the established Construction Cost limit, OWNER shall (1) give written approval to increase cost limit, (2) authorize negotiating or rebidding the Project within a reasonable time, or (3) cooperate in revising the Project's extent or character. In the case of (3), ENGINEER shall, without additional charge, modify the Contract Documents one time as necessary to bring the Construction Cost within the cost limit; subsequent modifications by the ENGINEER shall be paid for as Additional Services.

#### 4. GENERAL CONDITIONS:

4.1. **Termination**--Either party may terminate this Agreement upon 10 days written notice to the other party with the understanding that all services being performed under this Agreement shall cease upon the date specified in such notice. ENGINEER shall invoice OWNER for all services completed and shall be compensated in an amount corresponding to the amount designated as compensation for each phase of the work completed and accepted plus an amount corresponding to the percentage of work completed for any phase partially completed on the effective date of the termination.

4.2. **Ownership of Documents**--All documents prepared and assembled by ENGINEER under this agreement shall become the sole property of the OWNER and shall be delivered to OWNER without restriction on future use. ENGINEER may make copies of any and all documents for its files.

4.3. **Controlling Law**--This Agreement is performable and is to be governed by the law applicable in Victoria County, Texas. Sole venue for any action arising under this Agreement shall be in Victoria County, Texas.

4.4. **Assignment of Contract**--Neither OWNER nor ENGINEER shall assign, sublet or transfer any rights under or interest in (including, but without limitations, monies that may become due or monies that are due) this Agreement without the written consent of the other. Unless specifically stated to the contrary in any written consent to an assignment, no assignment will release or discharge the assignor from any duty or responsibility under this Agreement. Nothing contained in this paragraph shall prevent ENGINEER from employing independent consultants, associates, subcontractors, and employees to assist it in the performance of services hereunder.

4.5. **No Third-Party Beneficiaries**--Nothing herein shall be construed to give any rights or benefits to anyone other than OWNER and ENGINEER.

4.6. **Independent Contractor**--In performing services under this Agreement, the relationship between OWNER and ENGINEER is that of independent contractor, and OWNER and ENGINEER by the execution of this Agreement do not change the independent contractor status of ENGINEER. No term or provision of this Agreement or act of ENGINEER in the performance of this Agreement shall be construed as making ENGINEER or any agent, servant or employee of ENGINEER the agent, servant or employee of OWNER.

4.7. **Indemnity**--ENGINEER agrees to defend, indemnify, and hold OWNER whole and harmless against any and all

claims for damages, costs and expenses to persons or property that may arise out of, or be occasioned by any act or omission, including negligence, of ENGINEER or any officer, agent, servant, employee, or associate of ENGINEER in the execution or performance of this agreement. In addition, the duty to indemnify provided by the previous sentence shall indemnify OWNER against damages caused by acts or omissions, including negligence, of OWNER or OWNER'S officers, agents, or employees, but shall not apply to the negligence of OWNER or its agents or employees if the damage arises from (1) personal injury, (2) death, (3) property injury, or (4) any other expense that arises from the personal injury, death, or property injury.

ENGINEER further agrees to indemnify OWNER against all claims for damages that may arise from any claim made by an officer, agent, employee, associate, or subcontractor of ENGINEER or as a result of the entry of any of ENGINEER'S officers, agents, employees, associates or subcontractors onto the property of OWNER. The duty to indemnify provided by the previous sentence shall apply regardless of the acts or omissions, including negligence, of OWNER if the damage arises from (1) personal injury, (2) death, (3) property injury or (4) any other expense that arises from the personal injury, death, or property injury.

This indemnity shall not apply to any claim to the extent to which ENGINEER is prohibited from indemnifying a governmental entity pursuant to Tex. Local Gov't Code § 271.904 or other law.

**4.8. Insurance**-- During the term of this project and one year following its completion, ENGINEER shall maintain errors and omissions insurance in the amount of at least \$500,000 per occurrence and \$500,000 aggregate, and shall provide a copy of the insurance certificate to the OWNER'S REPRESENTATIVE. The insurance certificate shall require the insurer to provide the OWNER with at least 30 days notice of cancellation or change in coverage.

#### **4.9. Owner's Responsibilities**

**4.9.1.** Provide full information as to OWNER'S requirements for the Project, including design objectives and constraints, space, capacity and performance requirements, flexibility and expandability, and any budgetary limitations; and furnish copies of all design and construction standards which OWNER will require to be included in the drawings and specifications.

**4.9.2.** Furnish to ENGINEER, as required for performance of ENGINEER'S Basic Services, data prepared by or services of others, environmental assessment and impact statements; property, boundary, easement, and right-of-way descriptions; deed and other land use restrictions; and other special data or consultations not covered in Section 2.

**4.9.3.** Arrange for access to public property as required for ENGINEER to perform its services.

**4.9.4.** Examine studies, reports, Drawings, Specifications, and other documents presented by ENGINEER; provided, that approval of any such documents by OWNER or by OWNER'S REPRESENTATIVE shall not release ENGINEER from responsibility and liability for any negligence, mistake, inaccuracy, or other flaw in such documents, and shall not be deemed an assumption by OWNER or OWNER'S REPRESENTATIVE of any responsibility or liability.

