

RESOLUTION NO. 19-037

A RESOLUTION AUTHORIZING THE CITY OF PORT ARTHUR SECTION 4A ECONOMIC DEVELOPMENT CORPORATION TO ENTER INTO AN ENVIRONMENTAL CONSULTING SERVICES AGREEMENT WITH BAER ENGINEERING AND ENVIRONMENTAL CONSULTING, INC. FOR THE REMOVAL AND DISPOSAL OF TWO ABOVEGROUND STORAGE TANKS AND ELEVEN DRUMS FROM THE FORMER PORT ARTHUR NEWS BUILDING AT 549 4TH STREET AT A PRICE NOT TO EXCEED \$46,000. FUNDING AVAILABLE IN EDC ACCOUNT NO. 305-1606-591.82-00, PROJECT NO. EDC 549.



WHEREAS, per Resolution No. 18-116, the City Council of the City of Port Arthur approved the Port Arthur Economic Development Corporation's ("PAEDC") submission of an application for grant funding to the Economic Development Administration ("EDA") to secure and rehabilitate the property located at 549 4th Street in Downtown Port Arthur, formerly known as the Port Arthur News Building, for the purpose of developing a Community and Business Development Center; and

WHEREAS, per Resolution 18-313, the City Council of the City of Port Arthur approved the PAEDC purchasing the property at 549 4th Street ("Port Arthur News Building") contingent upon an award of grant funds from the Economic Development Administration; and

WHEREAS, in April of 2018 Baer Engineering and Environmental Consulting Services, Inc. ("Baer Engineering") provided PAEDC with a Phase I and Phase II Environment Site Assessment of the Port Arthur News Building; and

WHEREAS, in September of 2018, the PAEDC received a Notice of Award from the EDA for grant funding in the amount of \$4,700,000 for the rehabilitation of the Port Arthur News Building, attached hereto as **Exhibit "A"**; and

WHEREAS, as part of the site remediation, PAEDC is requesting to enter into an Environmental Consulting Services Agreement with Baer Engineering for the removal of two aboveground storage tanks and eleven drums from the Port Arthur News Building; and

WHEREAS, the maximum cost for the project based on current information is \$46,000 which includes oversight hours by an environment professional, sampling and analysis of the residual contents in the containers and disposal of the waste, tanks and drums; and

WHEREAS, the PAEDC Board of Directors approved entering into an Environment Consulting Services Agreement with Baer Engineering at a cost not to exceed \$46,000 as detailed in the Agreement attached hereto as **Exhibit "B"**.

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 of the City of Port Arthur approves the Port Arthur Section 4A Economic Development Corporation to enter into an Environmental Consulting Services Agreement with Baer Engineering and Environmental Consulting Services, Inc. in an amount not to exceed \$46,000.

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

READ, ADOPTED AND APPROVED on this 29th day of January A.D., 2019, at a Meeting of the City Council of the City of Port Arthur, Texas, by the following vote: AYES:

Mayor Freeman, Mayor Pro Tem Kinlaw

Councilmembers Scott, Jones, Duvet and Frank

NOES:

none


Derrick Freeman, Mayor

ATTEST:


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:


Andrew Vasquez, CPA, Director Finance

Exhibit "A"



UNITED STATES DEPARTMENT OF COMMERCE
Economic Development Administration
Austin Regional Office
903 San Jacinto Blvd., Suite 206
Austin, Texas 78701

SEP 28 2018

In Reply to
Investment No.: 08-79-05250

Mr. Floyd Batiste, CEO
Port Arthur Economic Development Corporation
501 Proctor Street, Suite 100
Port Arthur, Texas 77640-6448

Dear Mr. Batiste:

I am pleased to inform you that the Department of Commerce's Economic Development Administration (EDA) has approved your application for a \$4,700,000 EDA investment to establish the Center for Community and Business Development in downtown Port Arthur.

Enclosed are two signed copies of the Financial Assistance Award. Your agreement to the terms and conditions of the award should be indicated by the signature of your principal official on each of the signed copies of the Financial Assistance Award. One of the executed copies should be returned to the attention of Ms. Patricia Shorter, 903 San Jacinto Blvd., Suite 206, Austin, TX 78701. If not signed and returned within 30 days of receipt, EDA may declare the Award null and void.

Please do not make any commitments in reliance on this award until you have carefully reviewed and accepted the terms and conditions. Any commitments entered into prior to obtaining the approval of EDA in accordance with its regulations and requirements will be at your own risk.

EDA's mission is to lead the federal economic development agenda by promoting innovation and competitiveness, preparing American regions for growth and success in the worldwide economy. EDA implements this mission by making strategic investments in the nation's most economically distressed communities that encourage private sector collaboration and creation of higher-skill, higher wage jobs. EDA investments are results driven, embracing the principles of technological innovation, entrepreneurship and regional development.

