

RESOLUTION NO. 18-306

**A RESOLUTION APPROVING A TRAINING AGREEMENT
BETWEEN THE CITY OF PORT ARTHUR SECTION 4A
ECONOMIC DEVELOPMENT CORPORATION AND
PROGRAM OF HEALTH EXCELLENCE FOR CERTIFIED
NURSES' AIDE TRAINING TO PORT ARTHUR
RESIDENTS AT A COST NOT TO EXCEED \$20,000; FUNDS
AVAILABLE IN EDC ACCOUNT NO. 120-1429-582.59-07**

WHEREAS, the City of Port Arthur Section 4A Economic Development Corporation ("PAEDC") Board of Directors is dedicated to improving the quality of life for Port Arthur residents who lack skills to qualify for an on-the-job training program with a local employer or to secure permanent employment; and

WHEREAS, House Bill 1967 amends the Texas Local Government Code and adds §501.163 which authorizes expenditures by PAEDC for job training skills sufficient to enable an unemployed individual to obtain employment; and

WHEREAS, Program of Health Excellence ("Subcontractor") proposes to provide Certified Nurses' Aide ("CNA") skills training to Port Arthur residents; and

WHEREAS, at their July 9, 2018 special Board meeting, the PAEDC Board of Directors approved entering into a Training Agreement with Program of Health Excellence (the "Agreement") attached hereto as **Exhibit "A"**; and

WHEREAS, in consideration for the extraordinary costs of providing job skills training to Port Arthur residents, the PAEDC Board of Directors approved funding \$20,000 of the program cost; and

WHEREAS, the Agreement is for a one-year period with the option to renew for an additional two (2) one-year periods if PAEDC is satisfied with the Subcontractor's performance.

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 Agreement between PAEDC and Program of Health Excellence for a cost not to exceed \$20,000.

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 31st day of July A.D., 2018,
at a Meeting of the City Council of the City of Port Arthur, Texas, by the following vote:

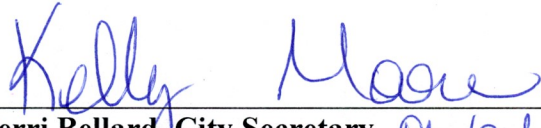
AYES:

Mayor Freeman, Mayor Pro Tem Kinlaw,
Councilmembers Scott, Jones, Dancet and
Moses
_____;

NOES: None


Derrick Freeman, Mayor

ATTEST:



Sherri Bellard, City Secretary on behalf of

APPROVED:



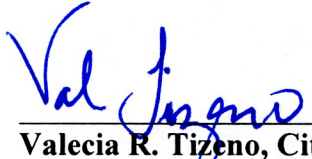
Floyd Batiste, PAEDC CEO

APPROVED AS TO FORM:



Guy N. Goodson, PAEDC Attorney

APPROVED AS TO FORM:



Valecia R. Tizeno, City Attorney

APPROVED AS TO AVAILABILITY OF FUNDS:



Andrew Vasquez, Finance Director

EXHIBIT “A”

**TRAINING AGREEMENT
BETWEEN
CITY OF PORT ARTHUR SECTION 4A
ECONOMIC DEVELOPMENT CORPORATION
AND
PROGRAM OF HEALTH EXCELLENCE**

RECITALS

WHEREAS, the City of Port Arthur Section 4A Economic Development Corporation ("PAEDC") Board of Directors is dedicated to improving the quality of life of Port Arthur residents who lack skills to qualify for an on the job training program with a local employer or skills to secure permanent employment in the current labor market; and

WHEREAS, House Bill 1967 amends the Texas Local Government Code and adds §501.163 which authorizes expenditures for job training skills sufficient to enable an unemployed individual to obtain employment by the PAEDC; and

WHEREAS, Program of Health Excellence ("Subcontractor") agrees to provide job training skills to Port Arthur residents ("Program Participants"); and

WHEREAS, in consideration for the extraordinary costs of providing job training skills to Port Arthur residents, the PAEDC agrees to fund \$20,000.00 of the program cost.

NOW, THEREFORE, for good and valuable consideration, PAEDC and Subcontractor hereby agree as follows:

AGREEMENT DATES

AGREEMENT START DATE

1. This Training Agreement ("Agreement") shall begin on _____, 2018.

AGREEMENT END DATE

2. This Agreement expires on _____, 2019. However, PAEDC has the option to extend this Agreement for an additional two, one year periods if PAEDC is satisfied with the Subcontractor's performance.

