

RESOLUTION NO. 17-025

**A RESOLUTION APPROVING AN ECONOMIC INCENTIVE
CONTRACT & LOAN AGREEMENT BETWEEN THE CITY
OF PORT ARTHUR SECTION 4A ECONOMIC
DEVELOPMENT CORPORATION & PORT ARTHUR
RECYCLING LLC**

WHEREAS, Port Arthur Recycling LLC d/b/a Scrap Works ("Incentive Recipient") is a Texas limited liability company located in Port Arthur, Texas operating a scrap metal recycling business; and

WHEREAS, Incentive Recipient has proposed to utilize incentive funds acquired through the City of Port Arthur Section 4A Economic Development Corporation (the "PAEDC") to acquire additional equipment in order to process materials at higher volumes and expand business operations to employ additional full-time employees; and

WHEREAS, at a special meeting on October 17, 2016, the PAEDC Board of Directors approved entering into an Economic Incentive Contract & Loan Agreement (the "Agreement") with Incentive Recipient in exchange for certain agreements by Incentive Recipient for creation of additional full-time permanent employment at the project and designated levels of payroll; and

WHEREAS, PAEDC shall conditionally grant Incentive Recipient an amount equal to \$158,700, subject to the conditions and limitations outlined in the Agreement attached hereto as Exhibit "A".

**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.

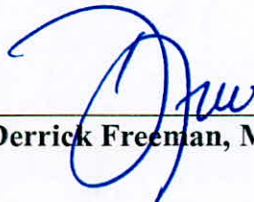
Section 2. That PAEDC is herein authorized to execute the Agreement in substantially the same form attached hereto as Exhibit "A", with the Incentive Recipient for an amount of \$158,700, release of funds are subject to Incentive Recipient obtaining a scrap metal recycling permit as delineated in Section 22-131 through 167 of the Code of Ordinances of the City of Port Arthur.

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 Jan A.D., 2017,
at a Meeting of the City Council of the City of Port Arthur, Texas, by the following vote: AYES:
Mayor Freeman; Mayor Pro Tem Scott,
Councilmembers Hamilton, Richard, Lewis,
Quarti and Moses.

NOES: None.

ATTEST:



Derrick Freeman, Mayor



Sherri Bellard, City Secretary

APPROVED:



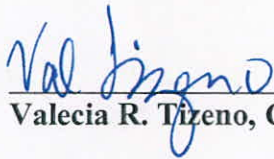
Floyd Batiste, PAEDC CEO

APPROVED AS TO FORM:

A handwritten signature in blue ink, appearing to read 'Guy N. Goodson', written over a horizontal line.

Guy N. Goodson, PAEDC Attorney

APPROVED AS TO FORM:

A handwritten signature in blue ink, appearing to read 'Valecia R. Tizeno', written over a horizontal line.

Valecia R. Tizeno, City Attorney

EXHIBIT “A”

**ECONOMIC INCENTIVE CONTRACT & LOAN AGREEMENT
BETWEEN THE CITY OF PORT ARTHUR SECTION 4A ECONOMIC
DEVELOPMENT CORPORATION
&
PORT ARTHUR RECYCLING, LLC**

Executive Summary

Port Arthur Recycling LLC d/b/a Scrap Works ("Incentive Recipient") is a Texas Limited Liability Company located in Port Arthur, Texas. Incentive Recipient operates a scrap recycling business. Specifically, Incentive Recipient collects scrap metals from households, municipalities and commercial and industrial businesses from the Golden Triangle region, processes the scrap material, and then sells the processed material to steel mills around the Golden Triangle region and exports some of the processed material to steel mills located in South America and Asia. Incentive Recipient proposes to utilize incentive funds acquired through the Port Arthur Section 4A Economic Development Corporation (the "PAEDC") to acquire additional equipment in order to process materials at higher volumes and expands business operations to employ additional full time employees. Incentive Recipient's business operations are located at 2901 Highway 365 W, Port Arthur, Texas 77640. PAEDC shall assist Incentive Recipient in this business expansion by providing certain agreement with incentives which shall include a conditional grant/loan in exchange for certain agreements by Incentive Recipient for creation of additional full-time permanent employment at the Project and designated levels of payroll. Incentive Recipient will be provided a credit against payroll paid to full-time employees who are residents of Port Arthur as outlined in the Performance Milestone Schedule. Incentive Recipient has been advised that as a condition of the Economic Incentive by PAEDC, Incentive Recipient must continue conducting its business operations in Port Arthur during the term of the Incentive Contract. Incentive Recipient has agreed to obtain a collateral pledge to secure the incentive and obtain an Owner's Consent to Pledge on property owned by NG International LLC to securitize the loan provided by PAEDC.

