

RESOLUTION NO. 10-181

A RESOLUTION APPROVING AWARDING A BID BY THE CITY OF PORT ARTHUR SECTION 4A ECONOMIC DEVELOPMENT CORPORATION TO EXCAVATORS & CONSTRUCTORS, LTD. AND AUTHORIZING THE EXECUTION OF A CONTRACT FOR CONSTRUCTION OF WATER, SANITARY SEWER, PAVING AND DRAINAGE TO SERVE THE PORT ARTHUR BUSINESS PARK PHASE II, CONTRACT NO 3 (A&G NO. EDC-090)

WHEREAS, on April 19, 2010, the Board of Directors of the City of Port Arthur Section 4A Economic Development Corporation (the "PAEDC") approved the bid for the construction of water, sanitary sewer, paving and drainage to serve the PAEDC Business Park located at 9555 W. Port Arthur Road to Hwy 365 to Excavators & Constructors, Ltd. of Port Arthur, Texas, in the amount of \$ 903,364.35; and

WHEREAS, on March 31, 2010, the City of Port Arthur received seven (7) sealed bids for the PAEDC Business Park project which bids provided for alternative project scopes and bids depending on available funding capacity; and

WHEREAS, the apparent low bidder for the overall project improvement was Reytec Construction Resources, Inc. of Houston, Texas with a bid of \$2,018,342.44; and

WHEREAS, based upon street bond fund balance as of April 1, 2010, PAEDC had a funding capacity of \$1,471,626.02; and

WHEREAS, the overall project cannot be awarded due to funding limitation. In order to award the project within the PAEDC funding limitation, PAEDC elected Alternates A, B, C, D, and E as described in the bid proposal; and

WHEREAS, based on this procedure, the lowest, responsive bid which includes Alternates A, B, C, D and E was Excavators & Constructors, Ltd. of Port Arthur, Texas with a bid of \$903,364.35; and

WHEREAS, the Port Arthur City Council hereby recommend that the PAEDC award the contract for this project to Excavators & Constructors, Ltd. on the basis of their total amount bid with Alternates A, B, C, D and E resulting in a contract price of \$ 903,364.35; and

WHEREAS, pursuant to Section 8.19 of the Bylaws, the PAEDC has to submit projects to the City Council for review and approval.

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 authorized the PAEDC to award a bid to Excavators & Constructors, Ltd. of Port Arthur, Texas for the construction of water, sanitary sewer, paving and drainage to serve PAEDC Business Park, Phase II Contract No. 3 in the amount of \$903,364.35.

Section 3. That the construction of PAEDC Business Park Phase II Contract will reflect that the parties to the contract are the PAEDC and Excavators & Contractors, Ltd., as noted in Exhibit "A".

READ, ADOPTED AND APPROVED on this 18th day of May, A.D., 2010,
at a Meeting of the City Council of the City of Port Arthur, Texas, by the following vote:

AYES:

Mayor Prince; Mayor Pro Tem Albright;
Councilmembers Chatman, Segler, Flood
Wise and Henderson.

NOES:

None.

ATTEST:

Deloris Prince

DELORIS "BOBBIE" PRINCE, MAYOR

Terri Hanks

TERRI HANKS, CITY SECRETARY

APPROVED:

Floyd Batiste

FLOYD BATISTE, PAEDC CEO

APPROVED AS TO FORM:

Guy N. Goodson

GUY N. GOODSON, PAEDC ATTORNEY

APPROVED AS TO FORM:

Val Tizeno

VALECIA R. TIZENO, CITY ATTORNEY

EXHIBIT "A"

**WILL BE AVAILABLE FOR VIEWING IN
THE CITY SECRETARY'S OFFICE**

CONTRACT DOCUMENTS AND TECHNICAL SPECIFICATIONS
For Construction of

**WATER, SANITARY SEWER, PAVING AND
DRAINAGE FACILITIES**

To Serve The

PORT ARTHUR BUSINESS PARK – PHASE II

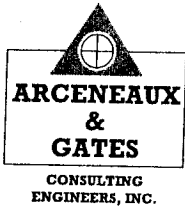
PORT ARTHUR ECONOMIC DEVELOPMENT CORPORATION
PORT ARTHUR, TEXAS

Project No. EDC-090
Contract No. 3

**PORT ARTHUR ECONOMIC
DEVELOPMENT CORPORATION**
JEFFERSON COUNTY, TEXAS

FEBRUARY 2010

ARCENEUX & GATES CONSULTING ENGINEERS, INC.
Engineers * Surveyors * Planners
PORT ARTHUR, TEXAS



ADDENDUM NO. 1

March 22, 2010

***WATER, SANITARY SEWER, PAVING and DRAINAGE FACILITIES
To Serve The
PORT ARTHUR BUSINESS PARK – PHASE II***

***PORT ARTHUR ECONOMIC DEVELOPMENT CORPORATION
Port Arthur, Texas
Jefferson County, Texas***

Job No. EDC-090, CONTRACT NO. 3

This document constitutes **ADDENDUM NO. 1** to the **WATER, SANITARY SEWER, PAVING and DRAINAGE FACILITIES** to serve the **PORT ARTHUR BUSINESS PARK – PHASE II, CONTRACT 3** issued for bidding by the Port Arthur Economic Development Corporation, Port Arthur, Texas, Jefferson County, Texas. **BIDDER MUST ACKNOWLEDGE RECEIPT OF THIS ADDENDUM ON HIS BID FORM.**

CONTRACT DOCUMENTS

1. SECTION I – ADVERTISEMENT FOR BIDS revised as follows:

- a. The Bid Opening is postponed **ONE WEEK**. The first paragraph in the Advertisement for Bids is revised to read as follows:

NOTICE IS HEREBY GIVEN THAT sealed proposals, addressed to the Port Arthur Economic Development Corporation, will be received at the office of the City Secretary, City Hall, until: **3:00 p.m. on March 31, 2010 and all bids received will thereafter be opened and read aloud at: 3:15 p.m. on March 31, 2010 at: City Council Chambers, City Hall, 444 4th Street, Port Arthur, Texas 77642,** for the construction of certain public works or furnishings of certain services briefly described as: **Water, Sanitary Sewer, Paving and Drainage Facilities to serve the Port Arthur Economic Development Corporation Business Park, Phase II, Contract 3.** Any bid received after closing time will be returned unopened.

NO OTHER CONDITIONS OF THE CONTRACT ARE HEREBY CHANGED

[END OF ADDENDUM NO. 1]



ADDENDUM NO. 2

March 26, 2010

***WATER, SANITARY SEWER, PAVING and DRAINAGE FACILITIES
To Serve The
PORT ARTHUR BUSINESS PARK – PHASE II***

***PORT ARTHUR ECONOMIC DEVELOPMENT CORPORATION
Port Arthur, Texas
Jefferson County, Texas***

Job No. EDC-090, CONTRACT NO. 3

This document constitutes **ADDENDUM NO. 2** to the **WATER, SANITARY SEWER, PAVING and DRAINAGE FACILITIES** to serve the **PORT ARTHUR BUSINESS PARK – PHASE II, CONTRACT 3** issued for bidding by the Port Arthur Economic Development Corporation, Port Arthur, Texas, Jefferson County, Texas. **BIDDER MUST ACKNOWLEDGE RECEIPT OF THIS ADDENDUM ON HIS BID FORM.**

CONTRACT DOCUMENTS

1. REPLACE EXISTING SECTION "D" IN THE CONTRACT DOCUMENTS WITH THE ATTACHED SECTION "D".

NO OTHER CONDITIONS OF THE CONTRACT ARE HEREBY CHANGED

[END OF ADDENDUM NO. 2]

CONTRACT DOCUMENTS AND TECHNICAL SPECIFICATIONS
For Construction of

**WATER, SANITARY SEWER, PAVING AND
DRAINAGE FACILITIES**

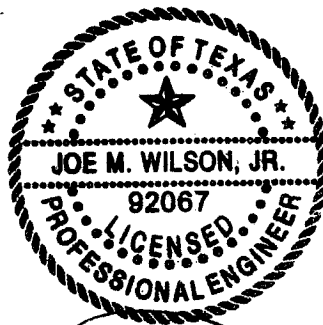
To Serve The

PORT ARTHUR BUSINESS PARK – PHASE II
PORT ARTHUR ECONOMIC DEVELOPMENT CORPORATION
PORT ARTHUR, TEXAS

Project No. EDC-090
Contract No. 3

**PORT ARTHUR ECONOMIC
DEVELOPMENT CORPORATION**
JEFFERSON COUNTY, TEXAS

FEBRUARY 2010



3-2-10

A handwritten signature in black ink, appearing to be "J. Wilson", written over a large, loopy flourish.

ARCENEUX & GATES CONSULTING ENGINEERS, INC.
Engineers * Surveyors * Planners
PORT ARTHUR, TEXAS

CONTRACT DOCUMENTS AND TECHNICAL SPECIFICATIONS
For Construction of

**WATER, SANITARY SEWER, PAVING AND
DRAINAGE FACILITIES**

To Serve The

PORT ARTHUR BUSINESS PARK – PHASE II
PORT ARTHUR ECONOMIC DEVELOPMENT CORPORATION
PORT ARTHUR, TEXAS

Project No. EDC-090
Contract No. 3

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SECTION A
CONSTRUCTION CONTRACT AGREEMENT

**CONSTRUCTION CONTRACT
AGREEMENT**

[Non-Federally Funded Projects]

THIS AGREEMENT, made this _____ day of _____, 2010, by and between the Port Arthur Economic Development Corporation, a municipal corporation organized under the laws of the State of Texas, hereinafter called "OWNER" or "PAEDC" and **EXCAVATORS & CONSTRUCTORS, LTD.** herein acting by and through Jay Braxton, General Partner, hereinafter called "CONTRACTOR".

WITNESSETH: That for and in consideration of the payments, terms, conditions and agreements set forth herein, OWNER and CONTRACTOR agree as follows:

1. The CONTRACTOR will commence and complete the construction of **WATER, SANITARY SEWER, PAVING AND DRAINAGE FACILITIES to Serve the PORT ARTHUR BUSINESS PARK – PHASE II, CONTRACT 3.**
2. The CONTRACTOR will furnish at his own expense all of the materials, supplies, tools, equipment, labor and other services necessary for the construction and completion of the Project described herein.
3. The CONTRACTOR will commence the work required by the Contract Documents on or before a date to be specified in the *Notice to Proceed* and will complete the same within **164** consecutive calendar days as specified in the *Notice to Proceed*, including, but not limited to, all Saturdays, Sundays and Federal, State, and City holidays unless the period for completion is extended otherwise by the Contract Documents.
4. The CONTRACTOR agrees to perform all of the Work described in the Contract Documents and comply with the terms therein for the sum of **\$903,364.35**, or as shown in the Bid Schedule.
5. The term "CONTRACT DOCUMENTS" means and includes the following:
 - (A) **Agreement**
 - (B) **Advertisement for BIDS**
 - (C) **Information for BIDDERS**
 - (D) **BID**
 - (E) **BID BOND**
 - (F) **General Conditions**
 - (G) **Wage Decision**
 - (H) **Supplemental General Conditions**
 - (I) **Payment Bond**
 - (J) **Performance Bond**
 - (K) **Notice of Award**
 - (L) **Notice to Proceed**
 - (M) **Change Order**
 - (N) **Drawings prepared by Arceneaux & Gates Consulting Engineers, Inc.,**
numbered **1** through **69** dated **February 2010.**

(O) Specifications prepared or issued by Arceneaux & Gates Consulting Engineers, Inc., dated February 2010.

(P) Addenda:

No. 1, dated March 22, 2010.

No. 2, dated March 26, 2010.

6. The OWNER will pay to the CONTRACTOR in the manner and at such times as set forth in the General Conditions such amounts as required by the Contract Documents.
7. This Agreement shall be binding upon all parties hereto and their respective heirs, executors, administrators, successors and assigns.

IN WITNESS WHEREOF, the Parties hereto have executed, or caused to be executed by their duly authorized officials, this Agreement in two (2) copies, each of which shall be deemed an original on the date first above written.

APPROVED IN FORM:

OWNER:

Port Arthur Economic Development Corporation

CITY ATTORNEY

NAME Floyd Batiste

TITLE Chief Executive Officer

CONTRACTOR:

Exporters & Constructors LTD

BY

NAME J. J. Braxton, General Partner [SEAL]

ADDRESS 6601 Procter St
Port Arthur TX 77642

ATTEST:

NAME _____

TITLE _____

[CORPORATE SEAL]

ATTEST: _____

NAME: _____

SECTION B
ADVERTISEMENT FOR BIDS

CITY OF PORT ARTHUR, TEXAS
ADVERTISEMENT FOR BIDS

NOTICE IS HEREBY GIVEN THAT sealed proposals, addressed to the Port Arthur Economic Development Corporation, will be received at the office of the City Secretary, City Hall, until: **3:00 p.m. on March 24, 2010 and all bids received will thereafter be opened and read aloud at: 3:15 p.m. on March 24, 2010 at: City Council Chambers, City Hall, 444 4th Street, Port Arthur, Texas 77642,** for the construction of certain public works or furnishings of certain services briefly described as: **Water, Sanitary Sewer, Paving and Drainage Facilities to serve the Port Arthur Economic Development Corporation Business Park, Phase II, Contract 3.** Any bid received after closing time will be returned unopened.

A Cashier's check, or Certified Check, payable without recourse to the order of the Port Arthur Economic Development Corporation, or a bid bond with corporate surety authorized to conduct business in Texas, in an amount not less than five percent (5%) guarantee that, if awarded the Contract, the bidder will promptly enter into a Contract and execute Bond in the forms provided as outlined in the Specifications and instructions to Bidders.