I share your expectations regarding the impact of this investment and look forward to working with you to meet the economic development needs of your community.

Sincerely,



Jorge D. Ayala
Regional Director

Enclosures

cc: South East Texas Regional Planning Commission

Exhibit “B”



Baer Engineering
and Environmental Consulting, Inc.

January 8, 2019

Port Arthur Economic Development Corporation
501 Procter Street, Suite 100
Port Arthur, TX 77640

Delivered via e-mail to fbatiste@paedc.org

Attention: Mr. Floyd Batiste, CEcD, CEO, Port Arthur Economic Development Corporation

Reference: **Proposal for Tank and Drum Removal Services**
Port Arthur News Building, 549 4th Street, Port Arthur, Texas 77640
Baer Engineering Proposal No. 182089-5.010, Exhibit A

Dear Mr. Batiste:

Baer Engineering and Environmental Consulting, Inc. (Baer Engineering) is pleased to submit our proposal to provide consulting services for the above-referenced project. In April 2018 Baer Engineering provided you with a Phase I and Phase II Environmental Site assessment. As part of the site remediation, you have asked us to provide the technical oversight and consulting services for the removal of two aboveground storage tanks and eleven drums from the above referenced site.

An initial estimate of \$46,000 was provided on January 4, 2019 for the oversight and removal of the tanks and drums referenced above. This is the maximum estimated cost for the project based on the current information about the project and may be reduced as information is provided. The estimated fee of \$46,000 includes: oversight hours by an environmental professional: sampling and analysis of the residual contents in the containers for waste characterization: dismantling of the tank: and cost for the proper hauling and disposal of the wastes, tanks and drums. The work is estimated to take five business days.

SCHEDULE

Baer Engineering understands that you need these services as quickly as possible. We will schedule the removal services for the first available date upon receipt of the executed service agreement (see attached).

Baer Engineering thanks you for the opportunity to propose our environmental services on this important project. If you have questions regarding this proposal please call me at (512) 453-3733.

Respectfully submitted,
BAER ENGINEERING AND ENVIRONMENTAL CONSULTING, INC.


Mark Sloop, PG (TX12157), CESSWI

Attachments: Professional Services Contract
Schedule of Fees

Baer Engineering and Environmental Consulting, Inc.
7756 Northcross Drive, Suite 211 Austin, Texas, U.S.A. 78757
Telephone: (512) 453-3733 • www.BaerEng.com • Fax: (512) 453-3316

Engineering and Environmental Services Contract

1. **THE AGREEMENT.** This agreement is made by and between Baer Engineering & Environmental Consulting, Inc., (hereafter Baer Engineering or Baer) and Port Arthur Economic Development Corporation (hereinafter referred to as "Client"). The agreement between the parties consists of this Agreement together with any attachments and exhibits mentioned herein. Together, these documents will constitute the entire agreement superseding any and all prior dealings and understandings. Any modifications of this Agreement must be mutually agreed to in writing.
2. **PROJECTS.** Client engages Baer Engineering to perform professional engineering and environmental consulting services for a variety of projects to be determined by Client during the term of this Agreement.
3. **SCOPE OF SERVICES.** A detailed "Scope of Services" document, with a cost estimate, is presented in a written proposal accompanying this agreement herein after referred to as Exhibit A. Changes to the Scope of Services must be mutually agreed to in writing. Services not set forth in a Scope of Services document are excluded from the scope of Baer's services and Baer shall have no responsibility to perform them. If however, Client agrees to compensate Baer Engineering for services that are outside the Scope of Services, and Baer agrees to perform them, then such compensation is to be made based on Baer Engineering's prevailing fee schedule and expense reimbursement policy, as detailed in Exhibit A.
4. **DEFINITIONS.** As used throughout this Agreement, certain terms should be understood to have the following meanings:
 - A) "Claim" - shall mean claims that are legally enforceable and includes liabilities for all manner of losses, injuries, costs, expenses, and interest.
 - B) "Construction" - shall mean not only construction, but also includes demolition and abatement.
 - C) "Instruments of Service" - shall include what are commonly called "the Contract Documents," as well as any other reports, plans, specifications, and computer files prepared by Baer Engineering pursuant to its performance under this Agreement.
 - D) "Law" - shall mean any type of law, including statutes, regulations, ordinances, codes, rules, case law, court orders, or administrative agency orders.
 - E) "Negligent" or "Negligence" - Except where explicitly otherwise stated, in addition to its common law definition, for the purposes of brevity the term "negligence" is meant to also include intentional misconduct of Baer employees to the extent their acts are within the scope of their employment.
5. **COMPENSATION.** Client agrees to compensate Baer Engineering timely in the amounts and at the rates set forth in Exhibit A.
6. **STANDARD OF CARE.** Baer Engineering will strive to perform the services under this Agreement in a manner consistent with the level of care and skill ordinarily exercised by members of the profession practicing contemporaneously under similar conditions in the locality of the project. Under no circumstances is any warranty or guarantee, express or implied, made in connection with the providing of these services. Client recognizes that site or building structure conditions may vary from those observed at locations where samples are collected, and that site conditions may change with time. Data, interpretations, and recommendations by Baer Engineering will be based solely on information available to Baer Engineering. Baer Engineering is responsible for its data, interpretations, and recommendations, but will not be responsible for other parties' interpretations or use of the information developed, or for the accuracy of information provided by others.
7. **INSURANCE.** Baer Engineering represents that it maintains the following insurance coverage:

Type/Limits
Worker's Compensation and Employers' Liability /Statutory
General Liability /\$1,000,000 per occurrence/\$1,000,000 aggregate
Automobile Liability /\$1,000,000 per person/\$1,000,000 per occurrence
Professional Liability /\$1,000,000 claims made/\$1,000,000 aggregate

If Client desires additional insurance coverage, Baer Engineering will obtain said coverage (if procurable) at Client's expense, to protect Baer Engineering and Client, upon written notice to Baer specifying the types and amounts of coverage(s) desired.
8. **LIMITATION OF LIABILITY.** Baer is not an insurer, and will not accept a liability that is out of proportion to the income generated by a particular project. THEREFORE, AS A FUNDAMENTAL TERM OF THIS CONTRACT, CLIENT AGREES THAT BAER ENGINEERING'S LIABILITY, (and that of its officers, directors, employees, agents, and subcontractors) TO CLIENT OR ANY THIRD PARTY DUE TO NEGLIGENT PROFESSIONAL ACTS, ERRORS, OR OMISSIONS OR FOR BREACH OF THIS CONTRACT SHALL BE LIMITED TO AN AGGREGATE OF \$50,000.00 OR THE TOTAL AMOUNT OF BAER'S CHARGES AND FEES, WHICHEVER IS GREATER. IF CLIENT PREFERS TO HAVE HIGHER LIMITS OF LIABILITY, BAER AGREES TO INCREASE THE AGGREGATE LIMIT, UP TO A MAXIMUM OF \$1,000,000.00, UPON CLIENT'S WRITTEN REQUEST AT THE TIME OF ACCEPTANCE OF BAER'S PROPOSAL, PROVIDED THAT CLIENT PAYS AN ADDITIONAL

CONSIDERATION OF TWENTY PERCENT (20%) OF BAER'S TOTAL CHARGES AND FEES, OR \$2,000.00, WHICHEVER IS GREATER. IT IS AGREED AND UNDERSTOOD THAT THE ADDITIONAL CHARGE FOR THE HIGHER LIABILITY LIMIT IS BECAUSE OF THE GREATER RISK ASSUMED BY BAER AND IS NOT A CHARGE FOR ADDITIONAL LIABILITY INSURANCE. This limitation shall not apply to the extent that may be prohibited by law.

9. **INDEMNIFICATION.** When an indemnity is provided for in this Agreement, such indemnity shall extend not only to actual and punitive damages for the claim itself, but also the costs of defense (e.g., attorney fees and court costs) and similar costs incurred in enforcing the indemnity.

A) Baer Engineering's Indemnities

- i. **Acts of Baer.** Baer Engineering agrees to indemnify and hold Client harmless from and against claims arising directly from the negligent acts and omissions of Baer Engineering in its performance of its contractual obligations, but only to the extent that Baer Engineering is responsible on a comparative basis of fault and responsibility. Such indemnification and liability shall not extend to consequential damages (e.g., loss of use or profits). Nor shall Baer Engineering indemnify Client for damages caused by Client's own negligence, nor for punitive or exemplary damages unless they are assessed against Baer Engineering for an act or omission committed by Baer Engineering.
- ii. **Acts of Subconsultants.** Baer Engineering agrees to indemnify and hold Client harmless from and against claims arising directly from negligent acts and omissions of subconsultants hired by Baer to render professional services under this Agreement; however, Baer will not indemnify for their intentional misconduct.