PAEDC has agreed as a consideration for the promise and performance of Incentive Recipient to reimburse Incentive Recipient in accordance with the Agreement for the acquisition by Incentive Recipient of the states equipment to be incorporated into the Project. PAEDC and Incentive Recipient have agreed that the incentive credit shall be for an amount not to exceed \$158,700, and Incentive Recipient shall have the period outlined in the Performance Milestone Schedule attached to the Agreement to meet its promised performance under the Agreement, and to provide all reports and other affirmative commitments as outlined in the Agreement.

The Economic Incentive Contract & Loan Agreement (the "Agreement") shall be for a period from its Effective Date through June 30, 2020.

Incentive Recipient has further agreed to execute the First Source Referral Agreement and to utilize the services of the PAEDC on a non-exclusive basis to find qualified applicants for employment at the Project.

**ECONOMIC INCENTIVE CONTRACT& LOAN AGREEMENT
BETWEEN THE CITY OF PORT ARTHUR SECTION 4A ECONOMIC
DEVELOPMENT CORPORATION**

&

PORT ARTHUR RECYCLING, LLC

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**ECONOMIC INCENTIVE CONTRACT & LOAN AGREEMENT BETWEEN
THE CITY OF PORT ARTHUR SECTION 4A
ECONOMIC DEVELOPMENT CORPORATION
AND
PORT ARTHUR RECYCLING, LLC ("INCENTIVE RECIPIENT")**

INTRODUCTION

The Incentive Recipient is a Texas limited liability company having its principal business operations at 2901 Highway 365 W, Port Arthur, Texas 77640. The Incentive Recipient intends to purchase equipment necessary to process scrap metal materials in higher volumes and hire an additional eighteen (18) full-time employees. Incentive Recipient proposes to utilize incentive funds acquired through the City of Port Arthur Section 4A Economic Development Corporation ("PAEDC") to acquire new equipment for its expansion project. Current market demands are such that Incentive Recipient plans to expand the above-referenced business operations at its facility in Port Arthur. PAEDC will assist Incentive Recipient in this business endeavor by providing the hereinafter described conditional and/or loan or other incentives in exchange for the promise by Incentive Recipient to meet the Performance Milestone Schedule. Incentive Recipient has agreed to obtain an Owner's Consent to Pledge in order to provide a deed of trust lien on property owned by NG International LLC to securitize the loan provided by PAEDC.

AGREEMENT TERM

EFFECTIVE DATE

1. This Economic Incentive Contract and Loan Agreement ("Agreement") is entered into with an Effective Date as of the approval of the Agreement by the City Council for the City of Port Arthur, Texas (the "City").

TERMINATION DATE

2. This Agreement expires the earlier of June 30, 2020, or 30 days after Incentive Recipient either performs fully or breaches the Agreement, subject to earlier termination or extension, voluntary or involuntary, as provided herein. The period from the effective date of this Agreement through and including the expiration date of this Agreement as provided in the previous sentence hereof, is sometimes referred to in this Agreement as the "Term" of this Agreement.

PARTIES

3. City of Port Arthur Section 4A Economic Development Corporation ("PAEDC"), located at 501 Procter Street, Port Arthur, Texas, 77640, is a 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

- (2) Incentive Recipient promises that one hundred percent (100%) of its full time employees will be Port Arthur residents. Incentive Recipient shall receive credit only for payroll paid to Port Arthur residents.
- (3) Incentive Recipient will utilize the incentive to acquire the Equipment valued at not less than \$158,700.00 as outlined in **Exhibit "B"**.
- (4) Incentive Recipient will be required to meet the conditions and agreements set forth in the First Source Referral Agreement attached hereto as **Exhibit "D"** and made a part hereof for all purposes.
- (5) PAEDC shall only be required to reimburse Incentive Recipient for Equipment purchased by Incentive Recipient that is substantially similar to the items described on the ¹attached **Exhibit "B"**. With each invoice or request for reimbursement sent to PAEDC, Incentive Recipient will provide a listing of the specific Equipment, requested for reimbursement and covenant that such request for reimbursement is being made for the specific Equipment and that all such Equipment has been acquired by the Incentive Recipient free of any lien or encumbrance.
- (6) Incentive Recipient acknowledges and agrees that the Economic Incentive proposed under this Agreement is only being provided as to the retention and/or expansion of the business of Incentive Recipient in Port Arthur, Texas. If Incentive Recipient at any time during the term of this Agreement discontinues and/or moves its business operations, including the Equipment identified in **Exhibit "B"**, from the City of Port Arthur, Texas, Incentive Recipient shall be immediately in default under the terms of this Agreement, and all amounts less any credits given as set forth in Paragraph 5(C) shall become a loan for a period not to exceed the remaining period for the Incentive as set forth herein.
- (7) As the conditional grant provided by PAEDC to Incentive Recipient is to be secured by an interest in real property, Incentive Recipient will secure the execution Deed of Trust contained in **Exhibit "C"** from NG International, Inc.
- (8) On demand by PAEDC and in response to Incentive Recipient's failure to achieve a performance milestone, Incentive Recipient shall provide PAEDC with reasonable assurances, proposed by Incentive Recipient and reasonably acceptable to PAEDC, that it has both the intention and the capabilities to perform fully its contractual obligations.