Copies of the PLANS AND SPECIFICATIONS and other CONTRACT DOCUMENTS are on file at the following locations:

PORT ARTHUR ECONOMIC DEVELOPMENT CORPORATION
4173 39th Street
Port Arthur, Texas 77642

ARCENEUX & GATES CONSULTING ENGINEERS, INC.
3501 Turtle Creek Drive, Suite 102
Port Arthur, Texas 77642

THE ASSOCIATED GENERAL CONTRACTORS
5458 Ave. A
Beaumont, Texas 77705

PLANS AND SPECIFICATIONS and other CONTRACT DOCUMENTS are open for public inspection without charge at the above locations. A set of such Documents may be purchased from the Engineer at *3501 Turtle Creek Drive, Suite 102, Port Arthur, Texas 77642* upon making a non-refundable deposit of **\$150.00**. Make checks payable to Arceneaux & Gates Consulting Engineers, Inc. (Postage or delivery charges to be paid by BIDDER.)

The following bonds, each in the amount of one hundred percent (100%) of the Contract price, will be required in accordance with State law as follows: (1) a payment bond for any contract in excess of Fifty Thousand Dollars (\$50,000.00); (2) a performance bond for any contract in excess of One Hundred Thousand Dollars (\$100,000.00).

Attention is called to the fact that this is a Contract for construction of public works and that there must be paid on same not less than the general prevailing wage rates which have been established by the Port Arthur Economic Development Corporation, pursuant to Chapter 2258 of the Texas Government Code, as amended and which are set out in detail in the Contract Documents. The CONTRACTOR shall forfeit as a penalty, to the Port Arthur Economic

Development Corporation, Sixty Dollars (\$60.00) for each laborer, workman or mechanic employed, for each calendar day, or portion thereof, if such laborer, workman or mechanic is paid less than the said stipulated rates for any work done under this Contract. The Davis-Bacon Act* is applicable to this Contract, and the prevailing wage rates established pursuant to said Act are made a part of this Contract. A copy of such current wage schedule is included in the Contract Documents and any applicable change in such wage schedule shall be furnished and Equal Employment Opportunity requirements must be met.

CONTRACTOR'S attention is also directed to the equal opportunity requirements of this Contract: Title VI, Sec. 3 and E.O. 11246.

This Contract is issued by an organization which qualifies for exemption pursuant to the provisions of Section 151.309 of the Texas Limited Sales, Excise and Use Tax Act as codified in Chapter 151 of the Texas Tax Code. Because of the Amendments to Section 151.311 of the Tax Code made by Section 14.07 of Chapter 5 (House Bill No. 11), 72nd Leg., 1st C.S., Acts 1991 at 188, in order for non-consumable materials and equipment to qualify for resale to the Port Arthur Economic Development Corporation, and be exempt from sales tax, the contract and bids must comply with the following requirements.

The bid and contract must separately identify: (1) the charges for non-consumable materials and equipment that are permanently incorporated into the project, and (2) charges for skill, labor and consumable materials, tools and equipment that are permanently incorporated into the project. Bidders are required to have a sales tax permit issued by the Comptroller of the State of Texas in order to qualify under the separated contract procedure.

The Port Arthur Economic Development Corporation, will issue to the CONTRACTOR a specific exemption certificate for this Contract in order that he does not have to pay taxes on qualifying materials, equipment, or other tangible personal property purchased for and permanently incorporated into Port Arthur Economic Development Corporation, realty in performing this Contract. The CONTRACTOR performing this contract must issue to his suppliers an exemption certificate complying with all applicable State Comptroller's rulings, along with a copy of the certificate issued to him by the Port Arthur Economic Development Corporation.

Lump-sum contracts, in which the above referenced charges are not separated, do not qualify for the sales and use tax exemption.

Attention is directed to the *Liquidated Damages* provision of this Contract (Paragraph No. 54 of the General Conditions) and the fact that rainy weather shall constitute justification for any delay in the time for completion only under certain conditions.

This Contract is for a Road Construction project. Each project will be specified by the Port Arthur Economic Development Corporation, in a notice to proceed. Successful Bidder shall be required to attend Pre-Construction Conference.

BIDDER IS CAUTIONED TO READ ALL CONTRACT DOCUMENTS BEFORE SUBMITTING BID, ESPECIALLY ITEM 18 (PRE-BID CONFERENCE) OF THE INFORMATION TO BIDDERS. **ALL BIDDERS SHALL BE REQUIRED TO ATTEND THE MANDATORY PRE-BID CONFERENCE ON: March 17, 2010 at: 10:00 a.m. on the 5th Floor Conference Room of the Port Arthur City Hall: 444 4th Street, Port Arthur, Tx.**

The Port Arthur Economic Development Corporation, reserves the right to reject any and all bids and to waive informalities.

Port Arthur Economic Development Corporation

BY: /s/ SHAWNA TUBBS

Shawna Tubbs

Purchasing Manager

*Davis-Bacon Act is found at 40 U.S.C., § 276a et. seq.

1st Advertisement - March 7, 2010
2nd Advertisement - March 14, 2010

SECTION C
INFORMATION TO BIDDERS

INFORMATION TO BIDDERS

The following instructions are applicable to the Contract, in addition to the requirements set forth in the ADVERTISEMENT FOR BIDS.

1. **BID PROCEDURE**

Bids must be submitted in DUPLICATE upon the prescribed forms, or copies thereof, in sealed envelopes plainly marked. Bids shall be prepared in compliance with the requirements of the ADVERTISEMENT FOR BIDS, these instructions and the instructions printed on the prescribed forms. All blank places on the Proposal form must be filled in as noted, in ink, in both words and figures, with amounts extended and totaled, and no changes shall be made in the phraseology of the forms or of the items mentioned therein. In case of any discrepancy between the written amounts and the figures, the written amounts shall govern. If the Bidder does not bid on optional items (if shown in the Proposal form), "No Bid" shall be entered in the blank spaces therefore. Any bid may be deemed irregular which contains any omission, erasure, alteration, addition, irregularity of any kind or item not called for, or which does not contain prices set opposite to each of the several items in the Proposal form, or in which any of the prices are obviously unbalanced, or which shall in any manner fail to conform to the conditions of the published ADVERTISEMENT FOR BID. The Bidder shall sign his Proposal in the blank area provided therefore. If the bid is made by a partnership or corporation, the name and address of the partnership or corporation shall be shown, together with the name and address of the partners or officers. If the bid is made by a partnership, it must be acknowledged by one of the partners; if made by a corporation, by one of the officers thereof accompanied by Corporate Seal. In order to ensure consideration, the Proposal must be enclosed in a sealed envelope plainly identified by the name of the project and the Contract number, and addressed to the OWNER as prescribed in the Invitation to Bidders.

Withdrawal or modifications to bids are effective only if written notice thereof is filed prior to time of bid opening and at the place specified in the Notice to Bidders. A notice of withdrawal or modifications to a bid must be signed by the CONTRACTOR or his designated representative. No withdrawal or modifications shall be accepted after the time for opening of proposals.

2. **BID SECURITY AND LIQUIDATED DAMAGES**

Bids shall be accompanied by a bid guarantee of not less than five percent (5%) Check or Cashier's Check payable without recourse to the Port Arthur Economic Development Corporation, or a bid bond with corporate surety authorized to conduct business in Texas. Said security shall be submitted with the understanding that it shall guarantee that the Bidder will not withdraw his bid within sixty (60) days after the date of the opening of the bids; that if a bid is accepted, the Bidder will enter into a formal Contract with the OWNER, furnish bonds and insurance as may be required and commence work at the specified time, and that in the event of the withdrawal of said bid within said period, or the failure to enter into said Contract, furnish said bonds and insurance and commence work within the time specified, the Bidder shall be liable to the OWNER for the

difference between the amount specified in the bid in the amount for which the OWNER may otherwise procure the required work. Checks of all except the three lowest responsible Bidders will be returned when award is made; when the Contract is executed, the checks of the two (2) remaining unsuccessful Bidders will be returned; that of the successful Bidder will be returned when formal Contract, bonds and insurance are approved, and work has commenced within the time specified.

The Bidder to whom the award is made shall execute and return the formal Contract with the OWNER and furnish Performance and Payment Bonds and required insurance Documents within ten (10) days after the prescribed forms are presented to him for signature. Said period will be extended only upon written presentation to the OWNER, within said period, of reasons which, in the sole discretion of the OWNER, justify an extension. If said Contract, bonds and insurance Documents are not received by the OWNER within said period or if work has not been commenced within the time specified, the OWNER may proceed to have the work required by the Plans and Specifications performed by any means at its command, and the Bidder shall be liable to the Port Arthur Economic Development Corporation, for any excess cost to the OWNER over his bid amount. Further, the bid guarantee shall be forfeited to the Port Arthur Economic Development Corporation, as liquidated damages and Bidder shall be liable to the Port Arthur Economic Development Corporation, for an additional amount of five percent (5%) of the bid amount as liquidated damages without limitation.

The OWNER, within ten (10) days of receipt of acceptable Performance and Payment Bonds, Insurance Documents and Contract signed by Bidder to whom Contract was awarded, shall sign and return executed duplicate of the Contract to said party. Should OWNER not execute the Contract within such period, the Bidder may, by written Notice to OWNER, withdraw his signed Agreement.

3. **BONDS**

The following bonds, each in the amount of one hundred percent (100%) of the Contract price, will be required in accordance with State law as follows: a (1) PAYMENT BOND for any contract in excess of Twenty-Five Thousand Dollars (\$25,000.00); and, (2) a PERFORMANCE BOND for any contract in excess of One Hundred Thousand Dollars (\$100,000.00).

4. **NOTICE TO PROCEED**

Notice to Proceed shall be issued within ten (10) days of the execution of the Contract by OWNER. Should there be any reason(s) why Notice to Proceed cannot be issued within such period, the time may be extended by mutual agreement between OWNER and CONTRACTOR. If Notice to Proceed has not been issued within the ten (10) day period or a period mutually agreed upon, CONTRACTOR may terminate the Contract without liability on the part of either party.

5. INSURANCE

All insurance must be written by an insurer licensed to conduct business in the State of Texas, unless otherwise permitted by OWNER. The CONTRACTOR shall, at his own expense, purchase, maintain and keep in force insurance that will protect against injury and/or damages which may arise out of or result from operations under this Contract, whether the operations be himself or by any Subcontractor or by anyone directly or indirectly employed by any of them, or by anyone for whose acts any of them may be liable of the following types and limits (No insurance policy or Certificate of Insurance required below shall contain any aggregate policy year limit unless a specific dollar amount[or specific formula for determining a specific dollar amount] aggregate policy year limit is expressly provided in the specification below which covers the particular insurance policy or Certificate of Insurance).

1. *Standard Worker's Compensation Insurance* (with waiver of subrogation in favor of the Port Arthur Economic Development Corporation, City of Port Arthur, its Officers, Agents & Employees). (City and Contractor and all persons providing services shall comply with the workers compensation insurance requirements of Section 406.096 of the Texas Labor Code and 28 TAC Section 110.110, a copy of which is attached hereto and is hereby incorporated by reference.)
2. *Commercial General Liability* occurrence type insurance. No. "XCU" RESTRICTIONS SHALL BE APPLICABLE. Products/completed operations coverage must be included, and Port Arthur Economic Development Corporation, its Officers, Agents, and Employees must be named as an additional Insured.
 - a. Bodily Injury \$500,000 single limit per occurrence, or \$500,000 each person/\$500,000 per occurrence for contracts of \$100,000 or less; or,
 - b. Bodily Injury \$1,000,000 single limit per occurrence or \$1,000,000 each person/\$1,000,000 per occurrence for contracts in excess of \$100,000; and,
 - c. Property Damage \$100,000 per occurrence regardless of Contract amount; and,
 - d. Minimum aggregate policy year limit of \$1,000,000 for contracts of \$100,000 or less; or,
 - e. Minimum aggregate policy year limit of \$2,000,000 for contracts in excess of \$100,000.
3. *Comprehensive Automobile Liability* (including owned, non-owned and hired vehicles coverage).
 - a. Minimum combined single limit of \$500,000 per occurrence for bodily injury and property damage.
 - b. If individual limits are provided, minimum limits are \$300,000 per person, \$500,000 per occurrence for bodily injury, and \$100,000 per occurrence for property damage.

PREAMBLE TO RULE 110.110

The Texas Worker's Compensation Commission adopts new § 110.10, concerning requirements for governmental entities awarding a contract for a building or construction project, and for persons providing services on a building or construction project for a governmental entity. The new rule is adopted with changes to the proposed text published in the April 26, 1994 issue of the Texas Register (19 TexReg 3131). Subsection (a)(7) and (c)(7) were amended by adding language to further clarify who is covered by the rule. Subsections (c)(7)(F) and (c)(3) were added to clarify that a contractor or subcontractor is representing to the governmental entity that workers' compensation coverage is provided. Subsections (d)(8)(C) and (c)(8)(C) were added to require specific language regarding representations of coverage to be added to contracts to provide services on the project. Subsections (c)(7)(F), and (c)(7)(I)(5), (d)(5), (d)(8)(F), (c)(6), and (c)(8)(F) were amended to reduce the retention period for contractors and other persons providing services on the project from three years to one year. Subsection (g) was changed to state that this rule applies to contract advertised for bid after September 1, 1994, rather than awarded after September 1, 1994.

The Texas Labor Code, §406.096, requires workers' compensation insurance coverage for all persons providing services on a building or construction project for a governmental entity. The commission is aware that this statutory requirement is not being met, and this rule is designed to achieve compliance and to implement a record keeping process which will enable oversight of compliance. The rule does this by placing requirements on the governmental entity and on contractors and other persons providing services on a project. These requirements include coverage, certificates of coverage, posted notices of coverage, and notification of changes in coverage status. The rule does not create any duty or burden on anyone which the law does not establish.

