

RESOLUTION NO. 19-215

A RESOLUTION APPROVING THE CITY OF PORT ARTHUR SECTION 4A ECONOMIC DEVELOPMENT CORPORATION ENTERING INTO AN AGREEMENT WITH TOTAL SAFETY FOR THE MANAGEMENT AND MONITORING SERVICES OVER THE ABATEMENT CONTRACTOR FOR THE REMOVAL OF ASBESTOS, LEAD AND MOLD AND INTERIOR DEMOLITION AT THE FORMER PORT ARTHUR NEWS BUILDING LOCATED 549 4TH STREET, PORT ARTHUR, TEXAS FOR A COST NOT TO EXCEED \$47,900.00; FUNDS AVAILABLE IN EDC ACCOUNT NO. 305-1606-591.82.01

WHEREAS, the City of Port Arthur Section 4A Economic Development Corporation (“PAEDC”) has acquired the property at 549 4th Street, formerly the Port Arthur News Building, for the purpose of renovating the building to house the Center for Community and Business Development; and

WHEREAS, Total Safety, U.S., Inc. prepared the scope of work for the request for proposals for a contractor to remove asbestos, lead and mold at 549 4th Street; and

WHEREAS, on May 6, 2019, the PAEDC Board of Directors approved entering into a Professional Environment Consultant Service Agreement with Total Safety U.S., Inc. of Port Arthur for the management and monitoring services for the abatement of asbestos, lead and mold and interior demolition at 549 4th Street at a cost not to exceed \$47,900.00 as shown in **Exhibit “A”** attached hereto and made a part hereof.

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 hereby authorizes PAEDC to enter into an Agreement with Total Safety U.S., Inc. for the management and monitoring services for asbestos, lead and mold abatement and interior demolition at 549 4th Street at a cost not to exceed \$47,900.00.

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 21st day of May 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 Dewet
Councilmembers Scott, Jones, Kinlaw and
Frank

NOES:


None

ATTEST:


Derrick Freeman, Mayor


Sherri Bellard, City Secretary

APPROVED:



Floyd Batiste, PAEDC CEO

APPROVED AS TO FORM:



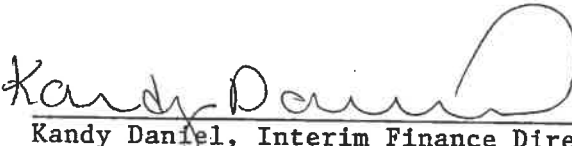
Guy N. Goodson, PAEDC Attorney

APPROVED AS TO FORM:



Valecia R. Tizeno, City Attorney

APPROVED AS TO AVAILABILITY OF FUNDS:



Kandy Daniel, Interim Finance Director

EXHIBIT “A”



Building **HEROES**. Protecting **HEROES**.

May 15, 2019

Port Arthur Economic Development Corporation
501 Proctor Street
Port Arthur, Texas 77640
ATTN: Floyd Batiste
Fbatiste@paedc.org

Subject: Proposal for Services: Asbestos/Lead Paint/Interior Demo Air Monitoring
Project Site: 549 4th Street, Port Arthur, Texas
Proposal Number: P7333-19R

INTRODUCTION

Total Safety U.S., Inc. (Total Safety) is pleased to present the following proposal to provide environmental consulting services to Port Arthur Economic Development Corporation for the asbestos/lead/interior demolition project for the vacant building located at 549 Proctor Street in Port Arthur, Texas. This proposal is being sent per your request. . Total Safety is an accepted vendor for the Region 5 ESC's "Environmental Services (excludes engineering services) #20180404" category by the Southeast Texas Cooperative Purchasing Organization for the contract year of June 1, 2018 to May 31, 2019.

PURPOSE

The primary purpose of this project is to provide project management, air monitoring services and a final report for the removal of asbestos/lead-based paint and interior demolition at the building.

SCOPE OF WORK

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

- Provide on-site project management/air monitoring during the work
- Provide a final closeout report at the project completion

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

FEE ESTIMATE

We propose to perform the above-mentioned services for a lump sum amount of **\$47,900.00**.

Our terms for payment are net 30 days. Our Terms and Conditions are attached and incorporated herein by reference, which, together with this letter, will constitute the entire agreement between us.

Total Safety U.S., Inc.

QUALIFICATIONS

Client Responsibilities

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

If this proposal is deemed satisfactory, please sign below and return a copy to my email at dward@totalsafety.com and copy shebert@totalsafety.com referencing proposal. Should you have any questions, please contact me at (409) 727-8227.

Sincerely,



Daniel R. Ward
Regional Manager EHS Services
DSHS Asbestos Consultant License No: 10-5479

ATTACHMENTS: Total Safety Terms and Conditions



Building HEROES. Protecting HEROES.

Total Safety Terms and Conditions

1. Scope. Customer has requested that Total Safety perform the safety services (the "Services") set forth in the proposal, invoice or other document attached hereto. These terms and conditions (the "Agreement") shall apply to Services provided by Total Safety, and any purchase, service or work order issued by Customer shall be for informational purposes only, to describe the particular Services, and shall not modify or change any provision of this Agreement. Any rates set forth on the attached document are subject to adjustment annually.