B) Client's Indemnities

- i. **Acts of Client & Client's Agents.** Client shall defend, indemnify, and hold harmless Baer Engineering and its directors, officers, shareholders, employees, and agents from and against any and all claims which result from or arise out of:
 - (1) acts or omissions of Client, Client's employees, agents, and subcontractors and their employees or agents;
 - (2) changes to Baer Engineering's plans, specifications or other Instruments of Service authorized or allowed by Client, but not approved by Baer in writing.
 - (3) the release of any hazardous substance not caused by Baer; or
 - (4) generation, treatment, or transportation of waste materials not performed by Baer.
 - ii. **Early Termination.** If Baer Engineering for any reason does not complete all of the services contemplated by this Agreement, it is agreed that Baer will not be responsible for the accuracy, completeness, or workability of the Instruments of Service that were completed or changed by Client or another party. Client therefore agrees to indemnify Baer Engineering from any claim allegedly arising from use of, completion of, or changes made to, the Instruments of Service.
 - iii. **Exception.** None of Client's indemnities shall apply to a claim that is solely the result of Baer Engineering's negligent act or omission.
10. **WAIVER OF CONSEQUENTIAL DAMAGES.** Neither Baer Engineering nor Client, their respective officers, directors, partners, employees contractors or subconsultants shall be liable to the other or shall make any claim for any incidental, indirect or consequential damages arising out of or connected in any way to the Project or to this Agreement. This mutual waiver includes, but is not limited to, loss of use or rent, loss of profit, loss of business, loss of income, loss of reputation or any other consequential damages that either party may have incurred for any reason.
11. **NO WARRANTIES.** Both parties agree that no warranties are intended to be made in this Agreement, either expressed or implied. Baer Engineering shall not be required to execute any documents, no matter by whom requested, that would, in Baer's sole opinion, increase Baer's contractual or legal obligations, risks, or the cost of its professional liability insurance. This includes requests to Baer to certify, guarantee, or warrant the existence or absence of conditions that Baer is not able to ascertain. Client agrees not to make resolution of any dispute or payment of any amount due to Baer in any way contingent upon Baer's executing any additional agreement or certification.
12. **CONFIDENTIALITIES**
- A) Baer Engineering shall hold confidential all business or technical information specifically designated as such by Client in writing and obtained from the Client or its affiliates or generated in the performance of this Agreement. If such information is in hardcopy form, Client must stamp it with the word "Confidential." Baer Engineering shall not disclose such information without Client's consent except to the extent required for (i) the performance of this Agreement, (ii) compliance with professional standards of conduct for preservation of public safety, health, and welfare, (iii) compliance with any court order or other governmental directive, and/or (iv) protection of Baer Engineering against claims or liabilities arising from performance of this

Agreement. Consultants obligations hereunder shall not apply to information in the public domain or lawfully acquired on a non-confidential basis from others.

- B) Notwithstanding the foregoing, it is agreed that Baer Engineering shall, promptly upon notice of the necessity of disclosure of information pursuant to (A)(i) through (A)(iv) above, notify the Client prior to any such disclosure. The Client may contest the requirement for or necessity of any such disclosure provided that such contest shall not subject Baer Engineering to any legal liability, claim, expense, criminal penalty, or prosecution for a crime.
- C) If Client requests Baer Engineering to report on the past or current qualifications and/or performance of others engaged or being considered for engagement directly or indirectly by the Client, and to render opinions and advice in that regard, then those about whom reports and opinions are rendered may as a consequence initiate claims of libel or slander against Baer. To help create an atmosphere in which Baer can freely and candidly communicate to Client, Client agrees, to the fullest extent permitted by law, to keep the existence and contents of such communications confidential. Should Client, for any reason, disclose such information, then Client will indemnify Baer for any claims that may arise based on the opinions and reports rendered by Baer Engineering to Client.

13. SITE ACCESS AND CONDITIONS. If site access is required as part of the services, Client shall indicate to Baer Engineering any limits to access and shall be responsible for the accuracy of such information.

- A) Client shall grant free access to the site for all necessary equipment and personnel. Client shall notify any and all possessors of the project site, whether they be lawfully or unlawfully in possession, that Client has granted to Baer Engineering free access to the project site and Client shall secure permission (and any permits) necessary to allow Baer Engineering free access to the project site at no charge to Baer Engineering.
- B) Client understands that material sampling and the use of testing equipment, if necessary, may cause some minor property damage at the sampling or test locations and agrees that the correction of such damage is not a responsibility of Baer Engineering unless specifically included in the written scope of services.
- C) Client will make available to Baer Engineering all information regarding existing and proposed conditions at the site. The information shall include, but not be limited to, architectural and/or engineering drawings of the project, building construction materials specifications, field or laboratory tests, and written reports. Client will immediately transmit to Baer Engineering any new information that becomes available or any change in plans.

14. BILLING AND PAYMENT.

- A) Fees and all other charges will be billed monthly as the services progress, and the net amount shall be due 30 days after the time of billing. If Client objects to all or any portion of any invoice, Client will notify Baer Engineering in writing within fourteen (14) calendar days of the invoice date, state the reason(s) for disagreement, and pay when due that portion of the invoice that is not in dispute. The parties will immediately make every effort to settle the disputed portion of the invoice. In the absence of written notification described above, Client agrees to pay the balance due as shown on the invoice.
- B) Invoices are delinquent if payment has not been received within thirty (30) days from date of invoice. Client will pay an additional charge of 1.5 percent (1.5%) per month (or the maximum percentage allowed by law, whichever is lower) on any delinquent amount, excepting any portion of the invoiced amount in dispute and resolved in favor of Client. Payment thereafter will first be applied to accrued interest and then to the principal unpaid amount. All time spent and expenses incurred (including attorney's fees) in connection with collection of any delinquent amount will be paid by Client to Baer Engineering per Baer Engineering's then prevailing fee schedule and expense reimbursement policy. In the event Client fails to pay Baer Engineering within sixty (60) days after invoices are sent, Client agrees that Baer Engineering will have the right to consider failure to pay the Baer Engineering invoice as a breach of this Agreement, and stop work on the project. The parties agree that any failure of Baer Engineering to aggressively pursue remedies for such a breach, shall not be considered to be a waiver of its rights to pursue its remedies for the breach at a later time, or considered as a waiver of its right to expect timely payment of subsequent invoices.