PARTIES

3. PAEDC located at 501 Procter Street, Port Arthur, Texas 77640, is a not for profit corporation. It is duly authorized to do business in the State of Texas under Chapter 504, Local Government Code (the "Development Corporation Act of 1979") and duly authorized by Resolution of the City Council of the City of Port Arthur to enter into this Agreement. As so

authorized and as provided by the PAEDC bylaws, the President and Secretary of the PAEDC Board have the authority to execute this Agreement.

4. Program of Health Excellence, 2700 Gulfway Drive, Port Arthur, Texas 77640, is a not for profit corporation and its duly authorized representative for purposes of this Agreement is Willie Mae Elmore.

CONDITIONS PRECEDENT

5. This Agreement has no legal consequences unless and until both the Board of Directors of the PAEDC and the City of Port Arthur City Council approve this Agreement in its final form.

PROMISED PERFORMANCE

6. The parties agree to perform as follows.

(a) PERFORMANCE BY PAEDC

- (1) Funding in the amount of \$20,000.00 is allocated to Program of Health Excellence subject to the approval of the City. The Subcontractor, Program of Health Excellence will provide the following services:

<u>Program Costs</u>	<u>Provider</u>	<u>Budgeted Funds</u>
Student Enrollment	Program of Health Excellence	\$8,500.00
Certification	Program of Health Excellence	\$8,500.00
Job Placement	Program of Health Excellence	\$3,000.00

- (2) PAEDC shall pay the Subcontractor \$425.00 per certified nursing aide student following verification of completion of at least fifteen (15) classroom hours. Subcontractor is to provide enrollment verification and a copy of the student's permanent identification verifying Port Arthur residency.
- (3) PAEDC shall pay \$425.00 per student following verification that certified nursing aide student completed and passed the State of Texas certification test. Subcontractor must provide PAEDC with a copy of the student's letter of certification.
- (4) PAEDC shall pay \$150.00 per student to Subcontractor once the student has gained employment following certification. Subcontractor must provide PAEDC a copy of the student's pay check stub.

Note: The maximum amount of funds the Subcontractor can receive per Program Participant for training and job placement is \$1,000.00.

(b) PERFORMANCE BY SUBCONTRACTOR

- (1) Subcontractor shall provide for the job training for certified nurse's aide to a maximum of twenty (20) Port Arthur residents.
- (2) Subcontractor further agrees to facilitate employment placement for Program Participants.

PAEDC'S CONDITIONAL OBLIGATIONS AND LIMITED LIABILITY

7. The PAEDC, at its sole option, may terminate this Agreement for nonperformance or failure to comply with the terms of this contract. In the event of such termination by the PAEDC, the PAEDC may, at its sole option, immediately cease all further funding, if any, required by this Agreement and the PAEDC shall not be liable to Subcontractor or to any third parties for failure to make payments to Subcontractor under the terms and conditions of this Agreement.

8. The PAEDC's sole liability/obligation shall be to Subcontractor and shall be limited to the funding for the Programs detailed in this Agreement. The PAEDC shall not be liable, in contract or otherwise, for any expense, expenditure or cost incurred by or on behalf of Subcontractor related to the Programs except as set forth in this Agreement.

RECORDS / INSPECTION / PAEDC AUDIT

9. All records pertinent to this Agreement shall be retained by Subcontractor.
10. Upon written request, Subcontractor shall provide reports to the PAEDC.
11. Upon written request, Subcontractor shall provide PAEDC with all reports reasonably necessary for PAEDC compliance with the Development Corporation Act of 1979.

CHANGES AND AMENDMENTS

12. Any alterations, additions, or deletions to the terms of this Agreement shall be by amendment in writing and executed by all parties to this Agreement and approved by PAEDC.

13. Any alterations, additions, or deletions to the terms of this Agreement which are required by changes in Federal, state or local law are automatically incorporated into this Agreement without written amendment hereto, and shall become effective on the date designated by such law or regulation.

DEFAULT / TERMINATION

14. In the event of default of any of the obligations of the Subcontractor detailed herein, the PAEDC may, at its sole and exclusive option, withhold and/or disallow further PAEDC payments or incentives to the Subcontractor.