The rule defines terms which apply to governmental entity building or construction projects and sets up a clear procedure for governmental entities and contractors that bid for building land construction projects to follow in complying with the requirements of the Texas Labor Code, §406.096. It also defines persons who provide services on a project who are subject to the statutory requirement of coverage, and sets forth their requirements to comply with the statute and the rule. It specifically excludes persons such as food/beverage vendors whose deliveries and labor are not permanently incorporated into the project. The rule puts persons on notice that providing false or misleading certificates of coverage, or failing to provide or maintain required coverage, or failing to report any change that materially affects the provision of coverage may subject the contractor or other persons providing services on the project to administrative penalties, civil penalties, or other civil actions.

The rule requires a governmental entity to timely obtain certificates of coverage, retain them for the duration of the project plus three years, and provide them to the commission upon request and to others entitled to them by law. It also requires the governmental entity as a prerequisite to awarding a contract, and as part of the contract, to require that the contractor provide coverage and certificates of coverage for the contractor's employees; timely obtain and provide the governmental entity all required certificates of coverage for all persons providing services on the project; retain certificates of coverage on file for the duration of the project and for one year thereafter; notify the governmental entity in writing by certified mail or personal delivery, within 10 days after the contractor knew or should have known, of any change that materially affects the provision of

coverage of any person providing services on the project; post notices on each project site; and contractually require persons with whom it contracts to do the same, with the certificates of coverage to be provided to the person for whom they are providing services. The rule also sets out the language to be included in bid specifications and in contracts awarded by a governmental entity and the information required to be in the posted notice to employees. It further establishes a method for obtaining the certificates from persons providing services on the project and providing them to the governmental entity.

It requires a contractor awarded a building or construction contract to provide workers' compensation coverage to the contractor's employees for the duration of the project; file a certificate of coverage of the contractor's employees with the governmental entity prior to being awarded a contract; obtain and provide to the governmental entity, certificates of coverage from each other person with whom it has contract to provide services on the project, prior to that person beginning work on the project; obtain and provide new certificates of coverage shown on the current certificate ends during the duration of the project; retain all certificates of coverage for the duration of the project and for one year thereafter, notify the governmental entity of material changes in coverage; contractually require each other person with whom it contracts to provide a certificate of coverage; and post notices on each project site.

All other persons providing services on a project have the same requirements as a contractor, with the exception of posting notices and with the exception that the certificate of coverage is given to the person for whom they contracted to provide services on the project. The rule uses the term "persons providing services on the project; in lieu of the statutory term "subcontractor because the term "subcontractor" as used in the statute (§406.096) and in this rule is broader than standard industry usage. The use of the different terminology will prevent confusion.

The rule does not create any duty or burden on anyone which the law does not establish.

The new rule is adopted under the Texas Labor Code, §402.061, which authorizes the commission to adopt rules necessary to administer the Act, and Texas Labor Code, §406.096, which establishes requirements for governmental entities, contractors, and subcontractors ("persons providing services on the project") regarding workers' compensation coverage for workers on public building or construction projects.

Rule 110.110 Reporting Requirements for Building or Construction Projects for Governmental Entities.

- (a) The following words and terms, when used in this rule, shall have the following meanings, unless the context clearly indicates otherwise. Terms not defined in this rule shall have the meaning defined the Texas Labor Code, if so defined.
 - (1) Certificate of coverage ("certificate"). A copy of a certificate of insurance, a certificate of authority to self-insure statutory workers' compensation insurance coverage for the person's or entity's employees (including those subject to a coverage agreement) providing services on a project, for the duration of the project.
 - (2) Building or construction - has the meaning defined in the Texas Labor Code, §406.096(e)(1).

(3) Contractor - A person bidding for or awarded a building or construction project by a governmental entity.

(4) Coverage - Worker's compensation insurance meeting the statutory requirements of the Texas Labor Code, §401.011(44).

(5) Coverage agreement - A written agreement on form TWCC-81, form TWCC-82, form TWCC083, or form TWCC-84, filed with the Texas Workers' Compensation Commission which establishes a relationship between the parties for purposes of the Workers' Compensation Act, pursuant to the Texas Labor Code, Chapter 406, Subchapters F and G as one of employer/employee and establishes who will be responsible for providing workers' compensation coverage for persons providing services on the project.

(6) Duration of the project - Includes the time from the beginning of work on the project until the work on the project has been completed and accepted by the governmental entity.

(7) Persons providing services on the project ("subcontractor" In §406.096 of the Act) - Includes all persons or entities performing all or part of the services the contractor has undertaken to perform on the project, regardless of whether that person contracted directly with the contractor and regardless of whether that person has employees. This includes but is not limited to independent contractors, subcontractors, leasing companies, motor carriers, owner-operators, employees of any such entity, or employees of any entity furnishing persons to perform services on the project. "Services" includes but is not limited to providing, hauling, or delivering equipment or materials, or providing labor, transportation, or other service related to a project. "Services" does not include activities unrelated to the project, such as food/beverage vendors, office supply deliveries, and delivery of portable toilets.

(8) Project - Includes the provision of all services related to a building or construction contract for a governmental entity.

(b) Providing or causing to be provided a certificate of coverage pursuant to this rule is a representation by the insured that all employees of the Insured who are providing services on the project are covered by workers' compensation coverage, that the coverage is based on proper reporting of classification codes and payroll amounts, and that all coverage agreements have been filed with the appropriate insurance carrier or, in the case of a self-insured, with the commission's Division of Self-Insurance Regulation. Providing false or misleading certificates of coverage, or failing to provide or maintain required coverage, or failing to report any change that materially affects the provision of coverage may subject the contractor or other person providing services on the project to administrative penalties, criminal penalties, civil penalties, or other civil actions.

- (c) A governmental entity that enters into a building or construction contract on a project shall:
- (1) Include in the bid specifications, all the provisions of subsection (d) of this rule, using the language required by paragraph (7) of this subsection;
 - (2) As part of the contracts, using the language required by paragraph (7) of this subsection, require the contractor to perform as required in subsection (d) of this rule;
 - (3) Obtain from the contractor a certificate of coverage for each person providing services of the project, prior to that person beginning work on the project;
 - (4) Obtain from the contractor a new certificate of coverage showing extension of coverage;
 - (A) Before the end of the current coverage period, if the contractor's current certificate of coverage shows that the coverage period ends during the duration of the project, and
 - (B) No later than seven days after the expiration of the coverage for each other person providing services on the project whose current certificate shows that the coverage period ends during the duration of the project;
 - (5) Retain certificates of coverage on file for the duration of the project and for three years thereafter;
 - (6) Provide a copy of the certificates of coverage to the commission upon request and to any person entitle to them by law; and,
 - (7) Use the following language for bid specifications and contracts, without any additional works or changes, except those required to accommodate the specific document in which they are contained or to impose stricter standards of documentation in Figure 1:

(Figures 1)

Article _____. *Worker's Compensation Insurance Coverage.*

A. *Definitions:*

Certificate of coverage ("certificate"). A copy of a certificate of insurance, a certificate of authority to self-insure issued by the commission, or a coverage agreement (TWCC-81, TWCC-82, TWCC-83, or TWCC-84), showing statutory workers' compensation insurance coverage for the person's or entity's employees providing services on a project, for the duration of the project.

Duration of the project - includes the time from the beginning of the work on the project until the contractor's/person's work on the project has been completed and accepted by the governmental entity.

Persons providing services on the project ("subcontractor" in §406.095) includes all persons or entities performing all or part of the services the contractor has undertaken to perform on the project, regardless of whether that person contracted directly with the contractor and regardless of whether that person has employees. This includes, without limitation, independent contractors, subcontractors, leasing companies, motor carriers, owner-operators employees of any such entity, or employees of any entity which furnishes persons to provide services on the project. "Services" include, without limitation, providing, hauling, or delivering equipment or materials, or providing labor, transportation, or other service related to a project. "Services" does not include activities unrelated to the project, such as food/beverage vendors, office supply deliveries, and delivery of portable toilets.

- B. The contractor shall provide coverage, based on proper reporting of classification codes and payroll amounts and filling of any coverage agreements, which meets the statutory requirements of Texas Labor Code, Section 401.011(44) for all employees of the contractor providing services on the project, for the duration of the project.*
- C. The Contractor must provide a certificate of coverage to the governmental entity prior to being awarded the contract.*
- D. If the coverage period shown on the contractor's current certificate of coverage ends during the duration of the project, the contractor must, prior to the end of the coverage period, file a new certificate of coverage with the governmental entity showing that coverage has been extended.*
- E. The contractor shall obtain from each person providing services on a project, and provide to the governmental entity:*
 - (1) a certificate of coverage, prior to that person beginning work on the project, so the governmental entity will have on file certificates of coverage showing coverage for all persons providing services on the project; and,*
 - (2) no later than seven days after receipt by the contractor, a new certificate of coverage showing extension of coverage (if the coverage period shown on the current certificate of coverage ends during the duration of the project.*
- F. The contractor shall retain all required certificates of coverage for the duration of the project and for one year thereafter.*

- G. *The contractor shall notify the governmental entity in writing by certified mail or personal delivery, within 10 days after the contractor knew or should have known, of any change that materially affects the provision of coverage of any person providing services on the project.*
- H. *The contractor shall post on each project site a notice, in the text form and manner prescribed by the Texas Worker's Compensation Commission, informing all persons providing services on the project that they are required to be covered, and stating how a person may verify coverage and report lack of coverage.*
- I. *The contractor shall contractually required each person with whom it contracts to provide services on a project, to:*
- (1) *Provide coverage, based on proper reporting of classification codes and payroll amounts and filling of any coverage agreements, which means the statutory requirements of Texas Labor Code, Section 401.011 (44) for all of its employees providing services on the project, for the duration of the project;*
 - (2) *Provide to the contractor, prior to that person beginning work on the project, a certificate of coverage showing that coverage is being provided for all employees of the person providing services on the project, for they duration of the project;*
 - (3) *Provide the contractor, prior to the end of the coverage period, a new certificate of coverage showing extension of coverage,(if the coverage period shown on the current certificate of coverage and during the duration of the project:*
 - (4) *Obtain from each other person with whom it contracts, and provide to the contractor:*
 - (a) *a certificate of coverage, prior to the other person beginning work on the project; and*
 - (b) *a new certificate of coverage showing extension of coverage, prior to the end of the coverage period. If the coverage period shown on the current certificate of coverage ends during the duration of the project;*
 - (5) *Retain all required certificates of coverage on file for the duration of the project and for one year thereafter;*
 - (6) *Notify the governmental entity in writing by certified mail or personal delivery, within 10 days after the person knew or should have known, of any change that materially affects the provision of coverage of any person providing services on the project; and*

(7) Contractually require each person with whom it contracts, to perform as required by paragraphs (1) – (7), with the certificates of coverage to be provided to the person for whom they are providing services.

J. By signing this contract or providing or causing to be provided a certificate of coverage, the contractor is representing to the governmental entity that all employees of the contractor who will provide services on the project will be covered by worker's compensation coverage for the duration of the project, that the coverage will be based on proper reporting of classification codes and payroll amounts, and that all coverage agreements will be filed with the appropriate insurance carrier or, in the case of a self-insured, with the commission's Division of Self-Insurance Regulation. Providing false or misleading information may subject the contractor to administrative penalties, criminal penalties, civil penalties, or other civil actions.

K. The contractor's failure to comply with any of these provisions is a breach of contract by the contractor which entitles the governmental entity to declare the contract void if the contractor does not remedy the breach within ten days after receipt of notice of breach from the governmental

(d) A contractor shall:

(1) Provide coverage for its employees providing services on a project, for the duration of the project based on proper reporting of classification codes and payroll amounts and filing of any coverage agreements;

(2) Provide a certificate of coverage showing workers' compensation coverage to the governmental entity prior to beginning work on the project;

(3) Provide the governmental entity, prior to the end of the coverage period, a new certificate of coverage showing extension of coverage, if the coverage period shown on the contractor's current certificate of coverage ends during the duration of the project;

(4) Obtain from each person providing services on a project, and provide to the governmental entity:

(A) a certificate of coverage, prior to that person beginning work on the project, so the governmental entity will have on file certificates of coverage showing coverage for all persons providing services on the project; and,

(B) no later than seven days after receipt by the contractor, a new certificate of coverage showing extension of coverage, if the coverage period shown on the current certificate of coverage code during the duration of the project;

- (5) *Retain all required certificates of coverage on file for the duration of the project and for one year thereafter;*
- (6) *Notify the governmental entity in writing by certified mail or personal delivery, within 10 days after the contractor knew or should have known, of any change that materially affects the provision of coverage of any person providing services on the project;*
- (7) *Post a notice on each project site informing all persons providing services on the project that they are required to be covered, and stating how a person may verify current coverage and report failure to provide coverage. This notice does not satisfy other posting requirements imposed by the Act or other commission rules. This notice must be printed with a title in at least 30 point bold type and text in at least 19 point normal type, and shall be in both English and Spanish and any other language common to the worker population. The text for the notices shall be the following text in Figure 2 provided by the commission on the sample notice, without any additional works or changes:*

(Figure 2)

REQUIRED WORKER'S COMPENSATION COVERAGE

"The law requires that each person working on this site or providing services related to this construction project must be covered by worker's compensation insurance. This includes persons providing, hauling, or delivering equipment or materials, or providing labor or transportation or other service related to the project, regardless of the identify of their employer or status as an employee."

