

RESOLUTION NO. 24269

A RESOLUTION AUTHORIZING THE ADMINISTRATOR OF THE DEPARTMENT OF PARKS, RECREATION, ARTS AND CULTURE TO EXECUTE A CONTRACT WITH CONSOLIDATED TECHNOLOGIES, INC., RELATIVE TO MONTAGUE PARK, FOR GROUND WATER MONITORING IN AN AMOUNT NOT TO EXCEED TWENTY-TWO THOUSAND TWO HUNDRED DOLLARS (\$22,200.00) AND DESIGN SERVICES FOR A PERMEABILITY COVER IN AN AMOUNT NOT TO EXCEED TWENTY-EIGHT THOUSAND NINE HUNDRED DOLLARS (\$28,900.00).

BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF CHATTANOOGA, TENNESSEE, That the Administrator of the Department of Parks, Recreation, Arts and Culture be and is hereby authorized to execute a contract with Consolidated Technologies, Inc., relative to Montague Park, for ground water monitoring in an amount not to exceed \$22,200.00 and design services for a permeability cover in an amount not to exceed \$28,900.00.

ADOPTED: November 30, 2004

/add

24269

11-30-04

AGREEMENT FOR ENGINEERING SERVICES

This Agreement made this ____ day of _____ 2004, by and between the City of Chattanooga, City Hall, Suite 216, 117 East 11th Street, Chattanooga, Tennessee 37402 (hereinafter referred to as CHATTANOOGA) and Consolidated Technologies, Inc., 401 Chestnut Street, Suite 220, Chattanooga, Tennessee 37402 (hereinafter referred to as CTI).

Whereas, CHATTANOOGA desires to engage CTI to perform certain professional services in connection with ground water monitoring for Montague Park (hereinafter referred to as the project).

Now, therefore, CHATTANOOGA and CTI do hereby agree as follows:

1. CTI shall provide engineering services for the project as outlined in attached Appendix B, Scope of Services, in accordance with the terms and conditions of this Agreement.
2. CHATTANOOGA shall assume responsibilities relative to the project as outlined in the attached Appendix B, Scope of Services.
3. For the cost-plus services provided by CTI as outlined in the attached Appendix B, Scope of Services, CTI will be paid an amount equal to salary costs plus 110 percent of salary costs plus 110 percent of direct non-salary expenses. The total fee will not exceed \$21,400, broken down as follows, without the prior authorization of CHATTANOOGA:

Drilling (subcontract)	\$11,400
Drilling supervision/logging	1,100
Sampling	600
Laboratory (subcontract)	4,800
Report and well logs	2,000
Consultation	<u>1,500</u>
TOTAL	\$21,400

Salary costs shall include the salaries and wages paid to all CTI personnel engaged directly on the project, plus the cost of customary and statutory benefits and payroll taxes. Direct non-salary expenses shall include subcontracts, travel and subsistence, computer and CADD service charges, communications, field supplies and equipment rental, reproduction, and other project-related expenses.

4. Additional services may be performed when authorized in writing by CHATTANOOGA. Compensation for these additional services shall be an amount equal to salary cost plus 110 percent of salary cost plus 110 percent of direct non-salary expenses.
5. Invoices will be submitted by CTI monthly. For lump sum services, the invoice amount will be based upon the percentage of work completed during the period. For cost-plus or hourly rate services, the invoice amount will be based upon the time and expenses chargeable to the project during the period.

6. Payments for invoices submitted by CTI are due and payable upon receipt. Payments due CTI under this Agreement are subject to a service charge of 1-1/2 percent per month on all balances not paid within twenty-five (25) days after the date of receipt of invoice.

Unless otherwise stipulated in writing, CTI is authorized to begin work on the project upon receipt from CHATTANOOGA of an executed copy of this Agreement.

The following appendices are attached hereto and made a part of this Agreement as if written herein: Appendix A, General Conditions; Appendix B, Scope of Services; and Appendix C, Special Conditions Relative to Hazardous Materials.