¹ "Materially different" is defined as a change in the type of asset that changes the overall business plan in place at the time that this contract was executed.

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

4. Port Arthur Recycling, LLC d/b/a Scrap Works is a limited liability company located at 2901 Highway 365 W., Port Arthur, Texas 77640.

PROMISED PERFORMANCE

5. The parties agree to perform as follows.

(a) PERFORMANCE BY PAEDC

- (1) PAEDC shall conditionally grant Incentive Recipient an amount equal to the \$158,700.00, subject to the conditions and limitations herein, which Incentive Recipient shall not be required to repay unless Incentive Recipient breaches this Agreement. If Incentive Recipient breaches this Agreement, then the grant will become a loan as provided in the Conditional Commercial Promissory Note (the "Note") attached hereto as **Exhibit "A"**.
- (2) PAEDC will use its best efforts to reimburse Incentive Recipient within forty-five (45) days of receipt for the capital expenditures (the "Equipment") listed in **Exhibit "B"**.

HOWEVER, PAEDC WILL ONLY RELEASE FUNDS IN AN AMOUNT EQUAL TO THE AMOUNT PAID FOR THE EQUIPMENT. PAEDC WILL ONLY RELEASE FUNDS UPON RECEIPT OF REQUIRED DOCUMENTATION OF THE PURCHASE, BY INCENTIVE RECIPIENT OF SUCH EQUIPMENT FREE OF ANY LIEN OR ENCUMBRANCE. REQUIRED DOCUMENTATION INCLUDED BUT IS NOT LIMITED TO AN INVOICE EVIDENCING THE PURCHASE OF THE EQUIPMENT.

PAEDC WILL ONLY PROVIDE AN INCENTIVE AS TO THE PROPERTY IF INCENTIVE RECIPIENT HAS DULY EXECUTED A DEED OF TRUST AND/OR OTHER APPROPRIATE COLLATERAL SECURITY INTEREST AS TO THE PROPERTY.

These payments are PAEDC's only obligations.

(b) PERFORMANCE BY INCENTIVE RECIPIENT

- (1) By the end of the Agreement term, Incentive Recipient promises to employ the equivalent of eighteen (18) full time employees at an annual payroll as measured by Internal Revenue Service (IRS) forms W-2 and 1040's for payroll for years 1, 2 and 3 of \$1,453,960.00.

(C) CREDITS – SUBSTITUTE PERFORMANCE

Incentive Recipient may earn credits according to the following terms, to either reduce the duration of this Agreement or reduce the amount of liquidated damages in the event Incentive Recipient breaches the Agreement.

- (1) Starting on the effective date of the Agreement and for as long as Incentive Recipient performs as specified in Section 5(b)(1) of this Agreement, Incentive Recipient will receive a \$1.00 credit for each \$9.16 of payroll paid to residents of Port Arthur. **PAYROLL TO NON-RESIDENTS CANNOT BE CREDITED.**
- (2) Total credits cannot exceed \$158,700.00.
- (3) Incentive Recipient will forfeit any credits it earned during a period for which a report is scheduled, but for which Incentive Recipient failed to issue the report pursuant to the Performance Milestone Schedule within 10 days after receipt of written notice from PAEDC that such report is past due.
- (4) Once Incentive Recipient has earned credits equal to \$158,700.00, the conditional grant/loan and all obligations to PAEDC shall terminate.

(d) FIRST SOURCE REFERRAL AGREEMENT

PAEDC has adopted policies and procedures to assist Incentive Recipient in locating a qualified workforce within the City. The First Source Referral Agreement is incorporated into this Agreement in **Exhibit “D”** (“First Source”). Incentive Recipient has agreed to the policies and procedures within First Source as a non-exclusive resource and referral for all appropriate new job openings of Incentive Recipient.

PERFORMANCE MILESTONE SCHEDULE

6. Although failure to achieve a performance milestone is not a breach of contract, a failure is grounds for PAEDC to withhold further payments to Incentive Recipient and/or demand reasonable assurances² from Incentive Recipient that it can and will fully perform its contractual obligations. Failure to provide such reasonable assurances following demand of PAEDC is a breach of contract.

² Examples of reasonable assurances are copies of pending contracts and customer commitment letters.