15. RISK ALLOCATION. Client acknowledges and accepts the risk that:

- A) Site conditions such as remodeling of structures, substitutions of construction building materials, and other conditions can vary from those encountered at the times and locations where data on them were obtained, and that this limitation on the available data can cause uncertainty with respect to the interpretation of conditions at Client's site;
- B) Governmental regulations relating to the environment, hazardous substances, asbestos, or other waste may change with time and may purport to require achievement of results which cannot be accomplished in an absolute sense (e.g., the construction of and entirely impermeable containment). Baer Engineering agrees to use reasonable professional efforts to comply with all laws applicable to its work that are in effect as of the date of this Agreement;

- C) Projects such as those involving abatement of asbestos and lead, may not perform as anticipated by Client, even if Baer Engineering's services are performed in accordance with Paragraph 6

16. LATENT HAZARDS. Discovery of Unanticipated Hazardous or Toxic Materials.

- A) Hazardous or toxic materials may exist at the site or on portions of the site where there is no reason to believe they could or should be present. In regard to them:
- i. Baer Engineering and Client agree that the discovery of such materials where they are not anticipated constitutes a changed condition mandating a re-negotiation of the Scope of Services or termination of services. Baer Engineering and Client also agree that the discovery of unanticipated hazardous or toxic materials may make it necessary for Baer Engineering to take immediate measures to protect human health and safety and/or the environment. Client agrees to compensate Baer Engineering for any equipment decontamination or other costs incident to the discovery of unanticipated hazardous or toxic materials.
 - ii. Baer Engineering agrees to notify Client when unanticipated hazardous or toxic materials or suspected hazardous or toxic materials are encountered. Client agrees to consult legal counsel of its own choosing to determine Client's duty to make disclosures required by law to appropriate governing agencies. Client also agrees to hold Baer Engineering harmless for any and all consequences of disclosures made by Baer Engineering that are required by law. If Client fails to disclose information to appropriate authorities, Client agrees to hold Baer Engineering harmless for any and all consequences of non-disclosure.
 - iii. In the event Client does not own the project site, Client recognizes that it is Client's responsibility to inform the property owner of the discovery of unanticipated hazardous or toxic materials or suspected hazardous or toxic materials.

17. OWNERSHIP AND DISPOSAL OF CONTAMINATED MATERIALS AND EQUIPMENT.

- A) Any hazardous waste, substances, or materials shall at all times be and remain Client's property. It is not part of Baer's duties under this Contract to arrange for the disposal, treatment, or transport of hazardous waste materials. Baer will provide to Client the Texas Commission on Environmental Quality (TCEQ's) list of approved disposal contractors, and assist Client in calculating the cost of disposal with any disposal contractor(s) chosen by Client. Client understands that it has the sole responsibility to make all decisions regarding the proper manner and means of waste disposal, and agrees to secure the advice of legal counsel of Client's choice in making its decisions.
- B) Samples will be disposed of at Client's cost in a proper manner according to applicable laws governing the handling, transport, and disposal of such sampled materials sixty (60) days after submission of a report covering those samples. At all times, any and all right title, and responsibility for samples shall remain with Client; under no circumstances shall this Agreement be construed or interpreted to create any right title, interest, or responsibility for such samples by Baer Engineering. At Client's direction, samples will be returned to Client for final disposition. Further storage or transfer of samples can be made at Client's expense upon Client's prior written request.
- C) All laboratory and field equipment contaminated in performing the work and which cannot be reasonably decontaminated shall become the property and responsibility of Client, unless equipment is contaminated because of Baer Engineering's failure to use reasonable care. All such equipment shall be delivered to Client or disposed of in a manner similar to that indicated for hazardous samples. Client agrees to pay the fair market value of any such equipment which cannot be reasonably decontaminated.

18. DATA PROVIDED BY CLIENT OR OTHERS. It is agreed that Baer Engineering will not be held responsible for the quality or accuracy of data, nor the acquisition or sampling programs or methods from which the data were developed, where such data is provided by or through Client or third parties to Baer Engineering and upon which Client desires Baer Engineering to rely, in whole or in part. Such data includes, but is not limited to, architectural and/or engineering drawings of the project, building construction materials specifications, reports, calculations, designs, drawings, surveys, maps, etc. If Client has provided the information, then Client agrees to assume responsibility for any liability that may result if the information is not correct.