"Call the Texas Worker's Compensation Commission at 512-440-3789 to received information on the legal requirement for coverage, to verify whether your employer has provided the required coverage, or to report an employer's failure to provide coverage." and

- (8) *Contractually require each person with whom it contracts to provide services on a project, to:*
 - (A) *Provide coverage based on proper reporting of classification codes and payroll amounts and filing of any coverage agreements for all of its employees providing services on the project, for the duration of the project;*
 - (B) *Provide a certificate of coverage to the contractor prior to that person beginning work on the project;*
 - (C) *Include in all contracts to provide services on the project the language in subsection (o) (3) of this rule;*
 - (D) *Provide the contractor, prior to the end of the coverage period, a new certificate of coverage showing extension of coverage, if the coverage*

period shown on the current certificate of coverage ends during the duration of the project;

(E) Obtain from each other person with whom it contracts, and provide to the contractor;

(I) a certificate of coverage, prior to the other person beginning work on the project; and

(II) prior to the end of the coverage period, a new certificate of coverage showing extension of the coverage period, if the coverage period shown on the current certificate of coverage ends during the duration of the project:

(F) Retain all required certificates of coverage on file for the duration of the project and for one year thereafter;

(G) Notify the governmental entity in writing by certified mail or personal delivery, within 10 days after the person knew or should have known, of any change that materially affects the provision of coverage of any person providing services on the project; and,

(H) Contractually require each person with whom it contracts, to perform as required by paragraphs (A) - (H), with the certificate of coverage to be provided to the person for whom they are providing services.

(e) A person providing services on a project, other than a contractor, shall:

(1) Provide coverage for its employees providing services on a project, for the duration of the project based on proper reporting of classification codes and payroll amounts and filing of any coverage agreements;

(2) Provide a certificate of coverage as required by its contract to provide services on the project, prior to beginning work on the project;

(3) Have the following language in its contract to provide services on the project:

"By signing this contract or providing or causing to be provided a certificate of coverage, the person signing this contract is representing to the governmental entity that all employees of the person signing this contract who will provide services on the project will be covered by workers' compensation coverage for the duration of the project that the coverage will be based on proper reporting of classification codes and payroll amounts, and that all coverage agreements will be filed with the appropriate insurance carrier or, in the case of a self-insured, with the commission's Division of Self-Insurance Regulation. Providing false or misleading information may subject the contractor to administrative penalties, criminal penalties, civil penalties, or other civil actions.

(4) Provide the person for whom it is providing services on the project, prior to the end of the coverage period shown on its current certificate of coverage, a new certificate showing extension of coverage, if the coverage period shown on the certificate of coverage ends during the duration of the project:

(5) Obtain from each person providing services on a project under contract to it, and provide as required by its contract:

(A) A certificate of coverage, prior to the other person beginning work on the project; and

(B) Prior to the end of the coverage period, a new certificate of coverage showing extension of the coverage period, if the coverage period shown on the current certificate of coverage ends during the duration of the project;

(6) Retain all required certificates of coverage on file for the duration of the project and for one year thereafter;

(7) Notify the governmental entity in writing by certified mail or personal delivery, of any change that materially affects the provisions of coverage of any person providing services on the project and sent the notice within 10 days after the person knew or should have known of the change; and

(8) Contractually require each other person with whom it contracts to:

(A) Provide coverage based on proper reporting of classification codes and payroll amounts and filing of any coverage agreements for all of its employees providing services on the project, for the duration of the project;

(B) Provide a certificate of coverage to it prior to that other person beginning work on the project;

(C) Include in all contracts to provide services on the project the language in subsection (e)(3) of this rule;

(D) Provide, prior to the end of coverage period, a new certificate of coverage showing extension of the coverage period, if the coverage period shown on the current certificate of coverage ends during the duration of the project

(E) Obtain from each other person under contract to it to provide services on the project, and provide as required by its contract:

(i) a certificate of coverage, prior to the other person beginning work on the project; and

(ii) prior to the end of the coverage period, a new certificate of coverage showing extension of the coverage period, if the coverage period shown on the current certificate of coverage ends during the duration of the project

period shown on the current certificate of coverage ends during the duration of the contract;

- (F) Retain all required certificates of coverage on file for the duration of the project and for one year thereafter;*
 - (G) Notify the governmental entity in writing by certified mail or personal delivery, within 10 days after the person knew or should have known, of any change that materially affects the provision of coverage of any person providing services on the project; and*
 - (H) Contractually require each person with whom it contracts, to perform as required by paragraphs (A) - (H), with the certificate of coverage to the provided to the person for whom they are providing services.*
- (f) If any provision of this rule or its application to any person or circumstance is held invalid, the invalidity does not affect other provisions or applications of this rule that can be given effect without the invalid provision or application, and to this end the provisions of this rule are declared to be severable.*
- (g) This rule is applicable for building or construction contracts advertised for bid by a governmental entity on or after September 1, 1994.*

Effective Date: September 1, 1994

4. *Contractual Liability Insurance* covering the indemnity provision of this Contract in the same amount and coverage as provided for Commercial General Liability Policy, specifically referring to this Contract by date, job number and location;
5. *All-Risk Builder's Risk of the non-reporting type* (**NOT REQUIRED** for paving projects, water and sewer line projects or projects involving lump sum payments).

CONTRACTOR shall cause CONTRACTOR'S insurance company or insurance agent to fill in all information required (including names of insurance agency, CONTRACTOR and insurance companies, and policy numbers, effective dates and expiration dates) and to date and sign and do all other things necessary to complete and make into a valid Certificate of Insurance the CERTIFICATE OF INSURANCE form attached to and made a part of the Information To Bidders, and pertaining to the above listed Items 1, 2, 3 and 4; and before commencing any of the work and within the time otherwise specified. CONTRACTOR shall file said completed form with the OWNER. None of the provisions in said Form shall be altered or modified in any respect except as herein expressly authorized. Said CERTIFICATE OF INSURANCE Form contains a provision that coverages afforded under the policies will not be altered, modified or cancelled unless at least fifteen (15) days prior written notice has been given to the OWNER. CONTRACTOR shall also file with the OWNER valid CERTIFICATE(s) OF INSURANCE on like form from or for all Subcontractors and showing the Subcontractor(s) as the Insured. Said completed CERTIFICATE OF INSURANCE Form(s) shall in any event be filed with OWNER not more than ten (10) days after execution of this Contract.

The original Builder's Risk policy (if required) shall provide for fifteen (15) days written notice of alteration, modification or cancellation and shall be furnished to OWNER. Provided, however, until the Original Policy is issued and furnished to the OWNER a Certified Insurance Binder with the identical notice will be acceptable in place of the original policy, which original policy must be received by the OWNER not later than thirty (30) days after issuance of the Notice to Proceed for the project. Notwithstanding any other provision in the Contract Documents, it is further mutually understood and agreed that no payment will be due and owing or made to the CONTRACTOR for any work performed under the Contract until all of the required insurance documentation, including the original policy specified above, are received by the OWNER.

6. **JOB EXAMINATION**

Bidder should carefully examine and be familiar with the Plans, Specifications and other Documents and other conditions and matters which can in any way affect the work or the cost thereof. By submitting a bid, the CONTRACTOR acknowledges that he or his qualified representative has visited the job site and investigated and satisfied himself as to: (a) the conditions affecting the work including but not limited of the physical conditions of the site which may bear upon site access, handling and storage of tools and materials, access to water, electric or other utilities or otherwise affect performance of

required activities; (b) the character and quantity of all surface and subsurface materials or obstacles to be encountered in so far as this information is reasonably ascertainable from inspection of the site, including exploratory work done by the OWNER or a designated consultant. Failure to do all of the above will not relieve a successful Bidder of the obligation to furnish all material and labor necessary to carry out the provisions of the Contract Documents and to complete the contemplated work for the considerations set forth in the bid. Any information shown in the specifications or on the Plans in regard to subsurface data, test borings and similar conditions is to be considered approximate and does not relieve the Bidder of the responsibility for its verification. OWNER is not responsible for any failure by the CONTRACTOR to acquaint himself with available information for estimating properly the difficulty or cost of successfully performing the work. The OWNER is not responsible for any conclusions or interpretations made by the CONTRACTOR on the basis of the information made available by the OWNER. In conformity with applicable statutes, the OWNER has adopted a labor classification and a minimum wage scale, which is included preceding the Specifications.

7. SALES TAX

This Contract is issued by an organization which qualifies for exemption pursuant to the provisions of Section 151.209 of the Texas Limited Sales, Excise and Use Tax Act as codified in Chapter 151 of the Texas Tax Code.

The CONTRACTOR'S attention is directed to the State of Texas Comptroller of Public Accounts Limited Sales, Excise and Use Tax rules and regulations Rulings regarding Repairmen and Contractors - Reference: Section 151.056 Texas Tax Code which, upon compliance with certain conditions, provides for exemption from this tax of non-consumable materials and equipment permanently incorporated into work done for an exempt organization, and to House Bill 11 amendments to Section 151.311 of the Tax Code (Vernon Supp. 1992) as they relate to separated contracts/bids in order for non-consumable materials and equipment to qualify for resale to the Port Arthur Economic Development Corporation, and be exempt from sales tax.

Any Bidder may elect to exclude this sales tax from his bid. The bid and contract, however, must separately identify the charges for: (1) non-consumable materials and equipment that are permanently incorporated into the project; and, (2) charges for skill, labor and consumable materials, tools and equipment which are not permanently incorporated into the project. This statement shall be included in and made part of the Contract. CONTRACTORS are required to have a sales tax permit issued by the Comptroller of the State of Texas in order to qualify under the exemption provisions and the separated Contract procedure.

The City will issue a specific exemption certificate for a separated Contract to the CONTRACTOR in order that he does not have to pay taxes on qualifying materials and equipment purchased for and permanently incorporated into the Port Arthur Economic Development Corporation, project. The CONTRACTOR performing this Contract must issue to his suppliers an exemption certificate in lieu of the tax, said exemption certificate complying with all applicable State Comptroller's rulings, along with a copy of the certificate issued to him by the Port Arthur Economic Development Corporation,.

The OWNER will make no further allowance for and will make no price adjustment above or below the originally bid unit prices on account of this tax. It shall be the CONTRACTOR'S sole responsibility, if CONTRACTOR has elected to exclude the sales tax from the bid, to comply with the aforementioned Rulings and with any other applicable rules, regulations or laws pertaining to the Texas Limited Sales, Excise and Use Tax which may now or at any time during the performance of this Contract be in effect, and the OWNER shall have no responsibility for any sales or use tax which the CONTRACTOR may be required to pay as a result of CONTRACTOR'S failure or the OWNER'S failure to comply with said rules, regulations or laws, or as the result of the performance of the Contract or any part hereof by the CONTRACTOR.

Bidders are cautioned that materials which are not permanently incorporated into the work (Example: Fuel, lubricants, tools, forming materials, etc.) are not eligible for exemption and are not to be included in the statement as "Non-Consumable Materials and Equipment".

8. **FINANCIAL STATEMENT AND EXPERIENCE RECORD**

The Bidder will, upon request by the OWNER, furnish such information and data as OWNER may request to determine ability of the Bidder to perform the work, including, without limitation, a list of all jobs completed in the last 24 months giving name of OWNER, amount of Contract, description of the job, and name of OWNER'S representative who is familiar with the work performed by the CONTRACTOR.

9. **INTERPRETATION OF PLANS AND SPECIFICATIONS**

Bidders desiring further information, or further interpretation of the Plans and Specifications must make request for such information in writing to the Architect/Engineer, not later than 96 hours before the bid opening. Answers to all such requests will be given in writing to all qualified Bidders, in Addendum form, and all addenda will be bound and made a part of the Contract Documents. No other explanation or interpretation will be considered official or binding. Should a Bidder find discrepancies in, or omissions from, the Plans, Specifications or other Contract Documents, or should a Bidder be in doubt as to their meaning, the Bidder should, no later than 96 hours prior to the bid opening, notify the Architect/Engineer in order that a written Addendum if necessary, may be sent to all Bidders prior to submission of the bids. Failure to request such clarification is a waiver to any claim by the Bidder for expense made necessary by reason of later interpretation of the Contract Documents by the OWNER.

10. **AWARD OF CONTRACT**

Unless it elects to reject all bids, the OWNER will award the Contract as promptly as possible consistent with the time required for a thorough analysis of bids submitted. Award will be made on the basis of the greatest advantage to the OWNER, considering all elements of the bid. The right is reserved to reject any or all Proposals and to waive technical defects, as the interest of the OWNER may require. The OWNER can award the

contract to a Bidder whose principal place of business is located in the City of Port Arthur and whose bid is within 5% of the lowest bid price.

A Bidder may withdraw his Proposal before the expiration of the time during which a Proposal may be submitted, without prejudice to himself, by submitting a written request for its withdrawal to the officer who holds it.

11. **TIME OF COMPLETION**

Attention is directed to the requirement that each Bidder specify in his Proposal the time in which he will agree to complete the work. The time required for completion of the work will be a consideration in the determination of the successful Bidder. Unless otherwise specified, Bidder must state time in consecutive calendar days, including, but not limited to, all Saturdays, Sundays, and Federal, State and City holidays.

12. **SUBSTITUTIONS**

Where materials or equipment are specified by a trade or brand name, it is not the intention of the OWNER to discriminate against an equal product of another manufacturer, but rather to set a definite standard of quality or performance, and to establish an equal basis for the evaluation of bids.

13. **LAWS**

All applicable laws, ordinances and the rules and regulations of all authorities having jurisdiction over construction of the project shall apply to the Contract throughout.

14. **EQUAL OPPORTUNITY**

Bidder agrees to abide by the requirement under Executive Order No. 11246, as amended, including specifically the provisions of the equal opportunity clause set forth in the General Conditions.

15. **MATERIAL SUPPLIERS AND SUBCONTRACTORS**

Low bidder shall supply the names and addresses of major material suppliers and Subcontractors when requested to do so by OWNER.

16. **RETAINAGE**

Ten percent (10%) {five percent (5%) if the total contract exceeds Twenty-five Thousand Dollars [\$25,000]} of the amount of each periodic progress payment shall be retained by OWNER until final completion and acceptance of all work under the CONTRACT.