7. Incentive Recipient's performance milestones are contained in the following table.

PERFORMANCE MILESTONE SCHEDULE

	<u>Deadline</u>	<u>Milestone</u>
(a)	March 31, 2017	Port Arthur Recycling, LLC to issue a status report to Port Arthur Economic Development Corporation's (PAEDC), Chief Executive Officer (CEO) for the period of January 1, 2017 to March 31, 2017
(b)	June 30, 2017	Issue an Operational and Payroll Status Report to PAEDC's CEO for the period covering April 1, 2017 to June 30, 2017
(c)	December 30, 2017	Issue an Operational Status Report to PAEDC's CEO for the period covering July 1, 2017 to December 30, 2017
(d)	March 30, 2018	Achieve employment of nine (9) full-time permanent employees with an annualized payroll of \$326,440 (submit W-2's/ 1040's for verification)
(e)	June 30, 2018	Issue an Operational and Payroll Status Report to PAEDC's CEO for the period covering January 1, 2018 to June 30, 2018
(f)	December 30, 2018	Issue an Operational Status Report to PAEDC's CEO for the period covering July 1, 2018 to December 30, 2018
(g)	March 30, 2019	Achieve employment of six (6) additional full-time permanent employees with an annualized payroll of \$187,200. Payroll for Years 1 & 2 totaling \$840,080 (submit W-2's/ 1040's for verification)
(h)	June 30, 2019	Issue an Operational and Payroll Status Report to PAEDC's CEO for the period covering January 1, 2019 to June 30, 2019
(i)	December 30, 2019	Issue an Operational Status Report to PAEDC's CEO for the period covering July 1, 2019 to December 30, 2019
(j)	March 30, 2020	Achieve employment of three (3) additional full-time permanent employees with an annualized payroll of \$100,240. Payroll for Years 1, 2, & 3 totaling \$1,453,960 (submit W-2's/ 1040's for verification)
(k)	June 30, 2020	Issue a Status Report to PAEDC's CEO for the period covering January 1, 2020 to June 30, 2020

(1)	June 30, 2020	PAEDC to prepare close out report for PAEDC's Board of Directors and the Port Arthur City Council for approval
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PAEDC'S CONDITIONAL OBLIGATIONS AND LIMITED LIABILITY

8. It is expressly understood and agreed by the parties hereto that the PAEDC funding obligations herein are contingent upon the actual receipt of adequate sales tax revenue funds to meet the PAEDC's liabilities under this Agreement. If adequate funds are not available to make payments under this Agreement, the PAEDC shall notify Incentive Recipient in writing within a reasonable time after such fact is reasonably determined by the PAEDC Board of Directors. Should PAEDC fail to fully fund its obligations hereunder, this Agreement shall terminate and both parties shall be relieve of any further liability hereunder. In the event of such termination, 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 Incentive Recipient or to any third parties for failure to make payments to Incentive Recipient under the terms and conditions of this Agreement.

9. The PAEDC shall not be liable, in Agreement or otherwise, to Incentive Recipient, or to any person or entity claiming by or through Incentive Recipient, for any expense, expenditure or cost incurred by or on behalf of Incentive Recipient related to the project made the basis of this Agreement. The PAEDC's sole liability/obligations, if any, shall be to Incentive Recipient and shall be limited to the obligations detailed in Section 5(a) of this Agreement.

Incentive Recipient shall not use the funds herein for any purpose(s) other than that specifically disclosed herein and as further disclosed within that certain application made by or on behalf of Incentive Recipient, which application is incorporated herein for all purposes to the extent Incentive Recipient has advanced funds to pay for equipment it will be deemed to satisfy this requirement.

LIQUIDATED DAMAGES FOR BREACH OF AGREEMENT

10. In the event Incentive Recipient fails to perform its obligations under this Agreement, following notice thereof from PAEDC and thirty-day (30-day) opportunity to cure the same, the PAEDC grant, minus any credits earned pursuant to section 5(c) of this Agreement, will automatically convert to a loan (liquidated damages), effective on the day of breach, as agreed by Incentive Recipient in the executed Note attached as **Exhibit "A."** Following such conversion to a loan as aforesaid, the PAEDC, at its sole option, may terminate its remaining funding obligations, if any, detailed in Section 5 herein. Further, the PAEDC shall be entitled to recover its reasonable and customary attorney's fees and court

costs incurred in collection of said obligation and such remedies as are provided at law or in equity.

11. It is expressly understood and agreed by the parties that any right or remedy shall not preclude the exercise of any other right or remedy under this Agreement or under any provision of law, nor shall any action taken in the exercise of any right or remedy be deemed a waiver of any other rights or remedies. Failure to exercise any right or remedy hereunder shall not constitute a waiver of the right to exercise that or any other right or remedy at any time.

