

PORT COMMISSION MINUTES
JULY 21, 2016

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 Meeting Room, 201 Jeff Davis Avenue, in said City, on Thursday, July 21, 2016, at 5:00 o'clock p.m., it being the time, date, and place 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 Don Deschenes, Commissioners Vernon Ehlers, Joseph Yott, Sr., John Casey, Roger Ladner, Harbormaster Bill Angley, and Deputy City Clerk Stacey Dahl.

Absent the meeting were Commissioners Barney Hill, Mike Biegel, 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 Deschenes made motion seconded by Commissioner Nicosia and unanimously carried to approve minutes of the Port Commission, as follows:

- Regular Minutes dated June 16, 2016, as submitted.

There came on for consideration a letter with attachments from Project Manager David Ball, as follows:

PORT COMMISSION MINUTES
JULY 21, 2016



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

520 33RD STREET
GULFPORT, MS 39507

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

July 8, 2016

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

RE: Southeast Bulkhead Shore Protection – Long Beach Smallcraft Harbor

Ladies and Gentlemen:

Please find the attached proposed contract for basic services for the referenced project, which is intended to construct a concrete bulkhead wall along approximately 450 feet of the southern and eastern shore of the Long Beach Harbor. This project is currently estimated at approximately \$2,000,000 in construction costs, and the fee for engineering services is based thereon. The intention is to utilize multiple years of Tidelands Trust Fund grants to pay for the project, both for construction and engineering. Although there are not currently sufficient Tidelands monies to fully fund the project, there are sufficient funds to complete the Contract Documents and obtain permits. Upon receipt of adequate Tidelands grants to fund the construction, the City can then proceed to the bid phase per normal procedure. We request your approval of this proposed contract and are ready to proceed upon your notice.

Sincerely,

David Ball, P.E.

DB:2077
Enclosure

**PORT COMMISSION MINUTES
JULY 21, 2016**

**SHORT FORM OF AGREEMENT
BETWEEN OWNER AND ENGINEER
FOR
PROFESSIONAL SERVICES**

THIS IS AN AGREEMENT, effective as of July 21, 2016 ("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 the construction of a concrete bulkhead wall for protection of the shoreline at the SE corner of the Long Beach Harbor, along with other improvements necessary to maintain access and use of Harbor facilities in the area, such as pedestrian sidewalks, modifications to the Stringer Pier, asphalt repairs, and other miscellaneous site improvements, all more particularly described as the Southeast Bulkhead Shore Protection. ("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. Construction inspection services will be negotiated separately when the project is fully funded. Geotechnical investigations and reports will be an additional service.

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

PORT COMMISSION MINUTES

JULY 21, 2016

each applicable billing class; plus reimbursable expenses and Engineer's consultants' charges, if any.

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

2 of 5

EJCDC E-520 Short Form of Agreement Between Owner and Engineer for Professional Services
Copyright © 2002 National Society of Professional Engineers for EJCDC. All rights reserved.

PORT COMMISSION MINUTES

JULY 21, 2016

written consent to an assignment, no assignment will release or discharge the assignor from any duty or responsibility under this Agreement.

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 or later editions per Engineer's choice).
- 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

3 of 5

EJCDC E-520 Short Form of Agreement Between Owner and Engineer for Professional Services
Copyright © 2002 National Society of Professional Engineers for EJCDC. All rights reserved.

**PORT COMMISSION MINUTES
JULY 21, 2016**

- 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.

9.01 Payment

- A. Based on the current expected construction cost of approximately \$2,000,000.00, and using the procedures set forth in paragraph 2.01, Owner shall pay Engineer as follows:

1. Basic Services.

- a. Basic Services will be compensated on a lump sum amount of \$114,000, based on the following assumed distribution of compensation:

Preliminary Design Phase	35%
Final Design Phase	35%
Permitting	10%
Bidding and Negotiating Phase	5%
<u>Construction Phase</u>	<u>15%</u>
Total	100%

2. Construction Inspection and Post Construction Services.

- a. Because the City does not currently have the funds available to construct the project, it is expected that a contract for Resident Project Representative Services and Post Construction Services will be negotiated between Owner & Engineer upon City's approval to proceed with the Construction phase.

3. Geotechnical Subconsultant.

- a. Geotechnical investigations and recommendations are hereby designated as an "Additional Service". Geotechnical engineer will be a subconsultant to Engineer and fees for Geotechnical investigations will be in addition to the fee for Basic Services above.
- b. Geotechnical investigation services are currently estimated at \$10,000. This fee is subject to change based upon subconsultant's proposal.

