

**PORT COMMISSION MINUTES
OCTOBER 15, 2015**

Be it remembered that a regular meeting of the Port Commission of the City of Long Beach, Mississippi, was begun and held at the City Hall, 201 Jeff Davis Avenue, in said City, on Thursday, October 15, 2015, at 5:00 o'clock p.m., it being the time, place, and dated fixed for holding said meeting.

There were present and in attendance on said Commission and at the meeting the following named persons: President Phil Kies, Vice President Susan Nicolais, Secretary Susan Nicolais, Commissioners Vernon Ehlers, John Casey, Barney Hill, Stan Snodgrass, Harbormaster Bill Angley, and Deputy City Clerk Stacey Dahl.

Absent the meeting were Commissioners Joseph Yott, Sr., Roger Ladner, and Port Attorney James C. Simpson, Jr.

There being a quorum present and sufficient to transact the business of this meeting, the following proceedings were had and done.

Commissioner Kies called the meeting to order and there were no comments or amendments to the agenda.

Commissioner Casey made motion seconded by Commissioner Hill and unanimously carried to approve minutes of the Port Commission, as follows:

- Regular Minutes dated September 17, 2015, as submitted.

There were no Project Updates discussed, due to Mr. Ron Robertson, Project Manager, Broaddus and Associates, absence.

There came on for consideration an estimate for concrete repairs at the harbor, as follows:

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A. GARNER RUSSELL & ASSOCIATES, INC. / CONSULTING ENGINEERS

520 33RD STREET
GULFPORT, MS 39507

TEL (228) 863-0667
FAX (228) 863-5232

September 15, 2015

City of Long Beach
P.O. Box 929
Long Beach, MS 39560

**RE: FY2013 – Pier 4 Improvements
Long Beach Smallcraft Harbor**

Ladies and Gentlemen:

Please find the attached proposed contract for design and construction phase services for miscellaneous improvements to Pier 4 in the Long Beach Smallcraft Harbor. We request your approval and will begin work upon the City's authorization.

Sincerely,

David Ball, P.E.

DB:1934
Enclosure

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SHORT FORM OF AGREEMENT BETWEEN OWNER AND ENGINEER FOR PROFESSIONAL SERVICES

THIS IS AN AGREEMENT, effective as of September 15, 2015 ("Effective Date") between City of Long Beach ("Owner") and A. Garner Russell & Assoc. ("Engineer").

Engineer agrees to provide the services described below to Owner for improvements to Pier 4, utilizing Tidelands Trust Funds from FY2013 or as appropriate, including the removal and replacement of all stringers and decking, along with other minor improvements per the Harbor's latest construction standards, all more generally described as the FY2013 - Pier 4 Improvements. ("Project")

Description of Engineer's Services: Provide design services for the Project, including the creation of Bid Documents, coordination with the City during the Bid process, acquisition of any needed permits, and other miscellaneous professional services, including construction phase services and construction inspection services needed to complete the work.

Owner and Engineer further agree as follows:

1.01 Basic Agreement

- A. Engineer shall provide, or cause to be provided, the services set forth in this Agreement, and Owner shall pay Engineer for such Services as set forth in Paragraph 9.01.

2.01 Payment Procedures

- A. *Preparation of Invoices.* Engineer will prepare a monthly invoice in accordance with Engineer's standard invoicing practices and submit the invoice to Owner.
- B. *Payment of Invoices.* Invoices are due and payable within 45 days of receipt. If Owner fails to make any payment due Engineer for services and expenses within 45 days after receipt of Engineer's invoice, the amounts due Engineer will be increased at the rate of 1.0% per month (or the maximum rate of interest permitted by law) from said forty-fifth day. In addition, Engineer may, without liability, after giving seven days written notice to Owner, suspend services under this Agreement until Engineer has been paid in full all amounts due for services, expenses, and other related charges. Payments will be credited first to interest and then to principal.

3.01 Additional Services

- A. If authorized by Owner, or if required because of changes in the Project, Engineer shall furnish services in addition to those set forth above.
- B. Owner shall pay Engineer for such additional services as follows: For additional services of Engineer's employees engaged directly on the Project an amount equal to the cumulative hours charged to the Project by each class of Engineer's employees times standard hourly rates for each applicable billing class; plus reimbursable expenses and Engineer's consultants' charges, if any.

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EJCDC E-520 Short Form of Agreement Between Owner and Engineer for Professional Services
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4.01 Termination

