

RESOLUTION NO. 21-162

A RESOLUTION APPROVING THE RATIFICATION OF A GENERAL SERVICES AGREEMENT BETWEEN THE PORT ARTHUR ECONOMIC DEVELOPMENT CORPORATION AND PANAMA EQUIPMENT, LLC FOR ENGINEERING DESIGN, PLATFORM CONSTRUCTION, INSTALLATION AND OTHER RELATED SERVICES FOR THE PROJECT AT 549 4TH STREET (THE PRESS BUILDING) THE AMOUNT OF \$249,425.66. FUNDS AVAILABLE IN EDC ACCOUNT NO. 120-80-625-5494-00-00-000.

WHEREAS, the City Council deems it is in the public interest to authorize the City of Port Arthur Section 4A Economic Development Corporation (the "PAEDC") to retrofit the property located at 549 4th Street in downtown Port Arthur; and

WHEREAS, per Resolution No. 20-333 (attached hereto as Exhibit "A"), the City Council authorized the PAEDC to terminate its contract with Cat 5 and enter into a General Service Agreement with Panama Equipment LLC. Panama Equipment LLC has agreed to charge a flat fee of \$249,425.66 for the engineering and design of a platform and generator foundation, build the foundation, enclose the generator, and set the generator and platform; and

WHEREAS, the formal written agreement between the PAEDC and Panama Equipment, LLC., was presented to the PAEDC for their consideration;

WHEREAS, at its April 5, 2021 board meeting, the PAEDC Board of Directors approved the ratification of the agreement with Panama Equipment LLC, as delineated in Exhibit "A".

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 approves the ratification of the General Services Agreement between the Port Arthur EDC and Panama Equipment LLC as delineated in Exhibit "A" attached hereto.

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 27th day of April A.D., 2021, at a Meeting of the City Council of the City of Port Arthur, Texas, by the following vote: AYES:
Mayor Bartie, Mayor Pro Tem Moser,
Councilmembers Holmes, Jones, Kinlaw,
Marks

NOES: none

ATTEST:


Thurman Bartie, Mayor


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:



Kandy Daniel, Interim Finance Director

EXHIBIT "A"

21897

GENERAL SERVICE AGREEMENT

THIS GENERAL SERVICE AGREEMENT (the "Agreement") is dated this 25th day of March, 2021.

CLIENT

PORT ARTHUR ECONOMIC
DEVELOPMENT CORPORATOIN
501 Procter Street, Port Arthur, TX 77640
(the "Client")

CONTRACTOR

PANAMA EQUIPMENT LLC
167 MAGNOLIA TRL, CLEVELAND, TX
77328
(the "Contractor")

BACKGROUND

- A. The Client is of the opinion that the Contractor has the necessary qualifications, experience and abilities to provide services to the Client.
- B. The Contractor is agreeable to providing such services to the Client on the terms and conditions set out in this Agreement.

IN CONSIDERATION OF the matters described above and of the mutual benefits and obligations set forth in this Agreement, the receipt and sufficiency of which consideration is hereby acknowledged, the Client and the Contractor (individually the "Party" and collectively the "Parties" to this Agreement) agree as follows:

SERVICES PROVIDED

1. The Client hereby agrees to engage the Contractor to provide the Client with the following services (the "Services"):
 - SCOPE OF WORK - Engineer design of platform and generator foundation, build foundation, enclose generator, set generator and platform..
2. The Services will also include any other tasks which the Parties may agree on. The Contractor hereby agrees to provide such Services to the Client.

TERM OF AGREEMENT

3. The term of this Agreement (the "Term") will begin on the date of this Agreement and will remain in full force and effect until the completion of the Services, subject to earlier termination as provided in this Agreement. The Term may be extended with the written consent of the Parties.

PERFORMANCE

4. The Parties agree to do everything necessary to ensure that the terms of this Agreement take effect.

CURRENCY

5. Except as otherwise provided in this Agreement, all monetary amounts referred to in this Agreement are in USD (US Dollars).

COMPENSATION

6. The Contractor will charge the Client a flat fee of \$249,425.66 for the Services (the "Compensation").
7. The Client will be invoiced when the Services are complete.
8. Invoices submitted by the Contractor to the Client are due within 30 days of receipt.
9. In the event that this Agreement is terminated by the Client prior to completion of the Services but where the Services have been partially performed, the Contractor will be entitled to pro rata payment of the Compensation to the date of termination provided that there has been no breach of contract on the part of the Contractor.
10. The Contractor will not be reimbursed for any expenses incurred in connection with providing the Services of this Agreement.

