

RESOLUTION NO. 13-081

**A RESOLUTION AUTHORIZING THE CITY OF PORT ARTHUR SECTION 4A ECONOMIC DEVELOPMENT CORPORATION TO ENTER INTO A PROFESSIONAL SERVICE CONTRACT WITH HADDON + COWAN ARCHITECTS COLLABORATIVE OF AUSTIN, TEXAS, WITH VINCE HAUSER AS THE DESIGN TEAM MANAGER FOR A TOTAL AMOUNT NOT TO EXCEED \$376,000.**

**WHEREAS**, it is deemed in the best interest of the citizens of Port Arthur to enhance the appearance of the downtown area and to create an environment conducive to business and entertainment activities for the community; and

**WHEREAS**, the City of Port Arthur Section 4A Economic Development Corporation (the "PAEDC") desires to relocate its offices to downtown Port Arthur; and

**WHEREAS**, per Resolution No. 10-092, the City Council authorized the funding for professional services for the feasibility and design for the renovations; and

**WHEREAS**, per Resolution No 10-271, the PAEDC contracted the services of Vincent Hauser Architect to conduct the feasibility and design study of the building located at 501 Procter Street in downtown Port Arthur; and

**WHEREAS**, per Resolution No 10-424, the City Council authorized the PAEDC to purchase the property located at 501 Procter Street in downtown Port Arthur; and

**WHEREAS**, on October 31, 2012, the purchase on the subject property was completed and the title company issued a property deed in the name of PAEDC; and

**WHEREAS**, the PAEDC CEO is currently negotiating a long-term lease agreement with the Greater Port Arthur Chamber of Commerce and a private entity; and

**WHEREAS**, per Resolution No 12-614, the City Council authorized the PAEDC to pursue the building development plan to retrofit the property at 501 Procter based upon the cost estimated attached hereto as **Exhibit “A”**; and

**WHEREAS**, per Resolution No 12-614, the City Council further authorized to proceed with the procurement process for the following projects of which the costs shall not exceed \$500,000.00:

- a. Asbestos abatement;
- b. Preliminary demolition;
- c. Architectural and engineering services; and

**WHEREAS**, at a special Board meeting on January 28, 2013, the PAEDC Board of Directors voted to enter into a professional service contract with Haddon + Cowan Architects Collaborative of Austin, Texas, with Vince Hauser as the design team manager attached hereto as **Exhibit “B”**; and

**WHEREAS**, at the special Board meeting on January 28, 2013, the PAEDC Board of Directors also voted that the amount of the contract shall not exceed \$326,000 and the reimbursable expenses shall not exceed \$50,000 (the total contract cost shall not exceed \$376,000).

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

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

**Section 2.** That the City Council authorizes the PAEDC to enter into a professional services contract with Haddon + Cowan Architects Collaborative of Austin, Texas, with Vince Hauser as the design team manager, in substantially the same form as Exhibit “B.”

**Section 3.** That the City Council authorizes the amount of this contract shall not exceed \$326,000 and the reimbursable expenses shall not exceed \$50,000 (the total contract cost shall not exceed \$376,000).

**Section 4.** That a copy of the caption of this Resolution be spread upon the Minutes of the City Council.

**READ, ADOPTED AND APPROVED** on this 12<sup>th</sup> day of Feb A.D., 2013, at a Meeting of the City Council of the City of Port Arthur, Texas, by the following vote:

AYES:

Mayor Mayor Pro Tem Lewis  
Councilmembers Jess, Bruce and Thomas

NOES:

Mayor Prince & Councilmember Williams

Deloris Prince  
Deloris "Bobbie" Prince, Mayor

ATTEST:

Sherri Bellard  
Sherri Bellard, City Secretary

APPROVED:

Floyd Batiste  
Floyd Batiste, PAEDC CEO

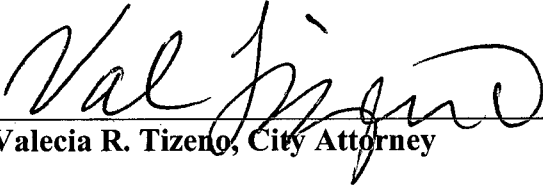
APPROVED AS TO FORM:



---

**Guy N. Goodson, PAEDC Attorney**

APPROVED AS TO FORM:



---

**Valecia R. Tizen, City Attorney**

# **EXHIBIT “A”**

### NMTC Sources and Uses Notes

While the New Market Tax Credit Program is tool for revitalization, it is not a guaranteed program and there are upfront costs associated with it such as:

- Legal
- Audits
- CDE AM Fee
- Put Reserve

In regards to the rehabilitation project at 501 Proctor St, the costs associated with using NMTC are as follows:

- Legal: \$200,000
- IF Audit: \$65,421
- Audit Fee: \$78,321
- CDE AM Fee: \$138,425
- Put Reserve: \$63,549

\$545,716 is the estimated cost associated with accessing \$1,337,153 in NMTC equity. All costs are included in the development budget and not taken out of operations.