- A. The obligation to provide further services under this Agreement may be terminated:
 - 1. For cause,
 - a. By either party upon 30 days written notice in the event of substantial failure by the other party to perform in accordance with the Agreement's terms through no fault of the terminating party.
 - b. By Engineer:
 - 1) upon seven days written notice if Engineer believes that Engineer is being requested by Owner to furnish or perform services contrary to Engineer's responsibilities as a licensed professional; or
 - 2) upon seven days written notice if the Engineer's services for the Project are delayed or suspended for more than 90 days for reasons beyond Engineer's control.
 - 3) Engineer shall have no liability to Owner on account of such termination.
 - c. Notwithstanding the foregoing, this Agreement will not terminate as a result of a substantial failure under paragraph 4.01.A.1.a if the party receiving such notice begins, within seven days of receipt of such notice, to correct its failure and proceeds diligently to cure such failure within no more than 30 days of receipt of notice; provided, however, that if and to the extent such substantial failure cannot be reasonably cured within such 30 day period, and if such party has diligently attempted to cure the same and thereafter continues diligently to cure the same, then the cure period provided for herein shall extend up to, but in no case more than, 60 days after the date of receipt of the notice.
 - 2. For convenience, by Owner effective upon the receipt of notice by Engineer.
- B. The terminating party under paragraphs 4.01.A.1 or 4.01.A.2 may set the effective date of termination at a time up to 30 days later than otherwise provided to allow Engineer to demobilize personnel and equipment from the Project site, to complete tasks whose value would otherwise be lost, to prepare notes as to the status of completed and uncompleted tasks, and to assemble Project materials in orderly files.

5.01 Controlling Law

- A. This Agreement is to be governed by the law of the state in which the Project is located.

6.01 Successors, Assigns, and Beneficiaries

- A. Owner and Engineer each is hereby bound and the partners, successors, executors, administrators, and legal representatives of Owner and Engineer (and to the extent permitted by paragraph 6.01.B the assigns of Owner and Engineer) are hereby bound to the other party to this Agreement and to the partners, successors, executors, administrators, and legal representatives (and said assigns) of such other party, in respect of all covenants, agreements, and obligations of this Agreement.
- B. Neither Owner nor Engineer may assign, sublet, or transfer any rights under or interest (including, but without limitation, moneys that are due or may become due) in this Agreement without the written consent of the other, except to the extent that any assignment, subletting, or transfer is mandated or restricted by law. Unless specifically stated to the contrary in any written consent to an assignment, no assignment will release or discharge the assignor from any duty or responsibility under this Agreement.

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7.01 General Considerations

- A. The standard of care for all professional engineering and related services performed or furnished by Engineer under this Agreement will be the care and skill ordinarily used by members of the subject profession practicing under similar circumstances at the same time and in the same locality. Engineer makes no warranties, express or implied, under this Agreement or otherwise, in connection with Engineer's services. Engineer and its consultants may use or rely upon the design services of others, including, but not limited to, contractors, manufacturers, and suppliers.
- B. Engineer shall not at any time supervise, direct, or have control over any contractor's work, nor shall Engineer have authority over or responsibility for the means, methods, techniques, sequences, or procedures of construction selected or used by any contractor, for safety precautions and programs incident to a contractor's work progress, nor for any failure of any contractor to comply with laws and regulations applicable to contractor's work.
- C. Engineer neither guarantees the performance of any contractor nor assumes responsibility for any contractor's failure to furnish and perform its work in accordance with the contract between Owner and such contractor.
- D. Engineer shall not be responsible for the acts or omissions of any contractor, subcontractor, or supplier, or of any contractor's agents or employees or any other persons (except Engineer's own employees) at the Project site or otherwise furnishing or performing any of construction work; or for any decision made on interpretations or clarifications of the construction contract given by Owner without consultation and advice of Engineer.
- E. The general conditions for any construction contract documents prepared hereunder are to be the "Standard General Conditions of the Construction Contract" as prepared by the Engineers Joint Contract Documents Committee (No. C-700, 2002 Edition).
- F. All design documents prepared or furnished by Engineer are instruments of service, and Engineer retains an ownership and property interest (including the copyright and the right of reuse) in such documents, whether or not the Project is completed.
- G. To the fullest extent permitted by law, Owner and Engineer (1) waive against each other, and the other's employees, officers, directors, agents, insurers, partners, and consultants, any and all claims for or entitlement to special, incidental, indirect, or consequential damages arising out of, resulting from, or in any way related to the Project, and (2) agree that Engineer's total liability to Owner under this Agreement shall be limited to \$50,000 or the total amount of compensation received by Engineer, whichever is greater.
- H. The parties acknowledge that Engineer's scope of services does not include any services related to a Hazardous Environmental Condition (the presence of asbestos, PCBs, petroleum, hazardous substances or waste, and radioactive materials). If Engineer or any other party encounters a Hazardous Environmental Condition, Engineer may, at its option and without liability for consequential or any other damages, suspend performance of services on the portion of the Project affected thereby until Owner: (i) retains appropriate specialist consultants or contractors to identify and, as appropriate, abate, remediate, or remove the Hazardous Environmental Condition; and (ii) warrants that the Site is in full compliance with applicable Laws and Regulations.

8.01 Total Agreement

- A. This Agreement (consisting of pages 1 to 5 inclusive together with any expressly incorporated appendix), constitutes the entire agreement between Owner and Engineer and supersedes all prior written or oral understandings. This Agreement may only be amended, supplemented, modified, or canceled by a duly executed written instrument.

