

RESOLUTION NO. 09-436

**A RESOLUTION AS IT PERTAINS TO THE LANDSCAPE  
ARCHITECTURE DESIGN AGREEMENT BETWEEN THE  
CITY OF PORT ARTHUR SECTION 4A ECONOMIC  
DEVELOPMENT CORPORATION AND RICE  
UNIVERSITY SCHOOL OF ARCHITECTURE**

**WHEREAS**, on June 30<sup>th</sup>, 2009 the City Council of the City of Port Arthur approved Resolution No. 09-258 authorizing the City of Port Arthur Section 4A Economic Development Corporation (the "PAEDC") to enter into an agreement with Rice University School of Architecture; and

**WHEREAS**, Rice University has requested changes therein which has been approved by the City of Port Arthur Section 4A Economic Development Corporation in substantially the same form as delineated in Exhibit "A" with the changes as marked therein, and

**WHEREAS**, the final draft of the agreement is delineated in Exhibit "B"

**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 the City Council of the City of Port Arthur herein authorizes PAEDC to enter into a Landscape Architecture Design Agreement with Rice University School of Architecture in substantially the same form as delineated in Exhibit "B"

**Section 3.** That a copy of this Resolution shall be spread upon the Minutes of the City Council.

READ, ADOPTED AND APPROVED on this 2<sup>nd</sup> day of Sept. A.D., 2009,

at a Meeting of the City Council of the City of Port Arthur, Texas, by the following vote:

AYES:

Mayor Prince;

Councilmembers Mayor Pro Tem Segler;  
Chatman, Flood, Beard,  
Williamson, Wise & Henderson.;

NOES: None.

Delores Prince  
DELORES "BOBBIE" PRINCE, MAYOR

ATTEST:

Terrri Hanks  
TERRI HANKS, CITY SECRETARY

APPROVED:

Floyd Batiste  
FLOYD BATISTE, PAEDC CEO

APPROVED AS TO FORM:

Mark Sokolow  
MARK T. SOKOLOW, CITY ATTORNEY

EXHIBIT "A"

## LANDSCAPE ARCHITECTURE DESIGN AGREEMENT

This Landscape Architecture Design Agreement (the "Agreement") is executed by and among the City of Port Arthur Section 4A Economic Development Corporation (the "PAEDC") and the Rice School of Architecture ("Rice") and is to be effective this \_\_\_\_ day of \_\_\_\_\_, 2009.

### RECITALS

A. The PAEDC wishes to under the development of a landscape/streetscape for downtown Port Arthur, Texas (the "City") together with signage and structures appropriate for two gateway locations approaching the downtown areas of the City by vehicular or other methods of transportation.

B. Rice provides an outreach to communities seeking to improve their environment through architecture design projects which provide students with working opportunities at design and client relations.

C. Rice has agreed to provide the development of a landscape/streetscape proposal for the City's downtown development through signage and other structures that would be appropriate for two gateway locations approaching the downtown areas of the City by vehicular or other methods of transportation (the "Project").

D. Rice has agreed to provide a design team made of approximately five (5) students under the supervision of Dr. Gordon Wittenberg, Professor of Architecture, who will serve as the contact person for Rice.

In consideration of the recitals set forth above and in consideration of the terms and conditions set forth below, PAEDC and Rice agree as follows:

1. Design Product. Rice shall provide to PAEDC a landscape/streetscape proposal with a cost estimate and working drawings which could be developed for eventual construction. Rice will provide the following to PAEDC during the Project:

- a) **Site Visits.** Meetings with PAEDC and representatives of the City and interest groups to familiarize the team members with the goals and objectives of the City, photographing the site, preparing copies of any existing site plans, development plans of the PAEDC or the City, to gain input from PAEDC and the City on the Project.
- b) **Conceptual Designs.** Rice will prepare computer-generated 2 and 3-dimensional images for the Project mounted on poster board for public display and CDs with an electric copy of any presentation.
- c) **Interim Updates.** Rice will provide periodic updates on the Project and the development of the proposal approximately every thirty (30) days beginning on or about October 1, 2009.

