

P.R. No. 16627
August 10, 2011 kv

RESOLUTION NO. 11-376

A RESOLUTION AUTHORIZING THE EXECUTION OF A CONTRACT FOR PROFESSIONAL SERVICES BETWEEN THE CITY OF PORT ARTHUR SECTION 4A ECONOMIC DEVELOPMENT CORPORATION AND ARCENEUX & GATES CONSULTING ENGINEERS, INC., FOR CERTAIN TECHNICAL AND PROFESSIONAL SERVICES FOR THE ENGINEERING, DESIGN, SURVEYING, TESTING AND PROVIDING RESIDENT PROJECT REPRESENTATION ON THE CONSTRUCTION OF A UTILITY ACCESS ROAD IN THE PORT ARTHUR SPUR 93 BUSINESS PARK IN AN AMOUNT NOT TO EXCEED \$29,500.00

WHEREAS, on March 7, 2011, at their regular Board meeting, the City of Port Arthur Section 4A Economic Development Corporation (the "PAEDC"), approved soliciting bids for the construction of an all weather utility road, movement of dirt, and installation of underground electrical conduit for light poles in the Spur 93 Business Park (the "Project"); and,

WHEREAS, Arceneaux & Gates Consulting Engineers, Inc. ("Arceneaux & Gates") submitted to the City of Port Arthur's Purchasing Department specifications for the construction of the Utility Access Road for the request for bid proposals; and,

WHEREAS, the City Council of the City of Port Arthur at their May 3, 2011 regular meeting, per Resolution 11-157 awarded the bid for construction of the utility access road to the lowest bidder, APAC – Texas, Inc. ("APAC") after review and recommendation by Arceneaux & Gates and the PAEDC Board of Directors; and,

WHEREAS, Arceneaux & Gates has provided technical and professional services as to the engineering, design, surveying, testing and providing resident project representation for the utility access road in the Spur 93 Business Park; and,

WHEREAS, the Professional Services Agreement with Arceneaux & Gates was not finalized nor executed during the construction bid proposal process for the Project; and,

WHEREAS, at their August 8, 2011 regular Board meeting, the PAEDC Board of Directors approved a Professional Services Agreement with Arceneaux & Gates for technical and professional services as to the Project, see **Exhibit "A"** at a cost not to exceed \$29,500.00.

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

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

Section 2. That the City Council of the City of Port Arthur approves the Professional Services Agreement between the PAEDC and Arceneaux & Gates at a cost not to exceed \$29,500.00 for engineering, design, surveying, testing and providing resident project representation for the utility access road in the Spur 93 Business Park.

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 23rd day of Aug A.D., 2011,
at a Meeting of the City Council of the City of Port Arthur, Texas, by the following vote:

AYES:

Mayor

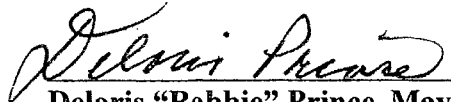
Prince; Mayor Pro Tem Duceff

Councilmembers


Scott, Segler, Albright, Beard,
Williamson, Freeman and Thomas.

NOES:


None.


Deloris "Bobbie" Prince, Mayor


ATTEST:


Sherri Bellard, Acting City Secretary

APPROVED:


Floyd Batiste, PAEDC CEO

APPROVED AS TO FORM:


Guy N. Goodson, PAEDC Attorney

APPROVED AS TO FORM:

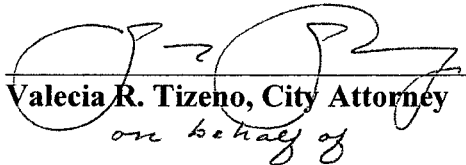

Valecia R. Tizeno, City Attorney
on behalf of

EXHIBIT "A"

Exhibit A
Total of 14 pages

THE STATE OF TEXAS §
§
COUNTY OF JEFFERSON §

CONTRACT
FOR PROFESSIONAL SERVICES
(NON-FEDERAL FORM)