RECORDS / INSPECTION / PAEDC AUDIT

12. Incentive Recipient must establish and maintain reasonably sufficient records, as reasonably determined by the PAEDC, to account for the expenditure and utilization of funds received by Incentive Recipient from PAEDC under the terms and conditions of this Agreement. Incentive Recipient shall maintain employment records as necessary to allow the PAEDC to audit and verify proper utilization of First Source and to verify any and all other covenants, representations and warranties contained herein and in Incentive Recipient's Application.

13. Incentive Recipient shall maintain records of the receipt and disposition of all funds provided hereunder as necessary to allow the PAEDC to audit and verify proper utilization of said funds in compliance with this Agreement and the representations and warranties contained herein and in Incentive Recipient's application. Incentive Recipient shall provide reports of utilization of said funds, as reasonably requested by the PAEDC, and upon termination of this Agreement.

14. Upon ten-day (10-day) advance written notice given not later than the 90th day after the end of the calendar year in which such transactions being audited occurred, Incentive Recipient shall give the PAEDC, or any of its duly authorized representatives, access to and right to examine all books, accounts, records, reports, files and other papers, things or property belonging to or in use by Incentive Recipient so that PAEDC can ensure the Incentive Recipient is meeting the Performance Milestone Schedule. Incentive Recipient agrees to maintain such records in an accessible location. All information obtained by the PAEDC, or its duly authorized representatives, shall be regarded as the confidential business information of Incentive Recipient and the PAEDC shall take reasonable measures to protect such information from disclosure to third parties; however, PAEDC is subject to the requirements of the Texas Open Meetings Act and Open Records Act (Tex.Gov.Code, 551 & 552). Incentive Recipient agrees that disclosures to the public required by the Texas Open Meetings Act, Texas Open Records Act, or any other legal requirement will not expose PAEDC (or any party acting by, through or under PAEDC) to any claim, liability or action by Incentive Recipient (or any party working by, through or under).

15. All records pertinent to this Agreement shall be retained by Incentive Recipient at least one year following the date of termination of this Agreement, whether said termination is a result of default or whether said termination is a result of final submission of a close out report by Incentive Recipient detailing its compliance with its obligations provided herein. Further, in the event any litigation, claim or audit arising out of or related to this Agreement is instituted before the expiration of the three (3) year period and extends beyond the three year period, the records will be maintained until all litigation, claims or audit findings involving this Agreement and the records made the basis of same have been resolved. Further, records relating to real property acquisition, including any long-term lease, shall be retained for a period equal to the useful life of any asset purchased with PAEDC funds.

16. Incentive Recipient shall provide PAEDC with all reports reasonably necessary for PAEDC compliance with the Development Corporation Act.

17. It is expressly understood and agreed by the parties hereto that if Incentive Recipient fails to submit to PAEDC in a timely and reasonably satisfactory manner any report reasonably required by this Agreement, PAEDC may, at its sole discretion, withhold further payments to Incentive Recipient and/or demand assurances that Incentive Recipient can and will fully perform its contractual obligations. If Incentive Recipient fails to provide adequate assurances then Incentive Recipient is in breach, and any monies advanced by PAEDC automatically become a loan. If PAEDC withholds such payments, it shall notify Incentive Recipient in writing of its decision and the reasons therefore. Payments withheld pursuant to this paragraph may be held by PAEDC until such time as the delinquent obligations for which funds are withheld are fulfilled by Incentive Recipient.

18. The PAEDC reserves the right, from time to time, prior to the termination of this agreement to carry out field inspections/audits to ensure compliance with the requirements of this Agreement. After completion of any such audit, the PAEDC may provide Incentive Recipient with a written report of the audit findings. If the audit report details deficiencies in its performance under the terms and conditions of this Agreement, the PAEDC may establish requirements for the timely correction of any such deficiencies by Incentive Recipient.

HOLD HARMLESS

19. INCENTIVE RECIPIENT AGREES TO HOLD HARMLESS THE PAEDC AND THE CITY OF PORT ARTHUR FROM ANY AND ALL CLAIMS, DEMANDS, AND CAUSES OF ACTION OF ANY KIND OR CHARACTER WHICH MAY BE ASSERTED BY ANY THIRD PARTY OCCURRING, ARISING OUT OF OR IN ANY WAY RELATED TO THIS AGREEMENT, THE PROJECT MADE THE BASIS OF THIS AGREEMENT, AND THE UTILIZATION OF FUNDS PROVIDED BY THIS AGREEMENT, PROVIDED THAT SUCH CLAIM, DEMAND OR CAUSE OF ACTION DOES NOT ARISE FROM ANY FRAUD OR MISCONDUCT ON THE PART OF THE PAEDC OR THE CITY OF PORT ARTHUR, OR ANY AGENT, EMPLOYEE OR REPRESENTATIVE OF EITHER.