CONFIDENTIALITY

11. Confidential information (the "Confidential Information") refers to any data or information relating to the business of the Client which would reasonably be considered to be proprietary to the Client including, but not limited to, accounting records, business processes, and client records and that is not generally known in the industry of the Client and where the release of that Confidential Information could reasonably be expected to cause harm to the Client.
12. The Contractor agrees that they will not disclose, divulge, reveal, report or use, for any purpose, any Confidential Information which the Contractor has obtained, except as authorized by the Client or as required by law. The obligations of confidentiality will apply during the Term and will survive indefinitely upon termination of this Agreement.
13. All written and oral information and material disclosed or provided by the Client to the Contractor under this Agreement is Confidential Information regardless of whether it was provided before or after the date of this Agreement or how it was provided to the Contractor.

OWNERSHIP OF INTELLECTUAL PROPERTY

14. All intellectual property and related material, including any trade secrets, moral rights, goodwill, relevant registrations or applications for registration, and rights in any patent, copyright, trademark, trade dress, industrial design and trade name (the "Intellectual Property") that is developed or produced under this Agreement, is a "work made for hire" and will be the sole property of the Client. The use of the Intellectual Property by the Client will not be restricted in any manner.
15. The Contractor may not use the Intellectual Property for any purpose other than that contracted for in this Agreement except with the written consent of the Client. The Contractor will be responsible for any and all damages resulting from the unauthorized use of the Intellectual Property.

RETURN OF PROPERTY

16. Upon the expiration or termination of this Agreement, the Contractor will return to the Client any property, documentation,

records, or Confidential Information which is the property of the Client.

CAPACITY/INDEPENDENT CONTRACTOR

17. In providing the Services under this Agreement it is expressly agreed that the Contractor is acting as an independent contractor and not as an employee. The Contractor and the Client acknowledge that this Agreement does not create a partnership or joint venture between them, and is exclusively a contract for service. The Client is not required to pay, or make any contributions to, any social security, local, state or federal tax, unemployment compensation, workers' compensation, insurance premium, profit-sharing, pension or any other employee benefit for the Contractor during the Term. The Contractor is responsible for paying, and complying with reporting requirements for, all local, state and federal taxes related to payments made to the Contractor under this Agreement.

RIGHT OF SUBSTITUTION

18. Except as otherwise provided in this Agreement, the Contractor may, at the Contractor's absolute discretion, engage a third party sub-contractor to perform some or all of the obligations of the Contractor under this Agreement and the Client will not hire or engage any third parties to assist with the provision of the Services.

19. In the event that the Contractor hires a sub-contractor:

- the Contractor will pay the sub-contractor for its services and the Compensation will remain payable by the Client to the Contractor.
- for the purposes of the indemnification clause of this Agreement, the sub-contractor is an agent of the Contractor.

AUTONOMY

20. Except as otherwise provided in this Agreement, the Contractor will have full control over working time, methods, and decision making in relation to provision of the Services in accordance with the Agreement. The Contractor will work autonomously and not at the direction of the Client. However, the Contractor will be responsive to the reasonable needs and concerns of the Client.

EQUIPMENT

21. Except as otherwise provided in this Agreement, the Contractor will provide at the Contractor's own expense, any and all tools, machinery, equipment, raw materials, supplies, workwear and any other items or parts necessary to deliver the Services in accordance with the Agreement.

NO EXCLUSIVITY

22. The Parties acknowledge that this Agreement is non-exclusive and that either Party will be free, during and after the Term, to engage or contract with third parties for the provision of services similar to the Services.

NOTICE

23. All notices, requests, demands or other communications required or permitted by the terms of this Agreement will be given in writing and delivered to the Parties at the following addresses:

- a. PORT ARTHUR ECONOMIC DEVELOPMENT CORPORATOIN

501 Procter Street, Port Arthur, TX 77640

b. PANAMA EQUIPMENT LLC

167 MAGNOLIA TRL, CLEVELAND, TX 77328

or to such other address as either Party may from time to time notify the other, and will be deemed to be properly delivered (a) immediately upon being served personally, (b) two days after being deposited with the postal service if served by registered mail, or (c) the following day after being deposited with an overnight courier.

