

RESOLUTION NO. 24-096

A RESOLUTION RECONSIDERING THE FEBRUARY 12, 2024 MOTION FOR THE APPROVAL OF THE FIRST AMENDED AND RESTATED AGREEMENT FOR PROFESSIONAL SERVICES AND EMPLOYMENT AS CHIEF EXECUTIVE OFFICER OF PORT ARTHUR SECTION 4A ECONOMIC DEVELOPMENT CORPORATION (REQUESTED BY COUNCILMEMBER DOUCET)

WHEREAS, on February 12, 2024, the City Council considered a motion for the approval of the First Amended and Restated Agreement for Professional Services and Employment as Chief Executive Officer of the Port Arthur Section 4A Economic Development Corporation; and

WHEREAS, pursuant to Section 2-31(g) of the Code of Ordinances, reconsideration of an agenda item takes place upon a request to bring back for further consideration a matter previously decided by the City Council; and

WHEREAS, the matter can be brought back for reconsideration if requested by a member of the prevailing side or at the request of three council members; and

WHEREAS, according to the Code of Ordinances and summary guidance to Robert's Rules of Order to reconsider a vote, a member must have voted on the prevailing side. In the case of a tie vote, the motion fails. The guidance provides that the member who cast the negative vote is on the prevailing side and can therefore move to reconsider; and

WHEREAS, Councilmember Doucet, who was a member of the prevailing side, has requested that the City Council reconsider the item.

NOW THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF PORT ARTHUR:

THAT, the facts and opinion in the preamble are true and correct.

THAT, the City Council hereby approves the reconsideration of the February 12, 2024 motion for the approval of the First Amended and Restated Agreement for Professional Services and Employment as Chief Executive Officer of the Port Arthur Section 4A Economic Development Corporation.

THAT, the City Council hereby approves the First Amended and Restated Agreement for Professional Services and Employment as Chief Executive Officer of the Port Arthur Section 4A Economic Development Corporation, in substantially the same form as attached hereto as Exhibit "A".

THAT, a copy of the caption of this resolution be spread upon the minutes of the City Council.

READ, ADOPTED, AND APPROVED, this 31th day of February, 2024, AD, at a Regular Meeting of the City Council of the City of Port Arthur, Texas by the following

Vote: AYES:

Mayor: Bartie, Mayor Pro Tem Hamilton Everfield

Councilmembers: Doucet, Kinlaw and Frank

_____;

NOES: Lewis and Beckson



Thurman Bill Bartie, Mayor

ATTEST:

Kelly Moore

Sherri Bellard, City Secretary

Shirley G

APPROVED AS TO FORM:



Valecia Tizenno, City Attorney

APPROVED FOR ADMINISTRATION:



Ronald Burton, CPM City Manager

PR 23647

EXHIBIT "A"

FIRST AMENDED AND RESTATED AGREEMENT FOR PROFESSIONAL SERVICES & EMPLOYMENT AS CHIEF EXECUTIVE OFFICER OF THE PORT ARTHUR 4A ECONOMIC DEVELOPMENT CORPORATION

THIS FIRST AMENDED AND RESTATED AGREEMENT FOR PROFESSIONAL SERVICES AND EMPLOYMENT AS CHIEF EXECUTIVE OFFICER OF THE PORT ARTHUR 4A ECONOMIC DEVELOPMENT AGREEMENT (“AGREEMENT”) is made by and between the **PORT ARTHUR 4A ECONOMIC DEVELOPMENT CORPORATION** (hereinafter referred to as the "PAEDC"), and **Terry Stokes** (hereinafter referred to as "CEO"), both of which parties hereto understand and agree as follows:

WITNESS ETH:

WHEREAS, the PAEDC Board of Directors (the "Board") is given the power and authority under PAEDC Bylaws to appoint, supervise, and remove the Chief Executive Officer ("CEO"); and,

WHEREAS, when appropriately structured, the Board and the CEO believe an employment agreement can strengthen the CEO-Board relationship by enhancing the excellence and continuity of the management of the PAEDC for the benefit of the City of Port Arthur's "(City)" economic development goals; and,

WHEREAS, the Board and the CEO previously entered into an employment agreement with the Board on October 22, 2022 (the "Previous Agreement"); and,

WHEREAS, Terry Stokes desires to continue employment as CEO of the Port Arthur Type A Economic Development Corporation on the terms outlined herein; and,

WHEREAS, Board desires to continue to employ Terry Stokes as Chief Executive Officer for the Port Arthur 4A Economic Development Corporation on the terms outlined herein; and,

WHEREAS, The Board and CEO desire to repeal the Previous Agreement and enter into this Agreement.

