

RESOLUTION NO. 09-074

**A RESOLUTION APPROVING CHANGE ORDER  
NO. 3, FINAL PAYMENT, AND RELEASE OF  
RETAINAGE OF THE CONTRACT BETWEEN  
EXCAVATORS & CONSTRUCTORS, LTD. AND  
THE CITY OF PORT ARTHUR SECTION 4A  
ECONOMIC DEVELOPMENT CORPORATION  
FOR CONSTRUCTION OF JADE AVENUE.**

**WHEREAS,** Excavators & Constructors have been retained by the City of Port Arthur Section 4A Economic Development Corporation to extend Jade Avenue; and

**WHEREAS,** Joe M. Wilson, Jr., P.E. with Arceneaux & Gates Consulting Engineers, consultants for the City of Port Arthur Section 4A Economic Development Corporation Board of Directors, recommends approval of Change Order No. 3, attached as Exhibit "A"; and

**WHEREAS,** Joe M. Wilson, Jr., P.E. with Arceneaux & Gates consulting Engineers, verifies that this is the final payment, release of retainage, and that the total contract price is \$2,515,671.25; and

**WHEREAS,** attached as Exhibits "B, C, D, and E" respectively, are the Recommendation for Final Payment & Release of Retainage, Engineer's Certificate of Completion, Contractor's Certificate of Guarantee, and Contractor's Certificate & Release.

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

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

**Section 2.** That Change Order No. 3 is hereby approved, as delineated as in Exhibit "A".

**Section 3.** That the City Council hereby authorizes the approval by the EDC of the final payment and release of retainage, as delineated in Exhibit "B".

**Section 4.** That this authorization by the City Council is subject to the approval of the EDC Board of Directors.

**Section 5.** That a copy of the caption of the Resolution be spread upon the Minutes of the City Council.

**READ, ADOPTED AND APPROVED** on the 24<sup>th</sup> day of February  
A.D. 2009, at a Regular Meeting of the City Council of the City of Port Arthur, Texas by  
the following vote: AYES: Mayor Prince;  
City Council: Segler, Albright, Hood,  
Beard, Williamson, Wise  
and Henderson.

NOES: None  
Deloris Prince  
DELORIS "BOBBIE" PRINCE, MAYOR

**ATTEST:**  
Terri Hanks  
TERRI HANKS, ACTING CITY SECRETARY

**APPROVED:**  
Floyd Batiste  
FLOYD BATISTE, EDC CEO

**APPROVED AS TO FORM:**  
Mark Sokolow  
MARK T. SOKOLOW, CITY ATTORNEY

**EXHIBIT "A"**



### CHANGE ORDER No. 3

DATE: February 12, 2009 JOB NO. EDC-070, Contract No. 1

AGREEMENT DATE: March 19, 2008

NAME OF PROJECT: JADE AVENUE EXTENSION - PHASE II

OWNER: PORT ARTHUR ECONOMIC DEVELOPMENT CORP.

CONTRACTOR: EXCAVATORS & CONSTRUCTORS, LTD.

The following changes are hereby made to the CONTRACT DOCUMENTS:

**1. Adjust the following Bid Items to reflect actual quantities used.**

a. Bid Item No. 3, <b>Delete</b> 5885 LF Silt Fence	[-]	\$ <u>20,597.50</u>
b. Bid Item No. 6, <b>Delete</b> 58 S.Y. 8" Compacted Subgrade	[-]	\$ <u>63.80</u>
c. Bid Item No. 7, <b>Delete</b> 17.8 Tons Lime for Subgrade	[-]	\$ <u>2,741.20</u>
d. Bid Item No. 8, <b>Delete</b> 58 S.Y. Manipulation of Lime	[-]	\$ <u>249.40</u>
e. Bid Item No. 10, <b>Delete</b> 61.56 S.Y. Protective Slabs	[-]	\$ <u>6,863.94</u>
f. Bid Item No. 11, <b>Delete</b> 71 S.Y. 8" Class P Concrete	[-]	\$ <u>3,244.70</u>
g. Bid Item No. 12, <b>Add</b> 85.1 S.Y. 13" Class P Concrete	[+]	\$ <u>11,416.17</u>
h. Bid Item No. 13, <b>Delete</b> 100 L.F. Concrete Curb	[-]	\$ <u>365.00</u>
i. Bid Item No. 17, <b>Delete</b> 50 L.F. 13" Trench Safety	[-]	\$ <u>5.00</u>
j. Bid Item No. 19 <b>Add</b> 4 EA. Type "C" Inlet	[+]	\$ <u>10,400.00</u>
k. Bid Item No. 20, <b>Delete</b> 4 EA. Type "C" (Modified Offset)	[-]	\$ <u>8,480.00</u>
l. Bid Item No. 21, <b>Add</b> 14 L.F. 7' X 2' RCB	[+]	\$ <u>4,312.00</u>
m. Bid Item No. 22, <b>Add</b> 6 L.F. 6' X 2' RCB	[+]	\$ <u>1,473.90</u>
n. Bid Item No. 23, <b>Add</b> 20.5 L.F. 5' X 3' RCB	[+]	\$ <u>4,909.75</u>
o. Bid Item No. 24, <b>Delete</b> 6 L.F. 6' X 2' RCB	[-]	\$ <u>571.00</u>
p. Bid Item No. 25, <b>Add</b> 3 L.F. 4' X 2' RCB	[+]	\$ <u>555.45</u>
q. Bid Item No. 27, <b>Delete</b> 6.5 L.F. 3' X 2' RCB	[-]	\$ <u>1,172.93</u>
r. Bid Item No. 30, <b>Delete</b> 50.5 L.F. 24" RCP	[-]	\$ <u>4,191.50</u>
s. Bid Item No. 37, <b>Delete</b> 8 L.F. Relocate 8' Force Main	[-]	\$ <u>292.80</u>



**CHANGE ORDER NO. 3**  
**February 12, 2009**  
**Job No. EDC-070, Contract No. 1**

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t. Bid Item No. 40, <b>Delete</b> Paving on Bridge Structure	[-]	\$ <u>2,000.00</u>
u. Bid Item No. 41, <b>Delete</b> 354 LB. Extra Reinforcing Steel	[-]	\$ <u>265.50</u>
v. Bid Item No. 42, <b>Delete</b> 2 C.Y. Extra Class "A" Concrete	[-]	\$ <u>300.00</u>
w. Bid Item No. 43, <b>Add</b> 31 C.Y. Extra Cement Stab. Sand	[+]	\$ <u>1,178.00</u>

**2. Add the following to the Contract.**

a. <b>Add</b> (2) Stop Signs with Post.	[+]	\$ <u>1,150.00</u>
b. <b>Add</b> Hydromulch at drainage ditch.	[+]	\$ <u>2,750.00</u>
c. <b>Add</b> correction for error in Change Order No. 2	[+]	\$ <u>.50</u>

**TOTAL** **(\$ 13,258.50)**



**CHANGE ORDER NO. 3**  
**February 12, 2009**  
**Job No. EDC-070, Contract No. 1**

**CHANGE TO CONTRACT PRICE:**

ORIGINAL CONTRACT PRICE: \$2,509,381.78

CURRENT CONTRACT PRICE adjusted by previous CHANGE ORDER(S): \$2,528,929.75

The CONTRACT PRICE due to this CHANGE ORDER will be [increased]  
[decreased]

by: \$13,258.50 Dollars

The new CONTRACT PRICE, including this CHANGE ORDER, will be  
\$2,515,671.725

**CHANGE TO CONTRACT TIME:**

ORIGINAL CONTRACT TIME: 365 Calendar Days

CURRENT CONTRACT TIME adjusted by previous CHANGE ORDER: 365 Calendar Days

CURRENT DATE OF COMPLETION: May 15, 2009


CONTRACT TIME due to this CHANGE ORDER will be *increased* by 88 Days

The New DATE OF COMPLETION: August 11, 2009

No other Terms and Conditions of the Contract are changed as a result of this Change Order.  
Contractor's acceptance of Change Order relieves OWNER of any liability for additional costs  
incurred by Contractor in his performance of the work covered by the Change Order.