In witness whereof, both parties have caused this Agreement to be executed by their duly authorized representatives as of the day and year first written above.

ACCEPTED BY CLIENT:

ACCEPTED BY CTI:

CITY OF CHATTANOOGA

CONSOLIDATED TECHNOLOGIES, INC.

BY _____

BY *Gary M. Cosby*

NAME Jerry Mitchell

NAME Gary M. Cosby, P.E.

Administrator, Department of

TITLE Parks, Recreation, Arts, & Culture

TITLE President

DATE _____

DATE 4/19/04

(Insert here and on first line)

ATTESTED:

BY _____

NAME David Eichenthal

TITLE City Finance Officer

DATE _____

**APPENDIX A
GENERAL CONDITIONS**

1. Services performed by CTI under this Agreement will be conducted in a manner consistent with that level of care and skill ordinarily exercised by members of the profession currently practicing under similar conditions. CTI makes no warranty or guarantee, either expressed or implied, as part of this Agreement.
2. This Agreement may be terminated by either party without cause upon fifteen (15) days' written notice to the other party or by written mutual agreement of both parties. If this Agreement is terminated, CTI shall be paid for the extent of services performed up to the effective date of termination in accordance with the terms of payment set forth in this Agreement.
3. Neither party shall assign, transfer, or sublet any rights under or interest in this Agreement without the prior written consent of the other party. Each party binds itself to the successors, administrators, and assigns of the other party in respect to all covenants of this Agreement.
4. Any drawings, specifications, and reports developed pursuant to this Agreement are instruments of service, and as such, the original documents, computer files, and field notes are and shall remain the property of CTI.
5. CTI shall not disclose or permit disclosure of any information designated by CHATTANOOGA as confidential, except to its employees and subcontractors who need such information in order to execute the services under this Agreement.
6. CTI shall, during the performance of the Agreement, keep in force statutory Workers Compensation Insurance, Comprehensive General Liability and Automobile Liability Insurance with a combined single limit of \$1 million, and shall for a period of four (4) years following substantial completion of the construction contract maintain Professional Liability (errors and omissions) Insurance with an aggregate limit of \$1 million. Should CTI terminate its operations prior to the end of the four-year period, CTI will assist CHATTANOOGA in obtaining tail insurance to continue coverage. The cost of the tail insurance policy will be borne by CHATTANOOGA.
7. CHATTANOOGA and CTI have discussed the allocation of risks inherent in this type of work and agree that the total liability of CTI and its subconsultants to CHATTANOOGA for any and all claims, losses, expenses, damages, and claim expenses arising out of this Agreement from any cause or causes shall not exceed the amount of insurance coverage available at the time of settlement or judgment.
8. This Agreement shall be governed by the laws of the State of Tennessee.
9. CHATTANOOGA shall pay any applicable state sales tax, review fee(s), and/or permit fee(s) in the manner and amount required by law.
10. If CHATTANOOGA does not make timely payments on invoices to CTI, CTI may suspend its services by reason of non-performance on the part of CHATTANOOGA. When such progress payments are restored, CTI will resume its services. Should an attorney or agency be required for the collection of any payments due under this Agreement, CHATTANOOGA agrees to pay the full cost of collection, including attorney's or agency's fees, in addition to any other fee or payment due.
11. All claims, disputes, and other matters in question between the parties relative to this Agreement in which the sum or value in controversy does not exceed \$50,000 shall be decided by arbitration in accordance with the rules of the American Arbitration Association. The decision rendered by the arbitrator(s) shall be final and shall be specifically enforceable under the prevailing law of any court having jurisdiction. Fees of the American Arbitration Association shall be shared equally by both parties.
12. This Agreement represents the entire agreement between CHATTANOOGA and CTI and supersedes all prior negotiations, understandings, or agreements, either written or oral, for the project. This Agreement may only be amended or supplemented by a duly executed written instrument.

