

CONTRACT FOR LAND ACQUISITION SERVICES
Threshold Land Services, Inc.
Old Hearne Road – Phase 1 Reconstruction & Drainage Improvements
City Project Number 332/411//425/611-DE-1506

This Contract, dated _____, 2016, is between the **City of Bryan**, a Texas home-rule municipal corporation, (the City) and **Threshold Land Services, Inc.**, a corporation (the Agent), whereby the Agent agrees to provide the City with certain professional services as described herein and the City agrees to pay the Agent for those services.

1. Scope of Services

In consideration of the compensation stated in paragraph 2, the Agent agrees to provide the City with the professional services as described in Attachment A, the Scope of Services, which is incorporated herein by reference for all purposes, and which services may be more generally described as follows:

Acquisition of up to twenty-nine (29) easement and/or fee simple parcels located along N Sims Avenue and Old Hearne Road from Boulevard Street to Willhelm Drive.

2. Payment

In consideration of the Agent's provision of the professional services in compliance with all terms and conditions of this Contract, the City shall pay the Agent according to the terms set forth in Attachment B. Except in the event of a duly authorized change order, approved by the City in writing, the total cost of all professional services provided under this Contract may not exceed Ninety-eight Thousand, Six Hundred Ninety-Seven and No/100 Dollars (\$98,697.00).

3. Time of Performance

A. All design work and other professional services provided under this Contract must be completed by the following date: April 1, 2017. The City Engineer may agree to an extension of the time for completion. Any extension of the time for completion approved by the City Engineer, however, shall only be effective upon the execution of an instrument in writing stating the terms of the extension and signed by both the City Engineer and the Agent. The Schedule is more fully defined in Attachment C.

B. **Time is of the essence of this Contract.** The Agent shall be prepared to provide the professional services in the most expedient and efficient manner possible in order to complete the work by the times specified.

4. Warranty, Indemnification, & Release

A. As an experienced and qualified design professional, the Agent warrants that the information provided by the Agent reflects high professional and industry standards, procedures, and performances. The Agent warrants the design preparation of drawings, the designation or selection of materials and equipment, the selection and supervision of personnel, and the performance of other services under this Contract, is pursuant to a high standard of performance in the profession. The Agent warrants that the Agent will exercise diligence and due care and perform in a good and workmanlike manner all of the services pursuant to this Contract. Approval of the City shall not

constitute, or be deemed, a release of the responsibility and liability of the Agent, its employees, agents, or associates for the exercise of skill and diligence to promote the accuracy and competency of their designs, information, plans, specifications or any other document, nor shall the City's approval be deemed to be the assumption of responsibility by the City for any defect or error in the aforesaid documents prepared by the Agent, its employees, associates, agents, or subcontractors.

