

RESOLUTION NO. 2004- 183 R

A resolution authorizing the City Manager to execute a Professional Services Agreement between the City of Victoria and Landtech, Inc., for the North Navarro and Hathaway Connector Street Project in the amount of \$54,322; and declaring an effective date.

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

1.

The City Manager is authorized to execute a Professional Services Agreement between the City of Victoria and Landtech, Inc., for the North Navarro and Hathaway Connector Street Project in the amount of \$54,322, in the form attached as Exhibit "A" and incorporated herein, subject to minor changes as approved by the City Attorney. and subject to the City Attorney's approval of the participation agreements for the construction of the project from the Hull-Storey Group and Target Stores.

This resolution shall become effective immediately upon adoption.

PASSED, this 19th day of October, 2004.

AYES: 7


NAYS: 0

ABSTENTIONS: 0

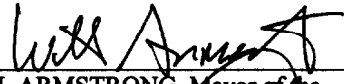
APPROVED AND ADOPTED, this the 19th day of October, 2004.



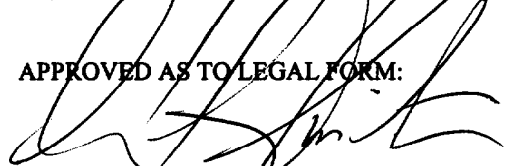
ATTEST:


SCARLET SWOBODA, City Secretary

Distribution: Legal Department
 Public Works Department


WILL ARMSTRONG, Mayor of the
City of Victoria, Texas

APPROVED AS TO LEGAL FORM:


DAVID ATMAR SMITH, City Attorney

Copies sent: OCTOBER 21, 2004

Exhibit "A"

Professional Services Agreement between the City of Victoria and Landtech, Inc. for the North Navarro and Hathaway Connector Street Project

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

ENGINEER: Landtech, Inc. a Texas Corporation, 1501 E. Mockingbird Lane, Suite 406, Victoria, Texas 77904

PROJECT: Professional will prepare plans, specifications and bid documents for street paving and drainage improvements to the following:

- a. A connector street from North Navarro to Hathaway
- b. Intersection improvements at this connector street and North Navarro
- c. Underground drainage improvements to drain the proposed collector street and associated intersection

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

PAYMENT:

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

Phase	Percentage of Project	Amount
Preliminary Design	12%	\$ 6,597.00
Final Design and Bidding	56%	\$30,184.00
Design Surveying	14%	\$ 7,441.00
Construction - inspection monitoring, completion & acceptance	18%	\$10,100.00
Total	100%	\$54,322.00

PAYMENT FOR ADDITIONAL SERVICES--OWNER shall pay **ENGINEER** for Additional Services requested by **OWNER's REPRESENTATIVE** in writing and rendered as follows:

- (1) Payment for Additional Services of Engineer rendered under this Agreement and or referenced under paragraphs 2.1.1. through 2.1.17. inclusive shall be paid for at the following rates when supported by invoices:

Registered Professional Engineer	\$120.00
EIT/Senior Designer	\$ 85.00
Senior Registered Professional Land Surveyor	\$110.00
Registered Professional Land Surveyor	\$ 90.00
Survey Technician	\$ 65.00
Clerical	\$ 55.00
CADD Technician	\$ 40.00
CADD Designer	\$ 55.00
Resident Project Representative	\$ 50.00
GPS Crew	\$190.00
Field Crew - 2 man	\$ 95.00
3 man	\$115.00
4 man	\$135.00

Mileage Expense (outside 50 mile radius of Victoria) \$0.375/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 at the 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.

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, based on the proportion of total services estimated by OWNER to have been actually completed at the time of billing. 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 and owed 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--ENGINEER shall perform professional engineering services as hereinafter stated which include customary incidental engineering services.