**4.9.5.** Provide such auditing service as OWNER may require to ascertain how Contractor has used the monies paid to it under the Contract.

**4.9.6.** Give prompt notice to ENGINEER whenever OWNER'S REPRESENTATIVE observes any development that affects the ENGINEER'S services, including defects in the work of Contractor.

**4.10. Entire Agreement**--This agreement, together with any referenced attachments, constitutes the entire agreement between OWNER and ENGINEER, and supercedes all prior written or oral understandings.

#### **FEDERALLY REQUIRED CONDITIONS:**

In performance of the aforementioned tasks, ENGINEER shall:

1. The fee shall cover all services necessary for the successful execution of the project, including consultations, surveys, soil investigations, supervision, travel, "as-built" or record drawings, arrow diagram (CPM/PERT) where applicable, and incidental costs. Both parties represent that the basic fee does not exceed that prevailing for comparable services in the project area.

2. The ENGINEER shall be responsible for making sufficient visits to the project site to determine, in general, if the work is proceeding in accordance with the construction contract.

3. The Victoria Sales Tax Development Corporation, the OWNER, the U.S. Economic Development Administration (EDA), the U.S. Comptroller General, the Inspector General of the Department of Commerce, or any of their duly authorized representatives shall have access to any documents, books, papers, and records of the ENGINEER that are directly pertinent to this project for the purpose of making an audit, examination, excerpts, and transcriptions. The ENGINEER shall maintain all required records for at least three years after the ENGINEER receives final payment, and all pending matters are closed.

4. If the preliminary cost estimate, final cost estimate, or the lowest responsive bid less deductive alternates exceeds the funds available by 1%, then ENGINEER shall, at no extra charge to OWNER, redesign this project and provide the bidding and construction supervision services for the redesigned project.

5. ENGINEER shall design any sewage treatment or other sewage facilities within this project to ensure a certificate of adequacy of treatment can be obtained.

6. ENGINEER shall comply with all applicable standards, orders, or requirements issued under the Clean Air Act (42 U.S.C. § 7401 et. seq.) and the Federal Water Pollution Control Act (33 U.S.C. 1251 et. seq., as amended)(Violations shall be reported to the EDA and to the regional office of the U.S. Environmental Protection Agency).

7. In the event of any violation of the terms of this agreement, the City may terminate this contract or recover a lesser sanction as appropriate.

8. Termination of this contract may be effected by either OWNER or ENGINEER in accordance with Section 4.1.

9. ENGINEER shall comply with the requirements of Executive Order 11246 (3 CFR 1964-65, Comp., p. 339) (Equal Employment Opportunity) as amended by Executive Order 11375, and as supplemented by Department of Labor regulations issued at 41 CFR, Chapter 60;

10. ENGINEER shall comply with the Copeland "Anti-Kickback" Act (18 USC 874) as supplemented in Department of Labor regulations (29 CFR, Part 3). This Act provides that each contractor or subrecipient is prohibited from inducing, by any means, any person employed in the construction, completion, or repair of public work, to give up any part of the compensation to which he/she is otherwise entitled.

ENGINEER shall also comply with Sections 102 and 107 of the Contract Work Hours and Safety Standards Act (40 USC 327-330) as supplemented by Department of Labor regulation (29 CFR, Part 5). Under Section 103 of the Act, each contractor shall be required to compute the wages of every mechanic and laborer on the basis of a standard work week of 40 hours. Work in excess of the standard work week is permissible provided that the mechanic or laborer is compensated at a rate not less than 1.5 times the basic rate of pay for all hours worked in excess of 40 hours in the work week. In construction work, no laborer or mechanic shall be required to work in surroundings or under working conditions which are unsanitary, hazardous, or dangerous to his/her health and safety.

11. All patentable processes, discoveries or inventions which arise or are developed in the course of, or under, this contract shall be reported to the EDA. The government has an interest in any such patentable processes, discoveries or inventions corresponding to the percentage of total project cost funded by EDA.

12. OWNER and its officers, agents, and employees may enter the project to conduct surveillance to assure compliance with plans, specifications, and other contract documents; however, such surveillance shall not relieve ENGINEER of its duties to perform contracted construction management and inspection services.

13. ENGINEER shall be responsible for any damages arising from any defects in design or negligence in the performance of the construction inspector. ENGINEER shall carry errors and omissions insurance providing coverage in the amount of at least \$250,000 per occurrence.

14. ENGINEER shall supervise any required subsurface explorations, such as borings, soil tests, and the like to determine amounts of rock excavation or foundation conditions, if any.