PART I - AGREEMENT

THIS AGREEMENT, entered into as of this ___ day of _____, by and between the Port Arthur Section 4A Economic Development Corporation, Port Arthur, Texas (hereinafter called the "EDC") acting herein by its Executive Director by Resolution of the EDC and Arceneaux & Gates Consulting Engineers, Inc. (hereinafter called the "ENGINEER") acting herein by Ronald J. Arceneaux, PE, PLS, its President, hereunto duly authorized:

WITNESSETH THAT:

WHEREAS, the EDC desires to engage the Engineer to (1) render certain technical and professional services hereafter described in "Scope of Services" or (2) perform certain work hereafter described in "Scope of Services": NOW, THEREFORE, the Parties hereto do mutually agree as follows:

1. EMPLOYMENT OF ENGINEER

The EDC hereby agrees to engage the ENGINEER and the ENGINEER hereby agrees to perform the "Scope of Services" hereinafter set forth. This contract shall be performed in Jefferson County, Texas.

2. SCOPE OF SERVICES

A. BASIC SERVICES

Engineering services in connection with preparation of plans and specifications and construction phase services, including all necessary design, surveying, and testing and resident project representation for the following described project, to wit:

**CONSTRUCTION OF UTILITY ACCESS ROAD FOR PORT ARTHUR EDC
BUSINESS PARK, PROJECT NO. EDC-160**

ENGINEER'S compensation for Basic Services shall be as set forth in Paragraph 5.

The services rendered by ENGINEER for the Project to be designed for construction are divided into three (3) distinct and sequential phases as follows:

1. **Preliminary Phase** – Preliminary studies, layouts, and cost estimates
2. **Design Phase** - Preparation of plans, specifications and contract documents
3. **Construction Phase** - EDC'S representative during bidding construction

Certain elements of the engineering work are covered under the Basic Services; others are performed as Additional Services. Those elements of the engineering work which cannot be accurately predetermined or controlled entirely by the ENGINEER are performed as Additional Services.

These phases are expanded in the following outline:

A. BASIC SERVICES

1. PRELIMINARY PHASE

- (a) Provide Project Management services to direct, supervise and coordinate the various items of work within this Phase, including review of activities of subcontracted engineers.
- (b) Attend preliminary conference with the EDC and other interested parties regarding the project in order to further define the work.
- (c) Establish the scope of any soil and foundation investigations or any special surveys and tests which, in the opinion of the ENGINEER, may be required, and arrange for such work to be done, for the EDC'S account.
- (d) Preparation of environmental statements and assistance to EDC in preparing for, and attending public hearings.

2. DESIGN PHASE

- (a) Provide Project Management service to direct, supervise and coordinate the various items of work within this Phase, including review of the activities of subcontracted engineers.
- (b) Establish the scope of any additional soil and foundation investigations or any special surveys and tests which, in the opinion of the ENGINEER may be required for design, and arrange for such work to be done, for the EDC'S account.
- (c) Furnish to the EDC, where required by the circumstances of the assignment, the engineering data necessary for applications for routine permits by local, state, and federal authorities (as distinguished from detailed applications and supporting documents for government grants-in-aid, or for planning advances).

- (d) Perform field surveys to collect information which in the opinion of the ENGINEER is required for design, including photogrammetry, and related office computations and drafting.
- (e) Prepare detailed specifications and contract drawings and bidding documents to be included in contract documents for construction authorized by the EDC.
- (f) Prepare detailed cost estimates of authorized construction. The ENGINEER shall use reasonable skill and care befitting the profession in preparing cost estimates that will reflect current, local construction costs.
- (g) Prepare environmental statements and assistance to EDC in preparing for, and attending public hearings
- (h) Furnish the EDC all necessary copies of approved Contract Documents including notices to bidders and proposal forms, up to twenty (20) sets.

