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RESOLUTION NO. 2006- 18 R

A resolution authorizing the City Manager to execute a Professional Services Agreement between the City of Victoria and R. W. Beck, Inc., of Austin, Texas, for work related to acquiring an operator for the City of Victoria Landfill, in an amount not to exceed \$95,000.00 for basic services; 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 with R. W. Beck, Inc., of Austin, Texas for work related to acquiring an operator for the City of Victoria Landfill, in an amount not to exceed \$95,000.00 for basic services; which is attached hereto as Exhibit "A" and incorporated herein, with minor changes to form as are approved by the City Attorney.

2.

This resolution shall become effective immediately upon adoption.

PASSED, this the 7th day of February, 2006.

AYES: 7

NAYS: 0

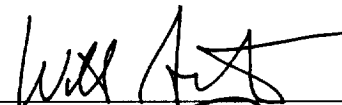
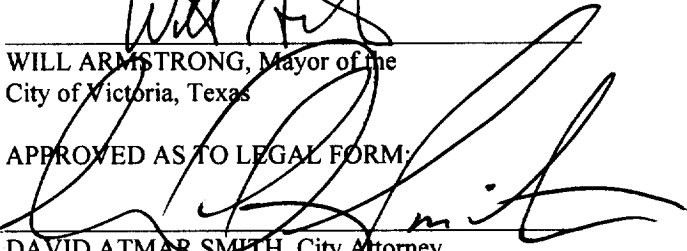
ABSTENTIONS: 0

APPROVED AND ADOPTED, this 7 day of February, 2006.



ATTEST:


SCARLET SWOBODA, City Secretary


WILL ARMSTRONG, Mayor of the
City of Victoria, Texas
APPROVED AS TO LEGAL FORM:

DAVID ATMAR SMITH, City Attorney

Distribution: Legal Department
 Finance Department
 Environmental Services

Copies Sent: February 8, 2006

**Professional Services Agreement between the City of Victoria and R.W. Beck, Inc. for
Work Related to Acquiring an Operator for the City of Victoria Landfill**

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

PROFESSIONAL: R.W. Beck, Inc., a Washington corporation, 5806 Mesa Dr., Suite 310; Austin, Texas 78731

PROJECT: Perform the items provided in the Scope of Services attached as **Exhibit "A"**.

OWNER'S REPRESENTATIVE: Jerry James, Director of Environmental Services, City of Victoria

PROFESSIONAL'S AGREEMENT: PROFESSIONAL shall provide professional services to perform the PROJECT as described above.

PAYMENTS TO PROFESSIONAL: PROFESSIONAL will perform the services at the following billing rates described on

Exhibit "B" in total amounts not to exceed the amounts shown as follows:

Phase 1: \$35,000

Phase 2: \$10,000

Phase 3: \$50,000

Phase 4: Additional Services--No total cost limit, but work will not proceed unless specifically requested by OWNER in writing after a cost limit is agreed in writing by PROFESSIONAL and the OWNER's City Manager and Director of Finance for the tasks described therein.

GENERAL CONDITIONS:

1. Termination. OWNER 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. In the event of early termination, PROFESSIONAL shall invoice OWNER for all services completed and shall be compensated in accordance with the billing rates and total cost limits for this contract and any phase described herein, to the extent such work provides value to the OWNER.

2. Ownership of Documents. All documents prepared and assembled by PROFESSIONAL under this Agreement shall become the sole property of the OWNER and shall be delivered to OWNER without restriction on future use. Any future use of the documents by OWNER other than the purposes for which they are immediately being provided shall be at OWNER's sole risk. PROFESSIONAL may make copies of any and all documents for its files.

3. Controlling Law. This agreement is performable and is to be governed by the law applicable in Victoria County, Texas. Venue for any action arising under this Agreement shall be in Victoria County, Texas.

4. Successors and Assigns. Neither OWNER nor PROFESSIONAL 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 PROFESSIONAL from employing independent consultants, associates and other employees to assist it in the performance of services hereunder.