15. ENGINEER shall attend bid openings, prepare and submit tabulation of bids, and make recommendations as to contract award.
16. ENGINEER shall review proof of bidder's qualifications and recommend approval or disapproval.
17. ENGINEER shall prepare and submit proposed change orders when applicable, with no charge to OWNER when the change order is required to correct errors or omissions by the ENGINEER. Change orders must have written approval from the EDA and must have some form of cost or price analysis performed by the ENGINEER attached thereto.
18. ENGINEER shall submit reports no less than quarterly to OWNER covering the general progress of the job and describing any problems or factors contributing to delay.
19. ENGINEER shall review and approve the contractor's schedule of amounts for contracts payment.
20. ENGINEER shall certify partial payments to contractors.
21. Retainage on any contract will be 10% until final acceptance by OWNER and approval by EDA regional office.
22. ENGINEER shall prepare "as built" or record drawings after completion of the project. ENGINEER shall provide reproducible original to OWNER in digital form within 60 days after construction is complete and the final inspection has been performed.
23. ENGINEER shall review and approve the contractor's submission of samples and shop drawings.
24. ENGINEER shall comply with all federal statutes relating to non-discrimination:
  - a. Title VI of the Civil Rights Act of 1964 (42 USC §§ 2000d et seq.) and DoC implementing regulations published at 15 CFR Part 8 which prohibit discrimination on the grounds of race, color, or national origin under programs or activities receiving Federal financial assistance;
  - b. Section 112 of PL 92-45 and Title IX of the Education Amendments of 1972 (20 USC §§ 1681 et seq.), as amended, prohibiting discrimination on the basis of sex under Federally assisted education programs or activities;
  - c. Section 504 of the Rehabilitation Act of 1973, as amended (29 USC § 794) and DoC implementing regulations published at 15 CFR Part 8b prohibiting discrimination on the basis of handicap under any program or activity receiving or benefitting from Federal assistance;
  - d. The Age Discrimination Act of 1975, as amended (42 USC §§ 6101 et seq.) and DoC implementing regulations published at 15 CFR Part 20 prohibiting discrimination on the basis of age in programs or activities receiving Federal financial assistance;
  - e. The Drug Abuse Office and Treatment Act of 1972 (P.L. 93-255), as amended, relating to non-discrimination on the basis of drug abuse;
  - f. The Comprehensive Alcohol Abuse and Alcoholism Prevention, Treatment and Rehabilitation Act of 1970 (P.L. 91-616), as amended, relating to non-discrimination on the basis of alcohol abuse or alcoholism;
  - g. Sections 523 and 527 of the Public Health Service Act of 1912 (42 U.S.C. §§ 290 dd-3 and 290 ee-3), as amended, relating to confidentiality of alcohol and drug abuse patient records;
  - h. Title VIII of the Civil Rights Act of 1968 (42 U.S.C. §§ 3601 et seq.), as amended, relating to non-discrimination in the sale, rental or financing of housing;
  - i. any other non-discrimination provisions in the specific statute(s) under which application for Federal assistance has been made; and
  - j. The requirements of any other non-discrimination statutes which may apply.

25. ENGINEER shall incorporate into the proposed construction contract documents a designation of all of the different types of construction that will be used for the project, such as building, heavy, or highway, in accordance with all state and local laws and practices. The plans or specifications shall clearly delineate where each type of construction stops or starts.

26. ENGINEER shall design all facilities to comply with the Americans with Disabilities Act (P.L. 101-336) and the Accessibility Guidelines for Buildings and Facilities, as amended, (36 CFR, Part 191 and Executive Order 12699).

27. ENGINEER shall design for seismic safety in accordance with Executive Order 12699, which imposes requirements that federally assisted facilities be designed and constructed in accordance with the 1991 ICBO Uniform Building Code or 1992 Supplement to the BOCA National Building Code and/or 1991 Amendments to the SBCC Standard Building Code.

28. ENGINEER shall provide sufficient plans, specifications, bid sheets, cost estimates, design analysis, and other contract documents required for the project. The number of copies to be furnished by the Architect/Engineer as part of his/her compensation for basic services shall be specified in the agreement.

29. ENGINEER shall use forms for instructions to bidders, general conditions, contract, bid bond, performance bond, and payment bond that meet EDA requirements. All proposed contract documents are subject to EDA approval, and ENGINEER shall make such modifications to any contract documents as necessary to receive EDA approval at no additional cost to OWNER.

This agreement and said attachments may only be amended, supplemented, modified or canceled by a duly executed written instrument.

EXECUTED, this the \_\_\_\_\_ day of \_\_\_\_\_, 200\_\_.

OWNER: City of Victoria, Texas

ENGINEER: Victoria Engineering, Inc. d/b/a Urban Engineering

\_\_\_\_\_  
Denny Arnold, City Manager

  
Thomas A. Schmidt, P.E., President

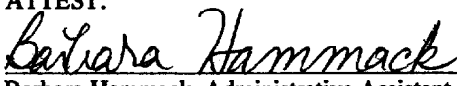
(seal)

(seal)

ATTEST:

ATTEST:

\_\_\_\_\_  
Scarlet Swoboda, City Secretary

  
Barbara Hammack, Administrative Assistant

FORM APPROVED:

\_\_\_\_\_  
David A. Smith, City Attorney