3. CONSTRUCTION PHASE

- (a) Provide Project Management services to direct supervise and coordinate the various items of work within this Phase, including review of activities of subcontracted engineers.
- (b) Assist the EDC in the advertisements of the project for bids.
- (c) Assist the EDC in the opening and tabulation of bids for construction of the Project, and consult with the EDC as the proper action to be taken, based on the engineering considerations involved.
- (d) Assist in the preparation of formal Contract Documents.
- (e) Provide routine horizontal and vertical controls for use by Contractor to do his detailed construction staking.
- (f)
 - a.) Make periodic visits to the construction site (as distinguished from the continuous services of a Resident Project Representative) as intervals appropriate to the various stages of construction to observe and to evaluate the progress and quality of work, and to determine in general if the construction is proceeding in accordance with the Contract Documents. ENGINEER will work closely with the Resident Project Representative (when required by EDC) to insure that complete, accurate construction records, reports and information are being provided and that the quantities and quality of work done by the Contractor are consistent with the Contract Documents.
 - b.) Provide services of a Resident Project Representative and other field personnel as required by the EDC for on-the-site determination of the quantities and quality of the work done by the Contractor, and to provide construction records, reports and information to the ENGINEER or Project Engineer.
- (g) Arrange for construction testing as required by the Project, for the EDC'S

account.

- (h) Consult with and advise with the EDC, issue all instructions to the Contractor requested by the EDC, and prepare and issue routine change orders with EDC'S approval.

On matters requiring the EDC's involvement the ENGINEER shall provide the EDC'S designated representative with all facts germane to such matters along with a complete recommendation for the EDC to consider. Upon the decision of the EDC, the ENGINEER shall be notified of the EDC'S decision with instructions to inform the Contractor. All matters of this nature shall be reduced to writing for the record as soon as practical.

The ENGINEER shall have other duties in this regard that may be included in the General Conditions of construction contract documents:

- (i) Review samples, catalog data, schedules, shop drawings, laboratory, shop and mill tests of material and equipment and other data which the Contractor submits. This review is for the benefit of the EDC and covers only general conformance with the information given by the Contract Documents. The Contractor is to review and stamp his approval on submittals prior to submitting to ENGINEER, and review by the ENGINEER does not relieve the Contractor of any responsibility such as dimensions to be confirmed and correlated at the job site, appropriate safety measures to protect workers and the public, or the necessity to construct a complete and workable facility in accordance with the Contract Documents.
- (j) Obtain and reviews monthly the final estimates for payments to Contractors, furnish to the EDC any recommended payments to Contractors and assemble written guarantees which are required by the Contract Documents.
- (k) Conduct, in company with the EDC, a final inspection of the Project for compliance with the Contract Documents, and submit recommendations concerning Project status, as it may affect EDC'S final payment to the Contractor.

ENGINEER'S compensation for Basic Services shall be as set forth in Paragraph 5.

B. ADDITIONAL SERVICES

All work performed by ENGINEER at request of EDC which is not included in the Basic Services defined above, shall constitute Additional Services. Unless included in said Basic Services, Additional Services may include but are not limited to the following:

- (1) Studies, tests, and process determination to establish basis of design for water and waste treatment facilities.
- (2) Land surveys and establishment of boundaries and monuments, and related office computation and drafting.
- (3) Preparation of property or easement descriptions.
- (4) Preparation of any special reports required for marketing of bonds.
- (5) Small design assignments (estimated construction cost less than \$100,000).
- (6) Appearances before regulatory agencies.
- (7) Assistance to the EDC as an expert witness in any litigation with third parties, arising from the development or construction of the Project, including preparation of engineering data and reports.
- (8) Special investigations involving detailed consideration of operation, maintenance and overhead expenses; preparation of rate schedules; earnings and expense statements; special feasibility studies; appraisals; evaluations; and material audits or inventories required for certification of force account construction performed by the EDC.
- (9) Special soil and foundation investigations, including field and laboratory tests, borings, related engineering analyses, and recommendations.
- (10) Detailed mill, shop and/or laboratory inspection of materials or equipment.
- (11) Travel and subsistence required of the ENGINEER and authorized by the EDC to points other than EDC'S or ENGINEER'S offices and Project site.
- (12) Additional copies of reports over ten (10) sets and additional sets of Contract Document over twenty (20) sets.
- (13) Preparation of applications and supporting documents for government grants or planning advances for public works projects.
- (14) Preparation of environmental statements and assistance to EDC in preparing for, and attending public hearings.
- (15) Plotting, computing, and filing plats of subdivisions; staking of lots; and related land planning and partitioning functions.
- (16) Revision of contract drawings after a definite plan has been approved by the EDC, redrawing of plans to show work as actually constructed.
- (17) Services after issuance of Certificate of Completion.
- (18) Services to investigate existing conditions or facilities or to make measured drawings thereof, or to verify accuracy of drawings or other information furnished by Client.
- (19) Preparation of operating instructions and manuals for facilities and training of personnel and assistance in operation of facilities.