**With NMTC****Sources**

I/O Loan - PAEDC	\$	4,066,847
I/O Loan - NMTC Equity	\$	1,283,667
Deferred Loan - NDC	\$	53,486

<b>Total Development Sources</b>	<b>\$</b>	<b>5,404,000</b>
----------------------------------	-----------	------------------

Gap	\$	-
-----	----	---

**Uses**

Acquisition	\$	200,000
Site Improvements	\$	27,500
Construction	\$	4,011,811
Professional Fees	\$	489,982
Construction Finance	\$	76,395
Permanent Finance	\$	-
Soft Costs	\$	6,000
Reserves	\$	46,596
Legal	\$	200,000
IF Audit	\$	65,421
Audit Fee	\$	78,321
CDE AM Fee	\$	138,425
Put Reserve	\$	63,549
<b>Total Development Costs</b>	<b>\$</b>	<b>5,404,000</b>

**NMTC Equity**

I/O Loan - NMTC Equity	\$	1,283,667
Deferred Loan - NDC	\$	53,486
<b>Total NMTC Equity</b>	<b>\$</b>	<b>1,337,153</b>

NMTC Equity	\$	1,337,153
-------------	----	-----------

NMTC Cost	\$	545,716
-----------	----	---------

<b>Net NMTC Proceeds</b>	<b>\$</b>	<b>791,437</b>
--------------------------	-----------	----------------

**NMTC Costs**

Legal	\$	200,000
IF Audit	\$	65,421
Audit Fee	\$	78,321
CDE AM Fee	\$	138,425
Put Reserve	\$	63,549
<b>Total NMTC Costs</b>	<b>\$</b>	<b>545,716</b>

W/O NMTC			
<b>Sources</b>		<b>Uses</b>	
I/O Loan - PAEDC	\$ 4,858,284	Acquisition	\$ 200,000
		Site Improvements	\$ 27,500
		Construction	\$ 4,011,811
		Professional Fees	\$ 489,982
		Construction Finance	\$ 76,395
		Permanent Finance	\$ -
		Soft Costs	\$ 6,000
		Reserves	\$ 46,596
<b>Total Development Sources</b>	<u>\$ 4,858,284</u>	<b>Total Development Costs</b>	<u>\$ 4,858,284</u>
Gap	\$ -		
Additional Funding Needed	\$ 791,437		



### RTC Sources and Uses Notes

While the Historic Rehabilitation Tax Credit Program is tool for revitalization on historic properties, it requires compliance with the National Parks Service standards for historic properties and there are ongoing operating costs associated with it such as:

- RTC Investor Exit Tax or Put
- Annual RTC Investor Return on Investment
- Administrative Fee
- Annual Property Taxes (property must owned by a for-profit entity)

In regards to the rehabilitation project at 501 Proctor St, the costs associated with using RTC are as follows:

- RTC Investor Return: 15% of Equity = \$100,065
- RTC Investor Return on Investment: 3% COC, 20,013 x 5 years = \$100,065
- Administrative Fee: \$1,000 x 5 years = 5,000
- Est. Property Taxes on \$3M: \$77,342 a year

\$591,845 is the estimated cost and ongoing property taxes associated with accessing \$667,116 in RTC equity. Using NMTC will extend the compliance period to seven years bringing the estimated operating cost increase to \$828,583 which is \$161,467 over the \$667,116 in RTC equity.

<b>With RTC</b>			
<b>Sources</b>		<b>Uses</b>	
I/O Loan - PAEDC	\$ 4,211,168	Acquisition	\$ 200,000
RTC Equity	\$ 667,116	Site Improvements	\$ 27,500
		Construction	\$ 4,011,811
		Professional Fees	\$ 489,982
		Construction Finance	\$ 76,395
		Permanent Finance	\$ -
		Soft Costs	\$ 26,000
		Reserves	\$ 46,596
<b>Total Development Sources</b>	<b>\$ 4,878,284</b>	<b>Total Development Costs</b>	<b>\$ 4,878,284</b>
Gap	\$ -		

<b>Operating Cost Comparison</b>	Year 1	Year 2	Year 3	Year 4	Year 5
RTC Investor Ret (15%)	20,013	20,013	20,013	20,013	20,013
RTC Investor ROI + Admin	21,013	21,013	21,013	21,013	21,013
Property Taxes	77,342	77,342	77,342	77,342	77,342
<b>Operating Expenses w RTC</b>	<b>\$ 118,369</b>	<b>\$ 118,369</b>	<b>\$ 118,369</b>	<b>\$ 118,369</b>	<b>\$ 118,369</b>
RTC Equity	\$ 667,116				\$ 667,116
Operating Increase	591,845				828,583
<b>RTC Operating Difference @ 5 years</b>	<b>\$ 75,271</b>				<b>\$ (161,467)</b>