17. **UNIT PRICES**

If the Contract may be let on a unit price basis, the Specifications furnished to bidders shall contain approximate quantities estimated upon the best available information, but

the compensation to be paid to the CONTRACTOR shall be based upon the actual quantities constructed or supplied.

18. **PRE-BID CONFERENCE**

A **MANDATORY PRE-BID CONFERENCE** between the Engineer, Representatives of the Port Arthur Economic Development Corporation, and prospective bidders will be held at: **10:00 a.m., Wednesday, March 17, 2010** at the **5th Floor Conference Room of the Port Arthur City Hall: 444 4th Street, Port Arthur, Tx .**

The purpose of the **MANDATORY PRE-BID CONFERENCE** is to make certain that the scope of work is fully understood, to answer any questions, to clarify the intent of the Contract Documents, and to resolve any problems that may affect the project construction. No addendum will be issued at this meeting, but subsequent thereto, the Engineer, if necessary, will issue an addendum(s) to clarify the intent of the Contract Documents.

Bids received from firms or individuals not listed on the roll of attendees of the **MANDATORY PRE-BID CONFERENCE** will be rejected and returned unopened to the Bidder.

SECTION D
BID

BID

TO: Port Arthur Economic Development Corporation
4173 39th Street
P.O. Box 3934
City of Port Arthur, Texas 77642

Proposal of EXCAVATORS & CONSTRUCTORS, LTD. (hereinafter called "BIDDER"), organized and existing under the laws of the State of Texas, doing business as * a Partnership, and acting by and through Excavators & Constructors, LTD to the Port Arthur Economic Development Corporation, (hereinafter called "OWNER").

In compliance with your Advertisement for Bids, BIDDER hereby proposes to perform all work for the construction of WATER, SANITARY SEWER, PAVING AND DRAINAGE FACILITIES to Serve the PORT ARTHUR ECONOMIC DEVELOPMENT CORPORATION BUSINESS PARK - PHASE II, CONTRACT 3 in strict accordance with the Contract Documents, within the time set forth in the Notice to Proceed and at the prices stated below, and Bidder shall enter into Contract for same within the time specified in Contract Documents.

By submission of this BID, each BIDDER certifies, and in the case of a joint BID, each party thereto certifies as to his own organization, that this BID has been arrived at independently, without consultation, communication, or agreement as to any matter relating to this BID with any other BIDDER or with any competitor.

BIDDER hereby agrees to commence WORK under this Contract on or before a date to be specified in the Notice to Proceed and to fully complete the PROJECT within 270 consecutive calendar days specified in the Notice to Proceed, including, but not limited to, all Saturdays, Sundays, and Federal, State, and City holidays thereafter. BIDDER further agrees to pay as liquidated damages, the sum of \$500.00 for each consecutive calendar day thereafter including, but not limited to, all Saturdays, Sundays, and Federal, State and City holidays as provided in Section 51 of the General Conditions.

Enclosed is bid security as required.

BIDDER acknowledges receipt of the following ADDENDUM:

No. 1 03/22/2010

No. 2 03/26/2010

BIDDER agrees to perform all the work described in the Contract Documents for the following unit prices or lump sum:

**Insert "a corporation," "a partnership," or "an individual" as applicable.*

Item No.	Approx. Qty.	Unit	Description of Item with Unit Price Written in Words	Unit Price	Amount
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BASE BID ITEMS

1.	1	L.S.	Mobilization, Bonds, Insurance, Onsite Facilities, Complete in Place. @ <u>Eighty-Eight Thousand Seven Hundred Eighty-One Dollars and No/100</u> Per Lump Sum	\$ <u>88,781.00</u>	\$ <u>88,781.00</u>
2.	35.0	STA.	Clearing and Grubbing, Complete in Place. @ <u>Two Hundred Four Dollars and No/100</u> Per Station	\$ <u>204.00</u>	\$ <u>7,140.00</u>
3.	735	L.F.	Silt Control Fencing, Complete in Place. @ <u>Two Dollars and 60/100</u> Per Linear Foot	\$ <u>2.60</u>	\$ <u>1,911.00</u>
4.	28	EA.	Silt Control Inlet Protection, Complete in Place. @ <u>Thirty-Three Dollars and No/100</u> Per Each	\$ <u>33.00</u>	\$ <u>924.00</u>
5.	33.9	STA.	Roadway Excavation and/or Embankment (Station Grading), 75 Foot Wide Right-of-Way, Alignment "A" Sta. 0+00 through 11+33, Alignment "B" Sta. 0+00 through 15+50, Alignment "C" 1+13 through 8+17, Complete in Place. @ <u>Fifteen Hundred Seventy-Four Dollars and No/100</u> Per Station	\$ <u>1,574.00</u>	\$ <u>53,358.60</u>
6.	15,860	S.Y.	8-Inch Compacted Subgrade, Complete in Place. @ <u>Two Dollars and 55/100</u> Per Square Yard	\$ <u>2.55</u>	\$ <u>40,443.00</u>

Item No.	Approx. Qty.	Unit	Description of Item with Unit Price Written in Words	Unit Price	Amount
7.	340	TON	Lime for Subgrade Stabilization, Complete in Place. @ <u>One Hundred Forty-Three Dollars</u> <u>and No/100</u> Per Ton	\$ <u>143.00</u>	\$ <u>48,620.00</u>
8.	15,860	S.Y.	Manipulation of Lime, When Approved by Engineer, Complete in Place. @ <u>One Dollar and 10/100</u> <u></u> Per Square Yard	\$ <u>1.10</u>	\$ <u>17,446.00</u>
9.	14,140	S.Y.	8-Inch Class "P" Reinforced Concrete Pavement, Complete in Place. @ <u>Thirty-Two Dollars and 90/100</u> <u></u> Per Square Yard	\$ <u>32.90</u>	\$ <u>465,206.00</u>
10.	6,600	L.F.	6-Inch Upright Concrete Curb, Complete in Place. @ <u>Two Dollars and 40/100</u> <u></u> Per Linear Foot	\$ <u>2.40</u>	\$ <u>15,840.00</u>
11.	6,420	L.F.	5-Foot Reinforced Concrete Sidewalk, Complete in Place. @ <u>Fourteen Dollars and 85/100</u> <u></u> Per Linear Foot	\$ <u>14.85</u>	\$ <u>95,337.00</u>
12.	6	EA.	Type 1, TxDOT Concrete Handicap Ramp, Complete in Place. @ <u>Five Hundred Forty-Two Dollars and</u> <u>No/100</u> Per Each	\$ <u>542.00</u>	\$ <u>3,252.00</u>

Item No.	Approx. Qty.	Unit	Description of Item with Unit Price Written in Words	Unit Price	Amount
13.	4	EA.	Type 7, TxDOT Concrete Handicap Ramp, Complete in Place. @ <u>Five Hundred Twenty Dollars and No/100</u> Per Each	\$ <u>520.00</u>	\$ <u>2,080.00</u>
14.	1	L.S.	Design and Submittal of Trench Excavation and Shoring Safety Plan, Complete in Place. @ <u>Five Hundred Dollars and No/100</u> Per Lump Sum	\$ <u>500.00</u>	\$ <u>500.00</u>
15.	3,319	L.F.	Trench Safety System for Storm Sewer Greater Than 4 Feet in Depth, Complete in Place. @ <u>No Dollars and 90/cents</u> Per Linear Foot	\$ <u>0.90</u>	\$ <u>2,987.10</u>
16.	13	EA.	Type "C" Storm Sewer Manhole, Complete in Place. @ <u>Forty-Six Hundred Fifty-Two Dollars and No/100</u> Per Each	\$ <u>4,652.00</u>	\$ <u>60,476.00</u>
17.	14	EA.	Type "C2" Storm Sewer Inlet, Complete in Place. @ <u>Thirty-Three Hundred Fifty Dollars and No/100</u> Per Each	\$ <u>3,350.00</u>	\$ <u>46,900.00</u>
18.	13	EA.	Storm Sewer Grate Inlet, Complete in Place. @ <u>Eighteen Hundred Sixty-Five Dollars and No/100</u> Per Each	\$ <u>1,865.00</u>	\$ <u>24,245.00</u>

Item No.	Approx. Qty.	Unit	Description of Item with Unit Price Written in Words	Unit Price	Amount
19.	1	EA.	48-Inch Concrete Headwall, Alignment "A", Complete in Place. @ <u>Fifty-Nine Hundred Sixty-Three Dollars</u> <u>and No/100</u> Per Each	\$ <u>5,963.00</u>	\$ <u>5,963.00</u>
20.	1	EA.	8-Foot x 6-Foot Concrete Headwall with 3:1 Flared Wings, Alignment "C", Complete in Place. @ <u>Forty-Five Hundred Twenty Dollars</u> <u>No/100</u> Per Each	\$ <u>4,520.00</u>	\$ <u>4,520.00</u>
21.	2	EA.	30" Reinforced Concrete Pipe Concrete Spillway, Alignment "C", Complete in Place. @ <u>Two Hundred Seven Dollars and</u> <u>No/100</u> Per Each	\$ <u>207.00</u>	\$ <u>414.00</u>
22.	4.0	STA.	Channel Excavation Alignment "A", Complete in Place. @ <u>Six Hundred Thirty-Four Dollars</u> <u>and No/100</u> Per Station	\$ <u>634.00</u>	\$ <u>2,536.00</u>
23.	406	L.F.	30-Inch Reinforced Concrete Pipe, C-76, Class III, with Required Bedding and Backfill, Complete in Place. @ <u>Sixty-One Dollars and 75/100</u> Per Linear Foot	\$ <u>61.75</u>	\$ <u>25,070.50</u>
24.	40	L.F.	48-Inch Reinforced Concrete Pipe, C-76, Class III, with Required Bedding and Backfill, Complete in Place. @ <u>Ninety-One Dollars and 20/100</u> Per Linear Foot	\$ <u>91.20</u>	\$ <u>3,648.00</u>

Item No.	Approx. Qty.	Unit	Description of Item with Unit Price Written in Words	Unit Price	Amount
25.	465	L.F.	6-Foot x 4-Foot Reinforced Concrete Box Culvert, C-1433, with Required Bedding and Backfill, Complete in Place. @ <u>One Hundred Eighty-Four Dollars</u> <u>and No/100</u> Per Linear Foot	\$ <u>184.00</u>	\$ <u>85,560.00</u>
26.	237	L.F.	6-Foot x 5-Foot Reinforced Concrete Box Culvert, C-1433, with Required Bedding and Backfill, Complete in Place. @ <u>One Hundred Ninety-Seven Dollars</u> <u>and 20/100</u> Per Linear Foot	\$ <u>197.20</u>	\$ <u>46,736.40</u>
27.	182	L.F.	7-Foot x 5-Foot Reinforced Concrete Box Culvert, C-1433, with Required Bedding and Backfill, Complete in Place. @ <u>Two Hundred Thirty Dollars and</u> <u>No/100</u> Per Linear Foot	\$ <u>230.00</u>	\$ <u>41,860.00</u>
28.	642	L.F.	7-Foot x 6-Foot Reinforced Concrete Box Culvert, C-1433, with Required Bedding and Backfill, Complete in Place. @ <u>Three Hundred Fifty-Eight Dollars</u> <u>and 50/100</u> Per Linear Foot	\$ <u>358.50</u>	\$ <u>230,157.00</u>
29.	250	L.F.	8-Foot x 5-Foot Reinforced Concrete Box Culvert, C-1433, with Required Bedding and Backfill, Complete in Place. @ <u>Two Hundred Sixty-Four Dollars and</u> <u>20/100</u> Per Linear Foot	\$ <u>264.20</u>	\$ <u>66,050.00</u>
30.	142	L.F.	8-Foot x 6-Foot Reinforced Concrete Box Culvert, C-1433, with Required Bedding and Backfill, Complete in Place. @ <u>Three Hundred Eighty-One Dollars</u> <u>and 50/100</u> Per Linear Foot	\$ <u>381.50</u>	\$ <u>54,173.00</u>

Item No.	Approx. Qty.	Unit	Description of Item with Unit Price Written in Words	Unit Price	Amount
31.	955	L.F.	9-Foot x 5-Foot Reinforced Concrete Box Culvert, C-1433, with Required Bedding and Backfill, Complete in Place. @ <u>Two Hundred Ninety-Seven Dollars</u> <u>and 10/100</u> Per Linear Foot	\$ <u>297.10</u>	\$ <u>283,730.50</u>
32.	11	EA.	Sanitary Sewer Manhole, 0'-12' Depth, Complete in Place. @ <u>Nineteen Hundred Ninety Dollars</u> <u>and No/100</u> Per Each	\$ <u>1,990.00</u>	\$ <u>21,890.00</u>
33.	2,769	L.F.	8-Inch Polyvinyl Chloride (PVC) Sanitary Sewer, SDR-26, ASTM D-2241, with Required Bedding and Backfill, Complete in Place. @ <u>Twenty-Six Dollars and 25/100</u> <u>Per Linear Foot</u>	\$ <u>26.25</u>	\$ <u>72,686.25</u>
34.	4	E.A.	8-Inch Long Side Sanitary Sewer Service With Drop Connection, Complete in Place. @ <u>Twenty-Six Hundred Ninety-Seven Dollars and No/100</u> Per Each	\$ <u>2,697.00</u>	\$ <u>10,788.00</u>
35.	2,769	L.F.	Trench Safety System for Sanitary Sewer Greater Than 4 Feet in Depth, Complete in Place. @ <u>No Dollars and 25/100</u> <u>Per Linear Foot</u>	\$ <u>0.25</u>	\$ <u>692.25</u>
36.	3,139	L.F.	12-Inch Polyvinyl Chloride (PVC) Water Line, Class 150, AWWA C-900, All Depths, Include Fittings, with Required Bedding and Backfill, Complete in Place. @ <u>Twenty-Four Dollars and 65/100</u> <u>Per Linear Foot</u>	\$ <u>24.65</u>	\$ <u>77,376.35</u>

