

RESOLUTION NO. 10-547

**A RESOLUTION AMENDING RESOLUTION NO. 10-445 TO THE ECONOMIC INCENTIVE CONTRACT & LOAN AGREEMENT WITH MPW INDUSTRIAL WATER SERVICES, INC. AND THE CITY OF PORT ARTHUR SECTION 4A ECONOMIC DEVELOPMENT CORPORATION**

**WHEREAS**, on June 29, 2010 per resolution 10-270, the City Council approved authorizing the incorporation of the First Source Referral Agreement with all new grant/loan/incentive contracts; and

**WHEREAS**, on October 5, 2010 per Resolution No. 10-445, the City Council approved of the City of Port Arthur Section 4A Economic Development Corporation ("PAEDC") to enter into an Economic Incentive Contract & Loan Agreement (the "Agreement") with MPW Industrial Water Services, Inc. ("MPW"); and

**WHEREAS**, on November 29, 2010, the Board of Directors of PAEDC determined that it was necessary to amend the First Source Referral Agreement, as denoted in **Exhibit "A"**; and

**WHEREAS**, on November 29, 2010, the Board of Directors of PAEDC also determined that it is necessary to amend its agreement with MPW to incorporate the changes as delineated in the amended version of the First Source Referral Agreement.

**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 Council hereby authorizes the PAEDC to amend Resolution No. 10-445 with MPW to include the new First Source Referral Agreement as delineated in **Exhibit "A"**.

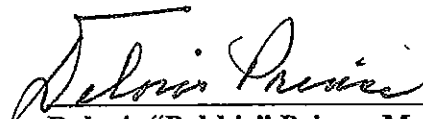
**Section 3.** That a copy of the caption of this Resolution be spread upon the Minutes of the City Council.

**READ, ADOPTED AND APPROVED** on this 14<sup>th</sup> day of Dec. A.D., 2010, at a Meeting of the City Council of the City of Port Arthur, Texas, by the following vote: AYES:

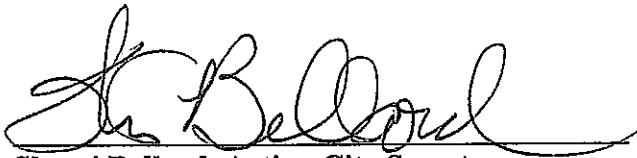
Mayor Prince; Mayor Pro Tem Albright

Councilmembers Chatman, Segler, Hood, Williamson and Henderson.

NOES: None

  
Deloris "Bobbie" Prince, Mayor


ATTEST:

  
Sherri Bellard, Acting City Secretary

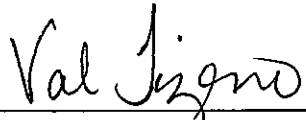
APPROVED:

  
Floyd Batiste, PAEDC CEO

APPROVED AS TO FORM:

  
Guy N. Goodson, PAEDC Attorney

APPROVED AS TO FORM:

A handwritten signature in cursive script that reads "Val Tizeno". The signature is written in black ink and is positioned above a horizontal line.

**Valecia R. Tizeno, City Attorney**

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# **Exhibit “A”**

**PORT ARTHUR ECONOMIC DEVELOPMENT CORPORATION**  
**FIRST SOURCE REFERRAL AGREEMENT**

**Resolution No:** \_\_\_\_\_

**Incentive Recipient:** \_\_\_\_\_

**Project Name:** \_\_\_\_\_

**Project Address:** \_\_\_\_\_

**Project Contact Person:** \_\_\_\_\_

**Project Contact Person Phone Number:** \_\_\_\_\_

This First Source Referral Agreement (the "Agreement") is entered into by and between the Port Arthur Economic Development Corporation ("PAEDC") and \_\_\_\_\_ ("EMPLOYER"), for recruitment, referral, and placement of Port Arthur residents in regards to the Project.

**RECITALS**

A. EMPLOYER will use PAEDC as its first source for recruitment, referral, and placement of new positions created jobs at the Project. The goal of using PAEDC as the first source for its recruitment, referral, and placement needs is to hire qualified Port Arthur residents for the jobs created by EMPLOYER. While there is no specific percentage of Port Arthur residents that must be employed by EMPLOYER, EMPLOYER must show through compliance with the terms of this Agreement that it has used its best efforts to hire Port Arthur residents wherever possible.

B. Failure of PAEDC to refer Port Arthur residents to EMPLOYER that are ultimately hired for new positions created by EMPLOYER does not waive, mitigate, eliminate or reduce the

requirements placed upon EMPLOYER for the creation of payroll to Port Arthur residents as may be necessary to receive credits under the Incentive Contract.