**Deleted:** September

- d) **Presentation of Landscape/Streetscape Proposal.** Representatives of the design team will provide a presentation of their proposal to PAEDC and representatives of the City on or about December 1, 2009.

2. **Payment.** PAEDC agrees to provide a budget of \$4,000 for the Project with \$1,500 to be paid to Rice by October 15, 2009, to cover costs of assembling research material, travel expenses and related costs with the balance of \$2,500 to be paid at or before the presentation of the Project as outlined in paragraph 1 for costs of reproduction and mounting for presentation materials.

3. **Term of Agreement.** This Agreement will conclude following presentation of materials for the Project, and PAEDC's funding of the budgeted amount set forth in paragraph 2 of this Agreement. Rice has requested an opportunity to present a landscape architectural proposal for the downtown area in addition to the services provided for the Project which would allow Rice the opportunity to utilize the presentation material and research assembled for the Project for the possibility of developing a plan for the revitalization of the City downtown. If PAEDC or the City agree to proceed with additional landscape architectural planning and design by Rice, the parties agree that this Agreement may be continued beyond its initial term.

4. **Relationship of Parties.** Rice acknowledges that the service rendered under this Agreement to PAEDC shall be solely as an independent contractor. Rice acknowledges that it is not considered an affiliate or successor to PAEDC or the City and is not entitled to any PAEDC or City employment rights, benefits and it is expressly understood that the providing of the proposal for the Project under this Agreement is not a joint venture and does not in any manner obligate the PAEDC or the City other than for the compensation to be paid in accordance with the terms of this Agreement.

5. **Release of PAEDC and City by Rice and Design Team Members.** Rice and the Rice design team members, who shall be separately identified and designated by Exhibit to this Agreement, acknowledge that they are acting as independent contractors to PAEDC and the City under this Agreement, and that they do not have an employee, agency, partnership or joint venture relationship with either PAEDC or the City. In performing services as independent contractors under this Agreement, Rice and the Rice design team members named on the attached Exhibit release PAEDC and the City and all of their respective officers, agents and employees from any claim for personal injury or property damage which may arise from or be a consequence of any negligent act, inaction or omission by Rice or the Rice design team members, as the case may be, in carrying out the services for the Project.

6. **Assignment.** This Agreement is not to be assigned by either party without the prior written consent of the other which may not be unreasonably withheld.

7. **Successors and Assigns.** This Agreement shall inure to the benefit of and be binding on each of the parties, their respective heirs, personal representatives, successors and assigns.

**Deleted:** on or before July 1,

**Deleted:** Indemnity. Rice shall indemnify and hold PAEDC and the City, its officers, employees and agents from and against all actions, claims, demands, costs and expenses (including the costs of defending or settling any action, claim or demand including reasonable cost in attorneys' fees), made, sustained, brought or prosecuted in any manner based upon, occasioned by or attributable to any of the work performed by Rice or its team members on the proposal for the Project including but not limited to any claims for patent, trademark, servicemark, copyright violation, injury to any person (including death) or loss of or damage to property or person which may arise from or be a consequence of any negligent action or inaction or omission of Rice, its team members, employees or agents in carrying out the services for the Project.

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**Inserted:** The Rice design team members, who shall be separately identified and designated by Exhibit to this Agreement, acknowledge that they are

**Deleted:** are responsible for all actions, claims, demands, costs or expenses, including the cost of defending or settling any action, claim or demand including reasonable cost and attorneys' fees, made, sustained, brought or prosecuted, in any manner, occasioned by or attributable to any of the work performed on the Project, and they individually and as members of the Project team

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**Inserted:** are responsible for all actions, claims, demands, costs or expenses, including the cost of defending or settling any action, claim or demand including reasonable cost and attorneys' fees, made, sustained, brought or ... 1)

**Deleted:** , consultants and representatives, harmless

8. Entire Agreement. This Agreement constitutes the complete agreement between Rice and PAEDC with respect to the subject matter hereof and supersedes any prior agreements, written or oral, with respect to such matters. There are no representations or warranties made by either party with respect to the subject matter hereof except as specifically set forth in this Agreement. No terms, covenants, conditions, understandings or agreements purporting to modify or vary the terms of this Agreement shall be binding unless hereinafter made in writing and signed by both parties hereto.