Item No.	Approx. Qty.	Unit	Description of Item with Unit Price Written in Words	Unit Price	Amount
37.	1	EA.	Fire Hydrant Assembly with Lead, Complete in Place. @ <u>Twenty-Seven Hundred Fifty-Eight</u> <u>Dollars and No/100</u> Per Each	\$ <u>2,758.00</u>	\$ <u>2,758.00</u>
38.	6	EA.	Fire Hydrant Assembly with Gradelock, Complete in Place. @ <u>Twenty-Seven Hundred Twenty</u> <u>Dollars and No/100</u> Per Each	\$ <u>2,720.00</u>	\$ <u>16,320.00</u>
39.	6	EA.	8-Inch Long Side Water Service Connection, Complete in Place. @ <u>Fifteen Hundred Sixty-Five Dollars</u> <u>and No/100</u> Per Each	\$ <u>1,565.00</u>	\$ <u>9,390.00</u>
40.	6	EA.	8-Inch Gate Valve and Box (GV&B), Complete in Place. @ <u>Seven Hundred Ninety-Eight Dollars</u> <u>and No/100</u> Per Each	\$ <u>798.00</u>	\$ <u>4,788.00</u>
41.	3	EA.	12-Inch Gate Valve and Box (GV&B), Complete in Place. @ <u>Fifteen Hundred Twenty Dollars and</u> <u>No/100</u> Per Each	\$ <u>1,520.00</u>	\$ <u>4,560.00</u>
42.	1	EA.	Extend Existing Fire Hydrant, Alignment "A" Sta. 11+37, Complete in Place. @ <u>Five Hundred Fourteen Dollars and</u> <u>No/100</u> Per Each	\$ <u>514.00</u>	\$ <u>514.00</u>
43.	3.20	AC.	Seeding, Alignment "A", Alignment "B", Alignment "C", Complete in Place. @ <u>Eight Hundred Fifty Dollars</u> <u>Per Acre</u>	\$ <u>850.00</u>	\$ <u>2,720.00</u>

Item No.	Approx. Qty.	Unit	Description of Item with Unit Price Written in Words	Unit Price	Amount
44.	1	EA.	Concrete Survey Monument, Complete in Place. @ <u>Three Hundred Dollars and No/100</u> Per Each	\$ <u>300.00</u>	\$ <u>300.00</u>
45.	1	L.S.	Place and Compact Fill in Existing Earthen Ditch Between Alignment "A" and Alignment "B" Utilizing On Site Materials, Complete in Place. @ <u>Eighty-Seven Hundred Fifty-four</u> <u>Dollars and No/100</u> Per Lump Sum	\$ <u>8,754.00</u>	\$ <u>8,754.00</u>
46.	22.5	STA.	Pavement Markings, Including but not limited to Turning Lanes, Stop Bars and Turn Arrows (4-Inch Yellow, 4-Inch White, 12-Inch to 24-Inch White), Alignment "B" Sta. 0+00 through 15+50, Alignment "C" 1+13 through 8+17, Complete in Place. @ <u>Three Hundred Ten Dollars and</u> <u>No/100</u> Per Station	\$ <u>310.00</u>	\$ <u>6,975.00</u>
47.	22.5	STA.	Signage Per Plans, Alignment "B" Sta. 0+00 through 15+50, Alignment "C" 1+13 through 8+17, Complete in Place. @ <u>Three Hundred Dollars and No/100</u> Per Station	\$ <u>300.00</u>	\$ <u>6,750.00</u>
48.	500	LB.	Extra Reinforcing Steel, Complete in Place. @ <u>No Dollars and 75/100</u> Per Pound	(\$0.75)* \$ <u>0.75</u>	\$ <u>375.00</u>

Item No.	Approx. Qty.	Unit	Description of Item with Unit Price Written in Words	Unit Price	Amount
49.	5	C.Y.	Extra Class "A" Concrete, Complete in Place. @ <u>One Hundred Fifty Dollars and No/100</u> _____ Per Cubic Yard	(\$150.00)* \$ <u>150.00</u>	 \$ <u>750.00</u>
50.	10	C.Y.	Extra Cement Stabilized Sand, Complete in Place. @ <u>Thirty-Five Dollars and No/100</u> _____ Per Cubic Yard	(\$30.00)* \$ <u>35.00</u>	 \$ <u>350.00</u>

TOTAL AMOUNT BID

\$ 2,074,601.95

**Figures in parentheses represent minimum unit prices for Supplemental Items described in Section H, Page H-3A, Paragraph H.*

DEDUCTIVE ALTERNATE "A", PAVING

51.	17.9	STA.	Deduct Roadway Excavation and/or Embankment (Station Grading), 75 Foot Wide Right-of-Way, Alignment "B" Sta. 0+00 through 10+80, Alignment "C" Sta. 1+13 through 8+17, Complete in Place. @ <u>Fifteen Hundred Seventy-Four Dollars and No/100</u> _____ Per Station	\$ <u>1,574.00</u>	\$ <u>28,174.00</u>
52.	8,535	S.Y.	Deduct 8-Inch Compacted Subgrade, Alignment "B" Sta. 0+00 through 11+50, Alignment "C" Sta. 1+11 through 8+17, Complete in Place. @ <u>Two Dollars and 55/100</u> _____ Per Square Yard	\$ <u>2.55</u>	\$ <u>21,764.25</u>

Item No.	Approx. Qty.	Unit	Description of Item with Unit Price Written in Words	Unit Price	Amount
53.	180	TON	Deduct Lime for Subgrade Stabilization, Alignment "B" Sta. 0+00 through 11+50, Alignment "C" Sta. 1+11 through 8+17, Complete in Place. @ <u>One Hundred Forty-Three Dollars and No/100</u> Per Ton	\$ <u>143.00</u>	\$ <u>25,740.00</u>
54.	8,535	S.Y.	Deduct Manipulation of Lime, When Approved by Engineer, Alignment "B" Sta. 0+00 through 11+50, Alignment "C" Sta. 1+11 through 8+17, Complete in Place. @ <u>One Dollar and 10/100</u> Per Square Yard	\$ <u>1.10</u>	\$ <u>9,388.50</u>
55.	7,725	S.Y.	Deduct 8-Inch Class "P" Reinforced Concrete Pavement, Alignment "B" Sta. 0+00 through 11+50, Alignment "C" Sta. 1+13 through 8+17, Complete in Place. @ <u>Thirty-Two Dollars and 90/100</u> Per Square Yard	\$ <u>32.90</u>	\$ <u>254,152.50</u>
56.	3,643	L.F.	Deduct 6-Inch Upright Concrete Curb, Alignment "B" Sta. 0+00 through 11+50, Alignment "C" Sta. 1+13 through 8+17, Complete in Place. @ <u>Two Dollars and 40/100</u> Per Linear Foot	\$ <u>2.40</u>	\$ <u>8,743.20</u>
57.	3,462	L.F.	Deduct 5-Foot Reinforced Concrete Sidewalk, Alignment "B" Sta. 0+42 through 11+50, Alignment "C" Sta. 1+90 through 8+38, Complete in Place. @ <u>Fourteen Dollars and 85/100</u> Per Linear Foot	\$ <u>14.85</u>	\$ <u>51,410.70</u>

Item No.	Approx. Qty.	Unit	Description of Item with Unit Price Written in Words	Unit Price	Amount
58.	4	EA.	<p>Deduct Type 1 TxDOT Concrete Handicap Ramp, Alignment "B" Sta. 0+45, Alignment "C" Sta. 1+93, Complete in Place.</p> <p>@ Five Hundred Forty-Two Dollars and <u>No/100</u> Per Each</p>	\$ <u>542.00</u>	\$ <u>2,168.00</u>
59.	2	EA.	<p>Deduct Type 7 TxDOT Concrete Handicap Ramp, Alignment "C" Sta. 8+38, Complete in Place.</p> <p>@ Five Hundred Twenty Dollars and <u>No/100</u> Per Each</p>	\$ <u>520.00</u>	\$ <u>1,040.00</u>
60.	18.4	STA.	<p>Deduct Pavement Markings, Including but not limited to Turning Lanes, Stop Bars and Turn Arrows (4-Inch Yellow, 4-Inch White, 12-Inch to 24-Inch White), Alignment "B" Sta. 0+00 through 11+50, Alignment "C" Sta. 1+13 through 8+17 Complete in Place.</p> <p>@ One Hundred Seven Dollars and <u>No/100</u> Per Station</p>	\$ <u>107.00</u>	\$ <u>1,968.80</u>
61.	18.4	STA.	<p>Deduct Signage Per Plans, Alignment "B" Sta. 0+00 through 11+50, Alignment "C" Sta. 1+13 through 8+17, Complete in Place.</p> <p>@ One Hundred Eight Dollars and No/100 <u>No/100</u> Per Station</p>	\$ <u>108.00</u>	\$ <u>1,987.20</u>

SUBTOTAL DEDUCTIVE ALTERNATE "A", PAVING \$ 406,537.75

CALENDAR DAY DEDUCTION FOR ALTERNATE "A", PAVING 40 **CALENDAR DAYS**

Item No.	Approx. Qty.	Unit	Description of Item with Unit Price Written in Words	Unit Price	Amount
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DEDUCTIVE ALTERNATE "B", STORM SEWER

62.	2,049	L.F.	Deduct Trench Safety System for Storm Sewer Greater Than 4-Feet in Depth, Alignment "B" Sta. 0+00 through 10+10, Alignment "C" Sta. 0+00 through 7+83, Complete in Place. @ <u>No Dollars and 90/cents</u> _____ Per Linear Foot	\$ <u>0.90</u>	\$ <u>1,844.10</u>
63.	6	EA.	Deduct Type "C" Storm Sewer Manhole, Alignment "B" Sta. 2+50, 7+50, 9+50, Alignment "C" Sta. 1+43, 4+66, 7+87 Complete in Place. @ <u>Forty-Six Hundred Fifty-Two Dollars</u> <u>and No/100</u> _____ Per Each	\$ <u>4,652.00</u>	\$ <u>27,912.00</u>
64.	8	EA.	Deduct Type "C2" Storm Sewer Inlet, Alignment "B" Sta. 2+50, 7+50, 9+50 Alignment "C" Sta. 4+66, Complete in Place. @ <u>Thirty-Three Hundred Fifty Dollars</u> <u>and No/100</u> _____ Per Each	\$ <u>3,350.00</u>	\$ <u>26,800.00</u>
65.	8	EA.	Deduct Storm Sewer Grate Inlet, Alignment "B" Sta. 2+50, 7+50, 9+50 Alignment "C" Sta. 4+66, Complete in Place. @ <u>Eighteen Hundred Fifty Dollars and</u> <u>No/100</u> _____ Per Each	\$ <u>1,865.00</u>	\$ <u>14,920.00</u>
66.	1	EA.	Deduct 8-Foot x 6-Foot Concrete Headwall with 3:1 Flared Wings, Alignment "C" Sta. 0+00, Complete in Place. @ <u>Forty-Five Hundred Twenty Dollars</u> <u>and No/100</u> _____ Per Each	\$ <u>4,520.00</u>	\$ <u>4,520.00</u>

Item No.	Approx. Qty.	Unit	Description of Item with Unit Price Written in Words	Unit Price	Amount
67.	2	EA.	Deduct 30" Reinforced Concrete Pipe Concrete Spillway, Alignment "C" Sta. 4+66, Complete in Place. @ <u>Two Hundred Seven Dollars and</u> <u>No/100</u> Per Each	\$ <u>207.00</u>	\$ <u>414.00</u>
68.	250	L.F.	Deduct 30-Inch Reinforced Concrete Pipe, C-76, Class III, with Required Bedding and Backfill, Alignment "B" Sta. 0+00 through 11+50, Alignment "C" Sta. 0+00 through 8+17, Complete in Place. @ <u>Sixty-One Dollars and 75/100</u> <u></u> Per Linear Foot	\$ <u>61.75</u>	\$ <u>15,437.50</u>
69.	642	L.F.	Deduct 7-Foot x 6-Foot Reinforced Concrete Box Culvert, C-1433, with Required Bedding and Backfill, Alignment "C" Sta. 0+00 through 7+88, Complete in Place. @ <u>Three Hundred Fifty-Eight Dollars</u> <u>and 50/100</u> Per Linear Foot	\$ <u>358.50</u>	\$ <u>230,157.00</u>
70.	60	L.F.	Deduct 8-Foot x 5-Foot Reinforced Concrete Box Culvert, C-1433, with Required Bedding and Backfill, Alignment "B" Sta. 9+50 through 10+10, Complete in Place. @ <u>Two Hundred Sixty-Four Dollars and</u> <u>20/100</u> Per Linear Foot	\$ <u>264.20</u>	\$ <u>15,852.00</u>
71.	142	L.F.	Deduct 8-Foot x 6-Foot Reinforced Concrete Box Culvert, C-1433, with Required Bedding and Backfill, Alignment "B" Sta. 0+00 through 9+50, Complete in Place. @ <u>Three Hundred Eighty-One Dollars</u> <u>and 50/100</u> Per Linear Foot	\$ <u>381.50</u>	\$ <u>54,173.00</u>

Item No.	Approx. Qty.	Unit	Description of Item with Unit Price Written in Words	Unit Price	Amount
72.	955	L.F.	Deduct 9-Foot x 5-Foot Reinforced Concrete Box Culvert, C-1433, with Required Bedding and Backfill, Alignment "B" Sta. 0+00 through 9+50, Complete in Place. @ <u>Two Hundred Ninety-Seven Dollars and 10/100</u> Per Linear Foot	\$ <u>297.10</u>	\$ <u>283,730.50</u>
73.	8	EA.	Deduct Silt Control Inlet Protection, Alignment "B" Sta. 2+50, 7+50, 9+50 Alignment "C" Sta. 4+66, Complete in Place. @ <u>Thirty-Three Dollars and No/100</u> Per Each	\$ <u>33.00</u>	\$ <u>264.00</u>
74.	1	L.S.	Deduct Fill in Existing Earthen Ditch Between Alignment "A" and Alignment "B" Utilizing On Site Materials, Complete in Place. @ <u>Eighty-Seven Hundred Fifty-four Dollars and No/100</u> Per Lump Sum	\$ <u>8,754.00</u>	\$ <u>8,754.00</u>