<b>W/O RTC</b>			
<b>Sources</b>		<b>Uses</b>	
I/O Loan - PAEDC	\$ 4,858,284	Acquisition	\$ 200,000
		Site Improvements	\$ 27,500
		Construction	\$ 4,011,811
		Professional Fees	\$ 489,982
		Construction Finance	\$ 76,395
		Permanent Finance	\$ -
		Soft Costs	\$ 6,000
		Reserves	\$ 46,596
<b>Total Development Sources</b>	<b>\$ 4,858,284</b>	<b>Total Development Costs</b>	<b>\$ 4,858,284</b>
Gap	\$ -		
<b>Additional Funding Needed</b>	<b>\$ 647,116</b>		

# **EXHIBIT “B”**



1412 Collier St, Suite C Austin, Texas 78704	PH 512 374 9120	F 512 374 9122	www.architectscollaborative.net
--	-----------------	----------------	---------------------------------

28 January 2013

Mr. Floyd Batiste  
Port Arthur Economic Development Corporation  
4173 39<sup>th</sup> Street  
Port Arthur, Texas 77642

Re: Proposal for Professional Services for Port Arthur EDC's New Office

Dear Floyd:

**HADDON + COWAN** Architects Collaborative (HCAC) is pleased to present this proposal ("Proposal") to the Port Arthur Economic Development Corporation (PAEDC) ("Owner") for Programming, Concept Development, and Construction Documents for the renovation of the Port Arthur Savings Building located at 501 Proctor St in Port Arthur, Texas, including new offices for the PAEDC (the "Project)." This Proposal includes General Terms and Conditions which are attached to, and incorporated into this Proposal. The Proposal and the General Terms and Conditions are referred to as the "Agreement" and those documents refer to HCAC as the "Architect."

#### PROJECT DESCRIPTION

HCAC shall be the architect of record for the Programming, Building Survey, and Basic Services (Schematic Design, Design Development, Construction Documents, and Construction Administration). The project includes core and shell renovation of approximately 19,500 sq ft on three levels of the existing building and tenant improvements for the PAEDC.

The Programming and Building Survey shall be performed simultaneously to allow the design team to compile all of the information needed to start the Basic Services. For the Building Survey, the Owner shall contract with a demolition contractor to assist in the exploratory demolition that needs to occur. HCAC will coordinate the scope of work with the demolition contractor.

Once the Programming and Building Survey is completed, HCAC and their consultants will proceed with the Basic Services. These services include Schematic Design, Design Development, Construction Documents, Bid Negotiations, and Construction Administration that are detailed below. The Basic Services shall document the scope of work for the restoration of the exterior of the building, providing code compliant egress elements and elevators, restoring the existing lobby area, provide for offices, lobbies, conference rooms, and other function per the Program developed for each tenant.

HCAC will contract with the following consultants:

Design Team Manager:	Vincent P. Hauser, Architect
Civil Engineering:	To be determined
Landscape Architecture:	To be determined
Structural Engineering:	Steinman Luevano Structures
Interior Design:	Edwards+Mulhausen Interior Design
MEP Engineering:	La Mette Consulting

## SCOPE OF SERVICES

The Scope of Services for Architect is as follows:

1. Meet with Owner to discuss priorities, decisions, and goals. HCAC will work with the Owner and a Demolition Contractor to develop a scope of work to allow for investigational demolition so the team can verify existing conditions.
2. Programming will consist of HCAC and the Owner meeting the user groups to determine what the requirements are for each group and how they relate to each other. From this information, HCAC will develop a project concept plan for approval by the Owner.
3. After approval of the project concept and a notice to proceed, HCAC will proceed with Schematic Design. Schematic Design will identify the project concept and project scope.
4. Once the Schematic Design Package is approved by the Owner, HCAC will work with their consultants to provide a Design Development Package. The Design Development Package drawings shall illustrate and describe the refinement of the design of the Project, establishing the scope, relationship, forms, size and appearance of the Project by means of plans, section and elevations, typical construction details, and equipment layouts. HCAC will coordinate with the Owner's consultants.
5. After approval of the Design Development Package, HCAC will work with their consultants to provide a Construction Document package for the construction of the above reference project. The Construction Documents shall include drawings and specifications for those portions of the Project designed by the design team and that establish the quality levels of materials and systems required for the Project. HCAC will coordinate with the Owner's consultants.
6. Furniture design, speciation, and overseeing installation.
7. Conduct a design review meeting at the completion of each phase.
8. HCAC or their consultants will not be responsible for providing cost estimates or evaluations.
9. HCAC will not be responsible for Zoning and / or permitting. HCAC will support the Owner with required information, but the Owner is responsible for obtaining permits.
10. HCAC will provide Construction Administration services and coordinate with the Owner's representative the National Development Council during construction to include project meeting / site visits, responses to RFI's, review of submittals, application for payment, and project closeout.
11. HCAC will provide support to the Owner in the following tasks: Updating the existing project schedule and budget, responding to proposed tenant Letters of Intent and Tenant Improvement Scope / Workletters, general contractor qualifications, monthly progress reports to City Council and primary financing entity.