- B. The Agent shall promptly correct any defective designs or specifications furnished by the Agent at no cost to the City. The City's approval, acceptance, use of, or payment for, all or any part of the Agent's services hereunder or of the Project itself shall in no way alter the Agent's obligations or the City's rights hereunder.
- C. In all activities or services performed hereunder, the Agent is an independent contractor and not an agent or employee of the City. The Agent and its employees are not the agents, servants, or employees of the City. As an independent contractor, the Agent shall be responsible for the professional services and the final work product contemplated under this Contract. Except for materials furnished by the City, the Agent shall supply all materials, equipment, and labor required for the professional services to be provided under this Contract. The Agent shall have ultimate control over the execution of the professional services. The Agent shall have the sole obligation to employ, direct, control, supervise, manage, discharge, and compensate all of its employees or subcontractors, and the City shall have no control of or supervision over the employees of the Agent or any of the Agent's subcontractors.
- D. The Agent must at all times exercise reasonable precautions on behalf of, and be solely responsible for, the safety of its officers, employees, agents, subcontractors, licensees, and other persons, as well as their personal property, while in the vicinity of the Project or any of the work being done on or for the Project. It is expressly understood and agreed that the City shall not be liable or responsible for the negligence of the Agent, its officers, employees, agents, subcontractors, invitees, licensees, and other persons.
- E. **Responsibility for damage claims (indemnification): Agent shall defend, indemnify and save harmless the City and all its officers, agents, and employees from all suits, actions, or claims of any character, name and description brought for or on account of any injuries or damages received or sustained by any person or persons or property resulting from the Agent's negligent performance of the work, or by or on account of any claims or amounts recovered under the Workmen's Compensation Law or any other law, ordinance, order or decree, and his sureties shall be held until such suit or suits, action or actions, claim or claims for injury or damages as aforesaid shall have been settled and satisfactory evidence to the effect furnished the City. Agent shall defend, indemnify and save harmless the City, its officers, agents and employees in accordance with this indemnification clause only for that portion of the damage caused by Agent's negligence.**
- F. Release. The Agent releases, relinquishes, and discharges the City, its officers, agents, and employees from all claims, demands, and causes of action of every kind and character, including the cost of defense thereof, for any injury to, sickness or death of the Agent or its employees and any loss of or damage to any property of the Agent or its employees that is caused by or alleged to be caused by, arises out of, or is in connection with the Agent's negligent performance of the work. Both the City and the Agent expressly intend that this release shall apply regardless of whether said claims, demands, and causes of action are covered, in whole or in part, by insurance.

5. Agent's Insurance

The Agent agrees to maintain the minimum insurance coverage and comply with each condition set forth below during the duration of this contract with the City. All parties to this contract hereby agree that the Agent's coverage will be primary in the event of a loss, regardless of the application of any other insurance or self-insurance.

Contractor must deliver to the City a certificate(s) of insurance evidencing such policies are in full force and effect within 10 business days of notification of the City's intent to award a Contract. No contract shall be effective until the required certificate(s) have been received and approved by the City. Failure to meet the insurance requirements and provide the required certificate(s) and any necessary endorsements within 10 business days **may cause the contract to be rejected.**

The City reserves the right to review these requirements and to modify insurance coverage and their limits when deemed necessary and prudent.

- A. **Workers' Compensation Insurance & Employers' Liability Insurance** – Agent shall maintain Workers Compensation Insurance for statutory limits and Employers Liability insurance with limits not less than \$500,000 each accident for bodily injury by accident or \$500,000 each employee for bodily injury by disease. Agent shall provide Waiver of Subrogation in favor of the City and its agents, officers, officials, and employees.
- B. **Commercial General Liability Insurance** – Agent shall maintain Commercial General Liability with a limit of not less than \$1,000,000 per occurrence and an annual aggregate of at least \$2,000,000. Commercial General Liability shall be written on a standard ISO “occurrence” form (or a substitute form providing equivalent coverage) and shall cover liability arising from premises, operations, independent contractors, products-completed operations, personal and advertising injury, and liability assumed under an insured contract including the tort liability of another assumed in a business contract. No coverage shall be deleted from the standard policy without notification of individual exclusions and acceptance by the City. The City and its agents, officers, officials, and employees shall be listed as an additional insured.
- C. **Business Automobile Liability Insurance** – Agent shall maintain Business Automobile Liability insurance with a limit of not less than \$1,000,000 each accident. Business Auto Liability shall be written on a standard ISO version Business Automobile Liability, or its equivalent, providing coverage for all owned, non-owned and hired automobiles. Agent shall provide Waiver of Subrogation in favor of the City and its agents, officers, officials, and employees.
- D. **Professional Liability Insurance** – Agent shall maintain Professional Liability (errors & omissions) insurance with a limit of not less than \$1,000,000. If written on a “Claims-Made” form, Agent agrees to maintain a retroactive date equivalent to the inception date of the contract (or earlier) and maintain continuous coverage or a supplemental extended reporting period for a minimum of two years after the completion of this contract. Agent will be responsible for furnishing certification of coverage for 2 years following contract completion.
- E. **Policy Limits** - Required limits may be satisfied by a combination of primary and umbrella or excess liability policies. Agent agrees to endorse City and its agents, officers, officials, and employees as an additional insured, unless the Certificate states the Umbrella or Excess Liability provides coverage on a pure “True Follow Form” basis.
- F. **Deductibles, Coinsurance Penalties, & Self-Insured Retention** - Agent may maintain reasonable and customary deductibles, subject to approval by the City. Agent shall agree to be fully and solely responsible for any costs or expenses as a result of a coverage deductible, coinsurance penalty, or self-insured retention.