NOW, THEREFORE, for and in consideration of the mutual covenants and agreements herein contained, and herein before stated, the parties hereto agree as follows:

A. Employment; Duties and Responsibilities

CHIEF EXECUTIVE OFFICER. The PAEDC hereby employs Terry Stokes as the CEO of the PAEDC. CEO shall faithfully perform the duties of the Chief Executive Officer as prescribed in the job description, as set forth in **Exhibit A**. Further, the CEO shall comply with (collectively "Applicable Laws and Authorities") state and federal law, the City's Charter, all relevant policies, rules, regulations, and City ordinances as they exist or may hereinafter be amended, and all lawful Board directives.

B. Term

The term of this Agreement shall be for an initial period of one year beginning on the Effective Date and ending on November 14, 2024. This Agreement may be renewed on its anniversary date in one (1) year increments. CEO shall serve at the will and pleasure of the entire PAEDC Board and nothing in this Agreement shall prevent, limit or otherwise interfere with the right of the PAEDC or CEO, to terminate the services of CEO, subject only to the terms of this Agreement. A failure to renew this Agreement does not result in a termination of employment of the CEO.

C. Salary

The CEO shall receive an annual base salary ("Annual Base Salary") of one hundred and eighty thousand dollars and no/100 (\$180,000.00) to be paid in installments at the same time as other employees of the PAEDC are paid. The PAEDC may, in its sole discretion, increase CEO's Annual Base Salary and/or other benefits of CEO in such amounts and to such an extent as the Board may determine that is desirable to do so based on an annual performance evaluation and/or salary review of the CEO. There shall be no increase in CEO's compensation without specific Board approval.

D. Automobile and Technology

In addition to his Annual Base Salary and benefits herein provided, Board agrees to pay the CEO the sum of one thousand dollars and no/100 (\$1000.00) per month as a taxable car allowance, payable with and not otherwise segregated from the CEO's periodic compensation payments. The CEO shall acquire and maintain an automobile during the term of this Agreement. The CEO shall be responsible for all expenses attendant to the purchase, operation, maintenance, repair and replacement of said automobile.

The PAEDC shall provide CEO with such technology and equipment which may be determined by the PAEDC necessary for the CEO to fulfill CEO's obligations under this Agreement.

E. Vacation Leave & Sick Leave

Vacation and Sick leave shall be calculated in accordance with the City of Port Arthur Employee Manual (the "Manual"). CEO is encouraged to use their accrued vacation leave each year earned. CEO will be allowed to accumulate the maximum allowable under the Manual. The CEO shall accrue sick leave at the same rate as other PAEDC Employees. CEO shall accrue sick leave and accumulate the maximum allowable under the Manual. CEO shall notify the President of the Board at least five (5) business days in advance of any vacation leave to be used and designate such other employee, who is capable to temporarily carryout the duties of the Chief Executive Officer, as Acting Chief Executive Officer, and shall so inform, in writing, the Board of Directors.

F. Insurance

The CEO shall be covered by the same medical, dental, vision, long-term disability, life insurance and medical flexible spending account ("Health Plans") as all other PAEDC employees. The CEO's

spouse and/or dependents is eligible to enroll in the PAEDC's Health Plans as are all other employees' spouses and/or dependents.

G. Texas Municipal Retirement System and Deferred Compensation

Contributions to Texas Municipal Retirement System (TMRS) are mandatory for all full-time PAEDC employees. The CEO shall participate, and the PAEDC shall contribute to CEO's TMRS account, in the same manner as all other PAEDC employees.