## DELIVERY of SERVICE

The Architect's services will be performed as expeditiously as is consistent with professional practice. Architect will develop, with the National Development Council, a reasonable schedule for the project. This schedule shall allow an appropriate amount of time for each phase. Architect, however, shall not have any liability in the event of any deviations from the schedule.

## ADDITIONAL SERVICES

Any services beyond the Basic Services outlined above shall be considered Additional Services, and subject to additional compensation. Additional Services include, but are not limited to; significant changes to previously approved Drawings or Specifications; changes in applicable codes, laws or regulations subsequent to the Client's approval of the Drawings and Specifications. Additional Services shall be billed at \$95.00 per hour or proposed on at the request of the Client. Approval in writing of all additional services will be required.

## REIMBURSABLE EXPENSES

Reimbursable expenses are in addition to the Professional Fees. Reprographics (excluding internal plots and printing), courier services, travel beyond the City of Austin limits and other normal out-of-pocket costs directly associated with Architect's services are considered reimbursable expenses. Reimbursable expenses will be billed at 1.10 times their cost. The estimated reimbursable expenses are \$50,000.00.

**PROFESSIONAL FEES**

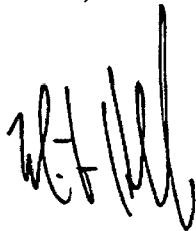
For the Architect's services noted above for the period described, we propose a lump sum fee of \$326,000.00. The reimbursable expenses are exclusive of the professional fee. Invoices for professional services and reimbursable expenses shall be billed the end of each month, based on percent complete. Invoices are due within 30 day of receipt.

**SUPPLEMENTAL CONDITIONS**

Signatures below authorize **HADDON + COWAN** architects collaborative to proceed with the scope of work outlined above. It is anticipated that the parties will enter into a standard AIA agreement.

We appreciate the opportunity to provide architectural services on the Project. If there are any questions regarding the Proposal, please do not hesitate to call.

Cordially,



Michael Haddon, AIA  
**HADDON + COWAN**  
architects collaborative

Accepted By Client:

Mr. Floyd Batiste  
Port Arthur EDC

**HADDON + COWAN ARCHITECTS COLLABORATIVE  
PROFESSIONAL SERVICES AGREEMENT  
PART II —TERMS AND CONDITIONS**

This Professional Services Agreement is made and entered into between Port Arthur Economic Development Corporation (“Client”) and Haddon + Cowan Architects Collaborative. (“Architect”) 1412 Collier St, Austin, Texas 78704. This Agreement consists of two parts: Part I Proposal - Scope of Services and Compensation; and Part II - Terms and Conditions.

**ARTICLE 1: PROFESSIONAL SERVICES**

1.1 **Services.** In connection with the property described in the Proposal (“Property”), Architect shall render the professional services (“Services”) for the project described in the Proposal (“Project”) as outlined in the Proposal and any Amendments.

1.2 **Agreement.** The Professional Services Agreement includes the Proposal, Amendments to the Proposal, and these Terms and Conditions (collectively, the “Agreement”).

**ARTICLE 2: PROPOSALS**

2.1 **Scope.** The Proposal(s) shall identify the specific scope of Services to be performed by Architect and those subconsultants specifically identified as having a direct contractual relationship with Architect (“Subconsultants”) in the Proposal. The Proposal shall also identify the amount and type of compensation for the Services. Any services not specifically identified in the Proposal are excluded unless added as additional services with additional compensation to Architect.

2.2 **Acceptance of Agreement.** Client shall authorize and Architect shall commence work upon Architect’s receipt of the properly executed and signed Proposal(s), as may be amended from time to time. If the Agreement is not executed by Client within thirty (30) days of the date tendered, it shall become invalid unless: (1) Architect extends the time in writing; or (2) at the sole option of Architect, Architect accepts Client’s oral authorization to proceed with the services, in which event the terms of the oral authorization shall include all the terms of this Agreement. Architect’s performance of the services under the oral authorization shall be in reliance on the inclusion of all the terms of this Agreement.

**ARTICLE 3: CHANGES**

3.1 **Changes.** The Architect and Client may at any time, by written amendment, make changes within the general scope of individual Proposal(s) or relating to services to be performed. If such changes cause an increase or decrease in the Architect’s cost of, or time required for, performance of any services under individual Proposals, an equitable adjustment shall be made and reflected in a properly executed Amendment.