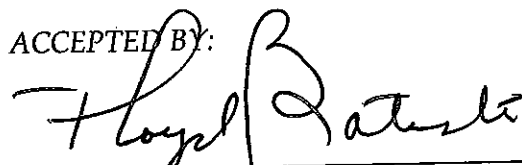
RECOMMENDED BY ENGINEER:

ACCEPTED BY:

  
**ARCENEAUX & GATES**  
**CONSULTING ENGINEERS, INC.**

  
[CONTRACTOR, OFFICER OR OWNER]  
**Excavators & Constructors, Ltd.**

ACCEPTED BY:



**PORT ARTHUR ECONOMIC DEVELOPMENT CORP.**

**EXHIBIT "B"**



**ARCENEUX & GATES**  
**Consulting Engineers, Inc.**

Engineers • Surveyors • Planners

February 17, 2009

Mr. Floyd Batiste, CEO  
**PORT ARTHUR E.D.C.**  
P.O. Box 3934  
Port Arthur, Texas 77641

**RE: RECOMMENDATION for FINAL PAYMENT and RELEASE of RETAINAGE**  
**JADE AVENUE EXTENSION - PHASE II TO SERVE THE CITY OF PORT ARTHUR**  
**Job No. EDC-070**

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Dear Mr. Batiste:

Attached for your records are the project completion documents for the Jade Avenue Extension Project - Phase II. These documents include the **Engineer's Certificate of Completion, Contractor's Certificate of Guarantee** and the **Contractor's Certificate of Release**.

These documents were executed showing a balance due the Contractor from the Port Arthur Economic Development Corp. This balance is the retainage withheld from the monthly estimates as well as any payments due from completion of work. As stipulated in the contract documents the retainage for this project is five percent (5%) of the work completed and billed. It is our recommendation that the retainage held by the Port Arthur Economic Development Corp. be released to the Contractor and final payment made. This will result in a final payment to EXCAVATORS & CONSTRUCTORS, LTD. from the Port Arthur Economic Development Corp. in the amount of **ONE HUNDRED TWENTY NINE THOUSAND FOUR HUNDRED EIGHTY EIGHT Dollars and FIFTY SIX Cents (\$129,488.56)**. Should you have any questions or require further information please do not hesitate to contact me at 409-724-7888.

Sincerely,

Joe M. Wilson, Jr., P.E.  
Project Manager

Attachments: Engineer's Certificate of Completion  
Contractor's Certificate of Guarantee  
Contractor's Certificate and Release



**EXHIBIT "C"**

**ENGINEER'S CERTIFICATE OF COMPLETION**

Project: JADE AVENUE EXTENSION - PHASE II

Date Of Issuance: February 16, 2009

Owner(s): PORT ARTHUR ECONOMIC DEVELOPMENT CORPORATION

Owner's Project No.: EDC-070, Contract No. 1

Engineer: ARCENEUX & GATES CONSULTING ENGINEERS, INC.

Contractor: EXCAVATORS & CONSTRUCTORS, LTD

This Engineer's Certificate of Completion applies to all Work under the Contract Documents or to the following specified parts thereof:

TO PORT ARTHUR ECONOMIC DEVELOPMENT CORPORATION  
[OWNER]

AND TO EXCAVATORS & CONSTRUCTORS, LTD  
[CONTRACTOR]

The Work to which this Certificate applies has been inspected by authorized representatives of Owner, Contractor and Engineer, and that Work is hereby declared to be complete in accordance with the Contract Documents on

February 12, 2009  
DATE OF COMPLETION

Executed by Engineer on 2-16, 2009

BY:   
ARCENEUX & GATES CONSULTING ENGINEERS, INC.