- (21) Additional or extended services during construction made necessary by work damaged by fire or other cause during construction, defective or neglected work of contractor; services rendered after prolongation of construction contract time by more than 20%, acceleration of work schedule involving services beyond normal working hours; or default under construction contract due to delinquency or insolvency.
- (22) Providing any other service not otherwise included in this Agreement or not customarily furnished in accordance with generally accepted engineering practice.
- (23) Any other special or miscellaneous assignments specifically authorized by EDC.

ENGINEER'S compensation for Additional Services shall be as set forth in Paragraph 5.

3. TIME OF PERFORMANCE

ENGINEER will proceed immediately upon execution of this Contract with performance of the services called for under the Basic Services with completion within 90 days after execution, unless delayed by causes outside the control of ENGINEER, and will proceed with subsequent work only on authorization by EDC. ENGINEER shall immediately submit to EDC in writing evidence of delay satisfactory to the EDC Engineer's reasonable discretion, upon which an extension of time equal to the period of actual delay shall be granted in writing.

4. INFORMATION AND SERVICES TO BE FURNISHED ENGINEER

It is agreed that the EDC will furnish, without charge, for the use of the Contract information, data, reports, records, and maps as are existing, available, and necessary for the carrying out of the work of the ENGINEER as outlined under "Scope of Services." The EDC and its agencies will cooperate with the ENGINEER in every way possible to facilitate the performance of the work described in this Contract.

5. COMPENSATION AND METHOD OF PAYMENT

A. COMPENSATION

EDC will pay ENGINEER for work performed and services rendered under Paragraph 2 "Scope of Services", (Basic Services and Additional Services) at the following rates shown in ATTACHMENT 1.

It is agreed that total fees for Basic Services (including subcontracted engineering services as described herein) under this Contract, as defined in Paragraph 2A and based on the preceding schedule, shall not exceed the sum of Twenty-nine Thousand Five Hundred Dollars (\$29,500.00). Additional Services authorized in writing by the EDC will be compensated based upon hourly rates established by the ENGINEER in Attachment 1.

B. PAYMENT

ENGINEER will invoice EDC Monthly for its services and charges incurred by ENGINEER for subcontracted engineering services performed under the direction and control of ENGINEER as described herein.

EDC agrees to pay ENGINEER at his office the full amount of each such invoice upon receipt or as otherwise specified in this Agreement. A charge of one percent per month shall be added to the unpaid balance of invoices not paid within 31 days after date of invoice. The engineer shall pay any subcontractors no later than the tenth day after he receives payment as required under Chapter 2251 Government Code of the Revised Civil Statutes of Texas.

6. RECORDS

ENGINEER shall keep accurate records, including time sheets and travel vouchers, of all time and expenses allocated to performance of Contract work. Such records shall be kept in the office of the ENGINEER for a period of not less than five (5) years and shall be made available to the EDC for inspection and copying upon reasonable request.

7. OWNERSHIP OF DOCUMENTS

All documents, including original drawings, estimates, specifications, field notes and data are property of EDC. ENGINEER may retain reproducible copies of drawings and other documents.