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9.01 Payment

- A. Using the procedures set forth in paragraph 2.01, Owner shall pay Engineer as follows:
1. *Basic Services.*
 - a. For Basic Services, an amount equal to the cumulative hours charged to the Project by each class of ENGINEER's employees times Standard Hourly Rates for each applicable billing class for all Basic Services performed on the Project, plus Reimbursable Expenses and ENGINEER's Consultant's charges, if any.
 - b. Total fees for Basic Services are estimated at \$3,500. This total fee for basic services will not be exceeded without prior written authorization.
 2. *Construction Inspection Services.*
 - a. Resident Project Representative Services and Post Construction Services. For services of ENGINEER's Resident Project Representative, an amount equal to the cumulative hours charged to the Project by each class of ENGINEER's employees times Standard Hourly Rates for each applicable billing class for all Resident Project Representative services performed on the Project, plus Reimbursable Expenses and ENGINEER's Consultant's charges, if any.
 - b. It is expected that construction inspection services will be performed on a part-time, as-needed basis for this project. Total fees for construction inspection services are currently estimated at \$3,000. This total fee will not be exceeded without prior written authorization.
- B. *Hourly Rates.*
1. The Engineer's Standard Hourly Rates are attached as Appendix 1.
 2. Overtime pay (i.e., hours spent in excess of 40 hours per calendar week), if any, for non-exempt employees shall be paid at an amount equal to the cumulative overtime hours charged multiplied by the standard hourly rates times 1.5 for each applicable billing class for all services performed during overtime hours.
 3. The Standard Hourly Rates may be adjusted annually (as of August 2016) to reflect equitable changes in the compensation payable to the ENGINEER.
- C. Engineer shall prepare and submit invoices to the Owner in accordance with Engineer's standard accounting and invoicing practices.
- D. Engineer proposes the following estimated schedule for completion of the various phases of the work:
- | | |
|---------------------------------|---|
| Complete Construction Documents | 30 days from date of execution of Contract |
| Receipt of Bids | 60 days from date of execution of Contract |
| Construction Complete | 120 days from date of execution of Contract |

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IN WITNESS WHEREOF, the parties hereto have executed this Agreement, the Effective Date of which is indicated on page 1.

OWNER: City of Long Beach

ENGINEER: A. Garner Russell & Associates, Inc.

By: _____
William Skellie, Jr.
Mayor

By: M. Scott Burge
M. Scott Burge
President

Date Signed: _____

Date Signed: 9-15-15
License No. and State: 9550/MS

Address for giving notice:
P.O. Box 929
Long Beach, MS 39560

Address for giving notice:
520 33rd St.
Gulfport, MS 39507

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Commissioner Deschenes made motion seconded by Commissioner Nicolais and unanimously carried to approve payment of invoices, as follows:

- Docket #HBR100615, as submitted.

Commissioner Casey made motion seconded by Commissioner Deschenes and unanimously carried acknowledging receipt of the September, 2015, Revenue/Expense Report.

The Commission recognized Harbormaster Bill Angley for his report, as follows:

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Harbor Master Report

October 15, 2015

- West Jetting fishing next to Cat Island Pier still waiting on electrical and parking area to be finished
- Boo Bash October 17, 2015 1800 to 2200 in ORC parking lot
- Landscaping: Recommend Clint Busby Superior Home and Lawn for ³⁴⁰⁰~~4300~~ a year
- 3 Live Aboard (Welch, Smith, Blandchard)
- All customers more than 90 days late have been notified via phone to comply and any others over that have been forwarded to Jim to send a certified letter to their home address.
- 6 Transients
- June 138 of 213
- July 138 of 213
- August 131 of 213
- September 129 of 213
- October 127 of 213

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B I D

Superior Home and Lawn

Clint Busby

228- 493 – 5890

Estimate Submitted to:
Long Beach Harbor
Street:
Hwy.. 90
City, State, and Zip Code
Long Beach, MS 39560

Phone:
Job Name:
Job Location:
Long Beach Harbor
Long Beach Harbor

Date:
9/15/15

Job Description:

May – September – Every two weeks – mow, edge, weed eat, spray weed killer where needed, water and tend all plants, flower beds, and concrete island beds; once a week, drive through and pick up trash out of flowerbeds and trim back bushes and foliage, and plant flowers or bushes when needed.

October – April – Once a month – mow if needed, water plants, pick up trash from flower beds and concrete island beds, spray weed killer if needed, replace and freshen mulch when needed.

I HEREBY, estimate to furnish labor in complete accordance with the above specifications.

Cost: Winter, \$1,600 – Clint Busby

Summer, \$1,800 – Clint Busby

ACCEPTANCE OF ESTIMATE; The above prices and specifications are satisfactory and are hereby accepted:



Signature
PRESIDENT, LRPC

Date 10/14/15

** **

After considerable discussion regarding several quotes the Harbormaster solicited regarding landscaping maintenance at the Harbor, Commissioner Hill made motion seconded by Commissioner Nicolais and unanimously carried to accept the aforesaid Bid with Superior Home and Lawn, Clint Busby.

There was no Port Attorney's report due to his absence.

There being no further business to come before the Port Commission at this time, Commissioner Hill made motion seconded by Commissioner

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Deschenes and unanimously carried to adjourn until the next regular meeting in due course.

APPROVED:

PHIL KIES, PRESIDENT

DATE

ATTEST:

STACEY DAHL, DEPUTY CITY CLERK