INDEMNIFICATION

24. Except to the extent paid in settlement from any applicable insurance policies, and to the extent permitted by applicable law, each Party agrees to indemnify and hold harmless the other Party, and its respective directors, shareholders, affiliates, officers, agents, employees, and permitted successors and assigns against any and all claims, losses, damages, liabilities, penalties, punitive damages, expenses, reasonable legal fees and costs of any kind or amount whatsoever, which result from or arise out of any act or omission of the indemnifying party, its respective directors, shareholders, affiliates, officers, agents, employees, and permitted successors and assigns that occurs in connection with this Agreement. This indemnification will survive the termination of this Agreement.

ADDITIONAL CLAUSE

25. COST NOT TO EXCEED

The total cost of this agreement shall not exceed original purchase order #221745 in the amount of \$249,425.66.

MODIFICATION OF AGREEMENT

26. Any amendment or modification of this Agreement or additional obligation assumed by either Party in connection with this Agreement will only be binding if evidenced in writing signed by each Party or an authorized representative of each Party.

TIME OF THE ESSENCE

27. Time is of the essence in this Agreement. No extension or variation of this Agreement will operate as a waiver of this provision.

ASSIGNMENT

28. The Contractor will not voluntarily, or by operation of law, assign or otherwise transfer its obligations under this Agreement without the prior written consent of the Client.

ENTIRE AGREEMENT

29. It is agreed that there is no representation, warranty, collateral agreement or condition affecting this Agreement except as expressly provided in this Agreement.

ENUREMENT

30. This Agreement will ensure to the benefit of and be binding on the Parties and their respective heirs, executors, administrators and permitted successors and assigns.

TITLES/HEADINGS

31. Headings are inserted for the convenience of the Parties only and are not to be considered when interpreting this Agreement.

GENDER

32. Words in the singular mean and include the plural and vice versa. Words in the masculine mean and include the feminine and vice versa.

GOVERNING LAW

33. This Agreement will be governed by and construed in accordance with the laws of the State of Texas.

SEVERABILITY

34. In the event that any of the provisions of this Agreement are held to be invalid or unenforceable in whole or in part, all other provisions will nevertheless continue to be valid and enforceable with the invalid or unenforceable parts severed from the remainder of this Agreement.

WAIVER

35. The waiver by either Party of a breach, default, delay or omission of any of the provisions of this Agreement by the other Party will not be construed as a waiver of any subsequent breach of the same or other provisions.

PORT ARTHUR ECONOMIC DEVELOPMENT CORPORATOIN

Per: _____

Officer's Name: _____

PANAMA EQUIPMENT LLC

Per: _____

Officer's Name: _____



CERTIFICATE OF LIABILITY INSURANCE

DATE (MM/DD/YYYY)

01/29/2021

THIS CERTIFICATE IS ISSUED AS A MATTER OF INFORMATION ONLY AND CONFERS NO RIGHTS UPON THE CERTIFICATE HOLDER. THIS CERTIFICATE DOES NOT AFFIRMATIVELY OR NEGATIVELY AMEND, EXTEND OR ALTER THE COVERAGE AFFORDED BY THE POLICIES BELOW. THIS CERTIFICATE OF INSURANCE DOES NOT CONSTITUTE A CONTRACT BETWEEN THE ISSUING INSURER(S), AUTHORIZED REPRESENTATIVE OR PRODUCER, AND THE CERTIFICATE HOLDER.

IMPORTANT: If the certificate holder is an ADDITIONAL INSURED, the policy(ies) must be endorsed. If SUBROGATION IS WAIVED, subject to the terms and conditions of the policy, certain policies may require an endorsement. A statement on this certificate does not confer rights to the certificate holder in lieu of such endorsement(s).

PRODUCER

DSC Risk Services
2990 Richmond Ave. Ste. 120
Houston, TX 77098

CONTACT NAME: Dicarlos Davis

PHONE (A/C, No. Ext): (713) 621-9012 Ext. 101

FAX (A/C, No.):

E-MAIL ADDRESS: ddavis@dscriskservices.com

INSURER(S) AFFORDING COVERAGE

NAIC #

INSURER A: Depositors Insurance Co.

INSURER B: Union Standard

INSURER C: North River Insurance

INSURER D: Texas Mutual

INSURER E: Underwriters at Lloyd's London

INSURER F: Allied P & C Ins. Co.