3.2 **Regulatory Changes.** In the event that there are modifications or additions to regulatory requirements relating to the services to be performed under this Agreement after the date of execution of this Agreement, the increased or decreased cost of performance of the services provided for in this Agreement and

subsequent Proposals shall be reflected in an appropriate Proposal Amendment.

**ARTICLE 4: THE TERM**

4.1 **Term.** Architect shall be retained by Client as of the date Client executes the attached Proposal until the Services have been fully performed or until the Architect’s Services are terminated under provisions of the Agreement. Architect will pursue completion of Services in accordance with the timely completion specified in the Proposal and any amendments thereto. Architect shall not be liable or responsible for any delays caused by circumstances beyond Architect’s control.

**ARTICLE 5: DUTIES**

5.1 **Access.** Client will provide Architect with access to the Property or to any other site as required by Architect for performance of the Services.

5.2 **Client-furnished Data.** Client shall provide all criteria and full information as to Client’s requirements for the Project, designate a person to act with authority on Client’s behalf in respect to all aspects of the Project, examine and respond promptly to Architect’s submissions, and give prompt written notice to Architect whenever he observes or otherwise becomes aware of any defect in the work.

Client shall also do the following and pay all costs incident thereto: Furnish to Architect core borings, probings and subsurface exploration, hydrographic surveys, laboratory tests and inspections of samples, materials and equipment and similar data; appropriate professional interpretations of all of the foregoing; environmental assessment and impact statements; architectural or other engineering design documents, and any other information previously made available to the Client, which may be required by Architect, all of which Architect may rely upon in performing its Services.

Client shall provide such legal, accounting, independent cost estimating and insurance counseling services as may be required for the Project, any auditing service required in respect of contractor(s)’ applications for payment, and any inspection services to determine if contractor(s) are performing the work.

5.3 **Other Information.** Architect will rely upon commonly used sources of data, including database searches and agency contacts. Architect does not warrant the accuracy of the information obtained from those sources and has not been requested to independently verify such information.



5.4. **Ownership of Documents.** All designs, drawings, specifications, documents, and other work products of the Architect (collectively, the "Documents"), whether in hard copy or electronic form, are instruments of service for the services and are owned by the Architect regardless of whether or not services are completed. Reuse, change or alteration of the Documents by the Client or by others acting through or on behalf of the Client is not permitted without the written consent of Architect. The Architect grants to Client a nonexclusive license to reproduce the Documents solely for the purpose of constructing and maintaining the Project. Any termination of the Agreement prior to final completion of construction of the Project shall terminate this license. Upon such termination, and unless otherwise agreed by Architect in writing, the Client (and any third party who received copies of the Documents from Client) shall refrain from making further reproductions of the Documents and shall return to the Architect within seven days of termination all originals and reproductions in the Client's possession, custody and control. ANY REUSE, CHANGE OR ALTERATION BY THE CLIENT OR THIRD PARTIES IS AT THEIR OWN RISK AND CLIENT AGREES TO HOLD HARMLESS AND INDEMNIFY THE ARCHITECT, ITS OFFICERS, PARTNERS, EMPLOYEES, AND SUBCONTRACTORS FROM ALL CLAIMS, DAMAGES, LOSSES, EXPENSES AND COSTS (INCLUDING ATTORNEYS' FEES), INCLUDING, BUT NOT LIMITED TO, CLAIMS FOR ARCHITECT'S ALLEGED NEGLIGENCE, ARISING OUT OF OR RELATED TO SUCH AUTHORIZED OR UNAUTHORIZED REUSE, CHANGE OR ALTERATION.

5.5. **Reporting Obligations.** Client has responsibility for complying with all legal reporting obligations. Nothing in the Agreement precludes Architect from providing any notices or reports that it may be required by law to give to governmental entities.

5.6 **Laboratory Services.** In performing services, Architect may request that Client provide independent testing laboratory services. Architect will rely on the accuracy of the testing laboratory services. Architect will not, and Client shall not rely upon Architect to, check the quality or accuracy of the testing laboratory's services.

5.7. **Changed Conditions.** The Client shall rely on the Architect's judgment as to the continued adequacy of the Agreement in light of occurrences or discoveries that were not originally contemplated by or known to the Architect. Should Architect call for contract renegotiation, the Architect shall identify the changed conditions necessitating renegotiation and the Architect and the Client shall promptly and in good faith enter into renegotiation of this Agreement. If the terms cannot be agreed to, the parties agree that either party has the right to terminate the Agreement.

5.8 **Site Visit.** All conclusions, opinions and recommendations relating to site issues will be based upon site conditions at the Property as they existed at the time of Architect's site visit, if any. Any report should not be relied upon to represent

conditions at a later date. This paragraph does not obligate Architect to visit the site.