19. CONTINUITY. Client acknowledges that it is customary for Baer Engineering to be responsible for preparing and furnishing drawings, specifications, and other documents that are to be utilized during the bidding, construction, and/or field work phases of a remediation Project: (i) to interpret, clarify, and modify the same as circumstances may dictate; (ii) to adjust the same to accommodate substitution of materials and equipment as proposed by bidders and contractor(s); (iii) to conform same with approvals of shop drawings and sample submittals; and (iv) to correct for inconsistencies or irregularities in the documents. Therefore:

- A) If Baer Engineering is not retained to provide such services during the bidding, construction, and/or field work phases of Client's Project, Baer Engineering will not be responsible for claims arising out of any interpretation, clarification, substitution acceptance, shop drawing, sample approval, or modification of construction documents. Baer shall have no responsibility for any portion of any project designed by Client's other consultants, nor shall Baer be required to check or verify other consultants' construction documents;

instead, Baer shall be entitled to rely upon the accuracy and completeness thereof, as well as the fact that the documents comply with applicable law.

- B) If Baer Engineering is to be employed to provide such services, then Client warrants that it will cause the General Contractor to review any requests for information (RFIs) submitted by subcontractors prior to submission of them to Baer Engineering to ensure that such RFIs are not already clearly and unambiguously answered in the Contract Documents. It is understood that Baer Engineering will charge for time spent reviewing RFIs that are already clearly answered in the Contract Documents in accordance with its rates in Exhibit A.

20. CONSTRUCTION OBSERVATION.

- A) The purpose of Baer Engineering's presence at the site(s) is to enable Baer to provide for Client a greater degree of assurance that the completed work of contractor(s) do in fact generally conform to the contract documents. On the other hand, it is understood that, during such visits or as a result of such field observations, monitoring, and/or testing of contractor(s)' work-in-progress, Baer will not have authority to supervise, direct, or control contractor(s)' work. Baer is there only to report to Client what Baer believes is compliance or non-compliance with the contract documents. Thus, it is agreed that Baer Engineering shall have no responsibility for the means, methods, techniques, sequences, or procedures selected by the contractor(s), for the safety precautions and programs chosen by the contractor(s) or for any failure of the contractor(s) to comply with any laws applicable to the work being performed by the contractor(s).
 - B) It is understood and agreed that if Baer Engineering's basic services under this Agreement do NOT include project observation or review of Contractors' performance or any other construction phase services, that such services will be provided by Client or others hired by Client. Client therefore assumes responsibility for interpretation of the Contract Documents and for construction observation and supervision and waives any claims against Baer Engineering that may be in any way connected thereto. Furthermore, Client agrees to indemnify Baer Engineering from any claim arising or resulting from the performance of such services by others and from claims arising from modifications, clarifications, interpretations, adjustments, or changes to the Contract Documents. If Client requests in writing that Baer Engineering provide any specific construction phase services, a mutually agreeable contract must be reached by Client and Baer.
- 21. SAFETY.** Any construction review of contractor(s)' performance conducted by Baer Engineering is not intended to include review of the adequacy of the contractor(s)' safety measures in, on, or near the construction site. Client understands the contractor is solely responsible for working conditions at the job site, including the safety of all persons and property.
- 22. OPINIONS OF COST.** Since Baer Engineering has no control over the cost of labor, materials, equipment, or services furnished by others, or over a contractor's methods of determining prices, or over competitive bidding or market conditions, Baer's estimate of the probable construction, operations, and maintenance costs are nothing more than opinions based upon Baer Engineering's judgment as an experienced and qualified professional engineer and/or consultant familiar with the construction industry. But Baer Engineering cannot and will not guarantee that actual costs will not vary from estimates of probable cost prepared by Baer. If prior to the bidding or negotiation phase Client wishes greater assurance as to costs, Client shall employ an independent cost estimator.
- 23. DOCUMENTS.**
- A) Instruments of Service shall remain the property of Baer Engineering. Baer shall retain all common law, statutory, and other reserved rights, including the copyright thereto. Client may use such documents only in connection with the particular project for which such documents were prepared.
 - B) Instruments of Service shall become the property of Client only if specifically stated in Exhibit A. However, use by others or use for any other purpose or project, without written verification or adaptation by Baer Engineering, will be at the Client's or other's sole risk and liability. Client shall indemnify and hold Baer Engineering harmless from all claims arising out of use of Baer's documents on other projects or by third parties.
 - C) Baer Engineering agrees to maintain all Instruments of Service as is or on microfilm, except for samples and specimens, for a minimum period of two years after completion of its services. When the Instruments of Service shall become the property of the Client, the Client shall specify in writing to the President of Baer Engineering if it desires to acquire possession of the Instruments of Service at any time before the end of the two year period; if so requested, Baer will furnish them to Client and will be under no further obligation to continue to maintain them.
- 24. TERMINATION.** This agreement may be terminated by Baer Engineering or the Client at any time with or without cause upon giving the other party seven (7) calendar days prior written notice. In the event of termination, Baer Engineering will be paid within thirty (30) calendar days for services performed prior to the date of termination plus reasonable termination expenses including, but not limited to, the cost of completing analyses, records, and reports necessary to document job status at the time of termination.

