

RESOLUTION NO. 11-135

**A RESOLUTION AUTHORIZING ACCEPTANCE OF THE ENGINEER'S CERTIFICATE OF COMPLETION FROM JOE M. WILSON, JR., P.E., OF ARCENEUX & GATES CONSULTING ENGINEERS, INC., THE CONTRACTOR'S CERTIFICATE AND RELEASE AND CONTRACTOR'S CERTIFICATE OF GUARANTEE, BOTH FROM EXCAVATORS & CONSTRUCTORS, LTD. FOR THE COMPLETION OF THE SANITARY SEWER, PAVING AND DRAINAGE FACILITIES TO SERVE THE PORT ARTHUR SPUR 93 BUSINESS PARK - PHASE II, CONTRACT NO. 4, AND AUTHORIZING THE CITY MANAGER TO SIGN THE CERTIFICATE OF ACCEPTANCE ON BEHALF OF THE CITY OF PORT ARTHUR, TEXAS**

**WHEREAS**, on November 16, 2010, Resolution No. 10-504 was approved by the City Council of the City of Port Arthur, awarding the contract for the construction of water, sanitary sewer, paving and drainage to serve the City of Port Arthur Section 4A Economic Development Corporation (the "PAEDC") Business Park located at 9555 W. Port Arthur Road to Excavators & Constructors, Ltd.; and

**WHEREAS**, the total contract price was \$599,230.68; and

**WHEREAS**, on April 5, 2011, the City Council of the City of Port Arthur approved Resolution No. 11-110, approving Amendment No. 1 decreasing the contract price to \$559,230.68 due to the modification of bid items; and

**WHEREAS**, on April 4, 2011, at their regular Board meeting, the PAEDC Board of Directors approved the final pay estimate and completion documentation for Contract No. 4 submitted by Excavators & Constructors, Ltd. as denoted in Exhibits "A", "B", and "C".

**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 approves the acceptance of the Engineer's Certificate of Completion (Exhibit "A"), Contractor's Certificate of Guarantee (Exhibit "B"), and Contractor's Certificate and Release (Exhibit "C") for the completion of the sanitary sewer, paving and drainage facilities to serve the Port Arthur Spur 93 Business Park – Phase II, Contract No. 4.

**Section 3.** That the City Manager is hereby authorized to execute on behalf of the City of Port Arthur a Certificate of Acceptance (Exhibit "D") for the completion of sanitary sewer, paving and drainage facilities to serve the Port Arthur Spur 93 Business Park – Phase II, Contract No. 4.

**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 19<sup>th</sup> 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 Albright  
Councilmembers Chatman, Segler, Hood, Beard,  
Williams, Kiss and Henderson.

NOES: None.

Deloris Prince  
Deloris "Bobbie" Prince, Mayor

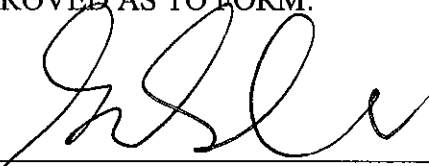
ATTEST:

Sherri Bellard  
Sherri Bellard, Acting City Secretary

APPROVED:

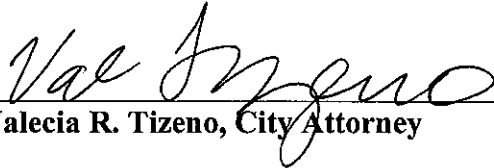
Floyd Batiste  
Floyd Batiste, PAEDC CEO

APPROVED AS TO FORM:

A handwritten signature in black ink, appearing to read 'G. Goodson', written over a horizontal line.

**Guy N. Goodson, PAEDC Attorney**

APPROVED AS TO FORM:

A handwritten signature in black ink, appearing to read 'Vale Tizen', written over a horizontal line.