SUBCONTRACTS

20. Incentive Recipient may not subcontract for performance credits described in this Agreement without obtaining PAEDC's written approval, such approval not to be unreasonably withheld. Incentive Recipient shall only subcontract for performance credits described in this Agreement after Incentive Recipient has submitted a Subcontractor Eligibility Request, as specified by PAEDC, for each proposed subcontract, and Incentive Recipient has obtained PAEDC's prior written approval. Incentive Recipient, in subcontracting for any performances described in this Agreement, expressly understands that in entering into such subcontracts, PAEDC is in no way liable to Incentive Recipient's subcontractor(s).

21. In no event shall PAEDC's prior written approval of a subcontractor's eligibility, be construed as relieving Incentive Recipient of the responsibility for ensuring that the performances rendered under all subcontracts are rendered so as to comply with all terms of this Agreement, as if such performances rendered were rendered by Incentive Recipient. PAEDC's approval does not constitute adoption, ratification, or acceptance of Incentive Recipient's or subcontractor's performance hereunder. PAEDC maintains the right to insist upon Incentive Recipient's full compliance with the terms of this Agreement, and by the act of subcontractor approval, PAEDC does not waive any right of action which may exist or which may subsequently accrue to PAEDC under this Agreement.

22. Incentive Recipient, as well as all of its approved subcontractors, shall comply with all applicable federal, state, and local laws, regulations, and ordinances for making procurement under this Agreement.

CONFLICT OF INTEREST / DISCLOSURE OBLIGATION

23. Conflict of Interest: No employee, agent, officer or elected or appointed official of the City of Port Arthur or the PAEDC who has participated in a decision making process related to this Agreement (without recusing him/herself and executing a conflict affidavit) may obtain a personal or financial interest or benefit from an PAEDC assisted activity, or have an interest in any contract, subcontract, or agreement (or proceeds thereof) with respect to an PAEDC assisted activity, during their tenure or for one (1) year thereafter. Insofar as relates to the conduct hereunder of Incentive Recipient, its agents, employees or representatives, Incentive Recipient shall ensure compliance with applicable provisions under Chapter 504, Local Government Code and Chapter 171 Local Government Code.

24. Disclosure: In conjunction with execution of this Agreement, Incentive Recipient has fully disclosed to PAEDC all known and potential owners of interests in Incentive Recipient (whether shareholder, partner, limited partner, manager, member or otherwise). In the event of any change in ownership or control of Incentive Recipient of five percent (5%) or greater, Incentive Recipient shall notify PAEDC in writing. Further, Incentive Recipient shall be obligated to notify in writing the PAEDC in the event any time prior to, during or one (1)

year after the term of this Agreement, any City or PAEDC employee or representative or any third party with a conflict of interest obtains or proposes to obtain a financial benefit, direct or indirect, from Incentive Recipient. Failure to provide said notice immediately or no later than five (5) business days after receipt of information shall constitute a default herein.

NONDISCRIMINATION / EMPLOYMENT / REPORTING

25. Incentive Recipient shall ensure that no person shall on the grounds of race, color, religion, sex, handicap, or national origin be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any program or activity funded in whole or in part with funds provided under this Agreement. Additionally, funds shall be used in accordance with the following requirements:

- (a) To the greatest extent feasible opportunities for training and employment arising in connection with the planning and carrying out of any project assisted with PAEDC funds provided under this Agreement be given to Port Arthur residents; and
- (b) To the greatest extent feasible, agreements for work to be performed in connection with any such project be awarded to Port Arthur residents and businesses, including, but not limited to, individuals or firms doing business in the field of planning, consulting, design, architecture, building construction, rehabilitation, maintenance, or repair, which are located in or owned in substantial part by persons residing in the City of Port Arthur, Texas.

LEGAL AUTHORITY

26. Incentive Recipient assures and guarantees it possesses legal and/or corporate authority (i) to enter into this Agreement, receive funds authorized by this Agreement, and (ii) to perform the obligations hereunder. Incentive Recipient has provided, or shall provide, as requested by the PAEDC, such resolutions or other required authorizations necessary to evidence this authority.

27. The person or persons signing and executing this Agreement on behalf of Incentive Recipient, or representing themselves as signing and executing this Agreement on behalf of Incentive Recipient, do hereby warrant and guarantee that he, she, or they have been duly authorized by Incentive Recipient to execute this Agreement on behalf of Incentive Recipient and to validly and legally bind Incentive Recipient to all terms, performances, and provisions herein set forth.

NOTICE OF LEGAL OR REGULATORY CLAIMS

28. Incentive Recipient shall give PAEDC immediate notice in writing of 1) any legal or regulatory action, including any proceeding before an administrative agency filed against Incentive Recipient, directly or indirectly; and 2) any material claim against Incentive

Recipient, which may impact continued operations. For purposes herein, "material" claims shall mean claims in excess of \$50,000. Except as otherwise directed by PAEDC, Incentive Recipient shall furnish immediately to PAEDC copies of all pertinent documentation of any kind received by Incentive Recipient with respect to such action or claim.

