

RESOLUTION NO. 11-122

**A RESOLUTION APPROVING AN AGREEMENT
BETWEEN THE CITY OF PORT ARTHUR SECTION 4A
ECONOMIC DEVELOPMENT CORPORATION AND
TEXAS GAS SERVICE TO PROVIDE PERFORMANCE
BLASTING & COATING, LP AND TEAM FABRICATORS,
LLC A 4" GAS MAIN TO SERVE THEIR FACILITIES
LOCATED ALONG THE PROCTOR STREET EXTENTION**

WHEREAS, the City of Port Arthur Section 4A Economic Development Corporation (the "PAEDC") Board of Directors at its meeting on February 7, 2011 approved a request from Performance Blasting & Coating, LP ("PBC") and Team Fabricators, LLC ("TEAM") for Texas Gas Service to extend a 4" gas main to serve the PBC and TEAM facilities located along the Proctor Street Extension, Port Arthur, Texas; and

WHEREAS, PBC proposes to construct a sandblast and paint facility and TEAM plans to add a metal tempering facility along the Proctor Street Extension in Port Arthur, Texas, and each project requires natural gas service to support these facilities; and

WHEREAS, PBC currently employs approximately 400 local workers and the proposed facility will employ approximately 45 additional employees at an average salary of \$18.00 per hour, and TEAM has invested over \$10 million into its Port Arthur operations and currently employs over 55 employers with an average wage of \$25.00 per hour; and

WHEREAS, Texas Gas Service has proposed to extend gas mains to serve PBC and TEAM; and

WHEREAS, the PAEDC Board will reimburse Texas Gas Service for the costs of the extension of the 4" gas main to serve both PBC and TEAM; and

WHEREAS, the PAEDC is authorized to reimburse the cost of the gas main extension to PBC and TEAM in accordance with §501.103, Local Government Code, where a project approved by the board of directors of an economic development corporation is required for infrastructure including gas utilities necessary to promote or develop new and expanded business enterprises providing primary jobs; and

WHEREAS, per Resolution 11-081, approved on March 8, 2011, the City Council of the City of Port Arthur authorized the PAEDC to negotiate an agreement with Texas Gas Service for the extension of a 4" gas main to serve PBC and TEAM to support for their facilities located along the Proctor Street Extension, Port Arthur, Texas; and

WHEREAS, the Agreement for Gas Main Extension attached as, "**Exhibit A**", has been approved in terms by all parties involved.

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 PAEDC shall enter into an Agreement for Gas Main Extension with Texas Gas Service as to a 4" gas main to serve PBC and TEAM to support their facilities located along the Proctor Street Extension, Port Arthur, Texas.

Section 3. That a copy of the caption of the Resolution be spread upon the Minutes of the City Council.

READ, ADOPTED AND APPROVED on this 5th day of April A.D., 2011,
at a Meeting of the City Council of the City of Port Arthur, Texas, by the following vote:

AYES:

Mayor

Prince; Mayor Pro Tem Albrechts;

Councilmembers Chatman, Segler, Ibo, Beare
Williamson, Sue and Henderson.

NOES: One.

Deloris Prince
Deloris "Bobbie" Prince, Mayor

ATTEST:

Sherri Bellard
Sherri Bellard, Acting 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:

Valecia R. Tizeno
Valecia R. Tizeno, City Attorney

EXHIBIT "A"

AGREEMENT FOR GAS MAIN EXTENSION

A. This Agreement for Gas Main Extension (the "Agreement") is made and entered into by and between Performance Blasting & Coating, LP ("PBC") and Team Fabricators, LLC ("Team") (collectively referred to as the "Incentive Recipients") and the City of Port Arthur Section 4A Economic Development Corporation (the "PAEDC"), a body politic and corporate and a public instrumentality of the State of Texas and the City of Port Arthur, Texas (the "City").

B. PBC and Team have submitted a letter of intent to PAEDC requesting the extension of a natural gas main to support industrial expansions including a planned sand blast and paint facility for PBC to be located at 6301 Proctor Street Extension, Port Arthur, Texas and a metal tempering facility for Team to be located at its current facilities located at the corner of Procter Street Extension and Main Street, both within the City.

C. PBC employs approximately 400 local workers, and its proposed facility will employ approximately 45 new employees. Team currently employs 55 local employees, and the planned expansion will retain current jobs and provide the opportunity for creation of additional jobs.

D. PAEDC may provide for the construction of infrastructure to promote or develop new or expanded business enterprises including projects for streets and roads, rails, water and sewer utilities, electric utilities or gas utilities, drainage, site improvements and road facilities in accordance with §501.013, Local Government Code.

E. The Incentive Recipients and PAEDC have solicited proposals from Texas Gas Service, a division of Oneok ("Texas Gas") for the extension of a 4" gas main to serve the Incentive Recipients.

F. PAEDC has stated that it would reimburse Texas Gas the cost of the proposed extension of the 4" gas main (the "Line Extension") in consideration of PBC and Team constructing and initiating business operations at their existing or proposed facilities.