5.9 **Opinions of Cost.** Should Architect provide any cost opinions, it is understood that those opinions are based on the experience and judgment of Architect and are merely opinions. Architect does not warrant that actual costs will not vary from those opinions because, among other things, Architect has no control over market conditions.

5.10 **Construction Observation.** If construction phase services are included in the Services, the Architect will periodically visit the Project during construction on the number of occasions indicated in the Proposal, or as Architect determines in Architect's sole opinion, to become generally familiar with the progress and quality of the contractors' work and to determine if the work is proceeding in general accordance with the Contract Documents. The Client has not retained the Architect to make detailed inspections or to provide exhaustive or continuous Project review and observation services. The Architect does not guarantee the performance of, and shall have no responsibility for, the acts or omissions of any contractor, subcontractor, supplier or any other entity furnishing materials or performing any work on the Project. Client acknowledges that Architect is not responsible for any failure of any contractor, subcontractor, supplier or any other entity furnishing materials or performing any work on the Project to construct the Project or manufacture materials in accordance with the Documents or any applicable legal requirements. Architect shall not be responsible for the means, methods, techniques, sequences or procedures of construction selected by contractor(s) or the safety precautions and programs incident to the work of contractor(s).

5.11 **Permits.** Client is responsible for obtaining and complying with all required permits or other approvals of, and for giving any required notices to, all governmental and quasi-governmental authorities having jurisdiction over the Services or the Property. Before Architect performs the Services, Client will provide Architect evidence satisfactory to Architect that all required permits or other approvals have been obtained and that all required notices have been given. Client will provide to Architect copies of any such permits or any such notices, together with any other relevant information that will alert Architect to the requirements of such permits, approvals, or notifications.

## ARTICLE 6: COMPENSATION OF SERVICES

6.1 **Compensation of Services.** Architect's compensation for services shall be set forth in individual Proposal(s).

6.2 **Compensation.** Client agrees to pay Architect for Services in accordance with the Agreement. Expenses directly related to these Services, including reproduction, travel, long distance telephone bill, express mail, special deliveries and subcontractor expenses shall include a ten percent (10%) markup on cost.

6.3 **Payments.** Architect will invoice Client monthly in accordance with the terms and conditions of the Proposal, and

amendment(s) for Services and reimbursables. Client agrees to promptly pay Architect the full amount of each such invoice upon receipt. In no event shall Architect's failure to bill monthly constitute default under the terms and conditions of this Agreement.

6.4 **Right to Stop Performance.** If Client does not pay any amount due to Architect within thirty (30) days after the invoice date, Architect may, upon three (3) additional days verbal or written notice to Client, stop performance of the Services until payment of the amount owed has been received.

6.5 **Interest.** Payments due and unpaid to Architect under the Agreement shall bear interest at the rate of twelve percent (12%) per annum, or lesser if required by law, calculated from the date of the invoice, if the payment is not made within thirty (30) days of the date of the invoice.

6.6 **Attorney's Fees.** In the event Architect's invoices for Services are given to any attorney for collection, or if suit is brought for collection, or if they are collected through probate, bankruptcy, or other judicial proceeding, then Client shall pay Architect all cost of collection, including the maximum attorney's fees allowed by law and court costs, in addition to other amounts due.

#### ARTICLE 7: TERMINATION OF SERVICES

7.1 **Termination.** This Agreement may be terminated, either by Client or by Architect, without cause, at any time prior to completion of Architect's services, upon seven (7) days written notice to the other at the address of record. Upon receipt of written notice from Client to discontinue work, the Architect shall discontinue work under this Agreement. Such termination shall release Architect from any further obligation to provide Services to Client on this Agreement, but all obligations of Client shall continue. In the event Client terminates the Agreement based on Client's reasonable opinion the Architect has failed or refused to prosecute the work efficiently, promptly or with diligence, the Architect shall have at least ten (10) days, from the receipt of written notification by Client, to cure such failure to perform in accordance with the terms of this Agreement or Proposal(s).

Client waives any and all claims it has against Architect arising out of termination of this Agreement by Architect. Client waives any and all claims, causes of action, or damages that it has or may have against Architect for failure to perform further services under this or any other Agreement with Client.

7.2 **Compensation in Event of Termination.** Upon termination by either Client or Architect, Client shall pay Architect with respect to all contracted Services rendered and expenses incurred before termination an amount fixed by applying the Architect's standard hourly rates, in force at the time of termination, to all Services performed to date, in addition to termination settlement costs the Architect reasonably incurs relating to commitments which had become firm before the termination.

#### ARTICLE 8: RELATIONSHIP OF PARTIES

8.1 **Independent Contractor.** It is understood that the relationship of Architect to Client shall be that of an independent contractor. Neither Architect nor employees of Architect shall be deemed to be employees of Client.