**Valecia R. Tizen, City Attorney**

# **EXHIBIT “A”**

**ENGINEER'S CERTIFICATE OF COMPLETION**

Project: **SANITARY SEWER, PAVING AND DRAINAGE TO SERVE THE  
PORT ARTHUR BUSINESS PARK-PHASE II**

Date Of Issuance: **April 1, 2011**

Owner(s): **PORT ARTHUR ECONOMIC DEVELOPMENT CORPORATION**

Owner's Project No.: **EDC-090, Contract No. 4**

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

Contractor: **EXCAVATORS & CONSTRUCTORS, LTD.**

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

TO PORT ARTHUR ECONOMIC DEVELOPMENT CORPORATION  
[OWNER]

AND TO EXCAVATORS & CONSTRUCTORS, LTD.  
[CONTRACTOR]

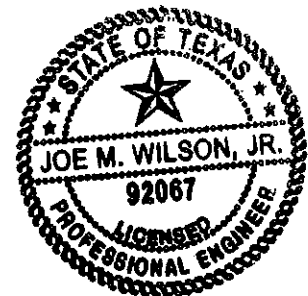
The Work to which this Certificate applies has been inspected by authorized representatives of Owner, Contractor and Engineer, and that Work is hereby declared to be complete in accordance with the Contract Documents on

March 1, 2011  
DATE OF COMPLETION

Executed by Engineer on 4-1, 2011

BY:

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



[SEAL]

## **EXHIBIT "B"**

**CONTRACTOR'S CERTIFICATE OF GUARANTEE**

FROM: EXCAVATORS & CONSTRUCTORS, LTD.  
(Name of Contractor)

TO: PORT ARTHUR ECONOMIC DEVELOPMENT CORPORATION

REFERENCE CONTRACT NO. EDC-090, Contract No. 4

ENTERED INTO THE 17<sup>th</sup> DAY OF NOVEMBER, 2010 BETWEEN THE PORT ARTHUR ECONOMIC DEVELOPMENT CORPORATION AND EXCAVATORS & CONSTRUCTORS, LTD.

OF PORT ARTHUR, TEXAS  
(City) (State)

FOR THE SANITARY SEWER, PAVING AND DRAINAGE FACILITIES TO SERVE THE PORT ARTHUR BUSINESS PARK, PHASE II, CONTRACT NO. 4

LOCATED IN THE CITY OF PORT ARTHUR, TEXAS

**KNOW ALL MEN BY THESE PRESENTS:**

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

IN WITNESS WHEREOF, the undersigned has signed and sealed this instrument this 1<sup>st</sup> day of April, 2011.

(CORPORATE SEAL)

**EXCAVATORS & CONSTRUCTORS, LTD.**

(Contractor)

BY: 

(SIGNATURE AND TITLE OF OFFICER)

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

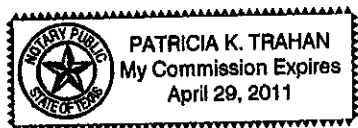
second, that he has read the foregoing certificate by him subscribed as President (Title)  
of EXCAVATORS & CONSTRUCTORS, LTD. (Name of Company)

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

W. Butler  
(Affiant)

Subscribed and sworn to before me this 1<sup>st</sup> day of April, 2011.

My commission expires: 4-29-11  
(Date)



Patricia K Trahan  
(Notary Public)

## **EXHIBIT "C"**

**CONTRACTOR'S CERTIFICATE AND RELEASE**

FROM: EXCAVATORS & CONSTRUCTORS, LTD.  
(Name of Contractor)

TO: PORT ARTHUR ECONOMIC DEVELOPMENT CORPORATION  
(Owner)

REFERENCE CONTRACT NO. EDC-090, CONTRACT NO. 4 ENTERED INTO THE 17<sup>th</sup> DAY OF NOVEMBER, 2010, BETWEEN THE PORT ARTHUR ECONOMIC DEVELOPMENT CORPORATION

AND EXCAVATORS & CONSTRUCTORS, LTD.  
(Name of Contractor)

OF PORT ARTHUR, TEXAS  
(City) (State)