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

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

7. Indemnity. PROFESSIONAL agrees to defend, indemnify, and hold the OWNER whole and harmless against any

and all claims, suits, and actions for damages, costs, and expenses to persons or property that may arise out of, or be occasioned by or from any negligent act, error or omission of PROFESSIONAL or any officer, agent, servant, employee or subcontractor of PROFESSIONAL in the execution or performance of this agreement. The PROFESSIONAL expressly agrees to defend, indemnify and hold harmless the City, its officers, agents, and employees in accordance with this clause regardless of whether the injury or damage is caused in whole or in part by any hidden or apparent condition of property owned or controlled by the OWNER. This indemnity shall not apply to any claim to the extent to which an engineer is prohibited from indemnifying a governmental entity pursuant to Tex. Local Gov't Code § 271.904.

8. Limitation of Liability. No employee of PROFESSIONAL shall have individual liability to OWNER. To the extent permitted by law, the total aggregate liability of PROFESSIONAL or directors, shareholders or employees of PROFESSIONAL for any and all claims arising out of this agreement, including attorneys fees, whether caused by negligence, errors, omissions, strict liability, breach of contract or contribution, or indemnity claims based on third party claims, will not exceed the revenue received by PROFESSIONAL under this agreement or \$150,000, whichever is greater.

9. Standard of Care. PROFESSIONAL shall provide services under this agreement with the degree of skill and diligence normally practiced by professional engineers or consultants performing the same or similar services.

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

EXECUTED, this the _____ day of _____, 2006.

OWNER: City of Victoria, Texas

PROFESSIONAL: R.W. Beck, Inc.

Denny Arnold, City Manager

(seal)

(seal)

ATTEST:

ATTEST:

Scarlet Swoboda, City Secretary

FORM APPROVED:

David A. Smith, City Attorney

Exhibit "A"
Scope of Services
to

**Professional Services Agreement between the City of Victoria and R.W. Beck, Inc. for
Work Related to Acquiring an Operator for the City of Victoria Landfill**

R.W. Beck, Inc. ("R.W. Beck") will perform Phases 1 and 2 of the scope concurrently. R.W. Beck will perform Phase 3 if the City determines, based on the work in Phase 2, that the work in Phase 3 is necessary. Phase 4 is an additional service, and R.W. Beck will only perform Phase 4 if the City decides to negotiate a contract. The following is a scope of services to be performed by R.W. Beck, Inc.:

Phase 1.

R.W. Beck will analyze and develop a letter report concerning what the market place for the Victoria Landfill is in current and future years and what the City of Victoria may expect to reasonably gain from that market place. This report would specifically include assessments of collection and landfill/transfer operations in the region. The collection operations review would focus on identifying major haulers (public and private) within a 100 mile radius of the City of Victoria. R.W. Beck would determine what landfills these haulers are currently using, and evaluate the potential for them to change to the City of Victoria's landfill based on factors such as pricing, transportation costs and existing contracts. The landfill/transfer review would focus on facilities that the major haulers are using. R.W. Beck will research the disposal pricing and opportunities for the City of Victoria to be more competitive with these other facilities. R.W. Beck will provide the City with R.W. Beck's opinion of how the City's current rates compare to the current market. The letter report will also include a discussion of the pros and cons for the City of Victoria to accept refuse from these additional cities and/or haulers.

Also included in that report will be a planning level estimate of how much additional land the City of Victoria may need to acquire to expand the landfill to service that market and have adequate landfill space for the City of Victoria for a 100 year period. R.W. Beck will use the following information to estimate the additional land needed:

- Permitted depth and height of current landfill;
- Waste disposal projections;
- Estimated compaction ratios and soil usage; and
- Land space needed for landfill infrastructure and buffers.

Some of the information listed will be based on assumptions that R.W. Beck and the City will agree to before conducting the analysis.

Phase 2.

R.W. Beck will analyze the existing contract between the City of Victoria and BFI for operation of the Victoria Landfill and determine if the City of Victoria should continue with the five year term of the contract or reduce this 5-year term (assuming that BFI still desires to reduce the 5-year term after the completion of this phase). In order to make this determination, R.W. Beck will first evaluate the financial terms of the current landfill operations contract by comparing the annual fees, royalties and any up front payments associated with the current landfill operations contract to other landfill operations contracts between public and private entities. Based on the financial evaluation of the landfill operations contract, R.W. Beck will determine the probable impact, both operationally and financially, to the City if the City were to reduce the term of the current contract with BFI. R.W. Beck will make a presentation to the Victoria City Council explaining its recommendation concerning whether the City should reduce the 5-year term of the contract, how such reduction, if any, should be structured, and the desirable method(s) of obtaining a substitute landfill operator.