9. Impossibility of Performance. Neither party hereto shall be liable in damages or have the right to terminate this Agreement for any delay or default in performing hereunder including the obligation of Rice to provide the presentation materials or the PAEDC to make payments hereunder, if such delay or default is caused by conditions beyond its control including, but not limited to, acts of God, government restrictions, wars or insurrections, strikes, fires, floods, hurricanes, work stoppages and/or lack of materials.

10. Severability. The parties agree that if any part, term, or provision of this Agreement shall be found illegal or in violation of any valid controlling law, the validity of the remaining provisions shall not be affected thereby. However, should the severance of such provision or provisions substantially adversely affect the primary purposes of this Agreement, this Agreement may be cancelled upon thirty (30) days prior written notice by either party to the other.

11. Waiver, Modification. The waiver of a breach hereunder may be affected only by a writing signed by the waiving party and shall not constitute a waiver of any other breach. A provision of this Agreement may be altered only by a writing signed by both parties.

12. Cooperation. Each party shall execute any instruments reasonably believed by the other party to be necessary to implement the provisions of this Agreement, including any relative to copyright or anticipated copyright material.

13. Third Party Property. Parties acknowledge that the services to be provided by Rice under this Agreement may incorporate the use of software/materials of third parties. Rice shall be responsible for determining and shall advise PAEDC of any licenses or fees, if any, before they are incurred for the use of such materials and shall receive PAEDC's written consent before incurring such expense that may be required in connection with the services to be provided under this Agreement. If necessary, PAEDC, with the assistance of Rice, will execute such license agreements or other documents that may be necessary in order to provide access to such third party property to reasonably complete the work to be provided hereunder.

14. Governing Law. This Agreement shall be construed in accordance with the laws of the State of Texas, and venue shall be in Jefferson County, Texas.

15. Notices. Any notices to be given hereunder shall be given by certified or registered mail, return receipt requested, verifiable facsimile or email and considered effective on the date of mailing or transmission. Any notice or communication hereunder shall be sent to the appropriate addresses as set forth below.

16. Acknowledgement by Project Team Members. Rice acknowledges that it shall provide a copy of this Agreement to all members of the Project design team as identified by the Exhibit attached to and acknowledge that they have read and agreed to the conditions for performing the work in the Project, and all conditions and limitations related thereto.

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EXECUTED by each of the parties hereto by their duly authorized representatives as of the date set forth in the initial paragraph of this Agreement.

**City of Port Arthur Section 4A  
Economic Development Corporation**

**Rice School of Architecture**

4173 39<sup>th</sup> Street  
P.O. Box 3934  
Port Arthur, Texas 77642

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

By: \_\_\_\_\_  
**Floyd Batiste, CEO**

By: \_\_\_\_\_

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EXHIBIT "B"

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EXECUTED by each of the parties hereto by their duly authorized representatives as of the date set forth in the initial paragraph of this Agreement.

**City of Port Arthur Section 4A  
Economic Development Corporation**

4173 39<sup>th</sup> Street  
P.O. Box 3934  
Port Arthur, Texas 77642

**Rice School of Architecture**

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

By: \_\_\_\_\_  
**President**

By: \_\_\_\_\_

By: \_\_\_\_\_  
**Secretary**

## **EXHIBIT TO AGREEMENT**

Professor Wittenberg will have a student team composed of the following:

Courtney Benzon

Sean Kizy

Jason Ouyang

- Matthew Feaga

and such other students as are approved by the City of Port Arthur Section 4A Economic Development Corporation and Rice University