NOW THEREFORE, IN CONSIDERATION of the recitals set forth above which are incorporated in this Agreement as fully set forth below and in consideration of the additional and mutual promises, covenants, conditions and agreements set forth in this Agreement and other good and valuable consideration, the sufficiency of which is hereby acknowledged by each party, PBC, Team and the PAEDC agree as follows:

1. **Engineering and Design of the Line Extension.** (a) The Line Extension shall be engineered and designed by Texas Gas in accordance with all applicable state or federal regulations and any and all local specifications and any other regulation of a governmental agency having appropriate jurisdiction. All plans and specifications shall be reviewed and approved by the Incentive Recipients and any of their consultants prior to a notice to proceed in the construction of the Line Extension.

(b) The Line Extension must be sized to provide continuous and adequate gas service to both the facilities of PBC and Team based upon the plans for development on said sites as provided to PAEDC and Texas Gas by the Incentive Recipients. Any oversizing of the line in anticipation of the needs of other customers may be done only with the prior consent of PAEDC which bears the obligation to reimburse Texas Gas for the cost of installation of the gas main.

2. Required Sites, Easements or Rights-of-Way. (a) Incentive Recipients shall be responsible for dedicating or acquiring any easements across their or any other privately owned land or sites (including off-site locations) which are necessary for the construction, operation of and obtaining any governmental approvals necessary to construct the Line Extension in such public rights-of-way.

(b) Any easements dedicated or acquired by the Incentive Recipients shall be in a form approved by the City and shall be assigned to the City on or before the completion of the construction of the Line Extension.

(c) The validity of the legal instruments by which the Incentive Recipients acquire such easements or by which it conveys such easements must be approved by the City attorney and shall be approved by PAEDC's attorney.

3. Construction of the Line Extension. (a) Construction of the Line Extension shall be undertaken solely by Texas Gas, and upon installation of the Line Extension and its authorization for service by any and all appropriate governmental authorities, Texas Gas shall provide to PAEDC invoices for the cost of installation of the Line Extension. Texas Gas has provided to Incentive Recipients and PAEDC a cost estimate in accordance with correspondence dated February 3, 2011 (the "Estimate") attached hereto as **Exhibit "A"** and made a part hereof for all purposes. Any cost for the installation of the Line Extension in excess of the Estimate shall be submitted by Texas Gas and approved by PAEDC prior to construction and installation and prior to any additional obligation or payment by PAEDC to Texas Gas beyond the amount specified in the Estimate.

(b) The Line Extension shall be constructed in accordance with the approved plans and specifications and the City and any and all other local, state or federal jurisdiction shall have the right to inspect all phases of the construction of the Line Extension. Texas Gas and/or Incentive Recipients shall give written notice to PAEDC of the date on which construction is scheduled to begin on the Line Extension, and PAEDC may have reasonable access to the site as necessary to insure performance under this Agreement.

4. Cost of the Line Extension. (a) Texas Gas shall pay all costs associated with the Line Extension including, without limitation, the cost of the following:

- (1) engineering and design;
- (2) construction;
- (3) inspection;
- (4) governmental or regulatory approvals; and
- (5) any other costs reasonably associated with the Line Extension.

(b) PAEDC shall reimburse Texas Gas for the costs set forth in paragraph (a) to the extent such do not exceed the Estimate unless prior written consent of reimbursement of any additional amounts as been given by PAEDC to Texas Gas before any such additional cost beyond that set forth in the Estimate or incurred.

5. **Service From the Line Extension.** After proper completion and dedication of the Line Extension to the City, Texas Gas shall provide continuous and adequate gas service to the Incentive Recipients, subject to all duly adopted rules and regulations of Texas Gas and the payment of the following:

- (1) All standard rates, fees and charges as reflected in Texas Gas's Service Policies;
- (2) Any and all other charges to which Texas Gas and Incentive Recipients independent of this Agreement have made.

6. **Effect of Force Majeure.** In the event either party is rendered unable by force majeure to carry out any of its obligations under this Agreement, in whole or in part, then the obligations of that party, to the extent affected by the force majeure, shall be suspended during the continuance of the inability, provided however, that due diligence is exercised to resume performance at the earliest practical time. As soon as reasonably possible after the occurrence of the force majeure relied upon to suspend performance, the party whose contractual obligations are affected thereby shall give notice and full particulars of the force majeure to the other party. The cause, as far as possible, shall be remedied with all reasonable diligence. The term "force majeure" includes acts of God, strikes, lockouts or other industrial disturbances, acts of the public enemy, orders of the government of the United States or the State of Texas or any civil or military authority, insurrections, riots, epidemics, landslides, lightning, earthquakes, fires, hurricanes, storms, floods, washouts, droughts, arrests, restraints of government and civil disturbances, explosions, breakage, or accidents to equipment, pipelines, or canals, partial or complete failure of water supply, and any other inability of either party, whether similar to those enumerated or otherwise, that are not within the control of the party claiming the inability and that could not have been avoided by the exercise of due diligence and care. It is understood and agreed that the settlement or strikes and lockouts shall be entirely within the discretion of the party having the difficulty and that the requirement that any force majeure be remedied with all reasonable dispatch shall not require the settlement of strikes and lockouts by acceding to the demands of the opposing party if the settlement is unfavorable to it in the judgment of the party having the inability.