15. In addition to the foregoing, the PAEDC and Subcontractor agree that this Agreement may be terminated at any time when both parties agree, in writing, to the terms and conditions of any such voluntary termination.

ORAL AND WRITTEN AGREEMENTS / PRIOR AGREEMENTS

16. All oral and written agreements between the parties to this Agreement relating to the subject matter of this Agreement that were made prior to the execution of this Agreement have been reduced to writing and are contained in this Agreement.

VENUE

18. For purposes of litigation that may accrue under this Agreement, venue shall be Jefferson County, Texas, where substantially all the performance will occur.

UNDOCUMENTED WORKERS

19. Subcontractor and any branch, division or department of Subcontractor certifies that they have not and will not knowingly employ an "undocumented worker" which means "an individual who, at the time of employment, is not lawfully admitted for permanent residence to the United States or authorized under law to be employed in that manner in the United States." Subcontractor acknowledges that it has reviewed Chapter 2264, Texas Government Code, attached hereto as **Exhibit "A"** and made a part hereof for all purposes and hereby affirmatively agrees by execution of this Agreement to repay the amount of any grant with interest at the rate of ten (10%) percent per annum not later than the 120th day after the date PAEDC notifies Subcontractor of a violation. Subcontractor acknowledges PAEDC may bring a civil action or recover any amounts owed under this Chapter and further acknowledges that PAEDC may recover court costs and reasonable attorneys' fees incurred in an action brought under §2264.101(a). The Subcontractor is not liable for a violation of this Chapter by a subsidiary, affiliate or franchisee of the Subcontractor or by a person with whom the Subcontractor contracts.

CONFLICT OF INTEREST DISCLOSURE

20. Each Subcontractor shall comply with the Conflict of Interest Policy attached hereto as **Exhibit "B."**

ADDRESS OF NOTICE AND COMMUNICATIONS

City of Port Arthur 4A Economic Development Corporation
501 Procter Street
Port Arthur, Texas 77640
ATTN: Floyd Batiste, Chief Executive Officer

Program of Health Excellence
2700 Gulfway Drive
Port Arthur, Texas 77640
Attn: Willie Mae Elmore

CAPTIONS

21. This Agreement has been supplied with captions to serve only as a guide to the contents. The caption does not control the meaning of any paragraph or in any way determine its interpretation or application.

ATTORNEY APPROVALS

APPROVED AS TO FORM:

Guy Goodson, Legal Counsel for PAEDC

VERIFIED AS CONSISTENT

WITH CITY COUNSEL RESOLUTION: Resolution Number: _____

City Attorney

AGREEMENT EXECUTION

**CITY OF PORT ARTHUR SECTION 4A
ECONOMIC DEVELOPMENT CORPORATION**

SIGNED AND AGREED TO on the _____ day of _____, 2018.

By: _____
President

By: _____
Secretary

Witness

Witness

PROGRAM OF HEALTH EXCELLENCE

SIGNED AND AGREED TO on the _____ day of _____, 2018.

By: _____

Witness

EXHIBIT "A"

GOVERNMENT CODE

TITLE 10. GENERAL GOVERNMENT

SUBTITLE F. STATE AND LOCAL CONTRACTS AND FUND MANAGEMENT

CHAPTER 2264. RESTRICTIONS ON USE OF CERTAIN PUBLIC

SUBSIDIES

SUBCHAPTER A. GENERAL PROVISIONS

Sec. 2264.001. DEFINITIONS. In this chapter:

(1) "Economic development corporation" means a development corporation organized under Subtitle C1, Title 12, Local Government Code.

(2) "Public agency" means the state or an agency, instrumentality, or political subdivision of this state, including a county, a municipality, a public school district, or a special-purpose district or authority.

(3) "Public subsidy" means a public program or public benefit or assistance of any type that is designed to stimulate the economic development of a corporation, industry, or sector of the state's economy or to create or retain jobs in this state. The term includes grants, loans, loan guarantees, benefits relating to an enterprise or empowerment zone, fee waivers, land price subsidies, infrastructure development and improvements designed to principally benefit a single business or defined group of businesses, matching funds, tax refunds, tax rebates, or tax abatements.

(4) "Undocumented worker" means an individual who, at the time of employment, is not:

(A) lawfully admitted for permanent residence to the United States; or

(B) authorized under law to be employed in that manner in the United States.

