PR No. 22122
09/02/21 FB

RESOLUTION NO. 21-377

A RESOLUTION AUTHORIZING AN AGREEMENT BETWEEN THE CITY OF PORT ARTHUR AND THE CITY OF PORT ARTHUR SECTION 4A ECONOMIC DEVELOPMENT CORPORATION FOR THE USE OF PROPERTY LOCATED AT THE JADE AVENUE BUSINESS PARK AS A TEMPORARY DEBRIS MANAGEMENT SITE IN THE EVENT OF STATE OR FEDERALLY DECLARED DISASTER

WHEREAS, disaster management is best accomplished at the local level where local jurisdictions are responsible for all debris removal operations conducted within their boundaries; and

WHEREAS, debris management sites are used during debris operations to temporarily stage and process disaster generated debris; and

WHEREAS, the City Council deems it is the public interest to authorize the City of Port Arthur to enter an agreement with the City of Port Arthur Section 4A Economic Development Corporation (the "PAEDC") as it pertains to the use of PAEDC property as a temporary debris management site in the event of a state or federal disaster is declared; and

WHEREAS, the City of Port Arthur Section 4A Economic Development Corporation has authorized the use of its property located at the Jade Avenue Business Park as a temporary debris management site, as delineated in the attached "A".

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 of Port Arthur is herein authorized to enter into an agreement with the Port Arthur Section 4A Economic Development Corporation for the

use of its property located at the Jade Avenue Business Park as a temporary debris management site in the event of a state or federal disaster within the boundaries of the City, as delineated in Exhibit "A".

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 Sept. 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 Frank;

Councilmembers: Holmes, Jones, Kinlaw, Marks and Moses.

;

NOES: None.

Thurman Bartie, Mayor

ATTEST:

Sherri Bellard, City Secretary

APPROVED:

George Davis, Interim CEO PAEDC

APPROVED AS TO FORM:

Frank Garza, PAEDC Attorney

APPROVED AS TO FORM:

Valecia R. Tizeno, City Attorney

Exhibit "A"

AGREEMENT FOR A TEMPORARY DEBRIS MANAGEMENT SITE FOR DEBRIS RESULTING FROM DECLARED STATE OR FEDERAL DISASTER

This Agreement is made by and between the City of Port Arthur, Texas, a Texas municipal corporation ("CITY") and the City of Port Arthur Section 4A Economic Development Corporation, an economic development corporation organized and operating under Chapters 501 and 504, Texas Local Government Code ("PAEDC"). The CITY and PAEDC are collectively referred to hereinafter as the "Parties."

A. CITY is a municipality that a potential catastrophic weather (Hurricane, Tropical Storm or the like) events is in an emergency event and must coordinate and facilitate the management of debris deposited on public lands and public right-of-way; and

B. Because of the inherent danger posed by uncollected debris, it is in the public interest that the CITY protect against the accumulation of debris and its accompanying hazard to human life and property; and

C. The CITY's Disaster Management and Recovery Plan states that the CITY by and through its Public Works Department will coordinate the establishment of temporary and permanent sites to accept debris; and

D. PAEDC is an entity that has undeveloped, unoccupied land suitable for temporary debris management operations; and

E. PAEDC has approximately 23 acres of property (the "Site") located at Jade Avenue, Port Arthur, Texas which has been identified as a site for temporary use for staging/stock piling debris from a potential Hurricane/Tropical Storm or the like event; and

F. The CITY has requested permission to use the Site, described in the attached **Exhibit "A"**, as a temporary staging area for short term debris storage and for debris separation; and

G. PAEDC has agreed to make the Site available to the CITY for such purposes subject to the terms and conditions hereinafter set forth.

NOW, THEREFORE, for and in consideration of the usage of the Site and other good and valuable consideration, including the mutual benefits accruing to the CITY and PAEDC, the Parties agree as follows:

1. Use of the Site. PAEDC has agreed to provide use of the Site for temporary debris management. The CITY will operate the Site under its control through CITY personnel and/or contractors/subcontractors. If the Site is operated by any contractor/subcontractor, the

CITY will advise PAEDC and will ensure that any contractor/subcontractor operating the Site includes both the CITY and PAEDC as additional named insureds under its insurance coverages and provide certificates or policies of insurance prior to initiation of any debris management operations on the Site.

The CITY or its contractors/subcontractors, their personnel and vehicles may enter upon the Site to deposit and thereafter manage debris. The CITY or its contractors/subcontractors will separate the debris so it may be moved to permanent storage and/or disposal sites. Debris deposited on the Site will be constantly rotated by the CITY and/or its contractors/subcontractors with additional debris being loaded in and sorted debris being removed.

2. Regulatory Approval. The CITY or its duly authorized contractors/subcontractors or agents hereby affirm and ratify that the CITY is solely responsible for the approval of the Site as a temporary debris management site. The CITY, its contractors/subcontractors or agents shall execute and file with the Texas Commission on Environmental Quality (the "TCEQ") the Request for Approval of Temporary Debris Management Site for Debris Resulting from Declared State or Federal Disaster TCEQ Form 20660 (Rev. 05/29/2015) and shall undertake all obligations related thereto to ensure the temporary designation of the Site for temporary debris management.

The CITY and/or its contractors/subcontractors or agents agree to complete the TCEQ-20660 indicating that the Site is requested for staging/stock piling and is not to be used for emergency burial, emergency burn or wood chipping operations. Further, the CITY, its contractors/subcontractors or agents agree to provide to PAEDC a complete copy of TCEQ-20660 upon filing and to provide all due notifications from TCEQ of approval of the Site if so granted by TCEQ.