7. **Notices.** Any notice to be given hereunder by either party to the other party shall be in writing and may be affected by personal delivery or by sending said notices by registered or certified mail, return receipt requested, to the address set forth below. Notice shall be deemed given when deposited with the United States Postal Service with sufficient postage affixed.

Any notice mailed to the PBC shall be addressed:

John M. Noddin
Project Manager

Any notice mailed to the **Team** shall be addressed:

Team
ATTN: John Panetti
1200 Maloney Road
Post Office Box 350
Kaukauna, Wisconsin 54130

Any notice mailed to the **Texas Gas** shall be addressed:

Manuel Villarreal
Texas Gas Service
4201 39th Street
Port Arthur, Texas 77642-2229

Any notice mailed to **PAEDC** shall be addressed:

Mr. Floyd Batiste
PAEDC
P.O. Box 3934
Port Arthur, Texas 77642

Any party may change the address for notice to it by giving written notice of such change in accordance with the provisions of this paragraph

8. Breach of Agreement and Remedies. (a) If any party breaches any term or condition of this Agreement, the non-breaching party may, at its sole option, provide the breaching party with a notice of the breach within sixty (60) days of discovery of the breach by the non-breaching party. Upon notice of breach, the breaching party shall have sixty (60) days to cure the breach. If the breaching party does not cure the breach within the sixty (60) days, the non-breaching party, below, shall have all rights at law and in equity including the right to enforce specific performance of this Agreement by the breaching party, and the right to perform the obligation in question and to seek restitution for all costs and damages incurred in connection therewith including court costs and any attorney fees or other professional fees.

(b) In the event of termination of this Agreement by a non-breaching party, such action shall not affect any prior conveyance.

(c) The rights and remedies of the parties provided in this Agreement shall not be exclusive and are in addition to any other rights and remedies provided by law and under this Agreement.

9. Third Parties. It is the express intention of the parties that the terms and conditions of this Agreement may be enforced by any party but not by any third party or alleged third-party beneficiary.

10. **Captions.** Captions are included solely for convenience of reference and if there is any conflict between captions and the text of the Agreement, the text shall control.

11. **Context.** Whenever the context requires, the gender of all words herein shall include the masculine, feminine, and neuter, and the number of all words shall include the singular and the plural.

12. **Litigation Expenses.** Either party to this Agreement who is the prevailing party in any legal proceeding against the other party, brought in relation to this Agreement, shall be entitled to recover court costs and reasonable attorneys' fees from the non-prevailing party.

13. **Intent.** The parties hereto covenant and agree that they shall execute and deliver such other and further instruments and documents as are or may become necessary or convenient to effectuate and carry out the intent of this Agreement.

14. **Multiple Originals.** This Agreement may be executed in multiple originals, any copy of which shall be considered to be an original.

15. **Authority.** The signatories hereto represent and affirm that they are authorized to execute this Agreement on behalf of the respective parties hereto.

16. **Severability.** The provisions of this Agreement are severable, and if any word, phrase, clause, sentence, paragraph, section, or other part of this Agreement or the application thereof to any person or circumstance shall ever be held by any court of competent jurisdiction to be invalid or unconstitutional for any reason, the remainder of this Agreement and the application of such word, phrase, clause, sentence, paragraph, section, or other part of this Agreement to other persons or circumstances shall not be affected thereby and this Agreement shall be construed as if such invalid or unconstitutional portion had never been contained therein.

17. **Entire Agreement.** This Agreement, including any exhibits attached hereto and made a part hereof, constitutes the entire Agreement between the parties relative to the subject matter of this Agreement. All prior Contracts, covenants, representations, or warranties, whether oral or in writing, between the parties are merged herein.

18. **Amendment.** No amendment of this Agreement shall be effective unless and until it is duly approved by each party and reduced to a writing signed by the authorized representatives of the parties hereto which amendment shall incorporate this Agreement in every particular not otherwise changed by the amendment.

19. **Governing Law.** This Agreement shall be construed under and in accordance with the laws of the State of Texas and all obligations of the parties are expressly deemed performable in Jefferson County, Texas.

20. **Venue.** Any action at law or in equity brought to enforce or interpret any provision of this Agreement shall be brought in a state court of competent jurisdiction with venue in Jefferson County, Texas.

21. **Successors and Assigns.** This Agreement shall be binding on and shall inure to the benefit of the heirs, successors and assigns of the parties.

22. **Assignability.** The rights and obligations hereunder may not be assigned by any party without the prior written consent of all parties hereto.

23. **Effective Date.** This Agreement shall be effective from and after the date of due execution by all parties.

IN WITNESS WHEREOF each of the parties has caused this Agreement to be executed by its duly authorized representative in multiple copies, each of equal dignity, on the date or dates indicated below.

Performance Blasting & Coating, LP

By: _____
Its: _____

Team Fabricators, LLC

By: _____
Its: _____

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

By: _____
Its: _____

Texas Gas agrees to the terms and conditions of the foregoing Agreement by execution hereof.

Texas Gas Service, a division of Oneok

By: _____
Its: _____