- G. **Subcontractor's Insurance** - If the Agent's insurance does not afford coverage on behalf of any Subcontractor(s) hired by the Agent, the Subcontractor(s) shall maintain insurance coverage equal to that required of the Agent. It is the responsibility of the Agent to assure compliance with this provision. The City accepts no responsibility arising from the conduct, or lack of conduct, of the Subcontractor.
- H. **Acceptability of Insurers** - Insurance coverage shall be provided by companies admitted to do business in Texas and rated A-VI or better by AM Best Insurance Rating,
- I. **Evidence of Insurance** - A valid certificate of insurance verifying each of the coverages required shall be issued directly to the City within ten (10) business days by the successful Agent's insurance agent or insurance company after contract award. Endorsements must be submitted with the certificate. No contract shall be effective until the required certificates have been received and approved by the City. See Attachment D for insurance example.

Renewal certificates shall be sent a minimum of 10 days prior to coverage expiration.

Upon request, Agent shall furnish the City with certified copies of all insurance policies.

The certificate of insurance and all notices shall be sent to the City at the following address:

City of Bryan
Attn: Risk Management Department
P.O. Box 1000
Bryan, TX 77805
Emailed to: mquiroga@bryantx.gov

Failure of the City to demand evidence of full compliance with these insurance requirements or failure of the City to identify a deficiency shall not be construed as a waiver of Agent's obligation to maintain such insurance.

- J. **Notice of Cancellation, Non-Renewal, Material Change, Exhaustion of Limits** - Agent must provide minimum 30 days prior written notice to the City of policy cancellation, material change, exhaustion of aggregate limits, or intent not to renew insurance coverage. If City is notified a required insurance coverage will cancel or non-renew during the contract period, the Agent shall agree to furnish prior to the expiration of such insurance, a new or revised certificate(s) as proof that equal and like coverage is in effect. The City reserves the right to withhold payment to Agent until coverage is reinstated.
- K. **Agent's Failure to Maintain Insurance** - If the Agent fails to maintain the required insurance, the City shall have the right, but not the obligation, to withhold payment to Agent until coverage is reinstated or to terminate the Contract.
- L. **No Representation of Coverage Adequacy** - The requirements as to types and limits, as well as the City's review or acceptance of insurance coverage to be maintained by Agent, is not intended to nor shall in any manner limit or qualify the liabilities and obligations assumed by the Agent under the Contract.

6. Termination

- A. The City or Agent may terminate this Contract at any time upon **thirty (30)** calendar days written notice. Upon the receipt of such notice, the Agent shall discuss with the City what will be accomplished within the 30 calendar day timeframe and document this in an exit strategy that must

be approved by the City. The Agent shall be compensated for the services satisfactorily performed prior to the termination date.

- B. If, through any cause, the Agent fails to fulfill its obligations under this Contract, or if the Agent violates any of the agreements of this Contract, the City has the right to terminate this Contract by giving the Agent **five (5)** calendar days written notice to the Agent. The Agent will be compensated for the services satisfactorily performed before the termination date.
- C. No term or provision of this Contract shall be construed to relieve the Agent of liability to the City for damages sustained by the City because of any breach of contract by the Agent. The City may withhold payments to the Agent for the purpose of setoff until the exact amount of damages due the City from the Agent is determined and paid.