Phase 3.

If the City requests R.W. Beck, in writing, to proceed to Phase 3, then R.W. Beck will perform the following services to aid the City in obtaining a new operator for the landfill:

1. R.W. Beck will evaluate the current contract with BFI and recommend elements that could be used from that contract and what would be acceptable in the current marketplace. R.W. Beck will prepare procurement documents, which will include:

- Expected contract length to operate existing facilities,

- Options for services to be bid (these options could include financial assurance, TCEQ disposal fees, permit amendments/expansions, cell development, infrastructure improvements; methane gas systems)
- Additional variables that might generally be anticipated when planning to bid for services to privately operate municipal landfill facilities
- Description of the service(s)
- Key payment provisions
- Technical and business submittal requirements
- Proposal forms
- Project schedule

R.W. Beck will also coordinate with City staff to determine whether the City would prefer to structure this procurement as a Request for Bid (RFB) process, a Request for Proposals (RFP) process, or a different process. R.W. Beck will develop documents to obtain a substitute landfill operator consistent with the City's preference.

2. R.W. Beck will work with the City to develop the evaluation criteria for the procurement. Having participated in a number of similar projects, R.W. Beck will identify those factors that are critical for success and ensure that the evaluation criteria address those issues.

3. R.W. Beck will coordinate the distribution of the procurement documents to all relevant City personnel and other stakeholders (such as interested bidders). R.W. Beck has a number of high-level contacts in solid waste organizations that may have an interest in obtaining the landfill operations contract.

R.W. Beck will assist the City in conducting one pre-proposal meeting with the interested firms.

R.W. Beck will develop a presentation to communicate information to the proposers regarding what is requested in the procurement documents and the approach that R.W. Beck will use to evaluate proposals relative to the identified evaluation criteria.

While R.W. Beck will strive to develop procurement documents that include all of the relevant information in a clear and concise manner, it is likely that interested firms will have additional questions and will request clarifications. It is recommended that additional information be communicated in the form of written addenda. R.W. Beck will assist the City in responding to questions and the issuance of up to two addenda¹.

4. R.W. Beck will evaluate the proposals to develop recommendations to present to the City. This task will include technical advice and support, financial advice and support and "due diligence" review of proposer's experience and qualifications. Our cost limit proposal is based on receiving up to three bids or proposals. Additional bids or proposals could be evaluated at a cost not to exceed of \$3,000 per bid.

5. Based on the evaluations and review conducted, and input from the City, R.W. Beck will develop recommendations relative to the firm(s) with which the City should negotiate. Such recommendations may include either simultaneous negotiations with two or more prospective bidders or sole source negotiations with one preferred bidder.

6. R.W. Beck will develop its recommendations based on the evaluation of the proposals, and conduct a meeting with the City that communicates our recommendations and the rationale for those recommendations.

Phase 4.

R.W. Beck will be prepared to assist the City in negotiating the terms of the contract with the prospective contractor selected by the City. As a result of our participation in a number of procurement projects, R.W. Beck has extensive experience in contract negotiations and can provide both technical and financial input. The extent of these discussions and the role played by R. W. Beck will be based on the approach selected by the City (i.e. negotiate with one offeror or with multiple firms simultaneously), the composition of the negotiations team (i.e. technical, legal and financial) and the ultimate complexity of the contractual documents. R.W. Beck recommends that the extent of R.W. Beck's involvement be revisited upon selection of a prospective buyer(s). Professional fees and expenses for this task have not been included in the cost of this proposal. If requested, R.W. Beck would prepare a specific cost proposal once the City gains an understanding of the scope of services that would need to be provided.

¹ Additional addenda can be developed on a time and expense basis.

Exhibit "B"

MEMORANDUM



To: Mr. Jerry James, Director of Environmental Services, City of Victoria
From: Scott Pasternak
Subject: **R. W. Beck Billing Rates**
Date: January 24, 2006

The following summarizes billing rates for R. W. Beck staff that will work on the Contract between the City of Victoria and R.W. Beck, Inc. for work related to acquiring an operator for the City of Victoria Landfill.

Staff	Hourly Rate
Principal	\$235
Project Manager	\$170
Senior Solid Waste Engineer	\$160
Solid Waste Engineer	\$135
Research Analyst	\$125
Financial Analyst	\$125
Clerical	\$40