All documents, including drawings and specifications prepared by ENGINEER are instruments of service in respect to the project. They are not intended or represented to be suitable for reuse by EDC or others on extensions of the Project or on any other project. Any reuse without written verification or adaption by ENGINEER for the specific purpose intended will be at EDC'S sole risk and without liability or legal exposure to ENGINEER and EDC shall indemnify and hold harmless ENGINEER from all claims, damages, losses and expenses including attorneys' fees arising out of or resulting therefrom. Any such verification or adaption will entitle ENGINEER to further compensation at rates to be agreed upon by EDC and ENGINEER.

8. INSURANCE

All insurance must be written by an insurer licensed to conduct business in the State of Texas, unless otherwise permitted by Owner. The ENGINEER 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 by 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 EDC of Port Arthur, its officers, agents and employees.)
2. Commercial General Liability occurrence type insurance. (No "XCU" restrictions shall be applicable.) Products/completed operations coverage must be included, and the EDC of Port Arthur, 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.
 - b. Property Damage \$100,000 per occurrence.
 - c. Minimum aggregate policy year limit \$1,000,000.
3. Commercial Automobile Liability Insurance (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.
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. ENGINEER also agrees to maintain Professional Liability Insurance coverage of \$250,000 minimum per occurrence/claim/policy year aggregate limits against ENGINEER for damages arising in the course of, or as a result of, work performed under this Contract. Coverage shall continue for a minimum of two (2) years after the ENGINEER'S assignment under this Contract is completed. Additional Professional Liability Insurance required is \$0 .

ENGINEER shall cause ENGINEER'S insurance company or insurance agent to fill in all information required (including names of insurance agencies, ENGINEER 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 this Contract, and pertaining to the above listed Items 1,2,3,4, and 5; and before commencing any of the work and within the time otherwise specified, ENGINEER shall file said completed Form with the EDC. 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 EDC. ENGINEER shall also file with

the EDC 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 EDC not more than ten (10) days after execution of this Contract.

Deductible on policy for Professional Liability shall not exceed \$5,000 unless specifically approved by the Owner.

9. PROFESSIONAL LIABILITY

A. ENGINEER shall be responsible for the use and employment of reasonable skill and care befitting the profession in the designs, drawings, plans, specifications, data, reports and designation of materials and equipment provided by ENGINEER for the Project covered by this Contract. Approval by EDC shall not constitute nor be deemed a release or waiver of the responsibility and liability of ENGINEER for the accuracy and competency of such designs, drawings, plans, specifications, data, reports and designation of materials and equipment. Contractor will be responsible for the actual supervision of Construction operations and safety measures involving the work, his employees and the public, but the ENGINEER will advise the Contractor of any items requiring the attention and action of the Contractor.

B. If services include periodic visits to the site to inspect work performed by another Contractor, ENGINEER is responsible for exercising reasonable care and skills befitting the profession to assure that the Contractor performs the work in accordance with Contract Documents and to safeguard the EDC against defects and deficiencies in the work; provided, however, ENGINEER does not guarantee or insure the work completed by the Contractor. During visits to the construction site, and on the basis of the ENGINEER'S on-site observations as an experienced and qualified design professional, he will keep the EDC informed on the extent of the progress of the work, and advise the EDC of material and substantial defects and deficiencies in the work of material and substantial defects and deficiencies in the work of Contractors which are discovered by the ENGINEER or otherwise brought to the ENGINEER'S attention in the course of construction, and may, on behalf of the EDC exercise whatever rights the EDC may have to disapproved work and materials as failing to conform to the Contract Documents.

C. In connection with the services of Resident Project Representatives, ENGINEER will use the usual degree of care and prudent judgement in the selection of competent Project Representatives, and the ENGINEER will use its best efforts to see that the Project Representatives are on the job to perform their required duties. In performing these duties and services (described in this sub-paragraph), ENGINEER is responsible for exercising reasonable care and skill befitting the profession the assure that the Contractor performs the work in accordance with Contract Documents and to safeguard the EDC against defects and deficiencies in the work; provided, however, ENGINEER does not guarantee or insure the work completed by the Contractor.