## **I. GENERAL TERMS**

A. The EMPLOYER will use PAEDC as its first source for the recruitment, referral and placement of employees for jobs created by the Project.

B. PAEDC participation in this Agreement will be carried through the Chief Executive Officer of PAEDC, who is responsible for referral of employees to EMPLOYER.

C. PAEDC will provide recruitment, referral and placement services to the EMPLOYER subject to the limitations set out in this Agreement.

D. This Agreement shall take effect when signed by the parties below and shall be fully effective for the duration of the incentive contract executed between EMPLOYER and PAEDC (the "Incentive Contract") and any extensions or modifications of the same.

E. PAEDC and the EMPLOYER agree that for purposes of this Agreement, "new positions created" include all of EMPLOYER'S job openings and vacancies in the Port Arthur Area created through internal promotions, terminations, and expansions of the EMPLOYER'S workforce, as a result of the project underlying the Incentive Contract (the "Project").

## **II. RECRUITMENT**

A. The EMPLOYER will complete the attached Employment Plan, which will indicate the number of projected new positions created, job descriptions, salary range, and hiring dates. The EMPLOYER will notify PAEDC of its specific need for new employees as soon as that need is identified.

B. Notification of specific needs, as set forth in Section II.A. must be given to PAEDC at least five (5) business days before using any other referral source, and shall include, at a minimum,

the information set forth in the Employment Plan, including job title, qualifications, desired hiring date, base rate of pay, expected hours of work, expected duration of employment, and job description for the work to be performed.

C. Job openings to be filled by internal promotion from the EMPLOYER'S current workforce need not be referred to PAEDC for placement or referral; however, such plans for internal promotions shall be included in the Employment Plan.

D. The EMPLOYER will submit to PAEDC, prior to starting work on the Project, the names, and social security numbers of all current employees, including apprentices, trainees, and laid-off workers who will be employed on the Project.

### **III. REFERRAL**

PAEDC will screen and refer applicants according to the qualifications supplied by the EMPLOYER.

### **IV. PLACEMENT**

A. PAEDC will notify EMPLOYER, prior to the anticipated hiring dates, of the number of applicants PAEDC will refer. PAEDC will make every reasonable effort to refer at least two qualified applicants for each job opening.

B. The EMPLOYER will make all decisions on hiring new employees but will in good faith use reasonable efforts to select its new hires or employees from among the qualified persons referred by PAEDC.

C. In the event PAEDC is unable to refer the qualified personnel requested within five (5) business days from the date of notification, the EMPLOYER will be free to directly fill remaining positions for which no qualified applicants have been referred.

D. After the EMPLOYER has selected its employees, PAEDC will not be responsible for the employees' actions and the EMPLOYER hereby releases PAEDC, from any liability for employees' actions.

E. As herein above stated, failure of PAEDC to refer Port Arthur residents to EMPLOYER that are ultimately hired for new positions created by EMPLOYER does not waive, mitigate, eliminate or reduce the requirements placed upon EMPLOYER for the creation of payroll to Port Arthur residents as may be necessary to receive credits under the Incentive Contract.

## **V. TRAINING**

PAEDC and the EMPLOYER may agree to develop skills training and on-the-job training programs. Training specifications and cost for such training will be mutually agreed upon by the EMPLOYER and PAEDC and set forth in a separate Training Agreement.

## **VI. CONTROLLING REGULATIONS AND LAWS**

A. To the extent this Agreement is in conflict with any labor laws or governmental regulations, the laws or regulations shall prevail.

B. PAEDC will make every effort to work within the terms of all collective bargaining agreements to which the EMPLOYER is a party.

C. The EMPLOYER will provide PAEDC with written documentation that the EMPLOYER has provided the representative of any involved collective bargaining unit with a copy of this Agreement and has requested comments or objections. If the representative has any comments or objections, the EMPLOYER will promptly provide them to PAEDC.

## **VII. EXEMPTIONS**

A. EMPLOYER may fill new positions created with individuals already employed by the EMPLOYER.



B. New positions created that are filled by laid-off workers according to EMPLOYER'S formally established recall procedures and rosters.

C. Suppliers located outside of the Port Arthur Area and who will perform no work in the Port Arthur Area.

#### **VIII. AGREEMENT MODIFICATIONS, RENEWAL, MONITORING, AND PENALTIES**

A. If, during the term of this Agreement, the EMPLOYER should transfer ownership of all or a portion of its business concerns affected by this Agreement to any other party by lease, sale, assignment, merger, or otherwise, the EMPLOYER as a condition of transfer shall:

1. Notify the party taking possession of the existence of this Agreement.
2. Notify the party taking possession that full compliance with this Agreement is required in order to avoid default on this Agreement and the Incentive Contract.
3. Notify PAEDC within seven (7) business/calendar days of the transfer. This notice will include the name of the party taking possession and the name and telephone of that party's representative.