FOR THE: SANITARY SEWER, PAVING AND DRAINAGE FACILITIES TO SERVE THE PORT ARTHUR BUSINESS PARK-PHASE II, CONTRACT NO. 4

**KNOW ALL MEN BY THESE PRESENTS:**

1. The undersigned hereby certifies that there is due from, and payable by, the Owner to the Contractor under the contract and duly approved Change Orders and modifications the balance of Twenty-Seven Thousand Nine Hundred Sixty-Eight Dollars and 27/100 (27,968.27)
2. The undersigned further certifies that in addition to the amount set forth in Paragraph 1, there are outstanding and unsettled the following items which he claims are just and due and owing by the Owner to the Contractor:
  - (a) \_\_\_\_\_
  - (b) \_\_\_\_\_
  - (c) \_\_\_\_\_
  - (d) \_\_\_\_\_

(Itemize claims and amounts due) (If none, so state)
3. The undersigned further certifies that all work required under this contract, including work required under Change Order(s) numbered 1 has been performed in accordance with the terms thereof, and that there are no unpaid claims for materials, supplies, or equipment and no claims of laborers or mechanics for unpaid wages arising out of the performance of this contract, and that the wage rates paid by the Contractor were in conformity with the contract provisions relating to said wage rates.

4. Except for the amounts stated under Paragraphs 1 and 2 hereof, the undersigned has received from the Owner all sums of money payable to the undersigned under, or pursuant to, the above mentioned contract or any modifications or change thereof.
5. That in consideration of the payment of the amount stated in Paragraph 1 hereof, the undersigned does hereby release the Owner and Operator from any and all claims arising under or by virtue of this contract, except the amount listed in Paragraph 2 hereof due from the Owner; provided, however, that if for any reason the Owner does not pay in full the amount stated in Paragraph 1 hereof, said deduction shall not affect the validity of this release, but the amount so deducted shall be automatically included under Paragraph 2 as an amount which the Contractor has not released but will release upon payment thereof. The Contractor further certifies that upon the payment of the amount listed in Paragraph 2 hereof, and of any amount which may be deducted from Paragraph 1 hereof, he will release the Owner and Operator from any and all claims of any nature whatsoever arising out of said contract or modification thereof, and will execute such further releases or assurances as the Owner and Operator may request.

IN WITNESS WHEREOF, the undersigned has signed and sealed this instrument this 1<sup>st</sup> day of April, 2011.  
(CORPORATE SEAL)

EXCAVATORS & CONSTRUCTORS, LTD.

(Contractor)

BY:

(Signature and Title of Officer)

M. J. Braxton  
(Affiant)

he is the President of EXCAVATORS & CONSTRUCTORS, LTD.  
(Title) (Name of Company)

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

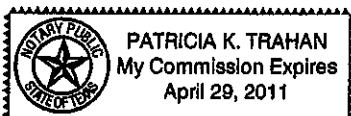
of EXCAVATORS & CONSTRUCTORS, LTD.  
(Name of Company)

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

(Affiant)

Subscribed and sworn to before me this 1<sup>st</sup> day of April, 2011.

My commission expires 4-29-11  
(Date)



Patricia K. Trahan  
(Notary Public)

## **EXHIBIT "D"**

**CERTIFICATE OF ACCEPTANCE**

**FOR THE**

**CONSTRUCTION OF THE SANITARY SEWER, PAVING AND DRAINAGE  
FACILITIES TO SERVE THE SPUR 93 BUSINESS PARK – PHASE II,  
CONTRACT NO. 4**

**IN THE**

**CITY OF PORT ARTHUR**


This is to certify that the City of Port Arthur, Texas, accepts the completion of the Sanitary Sewer, Paving and Drainage Facilities to serve the Spur 93 Business Park – Phase II, Contract No. 4, on the basis of the Engineer's Certificate of Completion, by Joe M. Wilson, Jr., P.E., of Arceneaux & Gates Consulting Engineers, Inc., and the Contractor's Certificate of Guarantee, and the Contractor's Certificate and Release, both executed by M. J. Braxton, Excavators & Constructors, Ltd.

Dated: \_\_\_\_\_

**CITY OF PORT ARTHUR**

**BY:** \_\_\_\_\_  
Stephen Fitzgibbons, City Manager

**ATTEST:**

  
\_\_\_\_\_  
Sherri Bellard, Acting City Secretary