D. In performing these services the ENGINEER will at all times endeavor to protect the EDC on the Project and work sites and safeguard the EDC against defects and deficiencies in the work of the Contractor; provided, however, ENGINEER does not guarantee or insure the work completed by the Contractor, nor is ENGINEER responsible for the actual supervision of construction operations or for the safety measures that the Contractor takes or should take.

E. ENGINEER shall not be responsible for any excess of construction costs over an amount estimated.

10. INDEMNIFICATION

ENGINEER shall comply with the requirements of all applicable laws, rules, and regulations in connection with the services of ENGINEER and shall exonerate, indemnify and hold harmless the EDC, its officers, agents and all employees from any and all liability, loss or damage arising out of noncompliance with such laws, rules and regulations; without limitation, ENGINEER shall assume full responsibility for payments of Federal, State and Local taxes or contributions imposed or required under the Social Security, Worker's Compensation, and Income Tax Laws with respect to ENGINEER'S employees. Further, ENGINEER shall exonerate, indemnify and hold harmless the EDC, its officers, agents and all employees from any and all liability, loss, damages, expenses or claims arising out of negligence of ENGINEER, its officers, agents and employees in connection with any of the work performed or to be performed under this Contract by ENGINEER or as a result of ENGINEER'S failure to use and employ reasonable skill and care befitting the profession in accordance with paragraph 9 hereof. Further, ENGINEER shall exonerate, indemnify and hold harmless the EDC, its officers, agents, and all employees from any and all liability, loss, damages, expenses or claims for infringement of any copyright or patents arising out of the use of any plans, design, drawings, or specifications furnished by ENGINEER in the performance of this Contract.

The foregoing indemnification provision shall apply to ENGINEER regardless of whether or not said liability, loss, damages, expenses, or claims is caused in part by a party indemnified hereunder.

11. ADDRESS OF NOTICE AND COMMUNICATIONS

EDC:

Mr. Floyd Batiste
Port Arthur EDC
4173 39th Street
Port Arthur, Texas 77642

ENGINEER:

Arceneaux & Gates
Consulting Engineers, Inc.
3501 Turtle Creek Dr., Suite 102
Port Arthur, TX 77642
Attn: Ron Arceneaux, PE, PLS, President

All notices and communications under this Contract shall be mailed or delivered to EDC and ENGINEER at the above addresses.

12. CAPTIONS

Each paragraph of this Contract has been supplied with a caption to serve only as a guide to

the contents. The caption does not control the meaning of any Paragraph or in any way determine its interpretation or application.

13. SUCCESSORS AND ASSIGNMENTS

The EDC and the ENGINEER each binds himself and his successors, executors, administrators, and assigns to the other party of this Contract and to the successors, executors, administrators and assigns of such other party, in respect to all covenants of this Contract. Except as above, neither the EDC nor the ENGINEER shall assign, sublet, or transfer his interest in this Contract without the written consent of the other. Nothing herein shall be construed as creating any personal liability on the part of any officer or agent of any public body which may be a party hereto.

14. TERMINATION OF CONTRACT FOR CAUSE

If, through any cause, the ENGINEER shall fail to fulfill in timely and proper manner his obligations under this Contract, or if the ENGINEER shall violate any of the covenants, agreements, or stipulations of this Contract, the EDC shall thereupon have the right to terminate this Contract by giving written notice to the ENGINEER 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, survey, drawings, maps, models, photographs, and reports prepared by the ENGINEER under this Contract shall, at the option of the EDC, become its property and the ENGINEER shall be entitled to receive just and equitable compensation for any work satisfactorily completed hereunder.

Notwithstanding the above, the ENGINEER shall not be relieved of liability to the EDC for damages sustained by the EDC by virtue of any breach of the Contract by the ENGINEER and the EDC may withhold any payment to the ENGINEER for the purpose of setoff until such time as the exact amount of damages due the EDC from the ENGINEER is determined.