H. Termination and Severance Pay

- a. In the event the Board decides to terminate CEO's employment during such time CEO is willing and able to continue performing the duties of the Chief Executive Officer, then PAEDC agrees to, after termination, continue paying all salary and benefits in effect for CEO at the time of termination for a period equal to one month full salary and an additional month for every 12 months of employment with the PAEDC from the Commencement Date to a maximum of six (6) months' severance ("Severance").
- b. In consideration for the Severance provided herein, CEO shall execute and deliver to the PAEDC a full Release of all claims that the CEO may have against the City and PAEDC. The failure to execute and deliver such release shall nullify any obligation by the PAEDC to pay the Severance.
- c. In the event the Board terminates the CEO's employment because of (i) the breach of any provision of this Agreement by CEO; (ii) allegations of embezzlement, fraud, theft, or dishonesty, or commission of a crime involving fraud or deception which are duly investigated by the Board; (iii) breach of fiduciary responsibilities, misfeasance, malfeasance, or gross negligence of CEO in the performance or non-performance of CEO's duties; (iv) violations of the City Charter; (v) or violations of the Manual, then the PAEDC shall have no obligation whatsoever to pay the Severance. If the CEO becomes permanently disabled because of sickness, physical or mental disability, so that the CEO will be unable to complete any of his duties under this Agreement with a reasonable accommodation as permitted by the Americans with Disabilities Act, the PAEDC has the option, consistent with applicable law, to terminate this Agreement upon 60 calendar days written notice of termination to the CEO. If so terminated, CEO shall be eligible for long term disability benefits provided to other PAEDC employees and the PAEDC shall have no obligation to pay the Severance.
- d. If the CEO terminates this Agreement by voluntary resignation of the position of Chief Executive Officer, the CEO shall give thirty (30) days' notice in advance unless the Board agrees otherwise in writing. If the Chief Executive Officer retires from full-time public service with the PAEDC, the CEO shall provide three (3) months' advance notice. Failure to provide the Notice will result in forfeiture of CEO's final paycheck in an amount not to exceed 14 days prorated Base Annual Salary. (the "Notices").

I. Performance Evaluation

The Board shall review the CEO every September utilizing the performance criteria approved by the Board. The review of the CEO's performance shall be in writing and in accordance with criteria and format approved by the Board. The Board shall provide the CEO a reasonable and adequate opportunity to discuss with the Board and/or respond to the CEO's evaluation. The annual performance reviews and evaluations shall be reasonably related to the CEO's written job description and shall be based, in whole or in part, on the performance criteria jointly developed and adopted by the Board and CEO.

J. Business Expenses

PAEDC recognizes that certain expenses of a job-related nature are incurred by CEO, and hereby agrees to reimburse or to pay said expenses if CEO provides adequate documentation consistent with the Manual.

In order to facilitate the CEO's representation of the PAEDC in the economic development marketplace, the PAEDC agrees to reimburse CEO an annual amount, upon presentment of receipts, an annual amount not to exceed fifteen thousand and no/100 (\$15,000.00) per year for the reasonable travel and subsistence for professional and official travel, meetings, and occasions adequate to continue the professional development of CEO, to adequately pursue necessary official and other functions for CEO and for short courses, institutes and seminars that are necessary for his professional development and for the good of the PAEDC. The PAEDC reserves the right to limit such attendance in the event of legitimate priorities it identifies if in the best interests of the PAEDC.

K. Professional Dues and Education

The PAEDC agrees to maintain memberships in professional organizations related and relevant to economic development at an annual amount level not to exceed ten thousand and no/100 dollars (\$10,000).

L. Professional Liability

The PAEDC participates in the Texas Municipal League Intergovernmental Risk Pool and agrees to maintain such existing insurance coverage or equivalent for the purpose of insurance coverage for PAEDC officials acting within the scope of their employment with the PAEDC. Nothing in this section shall be construed as limiting the PAEDC's authority to reduce the insurance coverage of all PAEDC officials equally based on budgetary or other reasonable considerations.

N. Hours of Work

It is recognized that the CEO is expected to engage in the hours of work that are necessary to fulfill the obligations of the position, must be always available, and must devote a great deal of time outside the normal office hours to the business of the PAEDC. In furtherance of this condition of employment, CEO shall, when not present in his office or PAEDC facilities, be available and on call, to attend his duties as though he was present. CEO shall, when on official leave status, designate another employee, who is capable of temporarily carrying out the duties of the Chief Executive Officer, as Acting Chief Executive Officer, and shall so inform, in writing, the PAEDC Board.

The CEO will devote full time and effort to the performance of the duties of the Chief Executive Officer and shall remain in the exclusive employ of the PAEDC during the Term of this Agreement, provided that, with the prior consent of the Board, the CEO may accept temporary, outside professional employment which will not in any way limit the performance of, or the CEO's availability for the performance of, the CEO's duties hereunder.

P. Conflict of Interest Prohibition

The CEO shall not, during the Term of this Agreement, individually, as a partner, joint venture, officer or shareholder, invest or participate in any business venture conducting business in the corporate limits of the City, except for stock ownership in a company whose capital stock is publicly held and regularly traded on any stock exchange, without the prior written approval of the Board. For and during the Term of the Agreement, the CEO shall, except for a personal residence or residential property acquired or held for future use as the CEO's personal residence, not investing any other real estate or property improvements within the City, without the prior written consent of the Board.