#### ARTICLE 9: LIMITATIONS OF LIABILITY

9.1 **Limitation of Liability.** TO THE FULLEST EXTENT PERMITTED BY LAW, THE TOTAL LIABILITY OF ARCHITECT, ITS EMPLOYEES, OFFICERS, SUBCONSULTANTS AND SUBCONTRACTORS, TO CLIENT OR ANY PARTY CLAIMING BY, THROUGH OR UNDER CLIENT, FOR ANY AND ALL INJURIES, CLAIMS, LOSSES, EXPENSES, OR DAMAGES WHATSOEVER FROM ANY CAUSE OR CAUSES, INCLUDING, BUT NOT LIMITED TO, STRICT LIABILITY, BREACH OF CONTRACT, BREACH OF WARRANTY, NEGLIGENCE, OR ERRORS OR OMISSIONS SHALL NOT EXCEED THE ARCHITECT'S TOTAL FEE. NOTWITHSTANDING ANY OTHER PROVISION OF THE AGREEMENT, NEITHER PARTY SHALL BE LIABLE TO THE OTHER FOR ANY PUNITIVE, SPECIAL, INCIDENTAL, OR CONSEQUENTIAL DAMAGES INCURRED DUE TO THE FAULT OF THE OTHER PARTY, REGARDLESS OF THE NATURE OF THIS FAULT OR WHETHER IT WAS COMMITTED BY THE CLIENT OR BY ARCHITECT, THEIR EMPLOYEES, AGENTS, SUBCONSULTANTS, OR SUBCONTRACTORS. CONSEQUENTIAL DAMAGES INCLUDE, BUT ARE NOT LIMITED TO, LOSS OF USE AND LOSS OF PROFIT.

9.2 **No Certification.** Architect shall not be required to sign any documents, no matter by whom requested, that would result in Architect having to certify, guarantee, or warrant the existence of conditions whose existence Architect cannot ascertain. The Client also agrees not to make resolution of any dispute with Architect or payments of any amount due to Architect in any way contingent upon Architect's signing any such certification.

9.3 **Asbestos or Hazardous Materials.** It is acknowledged by both parties that Architect's scope of services does not include any services related to asbestos or hazardous or toxic materials. In the event Architect or any other party encounters asbestos or hazardous or toxic materials at the Property, or should it become known in any way that such materials may be present at the Property or any adjacent areas that may affect the performance of Architect's Services, Architect may, at its option and without liability for consequential or other damages, suspend performance of Services on the Project until the Client retains appropriate specialist consultant(s) or contractor(s) to identify, abate, and/or remove the asbestos or hazardous or toxic materials and warrant that the Property is in full compliance with applicable laws and regulations.

9.4 **Delays.** Architect is not responsible for delays caused by factors beyond Architect's reasonable control, including but not limited to delays because of strikes, lockouts, work slowdowns or stoppages, accidents, acts of God, failure of any governmental or

other regulatory authority to act in a timely manner, failure of the Client to furnish timely information or approve or disapprove of Architect's Services or work product promptly, or delays caused by faulty performance by the Client or by contractors of any level. When such delays beyond Architect's reasonable control occur, the Client agrees Architect is not responsible for damages, nor shall Architect be deemed to be in default of this Agreement. In the event such delay exceeds ninety (90) days, Architect shall be entitled to an extension of time equal to the delay and an equitable adjustment in compensation. In the event Architect is delayed by the Client and such delay exceeds thirty (30) days, Architect shall be entitled to an extension of time equal to the delay and an equitable adjustment in compensation.

9.5 **Project Enhancement.** If, due to Architect's error or omission, any required item or component of the Project is omitted from Architect's documents, Architect shall not be responsible for paying the cost to add such item or component to the extent that such item or component would have been otherwise necessary to the Project or otherwise adds value or betterment to the Project. In no event will Architect be responsible for any cost or expense that provides betterment, upgrade, or enhancement of the Project.

#### ARTICLE 10: MISCELLANEOUS

10.1 **Entire Agreement.** The Agreement contains the entire agreement between Architect and Client, and no oral statements or prior written matter shall be of any force or effect. The Agreement may be modified only by written document executed by both parties.

10.2 **Modifications.** No one has authority to make variations in, or additions to, the terms of this Agreement on behalf of Architect other than one of its officers, and then only in writing signed by him.

10.3 **Governing Law.** The Agreement shall be governed by and construed in accordance with the laws of the State of Texas.

10.4 **Venue.** Architect and Client agree that the services will be performed or partially performed in Jefferson County, Texas, and the venue of any action under the Agreement shall be exclusively in Jefferson County, Texas.

10.5 **Severability.** If any provision of the Agreement is held to be illegal, invalid or unenforceable under present or future laws, such provision shall be fully severable and the Agreement shall be construed and enforced as if such illegal, invalid or unenforceable provision is not a party hereof, and the remaining provisions shall remain in full force and effect. In lieu of any illegal, invalid or unenforceable provision, there shall be added automatically as a part of the Agreement, a provision as similar in terms to such illegal, invalid or unenforceable provision as may be possible and be legal, valid and enforceable.