25. **NO WAIVER OF LIEN OR STOP NOTICE RIGHTS.** The terms and conditions of this Agreement shall not be construed to alter, waive, or affect any lien or stop notice rights that Baer Engineering may have for the performance of services under this Agreement.
26. **SUCCESSORS AND ASSIGNS.** By this Agreement, Client understands that it binds itself, its partners, successors, executors, administrators, and assigns.
27. **BANKRUPTCY.** Should Baer Engineering become bankrupt, Baer Engineering or its trustee in bankruptcy shall be paid the reasonable value of all services previously performed. In determining reasonable value under this article, the contract price shall be deemed reasonable.
28. **ASSIGNMENT.** Neither Client nor Baer Engineering shall assign rights or duties created under this Agreement without the written consent of the other, except that Baer may employ the services of subconsultants when, in its sole opinion, it is necessary, customary, and/or appropriate to do so. Such subconsultants include, but are not limited to, surveyors, specialized consultants, drillers, and testing laboratories. The Client shall not unreasonably restrict Baer's use of other subconsultants for additional purposes.
29. **ALTERATIONS.** No term of this Agreement is to be altered unless done in writing and signed by the parties.
30. **FORCE MAJEURE.** Neither party shall be held responsible for damages or considered to be in default nor breach of this Agreement or by reason of delays in performance caused by strikes, lockouts, accidents, Acts of God, inclement weather and other unavoidable delays beyond Baer Engineering's reasonable control. Furthermore, Baer Engineering shall not be liable for delays in performing its obligations hereunder that are caused by Client or Client's agents (e.g., furnishing information promptly), shortages or unavailability of labor at established wage rates, other contractors, and/or government agencies. In the case of this happening, the time of completion shall be extended accordingly, but if Baer Engineering experiences increased costs due to such delays, then upon written notice to Client setting forth the specific items of increased cost and the amounts thereof, Client shall pay such additional amount(s) or else Baer Engineering, at its option, may terminate this Agreement.
31. **COOPERATION.**
- A) Client agrees to fully cooperate with Baer Engineering for the purposes of performing its obligations under this Agreement.
 - B) Baer Engineering agrees to assist Client in applying for permits and approvals that are typically required by law for projects similar to the one(s) for which Client has hired Baer Engineering. This assistance shall consist of completing and submitting forms on the results of certain work (if said work is included in the Scope of Services). However, this assistance does not include special studies, special research, special testing, or special documentation not normally required for the type of project contemplated. Furthermore, Baer's assistance shall not include attendance at meetings with Client, contractors, or public authorities unless specifically stated in the Scope of Services. If time spent in such meetings exceeds anticipated effort included in the Scope of Services, then Client agrees to compensate Baer for same at the rates specified in Exhibit A.
32. **CORPORATE LIABILITY.** It is understood and agreed by the parties that Baer Engineering is a Texas corporation, and it has contracted to perform services in the Agreement as a corporation and not as individuals. Therefore, Client agrees to make no claim, demand, or suit directed against individual employees, agents, and officers of Baer Engineering for their acts done as employees, agents, or officers.
33. **DISPUTE RESOLUTION**
- A) **Certification of Negligence.** Client agrees to make no claim for negligence against Baer unless Client has first provided Baer Engineering with a written certification of an independent engineer currently practicing in the same discipline as Baer Engineering and who is licensed by the State of Texas. This certification shall:
 - contain the name and license number of the certifier;
 - specify each and every act or omission that the certifier contends is a violation of the standard of care that is applicable to a design professional performing services under similar circumstances;
 - state in detail the basis for the certifier's opinion(s) that each alleged act or omission constitutes a violation of the applicable standard of care; and
 - be presented to Baer Engineering at least 30 days prior to the presentation of any claim for dispute resolution or litigation.
 - B) **ADR.** Except as provided herein, all claims, disputes, and other matters in controversy solely between Baer Engineering and Client arising out of or in any way related to this Agreement shall be submitted to "alternative dispute resolution" (ADR) before and as a condition precedent to other remedies provided by law. If the parties agree to no specific ADR procedure, then both parties must submit their claims and/or defenses to mediation before they can be plead in a lawsuit.
 - C) **Exceptions.** If a dispute involves: (i) claims for indemnity against claims brought by third parties, and/or (ii) Baer Engineering's claims for sums due and owing to Baer Engineering for services rendered and costs incurred, Baer Engineering, at its option, may proceed directly to enforce its remedies at law, including, but

not limited to, an action to foreclose mechanic's liens, a suit on sworn account, or such other proceedings or process deemed necessary to enforce its rights to payment.

