

RESOLUTION NO. 22-452

A RESOLUTION AUTHORIZING THE EXPENDITURE OF FUNDS IN AN AMOUNT NOT TO EXCEED \$9,530.77 TO PROVIDE MAINTENANCE OF THE GENERATOR SERVICING 549 4TH STREET (THE PRESS BUILDING); FUNDING AVAILABLE IN EDC ACCOUNT NO. 120-80-625-5318-00-00-000.

WHEREAS, the City Council deems it is 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 for co-working, office rental space and entrepreneurship endeavors; and

WHEREAS, Panama Equipment responded to a request for bids for maintenance of the generator at 549 4th Street (The Press Building); and

WHEREAS, the service contract and related expenditures were approved by the PAEDC Board; and

WHEREAS, pursuant to Tex. Loc. Gov't Code Ann. § 501.073 the City Council will approve all expenditures of the PAEDC; and

WHEREAS, the proposed expenditures are available and properly budgeted.

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 expenditures of the Port Arthur Economic Development Corporation to be paid to Panama Equipment for maintenance of the generator at

549 4th Street (The Press Building) in an amount not to exceed nine thousand five hundred thirty dollars and seventy-seven cents (\$9,530.77).

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 11th day of Oct. A.D., 2022,
at a Meeting of the City Council of the City of Port Arthur, Texas, by the following vote:

AYES:

Mayor Bartie

Councilmembers Jones, Kinlaw, Marks and
Moss.

NOES: None.

ATTEST:


Sherri Bellard, City Secretary


Thurman Bartie, Mayor

APPROVED:


Krystle Muller, Interim CEO

APPROVED AS TO FORM:


Charles Zech, PAEDC Attorney

APPROVED AS TO FORM:


Valecia R. Tizen, City Attorney

APPROVED AS TO AVAILABILITY OF FUNDS:


Kandy Daniel, Interim Finance Director

Exhibit "A"

22769

SERVICES AGREEMENT

STATE OF TEXAS §
 §
COUNTY OF JEFFERSON §

This Agreement is entered into by and between the Port Arthur Economic Development Corporation, a Texas Type A Economic Development Corporation ("EDC"), acting by and through its EDC Executive Director, and Panama Equipment. ("Service Provider"), both of which may be referred to herein singularly as "Party" or collectively as the "Parties."

The Parties hereto severally and collectively agree, and by the execution hereof are bound, to the mutual obligations herein contained and to the performance and accomplishment of the tasks hereinafter described.

I. TERM

This Agreement shall become effective upon the later of either execution by the EDC or the approval by the City of Port Arthur of all expenditures contemplated under this Agreement (the "Effective Date"). This Agreement shall remain in effect for a period of one year unless terminated earlier as provided for in this Agreement.

II. SCOPE OF SERVICES

2.1 Service Provider agrees to provide the services described in this Article II entitled Scope of Services in exchange for the compensation described in Article III. Compensation. Scope of Services are detailed in *Exhibit "A"* which are incorporated by reference as if written and copied herein.

2.2 All services performed by Service Provider hereunder shall be performed to the satisfaction of the EDC Executive Director. The determination made by EDC Executive Director shall be final, binding, and conclusive on all Parties hereto. EDC shall be under no obligation to pay for any services performed by Service Provider, which is not satisfactory to EDC Executive Director. EDC shall have the right to terminate this Agreement, in accordance with Article VI. Termination, in whole or in part, should Service Provider's services not be satisfactory to EDC Executive Director; however, EDC shall have no obligation to terminate and may withhold payment for any unsatisfactory services, as stated herein, even should EDC elect not to terminate.

III. COMPENSATION TO SERVICE PROVIDER

3.1 In consideration of Service Provider's performance in a satisfactory and efficient manner, as determined solely by EDC Executive Director, of all services and activities set forth in this Agreement, EDC agrees to pay Service Provider the amounts as provided for in *Exhibit "B"* upon completion of said services to be billed monthly to EDC.

3.2 No additional fees or expenses of Service Provider shall be charged by Service Provider nor be payable by EDC. The parties hereby agree that all compensable expenses of Service Provider have been provided for in the total payment to Service Provider as specified in section 3.1 above. Total payments to Service Provider cannot exceed that amount set forth in section 3.1 above, without prior approval and agreement of all parties, evidenced in writing and approved by the EDC.

IV. OWNERSHIP OF DOCUMENTS

4.1 All writings, documents or information in whatsoever form and character produced by Service Provider pursuant to the provisions of this Agreement is the exclusive property of EDC; and no such writing, document or information shall be the subject of any copyright or proprietary claim by Service Provider.