Q. General Provisions

1. **Severability.** In the event any one or more of the sections, provisions, or clauses contained herein shall for any reason be held to be invalid, illegal or unenforceable in any respect, such invalidity, illegality, or unenforceability shall not affect any other provision of this Agreement, but this Agreement shall be construed as if such invalid, illegal, or unenforceable provision had not been contained herein.
2. **Entire Agreement.** This Agreement incorporates all the agreements, covenants and understandings between the PAEDC and the CEO concerning the subject matter hereof, and all such covenants, agreements and understandings have been merged onto this written Agreement. No other prior agreements or understandings, verbal or otherwise, of the parties or their agents shall be valid or enforceable unless embodied in this Agreement.
3. **Amendment.** This Agreement shall not be modified or amended except by a written instrument executed by the CEO and the duly authorized representative of the Board;
4. **Governing Law.** This Agreement shall be construed in accordance with, and governed by, the laws of the State of Texas. Venue shall lie exclusively in Jefferson County, Texas.
5. **Savings Clause.** If any term or provision of this Agreement, as applied to any party or to any circumstance, is declared by a court of competent jurisdiction hereof to be illegal, unenforceable or void in any situation and in any jurisdiction, such determination shall not affect the validity or enforceability of the remaining terms and provisions hereof or the validity or enforceability of the offending provision in any other situation or in any other jurisdiction. The parties agree that the court making such determination shall have the power to reduce the scope, duration, area or applicability of the term or provision, to delete specific words or phrases or to replace any illegal, unenforceable or void term or provision with a term or provision that is valid and enforceable and that comes closest to expressing the intention of the invalid or unenforceable term or provision.
6. **Conflicts.** In the event of any conflict between the terms, conditions and provisions of this Agreement and the Applicable Laws and Authorities, then, unless otherwise prohibited by law, the terms of this Agreement shall take precedence over the contrary provisions of the Applicable Laws and Authorities during the term of this Agreement.
7. **Effective Date.** This Agreement shall become effective upon approval by the Port Arthur City Council if the Corporation's bylaws in effect at the time of approval by the Board requires City Council approval, and the expenditures required under this Agreement are approved by the PAEDC's Board of Directors.

IN WITNESS WHEREOF, the PAEDC Board of Directors, has authorized this Agreement to be signed and executed on its behalf by its Board President at a duly posted meeting of the PAEDC Board of Directors, and the CEO has signed and executed this Agreement.

Port Arthur Type A Economic Development Corporation

Darrell Anderson, Board President

Date

Terry Stokes, CEO

Date

ATTEST:

Kaala Jacobs, Board Secretary

Date

AS TO FORM:

Charles E. Zech, Board Attorney

Date

JOB TITLE: Chief Executive Officer, Economic Development Corporation

REPORTS TO: Port Arthur Economic Development Corporation's Board of Directors

SPECIAL REQUIREMENTS: Incumbent must reside within the corporate City limits of Port Arthur, Texas within 18 months of acceptance of the role.

DEFINITION:

To plan, organize, and direct the overall administrative activities and operations of the Port Arthur Economic Development Corporation (PAEDC); to advise and assist the PAEDC's Board of Directors (the "Board"); to represent the Board's interests with other levels and agencies or government, business interests, and the community at large; and to exercise independent judgment and initiative.

The position involves developing and implementing target industry marketing initiatives, servicing a broad range of manufacturing, distribution and office prospects, coordinating special incentive packages for prospects, interfacing with federal, state, and regional, and local economic development allies, stakeholders, brokers, developers, and other service providers to retain and locate prospects.

This position serves at the will and pleasure of the Port Arthur Economic Development Corporation Board of Directors.

SUPERVISION RECEIVED AND EXERCISED

Receives policy direction from the Port Arthur Economic Development Corporation Board.

Provides guidance for direct and indirect supervision over the PAEDC staff in collaboration with the Deputy Chief Economic Development Officer.

EXAMPLES OF IMPORTANT RESPONSIBILITIES AND DUTIES

Essential and other important duties and responsibilities may include, but are not limited to, the following:

- Develop, plan, and implement, with Board participation, PAEDC goals and objectives as well as policies and procedures necessary to provide services; approve new or modified programs, systems, policies and procedures.
- Prepare and submit to the Board reports of financial administrative activities; keep the Board advised of financial conditions, program progress, and present and future needs of the PAEDC.
- Direct the development, presentation, and administration of the PAEDC's budget, oversee the forecast of funding needed for staffing equipment, materials, and supplies; monitor revenues and expenditures, make mid-year corrections, as needed.
- Appoint, train, motivate and provide insight/input on staff performance objectives and collaborate in conjunction with the Deputy Chief Economic Development Officer in preparing and presenting performance reviews, conducting performance improvement plans (PIP), implementing corrective discipline procedures leading up to recommendation for termination; establish performance objectives, prepare and present employee performance reviews; implement discipline procedures; recommend employee termination;
- Direct and participate in the preparation of short-term and long-term plans and plan improvements with recommended financing.