D) **Venue.** Any action arising under this Agreement shall be brought and tried in Travis County, Texas. The parties agree that the prevailing party shall be entitled to attorney's fees and costs.

34. **NOTICES.** Any notices required or permitted to be sent shall be considered served on a party if hand delivered, sent by telegram or certified mail, or sent by facsimile to the addresses and numbers that appear in paragraph 36 or such other addresses as the parties may have designated pursuant to that paragraph.

35. **GOVERNING LAW AND SURVIVAL**

A) The law applicable to any adjudication of disputes arising hereunder shall be the law of the State of Texas.

B) If any of the provisions contained in this Agreement are held illegal, invalid, or unenforceable, the enforceability of the remaining provisions will not be impaired. It is agreed that limitations of liability and indemnities shall survive termination of this Agreement.

36. **PROJECT REPRESENTATIVES.** Client shall designate representatives who are authorized to accept notices from Baer and make decisions on Client's behalf when requested by Baer Engineering. Client lists the following representatives as persons who are authorized to make decisions regarding work on the project(s) that Baer is working on under this Agreement. Client agrees not to delay in making decisions that Baer has requested, and represents that the following people, listed in order of priority, will be available on an on-call basis:

Project Name (Project): Tank and Drum Removal Services	
Project Location (Site): Port Arthur Newspaper Building, 549 4th Street, Port Arthur, Texas 77640	
CLIENT INFORMATION	BAER ENGINEERING INFORMATION
Project ID:	Project Number: 182089.010
Port Arthur Economic Development Corporation 501 Procter Street, Suite 100 Port Arthur, TX 77640	Baer Engineering and Environmental Consulting, Inc. 7756 Northcross Drive, Suite 211 Austin, Texas 78757
Telephone: 409.963.0579	Telephone: 512.453.3733 Toll Free: 800.926.9242
FAX:	Fax : 512.453.3316 Website: www.baereng.com
PROJECT REPRESENTATIVES CONTACT INFORMATION	
Project Principal: Mr. Floyd Batiste fbatiste@paedc.org	Project Principal: Rosemary Wyman, P.G., CHMM, CPESC rwyman@baereng.com
Project Manager:	Project Manager: Mark Sloop, P.G. msloop@baereng.com

The parties agree to send written notice if any of the contact information above changes.

Wherefore, in solemn acknowledgment of the terms of this agreement, we do sign our names on this

_____ day of _____, 2019.

Client or Authorized Representative:

Baer Engineering:

SIGNATURE

SIGNATURE, ROSEMARY WYMAN, P.G., CHMM, CPESC

Executive Vice President, Principal Geologist

TITLE

TITLE



2018 FEE SCHEDULE

<u>ENGINEERING AND ENVIRONMENTAL</u>		Hourly Rate
Principal	Engineer, Geologist, Biologist, Scientist, Consultant	215.97
Senior	Engineer, Geologist, Biologist, Scientist, Consultant, Project Manager, LEED AP, Asbestos Consultant, Lead Project Designer, Mold Assessment Consultant	200.46
Project	Engineer, Geologist, Biologist, Scientist, Project Manager, Asbestos Management, Planner, Lead Risk Assessor, Project Technician	147.44
Staff	Engineer, Geologist, Biologist, Scientist, Asbestos Project Manager/Air Monitoring, Technician, Staff Technician	126.62
Field	Engineer, Geologist, Biologist, Scientist, Asbestos/Lead Inspector, Field Technician	119.55

INDUSTRIAL HYGIENE

Certified Industrial Hygienist	202.66
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ADMINISTRATIVE AND TECHNICAL SUPPORT

CADD Operator/Drafter	110.59
GIS	110.59
Administrative Assistant	92.42

Charges will be made at the rates listed above for time spent in project management, consultation or meetings related to the project, conducting field surveys, sampling, evaluations, review and analysis of field and laboratory data, report preparation and review, design, travel time, etc.

Time spent on projects in litigations, in depositions, and providing expert testimony will be charged at the standard rate times:	1.5
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Technician and Support Personnel time for work over 8 hours per day and on holidays, Saturday and Sunday will be charged at the standard rate times:	1.5
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EXPENSES

Company/personal vehicle travel expenses, per mile:	0.6
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Per Diem expenses when required to remain overnight outside Austin metropolitan area, and common carrier or car rental costs will be charged at cost multiplied by:	1.25
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Special equipment or supplies, laboratory charges, permits, shipping charges, special printing or other items not customarily provided by Baer Engineering will be charged at cost multiplied by:	1.15
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