4.2 Service Provider understands and acknowledges that as the exclusive owner of all such writings, documents and information, EDC has the right to use all such writings, documents, and information as EDC desires, without restriction. Any use of such writings, documents, and information on extensions of this project or on any other project without specific adaptation by Service Provider shall be at the EDC's sole risk and without liability to the Service Provider.

V. RECORDS RETENTION

5.1 Service Provider and its subcontractors, if any, shall properly, accurately and completely maintain all documents, papers, and records, and other evidence pertaining to the services rendered hereunder (hereafter referred to as "documents"), and shall make such materials available to the EDC at their respective offices, at all reasonable times and as often as EDC may deem necessary during the Agreement period, including any extension or renewal hereof, and the record retention period established herein, for purposes of audit, inspection, examination, and making excerpts or copies of same by EDC and any of its authorized representatives.

5.2 Service Provider shall retain all documents produced because of services provided hereunder for a period of four (4) years (hereafter referred to as "retention period") from the date of termination of the Agreement. If, at the end of the retention period, there is litigation or other questions arising from, involving, or concerning this documentation or the services provided hereunder, Service Provider shall retain the records until the resolution of such litigation or other such questions. Service Provider acknowledges and agrees that EDC shall always have access to all such documents, as deemed necessary by EDC, during said retention period. EDC may, at its election, require Service Provider to return said documents to EDC prior to or at the conclusion of said retention.

5.3 Service Provider shall notify EDC, immediately, in the event Service Provider receives any requests for information from a third party, which pertain to the documentation and records referenced herein. Service Provider understands and agrees that EDC will process and handle all such requests.

VI. TERMINATION

6.1 For purposes of this Agreement, "termination" of this Agreement shall mean termination by expiration of the Agreement term as stated in Article II. Term, or earlier termination pursuant to any of the provisions hereof.

6.2 *Termination Without Cause.* This Agreement may be terminated by either Party upon 15 calendar days' written notice, which notice shall be provided in accordance with Article VI. Notice.

6.3 *Termination For Cause.* Upon written notice, which notice shall be provided in accordance with Article VII. Notice, EDC may terminate this Agreement as of the date provided in the notice, in whole or in part, upon the occurrence of one (1) or more of the following events, each of which shall constitute an Event for Cause under this Agreement: The sale, transfer, pledge, conveyance or assignment of this Agreement without prior approval, as provided in for in this Agreement.

6.4 *Defaults With Opportunity for Cure.* Should Service Provider default in the performance of this Agreement in a manner stated in this section 6.4 below, same shall be considered an event of default. EDC shall deliver written notice of said default specifying such matter(s) in default. Service Provider shall have fifteen (15) calendar days after receipt of the written notice, in accordance with Article VII. Notice, to cure such default. If Service Provider fails to cure the default within such fifteen-day cure period, EDC shall have the right, without further notice, to terminate this Agreement in whole or in part as EDC deems appropriate, and to contract with another Service Provider to complete the work required in this Agreement. EDC shall also have the right to offset the cost of said new Agreement with a new Service Provider against Service Provider's future or unpaid invoice(s), subject to the duty on the part of EDC to mitigate its losses to the extent required by law.

6.4.1 Bankruptcy or selling substantially all of company's assets

6.4.2 Failing to perform or failing to comply with any covenant herein required

6.4.3 Performing unsatisfactorily

6.5 *Termination By Law.* If any state or federal law or regulation is enacted or promulgated which prohibits the performance of any of the duties herein, or, if any law is interpreted to prohibit such performance, this Agreement shall automatically terminate as of the effective date of such prohibition.

6.6 Regardless of how this Agreement is terminated, Service Provider shall affect an orderly transfer to EDC or to such person(s) or firm(s) as the EDC may designate, at no additional cost to EDC, all completed or partially completed documents, papers, records, charts, reports, and any other materials or information produced as a result of or pertaining to the services rendered by Service Provider, or provided to Service Provider, hereunder, regardless of storage medium, if so requested by EDC, or shall otherwise be retained by Service Provider in accordance with Article VI. Records Retention. Any record transfer shall be completed within thirty (30) calendar days

of a written request by EDC and shall be completed at Service Provider's sole cost and expense. Payment of compensation due or to become due to Service Provider is conditioned upon delivery of all such documents, if requested.