SUBTOTAL DEDUCTIVE

\$ 684,778.10

ALTERNATE "B", STORM SEWER

CALENDAR DAY DEDUCTION

55 **CALENDAR DAYS**

FOR ALTERNATE "B", STORM SEWER

Item No.	Approx. Qty.	Unit	Description of Item with Unit Price Written in Words	Unit Price	Amount
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DEDUCTIVE ALTERNATE "C", SANITARY SEWER

75.	5	EA.	<p>Deduct Sanitary Sewer Manhole, 0'-12' Depth, Alignment "B" Sta. 3+89, 6+54, 11+54, Alignment "D" Sta. 4+47, 8+48, Complete in Place.</p> <p>@ <u>Nineteen Hundred Ninety Dollars and No/100</u></p> <p>Per Each</p>	\$ <u>1,990.00</u>	\$ <u>9,950.00</u>
76.	1,565	L.F.	<p>Deduct 8-Inch Polyvinyl Chloride (PVC) Sanitary Sewer Pipe, SDR-26, ASTM D-2241, with Required Bedding and Backfill, Alignment "B" Sta. 3+89 through 11+54, Alignment "D" Sta. 0+47 through 8+48, Complete in Place.</p> <p>@ <u>Twenty-Six Dollars and 25/100</u></p> <p>Per Linear Foot</p>	\$ <u>26.25</u>	\$ <u>41,081.25</u>
77.	3	EA.	<p>Deduct 8-Inch Long Side Sanitary Sewer Service With Drop Connection Alignment "B" Sta. 3+89, 6+54, 11+54, Complete in Place.</p> <p>@ <u>Twenty-Six Hundred Ninety-Seven Dollars and No/100</u></p> <p>Per Each</p>	\$ <u>2,697.00</u>	\$ <u>8,091.00</u>
78.	1,565	L.F.	<p>Deduct Trench Safety System for Sanitary Sewer Greater Than 4 Feet in Depth, Complete in Place.</p> <p>@ <u>No Dollars and 25/cents</u></p> <p>Per Linear Foot</p>	\$ <u>0.25</u>	\$ <u>391.25</u>

SUBTOTAL DEDUCTIVE

\$ 59,513.50

ALTERNATE "C", SANITARY SEWER

CALENDAR DAY DEDUCTION

6 **CALENDAR DAYS**

FOR ALTERNATE "C", SANITARY SEWER

Item No.	Approx. Qty.	Unit	Description of Item with Unit Price Written in Words	Unit Price	Amount
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DEDUCTIVE ALTERNATE "D", WATER SYSTEM

79.	1,790	L.F.	<p>Deduct 12-Inch Polyvinyl Chloride (PVC) Water Line, Class 150, AWWA C-900, All Depths, Include Fittings, with Required Bedding and Backfill, Alignment "B" Sta. 0+00 through 10+80, Alignment "C" Sta. 1+80 through 7+87, Complete in Place.</p> <p>@ <u>Twenty-Four Dollars and 65/100</u></p> <p>Per Linear Foot</p>	\$ 24.65	\$ 44,123.50
80.	1	EA.	<p>Deduct Fire Hydrant Assembly with Lead, Alignment "C" Sta. 4+30, Complete in Place.</p> <p>@ <u>Twenty-Seven Hundred Fifty-Eight Dollars and No/100</u></p> <p>Per Each</p>	\$ 2,758.00	\$ 2,758.00
81.	3	EA.	<p>Deduct Fire Hydrant Assembly with Gradelock, Alignment "B" Sta. 1+17, 5+14, 9+17, Complete in Place.</p> <p>@ <u>Twenty-Seven Hundred Twenty Dollars and No/100</u></p> <p>Per Each</p>	\$ 2,720.00	\$ 8,160.00
82.	1	EA.	<p>Deduct 12" Gate Valve and Box (GV&B), Alignment "C" Sta. 4+30, Complete in Place.</p> <p>@ <u>Fifteen Hundred Twenty Dollars and No/100</u></p> <p>Per Each</p>	\$ 1,520.00	\$ 1,520.00

Item No.	Approx. Qty.	Unit	Description of Item with Unit Price Written in Words	Unit Price	Amount
83.	3	EA.	Deduct 8" Gate Valve and Box (GV&B), Alignment "B" Sta. 1+17, 5+14, 9+17, Complete in Place. @ <u>Seven Hundred Ninety-Eight Dollars</u> <u>and No/100</u> Per Each	\$ <u>798.00</u>	\$ <u>2,394.00</u>
84.	3	EA.	Deduct 8-Inch Long Side Water Service Connection, Alignment "B" Sta. 1+17, 5+14, 9+17, Complete in Place. @ <u>Fifteen Hundred Sixty-Five Dollars</u> <u>and No/100</u> Per Each	\$ <u>1,565.00</u>	\$ <u>4,695.00</u>

**SUBTOTAL DEDUCTIVE
ALTERNATE "D", WATER SYSTEM**

\$ 63,650.50

**CALENDAR DAY DEDUCTION
FOR ALTERNATE "D", WATER SYSTEM**

5 **CALENDAR DAYS**

Item No.	Approx. Qty.	Unit	Description of Item with Unit Price Written in Words	Unit Price	Amount
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ADDITIVE ALTERNATE "E", CHANNEL EXCAVATION

85.	10.1	STA.	Add Channel Excavation Alignment "B" Sta. 0+00 through 10+10, Complete in Place. @ <u>Twenty-Nine Hundred Sixty Dollars</u> <u>and No/100</u> Per Station	\$ <u>2,960.00</u>	\$ <u>29,896.00</u>
86.	425	S.Y.	Add 1-1/2-Inch HMAC Overlay, Type D, PG 70-22, Surface Aggregate Classification Type B, Complete in Place. @ <u>Fifteen Dollars and 50/100</u> <u>Per Square Yard</u>	\$ <u>15.50</u>	\$ <u>6,587.50</u>
87.	425	S.Y.	Add 6-Inch Grade 3, Type A, Flexible Base per 2004 TxDOT Standards with Skaps 4oz. Non-Woven Fabric and Synteen SF 12 Grid, Complete in Place. @ <u>Thirteen Dollars and 55/100</u> <u>Per Square Yard</u>	\$ <u>13.55</u>	\$ <u>5,758.75</u>
88.	2	EA.	Type III Fixed Barricade, Complete in Place. @ <u>Five Hundred Dollars and No/100</u> <u>Per Each</u>	\$ <u>500.00</u>	\$ <u>1,000.00</u>

**SUBTOTAL ADDITIVE
ALTERNATE "E", CHANNEL EXCAVATION**

\$ 43,242.25

SUBSTITUTIONS

1. N/A

\$

(ADD) (DEDUCT)

2. N/A

\$

(ADD) (DEDUCT)

3. N/A

\$

(ADD) (DEDUCT)

STATEMENT FOR SEPARATED CONTRACT COMPLIANCE:

TOTAL BASE BID: Non-consumable material and equipment. (Tax Exempt)

\$ 1,560,000.00

TOTAL BASE BID: Skill, labor and consumable material, tools and equipment. (Not Tax Exempt)

\$ 514,601.95

Unit prices are to be expressed in both words and figures. In case of a discrepancy, the amount shown in words shall govern. The above unit prices shall include all labor, materials, equipment, bailing, shoring, removal, overhead, profit, insurance, etc. to cover the finished work of the several kinds called for.

BIDDER acknowledges and agrees that OWNER reserves the right to reject any and all bids and to waive any informalities in the bidding. In addition, the OWNER reserves the right to award the Contract on the basis of THE TOTAL AMOUNT BID or THE TOTAL AMOUNT BID less deductive alternatives "A," "B," "C," and/or "D" as set forth in the bid plus the additive alternative "E", which deductive alternatives together with the additive alternative are deemed most advantageous to OWNER. In evaluating and making an award, the following shall be the priority for deductive alternatives to be considered by the OWNER:

- 1) deductive alternative "A", paving;
- 2) deductive alternative "D", water system;
- 3) deductive alternative "C", sanitary sewer;
- 4) deductive alternative "B", storm sewer.

Following the award and progress of the WORK, if funds are available to add back any deductive alternative or items within a deductive alternative, the OWNER reserves the right to add such deductive alternatives by change order and contractor shall agree to the pricing shown in the bid for such items.

Respectfully submitted:

EXCAVATORS & CONSTRUCTORS, LTD.

(NAME OF CONTRACTOR)

BY:

(SIGNATURE)

JAY BRAXTON

TITLE: General Partner

DATE: March 31, 2010

(SEAL, IF BIDDER IS A CORPORATION)

6601 Procter Ext.

Port Arthur, TX 77642

(ADDRESS)

(409)962-2677

(TELEPHONE NUMBER)

N/A

(LICENSE NUMBER IF APPLICABLE)

(ATTEST)

**PORT ARTHUR ECONOMIC DEVELOPMENT CORPORATION
EXCEPTION / APPROVED EQUAL REQUEST**

[Please submit this form for each exception/approved equal]

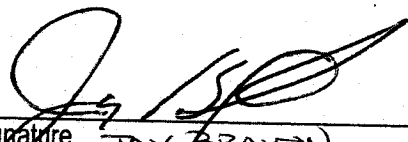
VENDOR: _____ TELEFAX: _____

PROJECT: _____

PAGE: _____ of _____ PARAGRAPH: _____

SUBJECT: _____ N/A _____

REQUEST:


Signature JAY BRAYTON
GENERAL PARTNER

PORT ARTHUR ECONOMIC DEVELOPMENT CORPORATION

APPROVED: _____ DISAPPROVED: _____ CLARIFICATION: _____

REMARKS:

Signature

PORT ARTHUR ECONOMIC DEVELOPMENT CORPORATION

BID OPENING DATE: **MARCH 31, 2010**

PORT ARTHUR ECONOMIC DEVELOPMENT CORPORATION
INSTRUCTIONS TO BIDDER

Bidders are requested to furnish their complete **REMIT TO ADDRESS** and **TAX IDENTIFICATION NUMBER** as indicated below:

REMIT PAYMENT TO:

COMPANY EXCAVATORS & CONSTRUCTORS, LTD.
ADDRESS 6601 Procter Ext.
CITY/STATE/ZIP Port Arthur, TX 77642

SEND PURCHASE ORDER TO:

COMPANY EXCAVATORS & CONSTRUCTORS, LTD.
ADDRESS 6601 Procter Ext.
CITY/STATE/ZIP Port Arthur, TX 77642

TAX IDENTIFICATION NUMBER: 74-1589839

AFFIDAVIT

[RETURN THIS AFFIDAVIT AS PART OF THE BID PROPOSAL]

All pages in offer's bid proposal containing statements, letters, etc., shall be signed by a duly authorized Officer of the company, whose signature is binding on the Bid Proposal.

The Undersigned offers and agrees to one of the following:

- X I hereby certify that I do not have outstanding debts with the City of Port Arthur. Further, I agree to pay succeeding debts as they become due during this agreement.
- I hereby certify that I do have outstanding debts with the City of Port Arthur and agree to pay said debts prior to execution of this Agreement.
- I hereby certify that I do have outstanding debts with the City of Port Arthur and agree to enter into an agreement for the payment of said debts. I further agree to pay succeeding debts as they become due.

NAME OF OFFERER: Jay Braxton

TITLE: General Partner - Excavators & Constructors, LTD.

ADDRESS: 6601 Procter Ext.

CITY/STATE/ZIP: Port Arthur, TX 77642

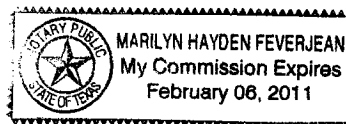
TELEPHONE NUMBER: (409)962-2677

SIGNATURE: 

SUBSCRIBED AND SWORN to before me by the above named JAY BRAXTON
on this the 23rd day of APRIL, 2010.

Notary Public in and for the State of TEXAS


Signature



My Commission Expires:

SECTION E
BID BOND

BID BOND

KNOW ALL MEN BY THESE PRESENTS, that we, the Undersigned, _____
_____ as Principal,
and _____ as Surety, are
hereby held and firmly bound unto _____ as OWNER
in the penal sum of _____
for the payment of which, well and truly to be made, we hereby jointly
and severally bind ourselves, successors and assigns.

Signed, this _____ day of _____, 20____. The
Condition of the above obligation is such that whereas the Principal
has submitted to _____ a
certain BID, attached hereto and hereby made a part hereof to enter
into a Contract in writing, for the _____

_____.

NOW, THEREFORE,

- (a) If said BID shall be rejected, or
- (b) If said BID shall be accepted and the Principal shall execute and deliver a Contract in the Form of Contract attached hereto (properly completed in accordance with said BID) and shall furnish a BOND for his faithful performance of said Contract, and for the payment of all persons performing labor or furnishing materials in connection therewith, and shall in all other respects perform the agreement created by the acceptance of said BID, then this obligation shall be void, otherwise the same shall remain in force and effect; it being expressly understood and agreed that the liability of the Surety for any and all claims hereunder shall, in no event, exceed the penal amount of this obligation as here in stated.

The Surety, for value received, hereby stipulates and agrees that the obligations of said Surety and its BOND shall be in no way impaired or affected by any extension of the time within which the OWNER may accept such BID; and said Surety does hereby waive notice of any such extension.