3. Term. This Agreement shall remain in effect for a term of 120 days unless earlier terminated by either party upon thirty (30) days written notice.

The CITY's use of the Site as a temporary staging area for debris storage and separation shall extend for that period of time reasonably required by the CITY to respond to the emergency event or major disaster. In the event this Agreement is terminated while debris is on the Site, the CITY will have thirty (30) days to remove the debris.

4. Site Repairs/Remediation. CITY agrees that upon cessation of use of the Site, the CITY will either restore the Site to the same condition as existed before its use thereof or pay PAEDC an agreed upon sum for the restoration. The CITY shall repair any damage to the Site or any other land owned by PAEDC immediately adjacent to the Site caused by any activity of the CITY or its employees, agents and contractors/subcontractors on the Site.

THE CITY HAS ACKNOWLEDGED THAT IT DOES NOT INTEND TO PROVIDE THE SITE FOR ANY WASTE OTHER THAN CLASS 1 MUNICIPAL WASTE AND DOES NOT INTEND TO COLLECT, STORE, SORT OR STAGE ANY HAZARDOUS WASTE OR

DEBRIS ON THE SITE. IF ANY HAZARDOUS WASTE OR DEBRIS IS PLACED UPON THE SITE, THE CITY AGREES TO INDEMNIFY AND HOLD PAEDC HARMLESS FROM ANY CLAIM OR CAUSE OF ACTION INCLUDING BUT NOT LIMITED TO SITE REMEDIATION AS A RESULT OF ANY DISCHARGE OF HAZARDOUS MATERIALS IN, ON, ALONG OR UNDER THE SITE, AND FURTHER AGREES TO UNDERTAKE ANY AND ALL REQUIRED ENVIRONMENTAL SITE ASSESSMENTS OR REMEDIATION RESULTING FROM SUCH DISCHARGE PLACEMENT OF HAZARDOUS MATERIAL ON THE SITE.

5. INDEMNIFICATION. PAEDC SHALL NOTIFY THE CITY OF ANY KNOWN HARMS OR HAZARDS ON THE SITE PRIOR TO CITY USAGE OF THE SITE. AFTER SUCH NOTIFICATION, THE CITY AGREES TO INDEMNIFY PAEDC FROM CLAIMS, SUITS, LOSSES, DAMAGES AND LIABILITY OF EVERY KIND SUFFERED BY CITY EMPLOYEES OR THE EMPLOYEES OF ITS AGENTS OR CONTRACTORS/SUBCONTRACTORS, RESULTING FROM THE USE OF THE SITE, WHICH OCCURRED DUE TO NEGLIGENCE OF THE CITY OR ANY OF ITS EMPLOYEES, CONTRACTORS/SUBCONTRACTORS, OR AGENTS.

6. Notices. All notices shall be in writing and shall be delivered to the following addresses or at such different addresses as shall be directed by the Parties in writing from time-to-time.

CITY: City of Port Arthur, Texas
Attn: City Manager
444 4th Street
Port Arthur, Texas 77640

PAEDC: PAEDC
Attn: PAEDC Executive Director
501 Procter Street, Suite 100
Port Arthur, Texas 77640

7. Assignment. The CITY shall not assign this Agreement without the prior written consent from PAEDC.

8. Entire Agreement. This Agreement constitutes the entire agreement between the Parties with respect to the subject matter hereof. All prior agreements, representations and negotiations between the Parties regarding the subject matter are hereby superseded. The Agreement shall not be altered or amended except by an agreement in writing executed by both Parties.

9. Governing Law. This Agreement shall be governed by, interpreted and enforced in accordance with the laws of the State of Texas.

10. Signatory Warranty. The undersigned signatories for the CITY and PAEDC hereby represent and warrant that they are authorized to sign the organization for which he or she has executed this Agreement.

11. Severability. If a court of competent jurisdiction determines that any term of this Agreement is invalid or unenforceable the remainder of the Agreement shall not be affected, and each remaining term shall be valid and enforceable to the fullest extent permitted by law.

EXECUTED AND MADE EFFECTIVE ON THE DATE LAST SIGNED BELOW.

City of Port Arthur, Texas

By: _____
Its: City Manager
Dated: 10-11-21

City of Port Arthur Section 4A Economic Development Corporation

By: _____
Its: George Davis, Interim CEO PAEDC
Dated: 10-14-2021

APPROVED AS TO FORM:

Valecia R. Tizeno
Valecia R. Tizeno, City Attorney

APPROVED AS TO FORM:

_____
PAEDC Attorney

10. Signatory Warranty. The undersigned signatories for the CITY and PAEDC hereby represent and warrant that they are authorized to sign the organization for which he or she has executed this Agreement.

11. Severability. If a court of competent jurisdiction determines that any term of this Agreement is invalid or unenforceable the remainder of the Agreement shall not be affected, and each remaining term shall be valid and enforceable to the fullest extent permitted by law.

EXECUTED AND MADE EFFECTIVE ON THE DATE LAST SIGNED BELOW.

City of Port Arthur, Texas

By: _____
Its: City Manager
Dated: 10-11-21

APPROVED AS TO FORM:

Valecia R. Tizeno
Valecia R. Tizeno, City Attorney

City of Port Arthur Section 4A Economic Development Corporation

By: _____
Its: Interim CEO PAEDC
Dated: 10/14/21

APPROVED AS TO FORM:

_____
PAEDC Attorney