

RESOLUTION NO. 13-406

A RESOLUTION APPROVING CHANGE ORDER NO. 2 TO THE AGREEMENT BETWEEN THE CITY OF PORT ARTHUR SECTION 4A ECONOMIC DEVELOPMENT CORPORATION AND TOTAL SAFETY FOR THE ASBESTOS/LEAD/MOLD CONSULTING SERVICES AT 501 PROCTER STREET IN THE AMOUNT OF \$8,600 BRINGING THE TOTAL CONTRACT PRICE TO \$43,500; FUNDING AVAILABLE IN ACCOUNT NO. 120-1429-582.54.00

WHEREAS, the City of Port Arthur Section 4A Economic Development Corporation (“PAEDC”) has acquired the property at 501 Procter Street, formerly the Port Arthur Savings Building, for the purpose of renovating the building to house PAEDC and additional tenants; and

WHEREAS, the building at 501 Procter Street will need to undergo abatement for lead, mold and asbestos before renovations can be made; and

WHEREAS, per Resolution 13-151 the City Council of the City of Port Arthur approved an abatement agreement between the PAEDC and R. L. Abatement, Inc. of Weslaco, Texas for asbestos, lead and mold abatement at 501 Procter Street (the “Agreement”); and

WHEREAS, on April 30, 2013 per Resolution 13-202, the City approved engaging the services of Total Safety for the asbestos, lead and mold consulting services; and

WHEREAS, per Resolutions 13-215, 13-255 and 13-275, the City Council approved the scope of services in the Agreement with R. L. Abatement, Inc. for Change Orders No. 1, 2 and 3; and

WHEREAS, Total Safety has requested Change Order No. 2 for additional monitoring to coincide with R. L. Abatement’s change orders listed above in the amount of \$8,600 as denoted in **Exhibit “A”** increasing the contract amount from \$34,900 to \$43,500; and

WHEREAS, the PAEDC Board of Directors approved Change Order No. 2 with Total Safety at its Regular Board Meeting on August 8, 2013.

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 approved Change Order No. 2 requested by Total Safety for additional monitoring to coincide with R. L. Abatement's change orders in the amount of \$8,600, increasing the contract amount from \$34,900 to \$43,500.

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

READ, ADOPTED AND APPROVED on this 3rd day of September, 2013,
at a Meeting of the City Council of the City of Port Arthur, Texas, by the following vote:

AYES:
Mayor Prince, Maya Pro Tem Williamson
Councilmembers Scott, Segler, Albright, Troy,
Lewis and Thomas

NOES: None

Deloris Prince
Deloris "Bobbie" Prince, Mayor

ATTEST:

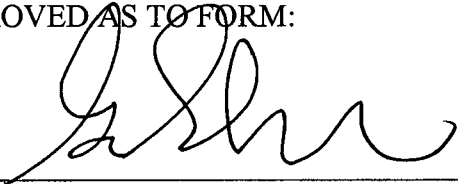
Kelly Marie
Sherri Bellard, City Secretary on behalf of

APPROVED:



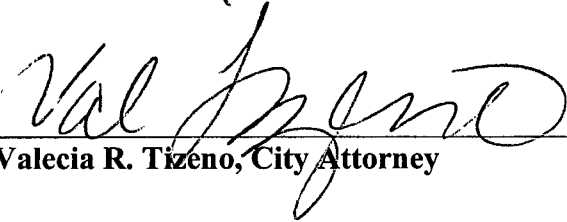
Floyd Batiste, PAEDC CEO

APPROVED AS TO FORM:



Guy N. Goodson, PAEDC Attorney

APPROVED AS TO FORM:



Valecia R. Tizeno, City Attorney

APPROVED AS TO AVAILABILITY OF FUNDS:



Deborah Echols, Finance Director

Exhibit “A”



August 26, 2013

Port Arthur Economic Development Corporation
4173 39th Street
Port Arthur, Texas 77642
ATTN: Mr. Floyd Batiste
(409) 963-0579
fbatiste@paedc.org

Subject: Proposal for Services:Asbestos/Lead/Mold Consulting Services – Additional Monitoring
Project Site: Port Arthur Savings Building, 501 Procter Street
Proposal No.: 8559B

INTRODUCTION

Total Safety U.S., Inc., d/b/a EHS Services, (EHS Services) is pleased to present this proposal to the Port Arthur Economic Development Corporation for the environmental consulting services for the asbestos/lead/mold abatement project at the Former Port Arthur Savings Building located at 501 Procter Street in Port Arthur, Texas. **This proposal has been revised per your request.**

Scope of Work

Based on our review and understanding of the project, the following tasks are included in the Scope of Work:

- Attend necessary construction meetings and conferences
- Provide on-site air monitoring during the abatement work
- Interface with regulatory agencies as required for the abatement work
- Provide a final closeout report at the project completion

A description of the proposed tasks is provided in the following paragraphs.