7. Miscellaneous Terms

- A. This Contract has been made under and shall be governed by the laws of the State of Texas. The parties agree that performance and all matters related thereto shall be in Brazos County, Texas.
- B. Notices shall be mailed to the addresses designated herein or as may be designated in writing by the parties from time to time and shall be deemed received when sent postage prepaid U.S. Mail to the following addresses:

The City of Bryan
Attn: W. Paul Kaspar, P.E.
P.O. Box 1000
Bryan, Texas 77805

The Agent: Threshold Land Services, Inc.
Attn: Kimbraugh Jeter
P.O. Box 9396
College Station, Texas 77842

- C. No waiver by either party hereto of any term or condition of this Contract shall be deemed or construed to be a waiver of any other term or condition or subsequent waiver of the same term or condition.
- D. This Contract represents the entire and integrated agreement between the City and the Agent and supersedes all prior negotiations, representations, or agreements, either written or oral. This Contract may only be amended by written instrument approved and executed by the parties.
- E. This Contract and all rights and obligations contained herein may not be assigned by the Agent without the prior written approval of the City.
- F. The Agent, its agents, employees, and subcontractors must comply with all applicable federal and state laws, the charter and ordinances of the City of Bryan, and with all applicable rules and regulations promulgated by local, state, and national boards, bureaus, and agencies. The Agent must obtain all necessary permits and licenses required in completing the work and providing the services required by this Contract.
- G. The parties acknowledge that they have read, understood, and intend to be bound by the terms and conditions of this Contract.

8. Disclosure of Interested Parties

In 2015, the Texas Legislature adopted [House Bill 1295](#), which added section 2252.908 of the Government Code. The law states that a governmental entity or state agency may not enter into certain contracts with a business entity unless the business entity submits a disclosure of interested

parties to the governmental entity or state agency at the time the business entity submits the signed contract to the governmental entity or state agency. The law applies only to a contract of a governmental entity or state agency that either (1) requires an action or vote by the governing body of the entity or agency before the contract may be signed or (2) has a value of at least \$1 million. The disclosure requirement applies to a contract entered into on or after January 1, 2016. The process as implemented by the Commission is as follows:

1. A business entity must use the application to enter the required information on Form 1295 and print a copy of the form and a separate certification of filing that will contain a unique certification number.
2. An authorized agent of the business entity must sign the printed copy of the form and have the form notarized. The completed Form 1295 and certification of filing must be filed with the city “at the time the business entity submits the signed contract” to the city.
3. The city must notify the Commission, using the Commission’s filing application, of the receipt of the filed Form 1295 and certification of filing not later than the 30th day after the date the contract binds all parties to the contract.

For more information regarding how to file Form 1295, please click on the following link: https://www.ethics.state.tx.us/whatsnew/elf_info_form1295.htm .

9. Nepotism

By submitting a proposal, the Agent certifies that neither he, nor any co-owner of the organization submitting this proposal, is related to a member of the City Council of the City of Bryan within the first, second, or third degree of consanguinity (blood) or affinity (marriage).

Party of the First Part
CITY OF BRYAN, TEXAS

Approved as to Form:

Janis Hampton, City Attorney

Prepared and Recommended:

W. Paul Kaspar, P.E., City Engineer

Approved for Processing:

Jayson Barfknecht, P.E., Ph.D
Director of Public Works

Kean Register, City Manager

Approved:

By: _____
Jason P. Bienski, Mayor

Attest:

By: _____
Mary Lynne Stratta, City Secretary

Date: _____

Party of the Second Part
AGENT: Threshold Land Services, Inc.

By: _____
Printed Name: Elizabeth C. Jeter
Title: Vice President
Date: _____
HUB License No. 1470894718000

Witness: Kimbrough Jeter, President

ATTACHMENT “A” SCOPE OF SERVICES

Acquisition of up to twenty-nine (29) easement and/or fee simple parcels located along N Sims Avenue and Old Hearne Road from Boulevard Street to Willhelm Drive.