2. Selection of Equipment, Products and Services. Customer is responsible for determining the experience, level of authority, and number of personnel to sufficiently comply with Customer's safety requirements for the project. All Services will be provided pursuant to Customer's safety policies, procedures and manuals. To the extent the Services include safety and/or health professionals to supplement or augment Customer's existing safety or health staff, such services shall be supplied in accordance with Customer's specifications and Customer shall be responsible for providing adequate training and supervision. Customer has selected the Services on the basis of its own judgment and expressly disclaims reliance upon any statements, representations or warranties made by Total Safety.

3. Payment. Payment is due 30 days from the invoice date or date Total Safety submits the invoice into Customer's EDI application. Discrepancies are required to be advised within 30 days of invoice date. Invoices with discrepancies raised after 30 days shall be subject to the late payment penalty described in Section 8 hereto.

4. Late Charge. A late payment penalty charge of 2% per month, pro rata from the date of the invoice, will be applied for any payment made later than 30 days from invoice date or date Total Safety submits the invoice into Customer's EDI application. In addition, Total Safety shall have the right to terminate this Agreement. In any action to collect amounts due under this Agreement, Total Safety shall be entitled to recover its costs and reasonable attorney's fees.

5. Taxes and Indemnification. Customer agrees to pay and discharge when due any and all taxes and governmental charges of any kind or character, federal, state, county, or municipal, which may be levied and/or assessed at any time by reason of the Services and interest and penalties, if any, on such taxes or charges, and Customer will at all times fully protect and save Total Safety and its successors and assigns harmless from and against any such taxes, governmental charges and interest and penalties thereon.

6. Default. If Customer fails to make a monthly payment when due, or if Customer becomes insolvent or makes an assignment for the benefit of creditors or files a Petition in Bankruptcy or if a receiver is appointed for the Customer's business, or if a Customer fails to comply with any of the other terms and conditions of this Agreement, or otherwise breaches this Agreement, such shall constitute a default hereunder and Total Safety may thereupon exercise all rights and remedies as are accorded hereunder or otherwise provided by law. In the event of default, Total Safety may do any or all of the following without notice or demand: (1) declare all rental payments hereunder to be immediately due and payable, (2) terminate this Agreement and (3) pursue any other remedy permitted by law. Customer also agrees to pay upon request all collection and legal costs, including reasonable attorney's fees and court costs, incurred by Total Safety to the extent permitted by law.

7. Warranty. Services shall be performed diligently, efficiently, in a safe and workmanlike manner in accordance with Agreement and generally consistent with practices applicable to such Services in the area in which the Services

Total Safety U.S., Inc.

are to be performed. Defective Services shall be reformed. Other than as set forth herein, Total Safety makes no warranties whatsoever in respect to the Services

8. **Exclusive Remedy.** Customer's sole and exclusive remedy for breach of warranty, tortious conduct, breach of contract, or any other cause of action against Total Safety or its officers, agents or employees, if any, shall be limited to the warranty set forth herein. Customer specifically understands and agrees that no other remedy (including but not limited to claims for incidental, special, consequential, or punitive damages for any cause whatsoever or injury to persons or property or any other consequential, economic, special or incidental loss) shall be available to Customer.

9. **Indemnification of Customer.** With respect to all Services provided by Total Safety, each of Total Safety 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 this Agreement, 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.

10. **Insurance.** Total Safety carries automobile, general liability, property, workers' compensation and professional liability insurance policies to provide coverage for its operations, property and employees while at Client locations and performing services for Clients. Upon request of Client, Client shall be named as an additional insured on Total Safety's automobile and general liability policies to the extent of Total Safety's contractual obligations under this Proposal.

11. **Drawings.** All drawings, diagrams, specifications and other material furnished by Total Safety and identified as confidential relating to the use and service of articles furnished hereunder and the information therein are proprietary to Total Safety. Such material has been developed at great expense and contains trade secrets of Total Safety. Customer may not reproduce or distribute such materials except to Customer's employees who may use the articles as part of their duties. All such materials relating to the articles supplied directly by Total Safety (except information as may be established to be in the public domain or disclosed pursuant to judicial government action) shall be received in confidence and Customer shall exercise reasonable care to hold such information in confidence.

12. **Force Majeure.** If either Party is unable to perform its obligations under this Agreement or any Service Order as a result of a Force Majeure Event and the affected Party notifies the other Party, the Service Order or a particular Service may be terminated by the affected Party giving notice to the other Party that the Force Majeure Event is of sufficient duration to substantially diminish the affected Party's ability to perform under this Contract. For purposes of this paragraph, a Force Majeure Event shall be defined to mean any event beyond the control of the affected Party which prevents the performance of that Party's obligations under this Agreement, including, without limitation, earthquakes, hurricanes, fires, and other physical natural disasters; Acts of War, terrorism, riot, civil war, blockade, insurrection or civil disturbances; or acts of a governmental entity, agency or other authority that prevents or makes unlawful performance under this Agreement

Total Safety U.S., Inc.

13. Entire Agreement. The terms set forth herein constitute the entire Agreement between Total Safety and Customer with respect to the Services, and shall not be amended except in a writing signed by both Parties.

14. 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 Jefferson, or, if it has or can acquire jurisdiction, in the United States District Court for the Eastern 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.

Accepted for Client

BY: _____

NAME: _____

TITLE: _____

DATE: _____