10.6 **Construction of Agreements.** The parties acknowledge that each party and, if it so chooses, its counsel have reviewed and revised the Agreement and that the normal rule of construction to the effect that any ambiguities are to be resolved against the

drafting party shall not be employed in the interpretation of the Agreement or any amendments or exhibits.

10.7 **Successor and Assigns; No Third Part Beneficiaries.** Client, for himself and partners, if any, and Architect, for itself, each binds himself or itself and its successors, executors, administrators and assigns to the other party to this Agreement and to partners, successors, executors, administrators and assigns of such other party in respect to all covenants of this Agreement. Neither Client nor Architect shall assign, sublet, or transfer his interest in this Agreement without the written consent of the other. Nothing herein shall be construed as giving any rights or benefits hereunder to anyone other than Client and Architect. Client and Architect agree that there are no third party beneficiaries to this Agreement. Client's representative signing below warrants that he or she has full authority to bind Client to this Agreement and further warrants that Client has an ownership interest in the real property that is part of the Project. Client's representative signing below agrees to indemnify, save, and hold Architect harmless for any and all claims, causes of action, and damages that may arise against Architect if the representations contained in this Paragraph are not correct.

Nothing in the Agreement restricts Architect's ability to hire subconsultants or others in connection with the Services. Notwithstanding anything to the contrary in this Agreement, Architect shall have no obligation to hire any subconsultants unless the services of subconsultants are specifically included in the Proposal. The Services and any reports or other documents prepared under this Agreement are for the sole benefit and sole use of Client and are not for the use of any other person. Only Client may rely upon the Agreement and the Services, unless the Architect gives Client prior and specific written approval.

10.8 **Not Used**

10.9 **Mediation.** Any claim, dispute or other matter in question arising out of or related to this Agreement shall be subject to non-binding mediation as a condition precedent to the institution of legal proceedings by either party. If such matter relates to or is the subject of a lien arising out of the Architect's services, the Architect may proceed in accordance with applicable law to comply with the lien notice or filing deadlines prior to resolution of the matter by mediation or other legal proceedings.

Each party agrees to include a similar mediation provision in all agreements with independent contractors and consultants retained for the Project and to require all independent contractors and consultants also to include similar mediation provisions in all agreements with their respective subcontractors, suppliers, and Subconsultants, thereby providing for mediation as the initial method for dispute resolution between the parties to all those agreements.

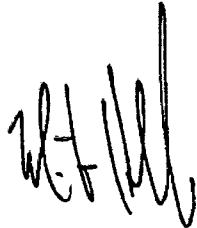
The parties shall share the mediator's fee and any filing fees equally. The mediation shall be held in the county where the Project is located, unless another location is mutually agreed upon. Agreements reached in mediation shall be enforceable as settlement agreements in any court having jurisdiction thereof.

10.10 **No Warranty.** Architect makes no warranty, either expressed or implied, as to Architect's findings, recommendations, Documents, or professional advice. Any warranties or guarantees contained in any purchase orders, contracts, certifications, requisitions, or notices to proceed issued by the Client are specifically objected to and excluded. Client recognizes that neither Architect nor any of Architect's Subconsultants or subcontractors owes any fiduciary responsibility or duty to Client.

10.11 **Corporate Liability.** Client understands and agrees that Architect is a business entity that has contracted to perform services, and any services provided by Architect's employees, agents or officers are not provided in their individual capacity. Client will not make any claim or demand against any of Architect's employees, agents or offices in their individual capacity.

10.12 **Survival of Provisions.** Termination of the Services for any reason whatsoever shall not affect (a) any right or obligation of any party that is accrued or vested prior to such termination, and

Architect:



Haddon + Cowan Architects Collaborative  
Name: Mike Haddon, AIA  
Title: Principal  
Date: 19 December 2012

any provision of the Agreement relating to any such right or obligation shall be deemed to survive the termination of the Services or (b) any continuing obligation, liability or responsibility of Architect and of Client which would otherwise survive termination of the Services.

10.13 **Texas Board of Architectural Examiners.** The Texas Board of Architectural Examiners has jurisdiction over complaints regarding the professional practices of persons registered as Architects in Texas.

Texas Board of Architectural Examiners  
Hobby Building  
333 Guadalupe Street, Suite 2-350  
Austin, Texas 78711  
Ph # 512-305-9000

Client:

Port Arthur Economic Development Corporation  
Name: Mr. Floyd Batiste  
Title: Chief Executive Officer  
Date: \_\_\_\_\_  
Address: 4173 39<sup>th</sup> Street  
Prot Arthur, Texas 77642