INSURED

Panama Equipment, LLC
167 Magnolia Trail
Cleveland, TX 77328

COVERAGES**CERTIFICATE NUMBER:****REVISION NUMBER:**

THIS IS TO CERTIFY THAT THE POLICIES OF INSURANCE LISTED BELOW HAVE BEEN ISSUED TO THE INSURED NAMED ABOVE FOR THE POLICY PERIOD INDICATED. NOTWITHSTANDING ANY REQUIREMENT, TERM OR CONDITION OF ANY CONTRACT OR OTHER DOCUMENT WITH RESPECT TO WHICH THIS CERTIFICATE MAY BE ISSUED OR MAY PERTAIN, THE INSURANCE AFFORDED BY THE POLICIES DESCRIBED HEREIN IS SUBJECT TO ALL THE TERMS, EXCLUSIONS AND CONDITIONS OF SUCH POLICIES. LIMITS SHOWN MAY HAVE BEEN REDUCED BY PAID CLAIMS.

INSR LTR	TYPE OF INSURANCE	ADDL INSR	SUBR WVD	POLICY NUMBER	POLICY EFF (MM/DD/YYYY)	POLICY EXP (MM/DD/YYYY)	LIMITS
A	<input checked="" type="checkbox"/> GENERAL LIABILITY						
	<input type="checkbox"/> CLAIMS-MADE <input checked="" type="checkbox"/> OCCUR						
		Y	Y	3019391821	09/16/2020	09/16/2021	EACH OCCURRENCE \$ 1,000,000
	GEN'L AGGREGATE LIMIT APPLIES PER: <input checked="" type="checkbox"/> POLICY <input type="checkbox"/> PROJECT <input type="checkbox"/> LOC						DAMAGE TO RENTED PREMISES (Ea occurrence) \$ 100,000 MED EXP (Any one person) \$ 5,000 PERSONAL & ADV INJURY \$ 1,000,000 GENERAL AGGREGATE \$ 2,000,000 PRODUCTS - COMP/OP AGG \$ 2,000,000
B	<input checked="" type="checkbox"/> AUTOMOBILE LIABILITY						
	<input checked="" type="checkbox"/> ANY AUTO <input type="checkbox"/> SCHEDULED AUTOS						
	<input checked="" type="checkbox"/> HIRED AUTOS <input checked="" type="checkbox"/> NON-OWNED AUTOS	Y	Y	CPA 4788795 - 12	09/29/2020	09/29/2021	COMBINED SINGLE LIMIT (Ea accident) \$ 1,000,000 BODILY INJURY (Per person) \$ BODILY INJURY (Per accident) \$ PROPERTY DAMAGE (Per accident) \$
C	<input checked="" type="checkbox"/> UMBRELLA LIAB <input checked="" type="checkbox"/> OCCUR						
	<input checked="" type="checkbox"/> EXCESS LIAB <input type="checkbox"/> CLAIMS-MADE	Y	Y	5821148133	09/16/2020	09/16/2021	EACH OCCURRENCE \$ 5,000,000 AGGREGATE \$ 5,000,000
	DED RETENTION \$						
D	<input checked="" type="checkbox"/> WORKERS COMPENSATION AND EMPLOYERS' LIABILITY						
	ANY PROPRIETOR/PARTNER/EXECUTIVE OFFICER/MEMBER EXCLUDED? (Mandatory in NH)	Y/N					
	If yes, describe under DESCRIPTION OF OPERATIONS below	N/A	X	0002000057	07/07/2020	07/07/2021	X WC STATUTORY LIMITS OTH-ER E.L. EACH ACCIDENT \$ 1,000,000 E.L. DISEASE - EA EMPLOYEE \$ 1,000,000 E.L. DISEASE - POLICY LIMIT \$ 1,000,000
E	Professional/Pollution Liability			ANE4434166	09/16/2020	09/16/2021	\$2,000,000/1,000,00
F	Inland Marine/Installation Floater			ACP 3019391821	09/16/2020	09/16/2021	\$100,000/1,000,000

DESCRIPTION OF OPERATIONS / LOCATIONS / VEHICLES (Attach ACORD 101, Additional Remarks Schedule, if more space is required)

Builders Risk is included in the Installation Floater policy.

CERTIFICATE HOLDER

City of Port Arthur

CANCELLATION

SHOULD ANY OF THE ABOVE DESCRIBED POLICIES BE CANCELLED BEFORE THE EXPIRATION DATE THEREOF, NOTICE WILL BE DELIVERED IN ACCORDANCE WITH THE POLICY PROVISIONS.

AUTHORIZED REPRESENTATIVE