APPENDIX B SCOPE OF SERVICES

A. Services of Consolidated Technologies, Inc. (CTI)

CTI will provide the following services in connection with the former Montague Park Landfill site:

1. Prepare sampling plan for use by CHATTANOOGA in notifying TDEC.
2. Prepare Site Safety and Health Plan.
3. Provide mobilization, drilling, and construction of up to eight 2-inch PVC ground water monitoring wells on the site and around its perimeter. Complete wells with steel post covers and locking caps. Collect soil cuttings for later disposal by CHATTANOOGA. For estimating purposes, it is assumed that the wells will not exceed an average depth of 30 feet.
4. Measure water levels (referenced to top of casing) and prepare map of ground water flow.
5. Purge up to three monitoring wells, and collect one ground water sample from each. Measure water levels (referenced to top of casing), conductivity, and pH. Purge water will be collected for later disposal by CHATTANOOGA.
6. Transport samples to an independent laboratory for analyses. Samples will be analyzed for EPA TAL/TCL contaminants, which include cyanide, dioxins, and furans.
7. Following receipt of results, prepare a brief summary report containing findings and well construction logs.

B. Responsibilities of CHATTANOOGA

CHATTANOOGA will be responsible to:

1. Provide all criteria and full information as to its requirements for the project.
2. Upon identification by CTI and approval by CHATTANOOGA of the necessity and scope of information required, furnish CTI with data, reports, surveys, and other materials and information required for this project, except those included in CTI's scope of services.
3. Provide access to the project site and make all provisions for CTI to enter upon public and private lands as required for CTI to perform its services under this Agreement.
4. Examine all studies, reports, sketches, opinions of the construction costs, specifications, drawings, proposals, and other documents presented by CTI to

CHATTANOOGA, and render in writing CHATTANOOGA's decisions pertaining thereto within a reasonable time so as not to delay the services of CTI.

5. Give prompt written notice to CTI whenever CHATTANOOGA observes or otherwise becomes aware of any defect in the project.
6. Furnish to CTI, prior to execution of this Agreement, a copy of any design and construction standards CHATTANOOGA shall require CTI to follow in performing its services under this Agreement.
7. Pay applicable permit and review fees assessed by regulatory agencies in connection with the project.
8. Following well construction, provide survey crew to survey well locations, including top of casing elevations and horizontal coordinates referenced both to property boundaries and State plane coordinates.
9. Dispose of purge water and soil cuttings.

C. Additional Services

The following services are not included in the above scope of services but are available to CHATTANOOGA from CTI as additional services subject to additional compensation:

1. Assistance in responding to notices or correspondence from regulatory agencies.
2. Preparation of site assessments, feasibility studies, or remedial designs.
3. Additional sampling and analyses beyond that included in the scope of services.