15. TERMINATION FOR CONVENIENCE OF THE EDC

The EDC may terminate this Contract at any time by giving at least thirty (30) days notice in writing to the ENGINEER. If the Contract is terminated by the EDC as provided herein, the ENGINEER will be paid for the time provided and expenses incurred up to the termination date. If this Contract is terminated due to the fault of the ENGINEER, Paragraph 14 hereof relative to termination shall apply.

16. CHANGES

The EDC may, from time to time, request changes in the scope of the services of the ENGINEER to be performed hereunder. Such changes, including any increase or decrease in the amount of the ENGINEER'S compensation, which are mutually agreed upon by and between the EDC and ENGINEER shall be incorporated in written amendments to this Contract.

17. PERSONNEL

- A. The ENGINEER represents that he has, or will secure at his own expense, all personnel required in performing the services under this Contract. Such personnel shall not be employees of or have any contractual relationship with the EDC.
- B. All of the services required hereunder shall be performed by the ENGINEER or under his supervision and all personnel engaged in the work shall be fully qualified and, if applicable shall be authorized or permitted under State and local law to perform such services.
- C. None of the work or services covered by this Contract shall be subcontracted without the prior written approval of the EDC. Any work or services subcontracted hereunder shall be specified by written Contract or agreement and shall be subject to each provision of this Contract.

18. REPORTS AND INFORMATION

The ENGINEER at such times and in such forms as the EDC may require, shall furnish the EDC 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.

19. CIVIL RIGHTS

Under Chapter 106 Civil Practice and Remedies Code of the Revised Civil Statutes of Texas, no person shall, on the grounds of race, religion, color, sex or national origin, be excluded due to discrimination under any program or activity of the EDC.

The ENGINEER will carry out its work under this Contract in a manner which will permit full compliance by the EDC with the Statute.

20. INTEREST OF ENGINEER AND EMPLOYEES

The ENGINEER 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 interests which would conflict in any manner or degree with the performance of his services hereunder.

The ENGINEER further covenants that in the performance of this Contract, no person having any such interest shall be employed.

21. 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.

EXECUTED IN TWO (2) counterparts (each of which is an original) on behalf of ENGINEER by Ronald J. Arceneaux, PE, PLS, its President shown below, and on behalf of the EDC by its Executive Director.

ACCEPTED:

EDC:

EDC OF PORT ARTHUR
SECTION 4A EDC

EXECUTIVE DIRECTOR

DATE: _____

ATTEST

EDC Secretary

APPROVED AS TO FORM:

EDC Attorney

DATE: _____

PROPOSED AND AGREED TO:

ENGINEER:

ARCENEUX & GATES
CONSULTING ENGINEERS, INC.

DATE: _____

ATTEST:

ATTACHMENT 1

SCHEDULE OF BILLABLE RATES FOR PROFESSIONAL SERVICES

CLASSIFICATION	RATE
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ENGINEERING SERVICES

- Principal \$175.00 per hour
- Engineering Project Manager \$150.00 per hour
- Staff Engineer \$120.00 per hour
- Engineer-in-Training \$102.00 per hour

SURVEYING SERVICES

- Registered Professional Land Surveyor \$115.00 per hour
- 2-Man Crew \$140.00 per hour
- 3-Man Crew \$195.00 per hour

TECHNICAL SERVICES

- Engineering Technician III \$ 90.00 per hour
- Engineering Technician II \$ 65.00 per hour
- Engineering Technician I \$ 55.00 per hour

SECRETARIAL/ADMINISTRATIVE SERVICES

\$ 45.00 per hour

NON-LABOR EXPENSES

- Vehicle Travel, Conventional Equipment \$ 25.00 per day
- Computer Plotting \$ 20.00 per plot
- Subcontracted Services Cost + 10%
- Materials Cost + 10%
- GPS Base Station w/One (1) Rover \$500.00 per day

2010