Abatement Monitoring

Proper abatement monitoring is essential to reducing the owner's liability on abatement projects. EHS Services proposes to monitor the abatement project on a full-time basis utilizing fully accredited and licensed asbestos field personnel. Tasks to be performed as part of the day-to-day abatement monitoring activities include:

- Provide oversight for compliance with project specifications, state and federal regulations and be available for on-site resolution of problems or emergency situations
- Collection of air samples during the abatement activities and analyze all samples
- Providing final clearance air sampling inside each work area



Total Safety, U.S., Inc., d/b/a EHS Services
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2300 Highway 365, Suite 370, Nederland, TX 77627

Total Safety, U.S., Inc., d/b/a EHS Services

- Provide daily documentation of abatement activities
- Assist in dispute resolution
- Provide overall project oversight and be the owner's on-site representative at all times

Final Report

Upon completion of the entire abatement project, a final report will be prepared which will provide all supporting documentation, including results of daily air sampling inside and outside the containment, daily field reports, final clearance procedures and all relevant supporting documentation.

FEE ESTIMATE

We propose to perform the above-mentioned services for a lump sum fee of **\$8,600.00**.

Qualifications

Client Responsibilities

Client to provide access to the work area and will notify proper authorities of our presence.

Insurance Coverage

EHS Services carries a full range of insurance including Worker's Compensation, Professional Liability (\$1,000,000), Auto Liability (\$1,000,000) and a General Liability Umbrella (\$5,000,000).

If this proposal is deemed satisfactory, please sign below and return a copy (via facsimile) to me at (409) 729-5075. An email to Daniel R. Ward (dward@totalsafety.com) referencing the proposal is also acceptable. Should you have any questions, please contact me at 409-727-8227.

We look forward to the opportunity to work with you on this project.

Sincerely,



Daniel R. Ward

Manager of Asbestos Services

ATTACHMENTS: EHS Services Terms and Conditions

TERMS AND CONDITIONS

WARRANTY AND LIMITATION OF LIABILITY

Total Safety U.S., Inc., d/b/a EHS Services, (EHS Services) warrants that work will be performed in accordance with sound practice and professional standards ordinarily exercised by members of the profession practicing at the same time in the same location, but makes no other warranty, whether statutory, expressed or implied. **All other warranties are disclaimed, including, without limitation, the warranty of merchantability or fitness for a particular purpose.** In the event of an error, omission or other professional negligence or any breach of the above warranty occurring within one (1) year from the substantial completion of the project, the sole and exclusive responsibility of EHS Services shall be to re-perform the deficient work at its own expense. The remedy set forth herein is the client's sole and exclusive remedy for any breach of warranty or failure by EHS Services to comply with the terms of this Agreement.

REPORTS

Reports and recommendations made by EHS Services are only advisory in nature and are intended to assist the Customer in evaluating Customer's facility or operations. They are not intended to imply that no other defects or hazards exist or that all aspects and areas of the facility or operations are clear of hazards at the time of inspection. Final responsibility for the condition and operation of the facility lies with the Customer.

INDEMNITY

Each of EHS Services and Customer shall, to the extent permitted by law, indemnify, defend, and hold harmless the other from and against any and all claims, demands, complaints or actions of third parties (including employees of the parties or government agencies) arising from or relating to the Services (including personal injury, death, property damage or damage to the environment), to the extent caused or arising out of the negligence, willful misconduct, breach of these terms and conditions, or violation of law of or by the Indemnitor. Further, in the event the parties are jointly at fault or negligent, they agree to indemnify each other in proportion to their relative fault or negligence. The claims, demands, complaints, and actions covered hereunder include all settlements, losses, liabilities, judgments, court costs, reasonable attorney's fees, fines, penalties and other litigation costs and expenses arising from or related to such claims, demands, complaints or actions.

In no event shall either Party have any liability to the other Party for any lost profits, loss of use, costs of procurement of substitute goods or services, or for any indirect, special, incidental, punitive, or consequential damages, however caused, and whether in contract, tort, or under any other theory of liability.

Total Safety, U.S., Inc., d/b/a EHS Services

INSURANCE

Upon request of Customer, Customer shall be named as an additional insured on EHS Services' policies of insurance to the extent of EHS Services' indemnity obligations under this Agreement.

APPLICABILITY

These terms and conditions shall be binding on and inure to the benefit of the personal representatives, the successors, or the assigns of the parties. No waiver or statements by any representative of the service provider will be valid unless contained in this agreement. These terms and conditions constitute the entire agreement between EHS Services and Customer and shall not be amended except in a writing signed by both Parties.

FORCE MAJEURE

EHS Services shall not be responsible for failure to render work due to causes beyond its control, including but not limited to work stoppages, fires, civil disobedience, riots, rebellions, acts of God.

SEVERABILITY

If any provision of this Agreement is held by any court or other competent authority to be void or enforceable in whole or in part, this Agreement will continue to be valid as to the other provisions and the remainder of the affected provision.

GOVERNING LAW, VENUE AND JURISDICTION

This Agreement shall be governed by and construed in accordance with the laws of the State of Texas applicable to contracts made and to be performed therein, exclusive of the choice of law or conflict of laws provisions thereof. Any action or proceeding seeking to enforce any provision of, or based on any right arising out of, this Agreement may be brought against any of the parties in the courts of the State of Texas, County of Harris, or, if it has or can acquire jurisdiction, in the United States District Court for the Southern District of Texas, and each of the parties consents to the jurisdiction of such courts (and of the appropriate appellate courts) in any such action or proceeding and waives any objection to venue laid therein.

EHS Services Terms & Conditions Accepted for Client

BY: _____

DATE: _____

TITLE: _____

EHS Services Approval

BY: _____

DATE: _____

Daniel Penalosa
Technical Operations Manager