CHANGES AND AMENDMENTS

29. Except as specifically provided otherwise in this Agreement, 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. Such amendments must be approved by the PAEDC Board of Directors and, in many cases, by the City Council for City of Port Arthur.

30. It is understood and agreed by the parties hereto that performances under this Agreement must be rendered in accordance with the regulations promulgated under the Development Corporation Act, the assurances and certifications made to PAEDC by Incentive Recipient, and the assurances and certifications made to the City of Port Arthur with regard to the operation of the PAEDC's Projects. Based on these considerations, and in order to ensure the legal and effective performance of this Agreement by all parties, it is agreed by the parties hereto that the performances under this Agreement are by the provisions of the PAEDC Program and any amendments thereto and may further be amended in the following manner: PAEDC may from time to time during the period of performance of this Agreement issue policy directives which serve to interpret, or clarify performance requirements under this Agreement. Such policy directives shall be promulgated by the PAEDC Board of Directors in the form of PAEDC issuances, shall be approved by the City Council and shall have the effect of qualifying the terms of this Agreement and shall be binding upon Incentive Recipient, as if written herein.

31. Any alterations, additions, or deletions to the terms of this Agreement which are required by changes in Federal, state law 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

32. In the event of a material default of any of the material obligations of Incentive Recipient detailed herein or in the event of a material breach of any of the representations of or warranties of Incentive Recipient either detailed herein or in its application to the PAEDC, and following any notice and opportunity to cure provided for in this Agreement, the PAEDC may, at its sole option, terminate this Agreement, in whole or in part. In the event of such termination, the PAEDC may, at its sole option, utilize one or more of the following actions to resolve or otherwise remedy said default:

- (a) Declare the Commercial Promissory Note executed in conjunction with this Agreement immediately effective;

- (b) Exercise any remedies provided herein and/or within the Deed of Trust or any Collateral Security Documents;
- (c) Withhold, whether temporarily or otherwise, disbursement of grant proceeds pending correction of the deficiency(s) by Incentive Recipient;
- (d) Disallow all or a part of the incentives which are not in compliance with the terms and conditions of this Agreement or in compliance with the representations and warranties contained within this Agreement and Incentive Recipient's application to the PAEDC;
- (e) Withhold and/or disallow further PAEDC incentives to Incentive Recipient; and
- (f) Exercise any and all other remedies that may be legally available to the PAEDC, under the laws of the State of Texas and as authorized by the terms and conditions of this Agreement.

33. In addition to the foregoing, the parties 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.

COMPLIANCE AUDITS

34. If directed by PAEDC Board not more than once each 12 month period, Incentive Recipient shall arrange for the performance of a compliance audit performed by a certified public accountant, of funds received and performances rendered under this Agreement, subject to the following conditions and limitations:

- (a) Incentive Recipient shall have a compliance audit which may be limited to use of funds received from the PAEDC, made for any of its fiscal years included within the Term of this Agreement in which Incentive Recipient receives more than \$50,000 in PAEDC financial assistance provided by PAEDC in the form of grants, contracts, loans, loan guarantees, property, cooperative agreements, interest subsidies, or direct appropriations. Backup documentation regarding actual expenditures shall be provided by Incentive Recipient. Said audit must be received and accepted by the Chief Executive Officer of PAEDC and/or the PAEDC Board.
- (b) At the option of Incentive Recipient, each audit required by this section may cover either its entire operations or each department, agency, or establishment of Incentive Recipient which received, expended, or otherwise administered PAEDC funds;

- (c) Unless otherwise specifically authorized by PAEDC in writing, Incentive Recipient shall submit the report of such audit to PAEDC within thirty (30) days after completion of the audit, but no later than one hundred twenty (120) days after the end of each fiscal period included within the Term of this Agreement.
- (d) As a part of its audit, Incentive Recipient shall verify that the expenditures were exclusively for the assets listed in **Exhibit "B"**. Any discrepancies in excess of \$5000 shall be specifically documented in writing.

35. Incentive Recipient understands and agrees that it shall be liable to reimburse immediately PAEDC for any costs disallowed pursuant to financial and compliance audit(s) of funds received under this Agreement and it may be required to submit formal audits at its expense.

36. Incentive Recipient shall take all necessary actions to facilitate the performance of any and all such audits, whether annual, mandatory or otherwise requested under this Agreement.

37. Subject to financial privacy requirements of Incentive Recipient and properly designated requests for non-disclosure due to proprietary reasons, all approved audit reports may be made available for public inspection.