6.7 Within forty-five (45) calendar days of the effective date of completion, or termination or expiration of this Agreement, Service Provider shall submit to EDC its claims, in detail, for the monies owed by EDC for services performed under this Agreement through the effective date of termination. Failure by Service Provider to submit its claims within said forty-five (45) calendar days shall negate any liability on the part of EDC and constitute a **Waiver** by Service Provider of any and all right or claims to collect monies that Service Provider may rightfully be otherwise entitled to for services performed pursuant to this Agreement.

6.8 Upon the effective date of expiration or termination of this Agreement, Service Provider shall cease all operations of work being performed by Service Provider or any of its subcontractors pursuant to this Agreement.

6.9 *Termination not sole remedy.* In no event shall EDC's action of terminating this Agreement, whether for cause or otherwise, be deemed an election of EDC's remedies, nor shall such termination limit, in any way, at law or at equity, EDC's right to seek damages from or otherwise pursue Service Provider for any default hereunder or other action.

VII. NOTICE

Except where the terms of this Agreement expressly provide otherwise, any election, notice or communication required or permitted to be given under this Agreement shall be in writing and deemed to have been duly given if and when delivered personally (with receipt acknowledged), or three (3) days after depositing same in the U.S. mail, first class, with proper postage prepaid, or upon receipt if sending the same by certified mail, return receipt requested, or upon receipt when sent by a commercial courier service (such as Federal Express or DHL Worldwide Express) for expedited delivery to be confirmed in writing by such courier, at the addresses set forth below or to such other address as either Party may from time to time designate in writing.

If intended for EDC, to:
Port Arthur Economic Development Corporation

If intended for Service Provider, to:
Panama Equipment, Attn: Rene Trevino

VIII. INDEMNIFICATION

SERVICE PROVIDER agrees to INDEMNIFY and HOLD HARMLESS, the EDC and the elected officials, employees, officers, directors, volunteers and representatives of the EDC, individually and collectively, from and against any and all costs, claims, liens, damages, losses, expenses, fees, fines, penalties, proceedings, actions, demands, causes of action, or liability for damages caused by or resulting from an act of negligence, intentional tort, intellectual property infringement, or failure to pay a subcontractor or supplier committed by the SERVICE PROVIDER or the SERVICE PROVIDER's agent, SERVICE PROVIDER under contract, or another entity over which the SERVICE PROVIDER exercises control. Such acts may include personal or bodily injury, death and property damage, made upon the EDC directly or indirectly arising out of, resulting from or related to SERVICE PROVIDER'S activities under this Agreement, including any negligent or intentional acts or omissions of SERVICE PROVIDER, any agent, officer, director, representative, employee, Service Provider or subcontractor of SERVICE PROVIDER, and their respective officers, agents employees, directors and representatives while in the exercise of the rights or performance of the duties under this Agreement. The indemnity provided for in this paragraph shall not apply to any liability resulting from the negligence of EDC, its elected officials, employees, officers, directors, volunteers and representatives, in instances where such negligence causes personal injury, death, or property damage. In no event shall the indemnification obligation extend beyond the date with when the institution of legal or equitable proceedings for the Service Provider negligence would be barred by any applicable statute of repose or statute of limitations.

The provisions of this INDEMNITY are solely for the benefit of the Parties hereto and not intended to create or grant any rights, contractual or otherwise, to any other person or entity. SERVICE PROVIDER shall advise the EDC in writing within 24 hours of any claim or demand against the EDC or SERVICE PROVIDER known to SERVICE PROVIDER related to or arising out of SERVICE PROVIDER's activities under this AGREEMENT.

Duty to Defend – Service Provider agrees to hold a DUTY TO DEFEND the EDC and the elected officials, employees, officers, directors, volunteers and representatives of the EDC, individually and collectively, from and against any and all claims, liens, proceedings, actions or causes of action, other than claims based wholly or partly on the negligence of, fault of, or breach of contract by the EDC, the EDC'S agent, the EDC'S employee or other entity, excluding the SERVICE PROVIDER or the SERVICE PROVIDER'S agent, employee or sub-Service Provider, over which the EDC exercises control. SERVICE PROVIDER is required under this provision and fully satisfies this provision by naming the EDC and those representatives listed above as additional insured under the SERVICE PROVIDER'S general liability insurance policy and providing any defense provided by the policy upon demand by EDC.

Employee Litigation – In any and all claims against any Party indemnified hereunder by any employee of Service Provider, any subcontractor, anyone directly or indirectly employed by any of them or anyone for whose acts any of them may be liable, the indemnification obligation herein provided shall not be limited in any way by any limitation on the amount or type of damages, compensation or benefits payable by or for Service Provider or any subcontractor under worker's compensation or other employee benefit acts.