[SEAL]

**EXHIBIT "D"**

**CONTRACTOR'S CERTIFICATE OF GUARANTEE**

FROM: EXCAVATORS & CONSTRUCTORS, LTD

TO: PORT ARTHUR ECONOMIC DEVELOPMENT CORP.

FOR: JADE AVENUE EXTENSION - PHASE II

REFERENCE CONTRACT NO. EDC-070, Contract No. 1 ENTERED INTO THE 19<sup>th</sup> DAY OF

MARCH, 2008 BETWEEN THE PORT ARTHUR ECONOMIC DEVELOPMENT CORP.

AND EXCAVATORS & CONSTRUCTORS, LTD

OF PORT ARTHUR, TEXAS

FOR: JADE AVENUE EXTENSION - PHASE II

**KNOW ALL MEN BY THESE PRESENTS:**

1. EXCAVATORS & CONSTRUCTORS, LTD. does hereby guarantee all of the work done under the above referenced contract to be free from faulty materials in every particular, and free from improper workmanship, and against injury from proper and usual wear; and agrees to replace or re-execute without cost to the Owner and Operator such work as may be found to be improper or imperfect, and to make good all damage caused to other work or materials, due to such required replacement or re-execution.
2. This guarantee shall cover a period of one (1) year from the date of acceptance of all work under this Contract, as evidenced by the Engineer's Certificate of Completion.
3. This Certificate is given in connection of the final payment under the contract between the Owner and EXCAVATORS & CONSTRUCTORS, LTD and with the knowledge that it will be relied upon in making such payment and that such payment would not be made except upon the truth of the matter contained in this affidavit.

IN WITNESS WHEREOF, the undersigned has signed and sealed this instrument this 16 day  
of Feb., 2009.

[CORPORATE SEAL]

EXCAVATORS & CONSTRUCTORS, LTD

(Contractor)

BY: [Signature]

\_\_\_\_\_, being first duly sworn on oath, deposes and says, first that  
he is the President

second, that he has read the foregoing certificate by him subscribed as \_\_\_\_\_

of EXCAVATORS & CONSTRUCTORS, LTD

Affiant further states that the matters and things stated herein are true.

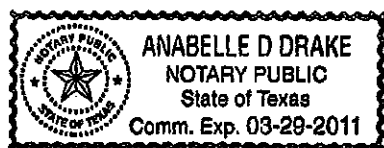
[Signature]

(Affiant)

Subscribed and sworn to before me this 16th day of February,  
2009.

My commission expires 03/29/2011

(Date)



[Signature]

(Notary Public)

IN WITNESS WHEREOF, the undersigned has signed and sealed this instrument this 16 day of Feb, 2009.

[SEAL]

EXCAVATORS & CONSTRUCTORS, LTD.

(Contractor)

BY:

[Signature] President  
(Signature and Title of Officer)

[Signature] (Affiant), being first duly sworn on oath, deposes and says, first, that he is the President (Title) of EXCAVATORS & CONSTRUCTORS, LTD (Name of Company)

second, that he has read the foregoing certificate by him subscribed as President (Title)

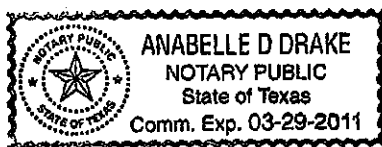
of EXCAVATORS & CONSTRUCTORS, LTD (Name of Company)

Affiant further states that the matters and things stated herein are true.

[Signature] (Affiant)

Subscribed and sworn to before me this 16th day of February, 2009.

My commission expires 03/29/2011 (Date)



Anabelle D Drake  
(Notary Public)