Added by Acts 2007, 80th Leg., R.S., Ch. 853 (H.B. 1196), Sec. 1, eff. September 1, 2007.

Amended by:

Acts 2009, 81st Leg., R.S., Ch. 87 (S.B. 1969), Sec. 11.023, eff. September 1, 2009.

SUBCHAPTER B. RESTRICTIONS ON USE OF CERTAIN

PUBLIC SUBSIDIES TO EMPLOY UNDOCUMENTED WORKERS

Sec. 2264.051. STATEMENT REQUIRED IN APPLICATION FOR PUBLIC SUBSIDIES. A public agency, state or local taxing jurisdiction, or economic development corporation shall require a business that submits an application to receive a public subsidy to include in the application a statement certifying that the business, or a branch, division, or department of the business, does not and will not knowingly employ an undocumented worker.

Added by Acts 2007, 80th Leg., R.S., Ch. 853 (H.B. 1196), Sec. 1, eff. September 1, 2007.

Sec. 2264.052. CONDITION ON RECEIPT OF PUBLIC SUBSIDIES. The statement required by Section 2264.051 must state that if, after receiving a public subsidy, the business, or a branch, division, or department of the business, is convicted of a violation under 8 U.S.C. Section 1324a(f), the business shall repay the amount of the public subsidy with interest, at the rate and according to the other terms provided by an agreement under Section 2264.053, not later than the 120th day after the date the public agency, state or local taxing jurisdiction, or economic development corporation notifies the business of the violation.

Added by Acts 2007, 80th Leg., R.S., Ch. 853 (H.B. 1196), Sec. 1, eff. September 1, 2007.

Sec. 2264.053. AGREEMENT REGARDING REPAYMENT OF INTEREST. A public agency, state or local taxing jurisdiction, or economic development corporation, before awarding a public subsidy to a business, shall enter into a written agreement with the business specifying the rate and terms of the payment of interest if the business is required to repay the public subsidy.

Added by Acts 2007, 80th Leg., R.S., Ch. 853 (H.B. 1196), Sec. 1, eff. September 1, 2007.

SUBCHAPTER C. ENFORCEMENT

Sec. 2264.101. RECOVERY. (a) A public agency, local taxing jurisdiction, or economic development corporation, or the attorney general on behalf of the state or a state agency, may bring a civil action to recover any amounts owed to the public agency, state or local taxing jurisdiction, or economic development corporation under this chapter.

(b) The public agency, local taxing jurisdiction, economic development corporation, or attorney general, as applicable, shall recover court costs and reasonable attorney's fees incurred in an action brought under Subsection (a).

(c) A business is not liable for a violation of this chapter by a subsidiary, affiliate, or franchisee of the business, or by a person with whom the business contracts.

Added by Acts 2007, 80th Leg., R.S., Ch. 853 (H.B. 1196), Sec. 1, eff. September 1, 2007.

Program of Health Excellence hereby acknowledges that it has reviewed Chapter 2264, Texas Government Code.

Program of Health Excellence

Date: _____

By: _____
Signature

Its: _____
Title

EXHIBIT "B"

CERTIFICATION REGARDING LOBBYING

For Contracts, Grants, Loans, and Cooperative Agreements

The undersigned certifies, to the best of his knowledge and belief, that:

1. No funds have been paid or will be paid, by or on behalf of the undersigned, to any person for influencing or attempting to influence an officer or employee of any agency, a member of the City or of the PAEDC in connection with the awarding of any contract, the making of any grant, the making of any loan, the entering into of any cooperative agreement, or modification of any contract, grant, loan, or cooperative agreement.
2. The undersigned shall require that the language of this certification be included in the award documents for all sub-awards at all tiers (including subcontracts, sub-grants, and contracts under grants, loans, and cooperative agreements), and that all Subs shall certify and disclose accordingly.

This certification is material representation of fact which reliance was placed when this transaction was made or entered into. Submission of this certification is a prerequisite for making or entering into this transaction.

Program of Health Excellence

Date: _____

By: _____
Signature

Its: _____
Title

EXHIBIT "D"
COMPLIANCE STATEMENT

Program of Health Excellence hereby certifies that it has fully complied with Local Government Code §176.006, as amended, which mandates the disclosure requirements for persons who contract or seek to contract with a local governmental entity.

Program of Health Excellence

Date: _____

By: _____
Signature

Its: _____
Title