4. Topographical Surveys.

- a. For preparation of topographical survey data by ENGINEER's personnel, 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 such services performed on the Project, plus Reimbursable Expenses and ENGINEER's Consultant's charges, if any.
- b. Total fees for topographical survey services are estimated at \$3,000. This total fee will not be exceeded without prior written authorization.

- B. Engineer proposes the following schedule for submittal of the work to the Owner, based upon the date of Owner's Notice to Proceed to Engineer:

Preliminary Design Phase	+ 4 months from Notice to Proceed.
Final Design Phase	+ 8 months from Notice to Proceed.
Permitting	+20 months from Notice to Proceed.
Bidding & Construction Phases	To be determined upon direction of the City.

**PORT COMMISSION MINUTES
JULY 21, 2016**

- C. The Engineer's compensation for Basic Services is conditioned on the time to complete construction not exceeding 36 months. Should the time to complete construction be extended beyond this period, total compensation to Engineer shall be appropriately adjusted.
- D. Hourly Rates for services billed on the basis of time.
 - 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 times 1.5 multiplied by the standard hourly rates for each applicable billing class for all services performed during overtime hours.
 - 3. The Standard Hourly Rates may be adjusted annually (as of July 2017) to reflect equitable changes in the compensation payable to the ENGINEER.
- E. Engineer shall prepare and submit invoices to the Owner in accordance with Engineer's standard accounting and invoicing practices.

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: 7/7/16
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

**PORT COMMISSION MINUTES
JULY 21, 2016**

Appendix 1

**A. GARNER RUSSELL & ASSOCIATES, INC.
STANDARD HOURLY RATES SCHEDULE**

<u>Position</u>	<u>Billing Rate</u>
Principal	\$160.00
Professional Engineer V	\$150.00
Professional Engineer IV	\$140.00
Professional Engineer III	\$130.00
Professional Engineer II	\$120.00
Professional Engineer I	\$110.00
Engineer Intern III	\$105.00
Engineer Intern II	\$95.00
Engineer Intern I	\$85.00
Professional Land Surveyor II.....	\$150.00
Professional Land Surveyor I.....	\$105.00
Senior Project Manager	\$115.00
Sr. Survey Crew Chief.....	\$85.00
Sr. Resident Project Representative	\$85.00
Engineering Technician III	\$80.00
Engineering Technician II	\$70.00
Engineering Technician I	\$60.00
CADD Technician III	\$90.00
CADD Technician II	\$80.00
CADD Technician I	\$70.00
Project Technician.....	\$65.00
Administrative/Clerical	\$60.00
Surveys with RTK GPS Equipment.....	\$15.00

**

**

After considerable discussion and input from Mr. Ball, Commissioner Nicosia made motion seconded by Commissioner Casey and unanimously carried to approve the aforesaid recommendation of Mr. Ball - Engineering Services for the Southeast Bulkhead Shore Protection.

After considerable discussion regarding BIG and Restore Grants, no action was required or taken.

**PORT COMMISSION MINUTES
JULY 21, 2016**

The Commission recognized Mr. Bill Angley for the Harbormaster report, as follows:

Harbor Master Report

July 21, 2016

- Clean Marina Inspection Complete and Passed
- Fuel System spec still not correct and having problem with overfill and probe issues engineer and I will have to go through specs for further information and plan of action as of now fueling is still open
- Lights on west jetty installed and working
- West Jetting striped.
- 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. Working with lawyer to proceed further with removal of derelict vessels.
- Landscaping finished and final warranty items are on order and will be installed upon arrival
- Electrical pipe to bait shop has broken 7 plastic straps that bind the pipe to sheet pile wall on Harbor House quoted replacement of clamps and installing proper amount of clamps low quote was 1900.00 that includes using stainless uni-strut instead of clamps and gives us additional space for future pipe to be installed.
- Live Aboards (Welch, Williamson, Zipperer, Keller)
- March 134 of 218
- April 139 of 218
- May 148 of 218
- June 144 of 218
- July 148 of 218

**

**

There was no action required or taken regarding the aforesaid report.

There was no Port Attorney's report.

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

**PORT COMMISSION MINUTES
JULY 21, 2016**

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

APPROVED:

PHIL KIES, PRESIDENT

DATE

ATTEST:

STACEY DAHL, DEPUTY CITY CLERK