B. PAEDC shall monitor EMPLOYER'S performance under this Agreement. The EMPLOYER will cooperate in PAEDC' monitoring effort and will submit a Contract Compliance Form to PAEDC quarterly.

C. To assist PAEDC in the conduct of the monitoring review, the EMPLOYER will make available payroll and employment records for the review period indicated.

D. If additional information is needed during the review, the EMPLOYER will provide the requested information to PAEDC.

E. With the EMPLOYER'S submission of the final request for closure of the Agreement from the Board, the EMPLOYER shall:

1. Document in a report to the Compliance Officer its compliance with the requirements of this Agreement by submitting 1) Material supporting a good faith effort to comply;
  - 2) Referrals provided by PAEDC and other referral sources; and/or
  - 3) Advertisement of job openings listed with PAEDC and other referral sources; or
2. Submit a request to the Compliance Officer for a waiver of compliance with the requirements of this Agreement due to circumstances beyond the control of EMPLOYER or as otherwise authorized in the Compliance Officer's sole discretion.

F. PAEDC, by action of its Board of Directors, may recommend waiver of the requirements of this Agreement if the PAEDC finds that:

1. A good faith effort to employ Port Arthur residents for the Project has been demonstrated by the EMPLOYER; or
2. The EMPLOYER enters into a special workforce development training or placement arrangement with PAEDC; or
3. PAEDC certifies that insufficient numbers of Port Arthur residents in the labor market possess the skills required by the positions created as a result of the Incentive.

G. Willful breach of the this Agreement by the EMPLOYER, or failure to submit the Contract Compliance Report upon notice that the same is delinquent, or deliberate submission of falsified data, may be enforced by the Compliance Officer, through imposition of penalties, including monetary fines of up to 30% of the total economic development incentive awarded as determined by the Board of Directors under the Incentive Contract.

H. The EMPLOYER and PAEDC, or such other agent as PAEDC may designate, may mutually agree to modify this Agreement, but only in a writing signed by both parties.

I. This Agreement and the Incentive Contract between PAEDC and the EMPLOYER may be terminated in accordance with the Incentive Contract due to EMPLOYER'S noncompliance with the provisions of this Agreement.

J. All terms and conditions of this Agreement shall be enforceable in accordance and shall be subject to the conditions, agreements, obligations, undertakings, and covenants as executed by EMPLOYER under the Incentive Contract.

Dated this \_\_\_\_\_ day of \_\_\_\_\_ 20\_\_\_\_\_

Signed:

\_\_\_\_\_

Port Arthur EDC

Signature of Employer

\_\_\_\_\_

Name of Company

\_\_\_\_\_

Address

\_\_\_\_\_

Telephone

\_\_\_\_\_

E-mail

# Port Arthur EDC First Source Referral Tracking

COMPANY \_\_\_\_\_

DATE OF OPEN POSITION	AVAILABLE POSITION	# OF POSITIONS TO BE FILLED	TOTAL # OF PA APPLICANTS REFERRED	# OF PA APPLICANTS MET MIN REQUIRED	% OF TOTAL PA APPLICANTS REFERRED MEETING REQ.	# OF PA REFERRED HIRED	OTHER SOURCE PA HIRED	# OF PA REFERRED & MET REQ. NOT HIRED	% OF PA REFERRED HIRED	% OF PA REFERRED & MET REQ NOT HIRED
11/17/2010	CLERK	1	5	3	60%	1	0	2	100.00%	67%
11/18/2010	PROCESS OPERATOR	2	4	1	25%	0	1	0	50.00%	0%
11/19/2010	LAB TECH	8	12	10	83%	3	1	6	50.00%	60%
11/19/2010	WELDER	25	15	9	60%	9	0	0	36.00%	0%
11/19/2010	TRUCK DRIVER	1	4	4	100%	0	1	3	100.00%	75%
11/20/2010	COMPUTER	1	4	2	50%	1	0	1	100.00%	50%
	45%	38				14	3	3		

Port Arthur EDC - First Source Referral Program

Company XYZ  
Company Name

Shipping & Receiving Clerk 007-03  
Position/ Job Request No.

\*Please list additional PA hires from other sources.

TOTAL REFERRALS MADE: 2

\* Notes are required if person not hired.

Name	Hired	Notes
1 Jane Doe		Did not meet the requirements for heavy lifting.
2 John Smith	X	
3		
4		
5		
6		
7		