Force Majeure - EDC agrees that the Service Provider is not responsible for damages arising from any circumstances such as strikes or other labor disputes; severe weather disruptions, natural disasters, fire or other acts of God; riots, war or other emergencies; or failure of any third-party governmental agency to act in timely manner not caused or contributed to by Service Provider.

IX. ASSIGNMENT AND SUBCONTRACTING

9.1 Service Provider shall supply qualified personnel as may be necessary to complete the work to be performed under this Agreement. Persons retained to perform work pursuant to this Agreement shall be the employees or subcontractors of Service Provider. Service Provider, its employees or its subcontractors shall perform all necessary work.

9.2 It is EDC's understanding, and this Agreement is made in reliance thereon, that Service Provider [intends] [does not intend] to use subcontractors in the performance of this Agreement. Contractors: [REDACTED]. Any deviation from this subcontractor list, whether in the form of deletions, additions or substitutions shall be approved by EDC prior to the provision of any services by said subcontractor.

9.3 Any work or services approved for subcontracting hereunder shall be subcontracted only by written contract and, unless specific waiver is granted in writing by the EDC, shall be subject by its terms to each provision of this Agreement. Compliance by subcontractors with this Agreement shall be the responsibility of Service Provider. EDC shall in no event be obligated to any third party, including any subcontractor of Service Provider, for performance of services or payment of fees. Any references in this Agreement to an assignee, transferee, or subcontractor, indicate only such an entity as has been approved by the EDC.

9.4 Except as otherwise stated herein, Service Provider may not sell, assign, pledge, transfer or convey any interest in this Agreement, nor delegate the performance of any duties hereunder, by transfer, by subcontracting or any other means, without the consent of the EDC Board, as evidenced by passage of an resolution. As a condition of such consent, if such consent is granted, Service Provider shall remain liable for completion of the services outlined in this Agreement in the event of default by the successor Service Provider, assignee, transferee or subcontractor.

9.5 Any attempt to transfer, pledge or otherwise assign this Agreement without said written approval, shall be void ab initio and shall confer no rights upon any third person. Should Service Provider assign, transfer, convey, delegate, or otherwise dispose of any part of all or any part of its right, title or interest in this Agreement, EDC may, at its option, cancel this Agreement and all rights, titles and interest of Service Provider shall thereupon cease and terminate, in accordance with Article VII. Termination, notwithstanding any other remedy available to EDC under this Agreement. The violation of this provision by Service Provider shall in no event release Service Provider from any obligation under the terms of this Agreement, nor shall it relieve or release Service Provider from the payment of any damages to EDC, which EDC sustains as a result of such violation.

X. INDEPENDENT CONTRACTOR

Service Provider covenants and agrees that he or she is an independent contractor and not an officer, agent, servant or employee of EDC; that Service Provider shall have exclusive control of and exclusive right to control the details of the work performed hereunder and all persons performing same, and shall be responsible for the acts and omissions of its officers, agents,

employees, contractors, subcontractors and Service Providers; that the doctrine of respondent superior shall not apply as between EDC and Service Provider, its officers, agents, employees, contractors, subcontractors and Service Providers, and nothing herein shall be construed as creating the relationship of employer-employee, principal-agent, partners or joint ventures between EDC and Service Provider. The Parties hereto understand and agree that the EDC shall not be liable for any claims which may be asserted by any third party occurring in connection with the services to be performed by the Service Provider under this Agreement and that the Service Provider has no authority to bind the EDC.

XI. AMENDMENTS

Except where the terms of this Agreement expressly provide otherwise, any alterations, additions, or deletions to the terms hereof, shall be affected by amendment, in writing, executed by both EDC and Service Provider, and, if applicable, subject to formal approval by the EDC Board.

XII. SEVERABILITY

If any clause or provision of this Agreement is held invalid, illegal or unenforceable under present or future federal, state or local laws, including but not limited to the EDC Charter, EDC Code, or resolutions of the Port Arthur Economic Development Corporation, Texas, then and in that event it is the intention of the Parties hereto that such invalidity, illegality or unenforceability shall not affect any other clause or provision hereof and that the remainder of this Agreement shall be construed as if such invalid, illegal or unenforceable clause or provision was never contained herein; it is also the intention of the Parties hereto that in lieu of each clause or provision of this Agreement that is invalid, illegal, or unenforceable, there be added as a part of the Agreement a clause or provision as similar in terms to such invalid, illegal or unenforceable clause or provision as may be possible, legal, valid and enforceable.