- Maintain mental capacity which allows the capabilities to:
 - Exercise sound judgment and rational thinking under stressful circumstances
 - Evaluate various options and alternatives and choose an appropriate and reasonable course of action
 - Prepare complex policies and recommendations
 - Effectively supervise personnel
 - Operate effectively in an economically and culturally diverse environment
- Maintain effective audio-visual discrimination perception for:
 - Making observations
 - Reading and writing
 - Operating necessary and assigned equipment
 - Communicating with others

OTHER IMPORTANT DUTIES AND RESPONSIBILITIES

- Confer with the Economic Development Corporation Board and staff concerning administrative and operational problems, make appropriate decisions or recommendations.
- Facilitate the preparation of agenda for regular and special meetings of the Board .
- Direct the preparation of plans and specifications for work which the Board orders.
- Interpret, analyze, and explain policies, procedures, and programs.
- Confer with residents, taxpayers, businesses, and other individuals, groups, and outside agencies having an interest in affairs of the Board.
- Respond to the most difficult and sensitive complaints and requests for information.
- Represent the PAEDC in the business community and at professional meetings as required .
- Coordinate Economic Development Corporation activities with other governmental agencies and outside organizations.
- Perform all duties as may be prescribed by the Board .
- Perform related duties as assigned.

QUALIFICATIONS

- Knowledge of:
 - Modern and highly complex principles and practices of administration, organization, functions and services.
 - Current social, political, and economic trends and operating problems of Economic Development Corporations.
 - Applicable federal and state laws, rules, and regulations regarding Economic Development Corporation operations.
 - Principles of personnel selection, supervision, training and evaluation.
 - Principles of effective public relations and interrelationships with community groups and agencies, private businesses and firms, and levels of government.

- Ability to:
 - o Develop and maintain effective working relationships with Economic Development Corporation Board members, staff, committee members, business leaders, and the general public.
 - o Provide effective leadership for and coordinate the activities of the Economic Development Corporation.
 - o Conceptualize, design and implement strategic digital marketing and branding initiatives to attract business to targeted demographics for community impact
 - o Analyze, interpret, summarize, and present administrative and technical information and data in an effective manner.
 - o Appraise situations and people accurately and quickly and adopt an effective course of action.
 - o Serve effectively as the administrative agent of the Economic Development Corporation Board.
 - o Provide staff training and development programs to increase professional and personal competencies.
 - o Lead people and initiatives with professionalism, dignity, respect and the ability to manage a large portfolio of diverse prospects.
 - o Communicate effectively, both orally and in writing.
 - o Prepare grant proposals and applications, contracts and other necessary documents as may require for necessary services
 - o Lead organizational change, set short- and long term-goals, establish Key Performance Indicators (KPI) and objectives, and establish a new organizational culture.

EXPERIENCE AND TRAINING GUIDELINE

Any combination of experience and training that would likely provide the required knowledge and abilities is qualifying. A typical way would be:

- Experience
 - o Minimum of five years of increasingly responsible experience in Economic Development in an administrative, managerial, or staff capacity in a large organization, involving the responsibility for the planning, organization, implementation and supervision of varied Economic Development programs.
- Training
 - o Equivalent to a Bachelor's degree from an accredited college or university with major course work in public or business administration, marketing, economics or a closely related field. An advanced degree is desirable.

LICENSES OR CERTIFICATIONS:

Possession of a Texas driver's license. Ability to obtain, the International Economic Development Council's (IEDC) Certified Economic Developer (CEcD) certification, IEDC's Entrepreneurship Development Professional (EDP) certification, or graduate from the IEDC-sponsored University of Oklahoma Economic Development Institute within 3 years of the effective date of this agreement.

The City of Port Arthur Section 4A Economic Development Corporation is an equal opportunity employer that is committed to diversity and inclusion in the workplace. We prohibit discrimination and harassment of any kind based on race, color, sex, religion, sexual orientation, national origin, disability, genetic information, pregnancy, or any other protected characteristic as outlined by federal, state, or local laws.

This policy applies to all employment practices within our organization, including hiring, recruiting, promotion, termination, layoff, recall, leave of absence, compensation, benefits, training, and apprenticeship. The City of Port Arthur Section 4A Economic Development Corporation makes hiring decisions based solely on qualifications, merit, and business needs at the time.