1.1. Preliminary Design Phase. ENGINEER shall:

- 1.1.1. Consult with OWNER to clarify and define OWNER'S requirements for the Project and review available data.
- 1.1.2. Advise OWNER of the need to provide or obtain from others data or additional services, and act as OWNER'S representative in connection with any such services acquired from others.
- 1.1.3. Prepare preliminary design documents consisting of final design criteria, preliminary drawings and outline specifications.
- 1.1.4. Based on the information contained in the preliminary design documents, submit a revised opinion of probable Project Cost.
- 1.1.5. Furnish one copy of the above preliminary design documents and review them in person with OWNER'S REPRESENTATIVE.

1.2. Final Design Phase. ENGINEER shall:

- 1.2.1. 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.
 - 1.2.2. 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.
 - 1.2.3. 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.
 - 1.2.4. 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
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1.2.5. Furnish one copy of the above documents and review them in person with the OWNER'S REPRESENTATIVE.

1.3. Bidding Phase. ENGINEER shall:

1.3.1. Assist OWNER in obtaining bids for a Contract for construction of the Project.

1.3.2. 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.

1.3.3. 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.

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

1.4. Construction Phase. ENGINEER shall:

1.4.1. 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.

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

1.4.3. 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.

1.4.4. 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.

1.4.5. 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.

1.4.6. 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.

1.4.7. 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).

1.4.8. 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.

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 Agreement.

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

2.1.6. Furnishing soil and foundation tests and borings.

2.1.7. Furnishing all reports and maps to establish or revise Flood Plain boundaries in a format acceptable to FEMA.

2.1.8. Providing detailed mill, shop and/or laboratory inspection of materials or equipment.

2.1.9. Investigations involving detailed consideration of operation and maintenance expenses; the preparation of feasibility studies and appraisals; and assistance in obtaining financing for the Project.

2.1.10. Furnishing the services of special consultants for purposes other than the normal engineering incidental to the Project, and providing data or services 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.

2.1.11. 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.

2.1.12. 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.

2.1.13. 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

2.1.14. Services during out-of-town travel required of ENGINEER other than visits to the site as required by Section 1.

2.1.15. 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.

2.1.16. Services after completion of the Construction Phase, such as inspections during any guarantee period called for in the Contract.

2.1.17. 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. OWNER'S RESPONSIBILITIES--Owner shall:

3.1. Provide 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 general design and construction standards which OWNER will require to be included in the Drawings and Specifications.

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

3.3. Furnish copies of finalized Plans and Specifications for use during bidding and construction.

4. CONSTRUCTION COST AND OPINIONS OF COST

4.1. 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 1.1.4.

4.2. Opinions of Cost.

4.2.1. 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.

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

4.2.2.1. 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.

4.2.2.2. 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.

4.2.2.3. 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 ENGINEER'S obligation to Contract Documents one time as necessary to bring the Construction Cost within the cost limit shall be subject to adjustment of the 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.

4.2.2.4. 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.

5. GENERAL CONDITIONS

5.1. 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.

5.2. Ownership of Documents--All documents prepared and/or assembled by ENGINEER under this Agreement shall become the 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 and re-use information contained therein.

5.3. 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.

5.4. 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.

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

5.6. 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.

5.7. 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 negligent act or omission of ENGINEER or any officer, agent, servant, employee, associate or subcontractor of ENGINEER in the execution or performance of this Agreement. In addition, the ENGINEER agrees to defend, indemnify and hold harmless the OWNER, the OWNER'S officers, agents and employees for any personal injuries or property damage to ENGINEER or ENGINEER'S subcontractors, officers, agents or employees regardless of whether the injury or damage is caused in whole or in part by OWNER'S negligence or any hidden or apparent condition of property owned or controlled by the OWNER. The indemnity provided by this section 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.

5.8. 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.

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: Landtech, Inc

Denny Arnold, City Manager

Ben L. Galvan, P.E., R.P.L.S., Manager-Victoria Office

(seal)

(seal)

ATTEST:

ATTEST:

Scarlet Swoboda, City Secretary

Kelly Bena, Marketing Coordinator

FORM APPROVED:

David A. Smith, City Attorney

Exhibit "A"