**APPENDIX C
SPECIAL CONDITIONS
RELATIVE TO HAZARDOUS MATERIALS**

1. Hazardous materials may exist at a site where there is no reason to believe they could or should be present. CTI and CHATTANOOGA agree that the discovery of unanticipated hazardous materials constitutes a changed condition that may require renegotiation of the scope of work and compensation. CTI and CHATTANOOGA also agree that the discovery of unanticipated hazardous materials may make it necessary for CTI to take immediate measures to protect human health and safety, and/or the environment. CTI agrees to notify CHATTANOOGA as soon as practically possible should unanticipated hazardous materials or suspected hazardous materials be encountered. CHATTANOOGA authorizes CTI to take any and all measures that in CTI's professional opinion are justified to preserve and protect the health and safety of CTI's personnel and the public and/or the environment. CHATTANOOGA agrees to compensate CTI for the additional cost of such work based upon CTI's prevailing fee schedule and expense reimbursement policy. CHATTANOOGA also agrees to compensate CTI for costs associated with decontamination of equipment and replacement of contaminated consumables, costs associated with the transportation and proper disposal of contaminated samples of soil, rock, sludge or water, and costs associated with the transportation and proper disposal of contaminated drilling cuttings and fluids and decontamination wastes.
2. When hazardous materials are known, assumed, or suspected to exist at a site, CTI is required to take appropriate precautions to protect the health and safety of its personnel, to comply with applicable laws and regulations, and to follow procedures that CTI deems prudent to minimize physical risks to employees and the public. CHATTANOOGA hereby warrants that, if it knows or has any reason to assume or suspect that hazardous materials may exist at the project site, it has so informed CTI. CHATTANOOGA also warrants that it has done its best to inform CTI of such known or suspected hazardous materials' type, quantity, and location.
3. Any disposable consumables; decontamination wastes; samples of soil, rock, sludge, or water; or drilling cuttings and fluids that are contaminated by hazardous materials on the project site are and shall remain the property of CHATTANOOGA. At no time shall title to hazardous substances, solid wastes, petroleum contaminated or other regulated substances pass to CTI, nor shall any provision of this Agreement be interpreted to permit CTI to assume the status of a "generator," "transporter," or "treatment, storage, or disposal facility" under state or federal law.
4. CHATTANOOGA understands and agrees that subsurface investigation and sampling involves unavoidable risks of cross-contamination of previously uncontaminated underground formations and aquifers by hazardous materials and contaminants which may be encountered during the work. If CHATTANOOGA has informed CTI or CTI has reason to assume or suspect that hazardous materials may be present at the site, CTI will recommend that CHATTANOOGA authorize preventive measures which in its opinion are prudent and reasonable to reduce the risks of cross-contamination. However, such measures will not eliminate all risks of cross-contamination. CHATTANOOGA therefore agrees that CTI shall not be held liable for cross-contamination of underground formations or aquifers as a result of subsurface investigation and sampling performed at the site under this Agreement.

5. If the project site is not owned by CHATTANOOGA, CHATTANOOGA warrants that it has obtained all necessary permissions for CTI to enter onto and conduct subsurface exploration and sampling activities.
6. CHATTANOOGA agrees that it is CHATTANOOGA's sole responsibility to inform the property owner and responsible government officials of the discovery or documentation of hazardous material. CHATTANOOGA releases CTI from all responsibility for informing the property owner or responsible government officials of the discovery or documentation of hazardous material. Nevertheless, CHATTANOOGA authorizes CTI to respond fully to any inquiries by government authorities concerning CTI's knowledge of the site, and to report site conditions to governmental authorities when, in CTI's sole judgment, such a report is necessary or appropriate. CTI is also authorized to contact all local, state, and federal authorities to discuss data and information gathered on or about the site for other purposes. CHATTANOOGA agrees that CTI shall not be held liable in any respect for reporting or failing to report conditions which were CHATTANOOGA's responsibility to report, or for responses to or discussions with government authorities concerning the project site.
7. In any verbal or written report relative to the project site, CTI shall not be deemed to represent, warrant, or certify (a) that hazardous or toxic materials are not present on the site, (b) that any local, state, or federal environmental laws or regulations have not been violated in such manner as to incur legal penalties or civil or criminal liability; (c) that environmental conditions or environmental management at the site is not under investigation; or (d) that the site will not be the subject of future investigation or regulatory action by local, state, or federal authorities.
8. It is understood and agreed that, in seeking the professional services of CTI under this Agreement, CHATTANOOGA may be requesting CTI to undertake uninsurable obligations for CHATTANOOGA's benefit involving the presence or potential presence, or release or potential release to the environment of hazardous materials and other contaminants with respect to the project. Therefore, CHATTANOOGA agrees to defend, indemnify, and hold CTI harmless from and against any and all claims, losses, damages, liability, and costs, including but not limited to costs of defense and costs of CTI's professional time in defense of such claims, arising out of or in any way connected with the discovery, presence, discharge, release, or escape of hazardous materials or contaminants of any kind, excepting only such liability as may arise out of the sole negligence of CTI, or the willful or reckless disregard of CTI's obligations, in the performance of services under this Agreement.
9. CHATTANOOGA agrees to extend any and all limitations, indemnifications, and waivers provided by CHATTANOOGA to CTI to those individuals and organizations the design professional retains by subcontract or otherwise for execution of the work.