XIII. LICENSES/CERTIFICATIONS

Service Provider warrants and certifies that Service Provider and any other person designated to provide services hereunder has the requisite training, license and/or certification to provide said services, and meets all competence standards promulgated by all other authoritative bodies, as applicable to the services provided herein.

XIV. COMPLIANCE

Service Provider shall provide and perform all services required under this Agreement in compliance with all applicable federal, state and local laws, rules and regulations.

XV. NONWAIVER OF PERFORMANCE

Unless otherwise specifically provided for in this Agreement, a waiver by either Party of a breach of any of the terms, conditions, covenants, or guarantees of this Agreement shall not be construed or held to be a waiver of any succeeding or preceding breach of the same or any other term, condition, covenant or guarantee herein contained. Further, any failure of either Party to insist in any one or more cases upon the strict performance of any of the covenants of this Agreement, or to exercise any option herein contained, shall in no event be construed as a waiver or

relinquishment for the future of such covenant or option. In fact, no waiver, change, modification, or discharge by either Party hereto of any provision of this Agreement shall be deemed to have been made or shall be effective unless expressed in writing and signed by the Party to be charged. In case of EDC, such changes must be approved by the EDC Board, as described in Article XVI. Amendments. No act or omission by a Party shall in any manner impair or prejudice any right, power, privilege, or remedy available to that Party hereunder or by law or in equity, such rights, powers, privileges, or remedies to be always specifically preserved hereby.

XVI. LAW APPLICABLE

This Agreement shall be construed under and in accordance with the laws of the state of Texas and all obligation of the Parties created are performable in Jefferson County, Texas.

Venue for any legal action or proceeding brought or maintained, directly or indirectly, as a result of this Agreement shall be heard and determined in a court of competent jurisdiction in Jefferson County, Texas.

XVII. LEGAL AUTHORITY

The signer of this Agreement for Service Provider represents, warrants, assures and guarantees that he has full legal authority to execute this Agreement on behalf of Service Provider and to bind Service Provider to all of the terms, conditions, provisions and obligations herein contained.

XVIII. PARTIES BOUND

This Agreement shall be binding on and inure to the benefit of the Parties hereto and their respective heirs, executors, administrators, legal representatives, and successors and assigns, except as otherwise expressly provided for herein.

XIX. CAPTIONS

The captions contained in this Agreement are for convenience of reference only, and in no way limit or enlarge the terms and/or conditions of this Agreement.

XX. INCORPORATION OF EXHIBITS

Each of the Exhibits listed below is an essential part of the Agreement, which governs the rights and duties of the Parties, and shall be incorporated herein for all purposes:

Exhibit "A" - Scope of Services, including Project Description/Scope of Services;

Exhibit "B" - Fee Summary for Service Provider Services and Proposed Project Schedule

XXI. ENTIRE AGREEMENT

This Agreement, together with its authorizing resolution and its exhibits, if any, constitute the final and entire agreement between the Parties hereto and contain all of the terms and conditions agreed upon. No other agreements, oral or otherwise, regarding the subject matter of this Agreement shall be deemed to exist or to bind the Parties hereto, unless same be in writing, dated after the date hereto, and duly executed by the Parties, in accordance with Article XI. Amendments.

EXECUTED and AGREED to as of the dates indicated below.

PORT ARTHUR EDC

SERVICE PROVIDER

(Signature)

(Signature)

Printed Name:

Printed Name:

Title: EDC Executive
 Director

Title:

Date:

Date:

EFFECTIVE DATE:

EXHIBIT A

SCOPE OF WORK:

- **One Annual Major PM**
 - Change 18 gallons oil
 - 3 Oil filters
 - 2 Fuel Filters
 - 2 Coolant Filters
 - 2 Air Filters
 - Check Coolant level
 - Check Battery voltage
 - Check Output voltage
 - Run Generator for and hour and transfer power
- **Three Minor PM's**
 - Check Fluid levels
 - Check Battery voltage
 - Check Output voltage
 - Run Generator for and hour and transfer power
- **Eight Monthly Cranks**
 - Run Generator for 30 Minutes every Month

EXHIBIT B

QUANTITY	DESCRIPTION	UNIT PRICE	LINE TOTAL
1.00	Major PM	\$5,476.92	\$5,476.92
3.00	Minor PM	\$ 653.85	\$1,961.54
8.00	Monthly Cranks	\$ 261.54	\$2,092.31
		TOTAL:	\$9,530.77