

RESOLUTION NO. 07-129

**A RESOLUTION AUTHORIZING A SETTLEMENT WITH
EXCAVATORS & CONSTRUCTORS.**

WHEREAS, the City Council deems it appropriate to authorize a settlement with Excavators & Constructors, as delineated in Exhibit "A", involving the Spur 93 Business Park.

**NOW THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY
OF PORT ARTHUR, TEXAS:**

Section 1. That the facts and opinions in the preamble are true and correct.

Section 2. That the duly authorized representatives of the City of Port Arthur Section 4A Economic Development Corporation are herein authorized to sign a Settlement Agreement with Excavators & Constructors, in substantially the same form as attached hereto as Exhibit "A".

Section 3. That this resolution is contingent on the approval by the EDC Board of Directors.

Section 4. That a copy of the caption of this Resolution be spread upon the Minutes of the City Council.

READ, ADOPTED AND APPROVED on this 20th day of

March, A.D., 2007, at a Meeting of the City Council of
the City of Port Arthur, Texas, by the following vote: AYES:

Mayor Ortiz

Councilmembers Lewis, Handerson, Beard,
Williamson and Sinegal,

NOES: None.

Rosa D. Ortiz
MAYOR

ATTEST:

Evangelina Green
CITY SECRETARY

APPROVED AS TO FORM:

(SEE CONFIDENTIAL MEMO DATED 3/16/07)
CITY ATTORNEY

EXHIBIT “A”

MUTUAL RELEASE

STATE OF TEXAS \$

COUNTY OF JEFFERSON \$

WHEREAS the City of Port Arthur Section 4A Economic Development Corporation entered into the following contracts with Excavators & Constructors as follows as it pertains to the Business Park on Spur 93:

Contract II	Rough Grading as approved by Resolution No. 02-259.	
	Original Contract Price	\$ 257,680.00
	Final Change Order and contract price as approved by Resolution No. 05-47.	\$ 256,623.70
Contract III	Underground utilities as approved by Resolution No. 02-259	
	Original Contract Price	\$ 1,109,990.00
	Change Order as approved by Resolution No. 03-123	+\$ 25,798.56
	Final Change Order and contract price as approved by Resolution No. 05-47	\$ 1,128,422.24
Contract IV	Drainage Improvements as approved by Resolution No. 02-259	
	Original Contract Price	\$ 869,310.00
	Change order as approved by Resolution No. 03-126	+\$ 13,406.00
	Final Change Order and contract price as approved by Resolution No. 05-47	\$ 904,790.00
Contract V	Road Improvements as approved by Resolution No. 02-259	
	Original Contract Price	\$ 887,500.00
	Change order as approved by Resolution No. 03-126	+\$ 63,000.00
	Final Change Order and contract price as approved by Resolution No. 05-47	\$ 956,853.00

Contract VII	Landscaping as approved by Resolution No. 03-107	
	Original Contract Price	\$ 597,672.00
	Final Change Order as Approved by Resolution No. 05-47	\$ 575,400.50

WHEREAS, the City of Port Arthur Section 4A Economic Development Corporation also contracted with Placo for the installation of the lift station at the Business Park per Contract No. VI for \$198,300 as per Resolution No. 02-289, with a change order of \$2,640 as approved by Resolution No. 04-073; and

WHEREAS, the City of Port Arthur Section 4A Economic Development Corporation also hired Schaumberg & Polk for engineering and inspection services per Resolution No. 01-70 for \$463,140; and

WHEREAS, the City of Port Arthur Section 4A Economic Development Corporation also hired Diamond Consulting for project management services as it pertained to the construction of the Business Park per Resolution No. 01-69 for \$194,600.

WHEREAS, the City of Port Arthur Section 4A Economic Development Corporation has concerns as to the recommendation for, authorization procedures, and payment of \$63,000 (lost of credits for two switching cabinets) for the installation of additional conduit by Entergy, which was an unexpected expense, and

WHEREAS, the City of Port Arthur Section 4A Economic Development Corporation paid \$24,626.82 to Excavators for 2" Sch.40 - single conduit, as per their invoice of June 26, 2003, all of which conduit has not been able to be utilized for electrical lines; and

WHEREAS, the City of Port Arthur Section 4A Economic Development Corporation also has had concerns as to the design specifications, contract administration, contract inspection, coordination of construction with the easement acquisition, project management services, and whether the construction was completed as designed; and

WHEREAS, the City of Port Arthur Section 4A Economic Development Corporation has incurred unexpected and additional expenses in attorney fees and expert fees in the review of this matter, and

WHEREAS, the City of Port Arthur Section 4A Economic Development Corporation desires to retain Excavators & Constructors for the extension of Jade Avenue as approved by Resolution No. 07-095 for \$245,459.85 to be completed within 60 consecutive calendar days from the Notice to Proceed (a savings of over \$38,000 from the next bidder, Norman Highway Constructors who bid \$283,952); and

WHEREAS, the City of Port Arthur cannot award a new contract to a company unless outstanding arrearages or debts are resolved per Section 2-262 of the Code of Ordinances; and

WHEREAS, the City of Port Arthur Section 4A Economic Development Corporation deems it in the public's best interest to settle its claims as to the liabilities, if any, of Excavators & Constructors as it involves Contract Nos. II, III, IV, V, VII for the amount of \$20,000 so that it can enter into a new contract with Excavators for the extension of Jade Avenue; and

WHEREAS, by entering into this agreement Excavators & Constructors does not admit that any of their goods or services that they have provided were deficient or did not meet specifications as designed; and

WHEREAS, as to resolve the claims of the City of Port Arthur Section 4A Economic Development Corporation against Excavators & Constructors as it pertains to Contract II, III, IV, V and VII, Excavators & Constructors herein agree immediately to reimburse the City of Port Arthur Section 4A Economic Development Corporation \$20,000; and

WHEREAS, Excavators & Constructors will continue to cooperate with the City of Port Arthur Section 4A Economic Development Corporation and with the City of Port Arthur as to providing their documents including redlined as-builts to the City of Port Arthur Section 4A Economic Development Corporation and to the City of Port Arthur as to the location and data as to improvements built in Contract Nos. II, III, IV, V and VII, and as to the location and data as

to the three computer, telecommunication and telephone conduits that it installed.

NOW THEREFORE THE CITY OF PORT ARTHUR SECTION 4A ECONOMIC DEVELOPMENT CORPORATION AND EXCAVATORS & CONSTRUCTORS FOR THE PAYMENT OF SAID \$20,000 HEREIN MUTUALLY RELEASE EACH OTHER AND THEIR BONDING COMPANIES AND INSURANCE COMPANIES FOR ANY AND ALL CLAIMS AS IT PERTAINS TO CONTRACTS NOS. II, III, IV, V AND VII. THIS MUTUAL RELEASE SHALL NOT BENEFIT ANY THIRD PARTY.

SIGNED AND AGREED TO ON THE ____ DAY OF _____,
2007.

**CITY OF PORT ARTHUR SECTION
4A ECONOMIC DEVELOPMENT
CORPORATION**

BY _____
President

BY _____
Secretary

SIGNED AND AGREED TO ON THE ____ DAY OF _____,
2007.

EXCAVATORS & CONSTRUCTORS

BY _____