IN WITNESS WHEREOF, the Principal and the Surety have hereunto set their hands and seals, and such of them as are corporations have caused their corporate seals to be hereto affixed and these presents to be signed by their proper Officers, the day and year first set forth above.

(L.S.) PRINCIPAL

SURETY

BY:

IMPORTANT - Surety companies executing BONDS must appear on the Treasury Department's most current list (Circular 570 as amended) and be authorized to transact business in the state where the project is located.

SECTION F
GENERAL CONDITIONS

**NUMERICAL INDEX
TO
GENERAL CONDITIONS**

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GENERAL CONDITIONS

1. CONTRACT AND CONTRACT DOCUMENTS

The Plans, Specifications and Addenda, enumerated in the Agreement and Paragraph 1 of the Supplemental General Conditions, shall form part of this Contract, and the provisions thereof shall be as binding upon the parties hereto as if they were herein fully set forth. The Table of Contents, titles, headings, running headlines and marginal notes contained herein and in said Documents are solely to facilitate reference to various provisions of the Contract Documents and in no way affect, limit, or cast light on the interpretation of the provisions to which they refer.

2. DEFINITIONS

The following terms, as used in this Contract, are respectively defined as follows:

- a. **"CONTRACTOR"**: A person, firm or corporation with whom the Contract is made with the OWNER or Port Arthur Economic Development Corporation.
- b. **"Subcontractor"**: A person, firm or corporation supplying labor and materials or only labor for work at the site of the project for, and under separate Contract or agreement with, the CONTRACTOR.
- c. **"Work on (at) the Project"**: Work to be performed at the location of the project, including the transportation of materials and supplies to or from the location of the project by employees of the CONTRACTOR and any Subcontractor.
- d. **"OWNER"**: Refers to the Port Arthur Economic Development Corporation.
- e. **"PAEDC"**: Refers to the Port Arthur Economic Development Corporation.
- f. **"ENGINEER"**: Arceneaux & Gates Consulting Engineers, Inc., Port Arthur, Texas

3. TERMINATION OF CONTRACT FOR CAUSE

If, through any cause, the CONTRACTOR shall fail to fulfill in timely and proper manner his obligations under this Contract, or if the CONTRACTOR shall violate any of the covenants, agreements or stipulations of this Contract, the PORT ARTHUR ECONOMIC DEVELOPMENT CORPORATION, shall thereupon have the right to terminate this Contract by giving written notice to the CONTRACTOR of such termination and specifying the effective date thereof, at least five (5) days before the effective date of such termination. In such event, all finished or unfinished Documents, data, studies, surveys, drawings, maps, models, photographs and reports prepared by the CONTRACTOR under this Contract shall, at the option of the PORT ARTHUR ECONOMIC DEVELOPMENT CORPORATION, become its property and the CONTRACTOR shall be entitled to receive just and equitable compensation for any work satisfactorily completed hereunder. Notwithstanding the above, the PORT ARTHUR ECONOMIC DEVELOPMENT CORPORATION

CONTRACTOR shall not be relieved of liability to the for damages sustained by the PORT ARTHUR ECONOMIC DEVELOPMENT CORPORATION by virtue of any breach of the Contract by the CONTRACTOR, and the PORT ARTHUR ECONOMIC DEVELOPMENT CORPORATION may withhold any payments to the CONTRACTOR for the purpose of set-off until such time as the exact amount of damages due the PORT ARTHUR ECONOMIC DEVELOPMENT CORPORATION from the CONTRACTOR is determined.

PERSONNEL

a. The CONTRACTOR represents that he has, or will secure at his own expense, all personnel required in performing the work under this Contract. Such personnel shall not be employees of, or have any contractual relationship with, the PORT ARTHUR ECONOMIC DEVELOPMENT CORPORATION.

b. All of the work required hereunder will be performed by the CONTRACTOR, or under his supervision, and all personnel engaged in the work shall be fully qualified and shall be authorized or permitted under State and local law to perform such services.

c. None of the work covered by this Contract shall be subcontracted without the prior written approval of the PORT ARTHUR ECONOMIC DEVELOPMENT CORPORATION. Any work or services subcontracted hereunder shall be specified by written Contract or agreement and shall be subject to each provision of this Contract.

REPORTS AND INFORMATION

The CONTRACTOR, at such times and in such forms as the PORT ARTHUR ECONOMIC DEVELOPMENT CORPORATION may require, shall furnish the PORT ARTHUR ECONOMIC DEVELOPMENT CORPORATION such periodic reports as it may request pertaining to the work or services undertaken pursuant to this Contract, the costs and obligations incurred or to be incurred in connection therewith, and any other matters covered by this Contract.

RECORDS AND AUDITS

The CONTRACTOR shall maintain accounts and records, including personnel, property and financial records, adequate to identify and account for all costs pertaining to the Contract and such other records as may be deemed necessary by the PORT ARTHUR ECONOMIC DEVELOPMENT CORPORATION to assure proper accounting for all project funds, both federal and non-federal shares.

These records will be made available for audit purposes to the PORT ARTHUR ECONOMIC DEVELOPMENT CORPORATION or any authorized representative, and will be retained for three (3) years after the expiration of this Contract, unless permission to destroy them is granted by the PORT ARTHUR ECONOMIC DEVELOPMENT CORPORATION.

7. **FINDINGS CONFIDENTIAL**

All of the reports, information, data, etc., prepared or assembled by the CONTRACTOR under this Contract are confidential, and CONTRACTOR agrees that they shall not be made available to any individual or organization without the prior written approval of the PORT ARTHUR ECONOMIC DEVELOPMENT CORPORATION.

8. **COPYRIGHT**

No report, maps or other Documents produced in whole or in part under this Contract shall be the subject of an application for copyright by or on behalf of the CONTRACTOR.

9. **COMPLIANCE WITH LAWS**

The CONTRACTOR shall comply with all applicable laws, ordinances, rules, orders, regulations and codes of the Federal, State and local governments relating to performance of the work herein, the protection of adjacent property and the maintenance of passageways, guard fences or other protective facilities.

10. **INTEREST OF MEMBERS OF CITY**

No member of the governing body of the Port Arthur Economic Development Corporation,, and no other Officer, Employee or Agent of the Port Arthur Economic Development Corporation, who exercises any functions or responsibilities in connection with the planning and carrying out of the program, shall have any personal financial interest, direct or indirect, in this Contract; and, the CONTRACTOR shall take appropriate steps to assure compliance.

11. **INTEREST OF OTHER LOCAL PUBLIC OFFICIALS**

No member of the governing body of the locality and no other public official of such locality, who exercises any functions or responsibilities in connection with the planning and carrying out of the program, shall have any personal financial interest, direct or indirect, in this Contract; and, the CONTRACTOR shall take appropriate steps to assure compliance.

12. **INTEREST OF CONTRACTOR AND EMPLOYEES**

The CONTRACTOR covenants that he presently has no interest and shall not acquire any interest, direct or indirect, in the study area or any parcels therein or any other interest which would conflict in any manner or degree with the performance of his services hereunder. The CONTRACTOR further covenants that in the performance of this Contract, no person having any such interest shall be employed.

INCORPORATION OF PROVISIONS REQUIRED BY LAW

Each provision and clause required by law to be inserted into the Contract shall be deemed to be enacted herein and the Contract shall be read and enforced as though each were included herein. If, through mistake or otherwise, any such provision is not inserted or is not correctly inserted, the Contract shall be amended to make such insertion on application by either party.

CERTIFICATES AND PERMITS

Except for required permits issued by OWNER, which shall be issued at no cost to CONTRACTOR, CONTRACTOR shall secure at his own expense from other public authorities all necessary certificates, licenses, approvals and permits required in connection with the work of this Contract or any part thereof, and shall give all notices required by law, ordinance or regulation. CONTRACTOR shall pay all fees and charges incident to the due and lawful prosecution of the work of this Contract, and any extra work performed by him.

GUARANTEE OF WORK

a. Neither the final certificate of payment, nor any provision in the Contract Documents, nor partial or entire occupancy of the premises by the OWNER shall constitute an acceptance of work not done in accordance with the Contract Documents or relieve the CONTRACTOR of liability in respect to any warranties or responsibilities for faulty materials or workmanship. The CONTRACTOR guarantees and warrants that all materials and equipment which are to become part of the work shall be new unless otherwise specified, and that all work will be of good quality and free from faults or defects and in accordance with the Contract Documents and of any inspections, tests or approvals required by the Contract Documents, law, ordinance, rules, regulations or orders of any public authority having jurisdiction. The OWNER will give notice of observed defects with reasonable promptness.

b. Neither observations by Architect or Engineer nor inspections, tests or approvals by persons other than CONTRACTOR shall relieve CONTRACTOR from his obligations to perform the work in accordance with the requirements of the Contract.

c. The provisions of this Paragraph shall be cumulative of, and not in limitation of, the responsibility of CONTRACTOR for defects in the work or materials or damages resulting therefrom as otherwise provided by the law of the State of Texas or this Contract, including, without limitation, the implied warranty of fitness of the work and the implied obligation to perform the work in a good and workmanlike manner.

ADDITIONAL INSTRUCTIONS AND DETAIL DRAWINGS

The CONTRACTOR will be furnished additional instructions and detail drawings as necessary to carry out the work included in the Contract. The additional drawings and instructions thus supplied to the CONTRACTOR will coordinate with the Contract Documents and will be so prepared that they can be reasonably interpreted as part thereof. The CONTRACTOR shall carry out the work in accordance with the additional

detail drawings and instructions. The CONTRACTOR and the Architect/Engineer will prepare jointly: (a) a schedule, fixing the dates at which special detail drawings will be required, such drawings, if any, to be furnished by the Architect/Engineer in accordance with said schedule; and, (b) a schedule fixing the respective dates for the submission of shop drawings, the beginning of manufacture, testing and installation of materials, supplies and equipment, and the completion of the various parts of the work; each such schedule to be subject to change from time to time in accordance with the progress of the work.

17. **SHOP OR SETTING DRAWINGS**

The CONTRACTOR shall submit promptly to the Architect/Engineer two (2) copies of each shop or setting drawing prepared in accordance with the schedule predetermined as aforesaid. After examination of such drawings by the Architect/Engineer and the return thereof, the CONTRACTOR shall make such corrections to the drawings as have been indicated and shall furnish the Architect/Engineer with two (2) corrected copies. If requested by the Architect/Engineer, the CONTRACTOR must furnish additional copies. Regardless of corrections made in, or approval given to, such drawings by the Architect/Engineer, the CONTRACTOR will nevertheless be responsible for the accuracy of such drawings and for their conformity to the Plans and Specifications, unless he notifies the Architect/Engineer in writing of any deviations at the time he furnishes such drawings.

18. **MATERIALS, SERVICES AND FACILITIES**

- a. It is understood that, except as otherwise specifically stated in the Contract Documents, the CONTRACTOR shall provide and pay for all materials, labor, tools, equipment, water, light, power, transportation, superintendents, temporary construction of every nature, and all other services and facilities of every nature whatsoever necessary to execute, complete and deliver the work within the specified time.
- b. Any work necessary to be performed after regular working hours, on Sundays or Legal Holidays, shall be performed without additional expense to the OWNER.

19. **CONTRACTOR'S TITLE TO MATERIALS**

No materials or supplies for the work shall be purchased by the CONTRACTOR or by any Subcontractor subject to any chattel mortgage or under a conditional sale Contract or other agreement by which an interest is retained by the seller. The CONTRACTOR warrants that he has good title to all materials and supplies used by him in the work, free from all liens, claims or encumbrances.

20. **INSPECTION AND TESTING OF MATERIALS**

- a. All materials and equipment used in the construction of the project shall be subject to adequate inspection and testing in accordance with accepted standards. The laboratory or inspection agency shall be selected by the OWNER. The OWNER will

c. If the CONTRACTOR uses any design, device or materials covered by letters patent or copyright, he shall provide for such use by suitable agreement with the OWNER of such patented or copyrighted design, device or material. It is mutually agreed and understood that, without exception, the Contract prices shall include all royalties or costs arising from the use of such design, device or materials in any way involved in the work. The CONTRACTOR and/or his Sureties shall indemnify and save harmless the OWNER of the project from any and all claims for infringement by reason of the use of such patented or copyrighted design, device or materials or any trademark or copyright in connection with work agreed to be performed under this Contract, and shall indemnify the OWNER for any cost, expense or damage which it may be obliged to pay by reason of such infringement at any time during the prosecution of the work or after completion of the work.

b. License or Royalty Fees: License and/or royalty fees for the use of a process which is authorized by the OWNER of the project must be reasonable and paid to the holder of the patent, or his authorized licensee, direct by the OWNER and not by or through the CONTRACTOR.

a. The CONTRACTOR shall hold and save the OWNER and its Officers, Agents, Servants and Employees harmless from liability of any nature or kind, including cost and expenses for, or on account of, any patented or unpatented invention, process, article or appliance manufactured or used in the performance of the Contract, including its use by the OWNER, unless otherwise specifically stipulated in the Contract Documents.

22. PATENTS

Whenever a material, article or piece of equipment is identified on the Plans or in the Specifications by reference to manufacturers' or vendors' names, trade names, catalogue numbers, etc., it is intended merely to establish a standard; and, any material, article or equipment of other manufacturers and vendors which will perform adequately the duties imposed by the general design will be considered equally acceptable provided the material, article or equipment so proposed is, in the opinion of the Architect/Engineer, of equal substance and function. It shall not be purchased or installed by the CONTRACTOR without the Architect/Engineer's written approval.

21. "OR EQUAL" CLAUSE

b. Materials of construction, particularly those upon which the strength and durability of the structure may depend, shall be subject to inspection and testing to establish conformance with Specifications and suitability for uses intended.

pay for all laboratory inspection service direct, and not as a part of the Contract; however, Owner will only pay for the first tests that pass. Failed tests and subsequent tests to pass work will be the CONTRACTOR'S sole expense.