Negotiation and Acquisition: Methodology

Threshold personnel will meet with each landowner to negotiate the acquisition of easements and/or fee simple parcels needed for this project. The procedure will be as follows:

- A title commitment policy and report will be ordered and exceptions will be cured before closing.
- An initial meeting will be used to introduce the landowner to the parties that will be involved and the public needs for the project.
- The initial offer will be based on the Brazos County Appraisal District (BCAD) land values plus 50% for each easement and/or parcel needed. Any additional offers will first be approved by the City Engineer.
- An appraisal will be ordered if and/or when it becomes apparent that the property owner will not accept the offer(s) based on BCAD values and condemnation appears to be eminent.
- Upon acceptance of an agreed upon price, (1) a Memorandum of Understanding (MOU) will be prepared stating the agreed upon price and the closing procedure and will be executed by the seller, and (2) the approved easement and/or warranty deed will be executed by the seller. A copy of the executed instruments will be delivered to the City of Bryan and the payment voucher will be requested.
- The executed documents will be filed of record in the courthouse and the original returned to the City.

Responsibilities of Threshold Land Services:

Threshold Land Services, Inc. will be responsible for and will pay for the following anticipated project expenses:

- The cost of title reports
- Preparation and delivery of offer letters to landowners
- Negotiation of acquisition terms, preparation of MOU, and collection of landowner signatures
- Acquisition of executed and notarized easements and/or deeds
- Copies and other pertinent expenses outlined in the bid sheet

Responsibilities of the City of Bryan:

The City of Bryan will be responsible for and will pay for the following anticipated project expenses:

- Landowner consideration for easements
- Surveying costs
- Appraisal costs
- Easement/deed recording fees

Condemnation Proceedings are not included in this contract.

ATTACHMENT 'B'
FEE SUMMARY

Payment to the AGENT will be made as follows:

A. Invoice and Time of Payment

Monthly invoices will be issued by the AGENT for all work performed under this Agreement. Invoices are due and payable on receipt. Invoices will be prepared in a format approved by the CITY prior to submission of the first monthly invoice. Monthly payment of the fee will be in proportion to percent completion of the total work for each fee item outlined below.

Fee items shall be tracked by BCAD Property Identification Number in monthly invoices.

B. Upon completion of services enumerated in Attachment A, Scope of Services, the final payment of any balance will be due upon receipt of the final invoice.

BASIC SERVICES

Invoicing is on an actual cost not to exceed basis for the amount listed in Article 2 of this Contract. Outside professionals will be treated as a pass through expense and direct salary cost will be based on Threshold Land Services, Inc. hourly rates attached hereto. Invoices will be prepared monthly based on current billing from outside professionals and land services expended during the period.

Threshold personnel time will be billed on an hourly basis. The not to exceed price includes:

- Phone calls and meetings with landowners
- Time spent in meetings with City of Bryan staff, the surveyor, appraiser, and title company
- Time anticipated curing exceptions and requirements set out in the title report
- Appraisal District and Courthouse title examinations
- Mileage and other project expenses including copies and supplies

Special Commissioner Hearings (Condemnation Proceedings) are not a part of this proposal.

Threshold services are billed on a monthly basis with payment due in thirty (30) days.

FEE SCHEDULE

The rates for personnel are subject to changes as required for the firm to maintain qualified personnel. The present hourly rates are quoted below and no major changes are currently anticipated. The client will be billed on an hourly basis at quarter hour increments for actual project hours worked.

Project Manager/Broker	\$65.00/Hr.
Senior Land Agent	\$60.00/Hr.
Land Tech	\$35.00/Hr.
Mileage	\$0.575/Mile

The Agent shall be reimbursed for all out of pocket expenses incurred while working on the project. Out of pocket expenses include mileage reimbursement based on the posted IRS rate, copies, office supplies, postage/FedEx, subordination fees, title report fees, out of town lodging, and required insurance fees agreed to by the City.

**ATTACHMENT “C”
PROJECT SCHEDULE**

SCHEDULE:

As quickly as possible, but definitely acquire all needed easements and parcels by April 1, 2017.