38. PAEDC shall not release any funds for costs incurred by Incentive Recipient under this Agreement until PAEDC has received certification from Incentive Recipient that its fiscal control and fund accounting procedures are adequate to assure proper disbursement of and accounting for funds provided under this Agreement. PAEDC shall specify the content and form of such certification.

SUPPLEMENTAL COVENANT

39. INCENTIVE RECIPIENT AND ANY BRANCH, DIVISION OR DEPARTMENT OF INCENTIVE RECIPIENT 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."

40. Incentive Recipient acknowledges that it has reviewed Chapter 2264, Texas Government Code and hereby affirmatively agrees by execution of this Agreement to repay the amount of any incentive (less any credits given as set forth in Paragraph 5(C)) with interest at the rate of ten (10%) percent per annum not later than the 120th day after the date PAEDC notifies Incentive Recipient of a violation.

41. Incentive Recipient acknowledges PAEDC may bring a civil action or cover 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). Incentive Recipient is not liable for a violation of this Chapter by a subsidiary, affiliate or franchisee of the Incentive Recipient or by a person with whom the Incentive Recipient contracts.

ENVIRONMENTAL REQUIREMENTS

42. Incentive Recipient understands and agrees that by execution of this Agreement, Incentive Recipient shall be responsible for providing to PAEDC all information, concerning this PAEDC funded project, reasonably required for PAEDC to meet its responsibilities for environmental review, decision making, and other action which applies to PAEDC in accordance with and to the extent specified in Federal, State and Local Law. Incentive Recipient further understands and agrees that Incentive Recipient shall make all reasonable efforts, but shall not be required to expend any funds in doing so, to assist PAEDC in handling inquiries and complaints from persons and agencies seeking redress in relation to environmental reviews covered by approved certifications.

ORAL AND WRITTEN AGREEMENTS / PRIOR AGREEMENTS

43. All oral and written contracts 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.

44. The documents required below are hereby made a part of this Agreement, and constitute promised performances by Incentive Recipient in accordance with this Agreement:

Required

<u>X</u>	Exhibit "A"	Commercial Promissory Note for Conditional Grant
<u>X</u>	Exhibit "B"	Equipment List
<u>X</u>	Exhibit "C"	Deed of Trust
<u>X</u>	Exhibit "D"	First Source Referral Agreement
<u>X</u>	Exhibit "E"	Certification Regarding Lobbying
<u>X</u>	Exhibit "F"	Compliance Statement
<u>X</u>	Incentive Recipient Application to PAEDC	

VENUE

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

ADDRESS OF NOTICE AND COMMUNICATIONS

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

Incentive Recipient
Port Arthur Recycling, LLC d/b/a Scrap Works
2901 Highway 365 W.
Port Arthur, Texas 77640
(281) 235-2464
ATTN: _____

CAPTIONS

46. 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.

COMPLIANCE WITH FEDERAL, STATE AND LOCAL LAWS

47. Incentive Recipient shall comply with all Federal, State and local laws, statutes, ordinances, resolutions, rules, regulations, orders and decrees of any court or administrative body or tribunal, including those related to the activities and performances of Incentive Recipient under this Agreement. Upon request by PAEDC and by the City, Incentive Recipient shall furnish satisfactory proof of its compliance herewith.

CONDITIONS PRECEDENT

48. This agreement has no legal consequences, and neither party shall rely on the agreement, unless and until

- a. Both the PAEDC Board and the Port Arthur City Council approve the Agreement in its final executed form.

ATTORNEY APPROVALS

APPROVED AS TO FORM:

Guy Goodson, General Counsel for PAEDC

VERIFIED BY
CITY COUNCIL RESOLUTION:

Resolution Number: _____

Valecia R. Tizeno, City Attorney

AGREEMENT EXECUTION

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

SIGNED AND AGREED TO on the _____ day of _____, 2017.

By: _____ By: _____
President Secretary

EDC Representative

EDC Representative

PORT ARTHUR RECYCLING, LLC

SIGNED AND AGREED TO on the _____ day of _____, 2017.

Port Arthur Recycling, LLC

By: _____
_____, ____ (Title)

Acknowledgment

EXHIBIT "A"

CONDITIONAL COMMERCIAL PROMISSORY NOTE

Port Arthur, Texas

This COMMERCIAL PROMISSORY NOTE becomes effective on the date when **Port Arthur Recycling, LLC**, a Texas limited liability company (hereinafter called "Maker") breaches that certain Economic Incentive Contract and Loan Agreement between the **City of Port Arthur Section 4A Economic Development Corporation** (hereinafter called "Lender") and Maker, dated _____, 201__.

Effective Date of Note: The Note shall be dated effective the _____ day of _____, 201__ which is the date upon which Lender provided written notification to Maker of its default under the Economic Incentive Contract & Loan Agreement (the "Agreement") by and between Lender and Maker dated _____, 201__ ("Date of Default").

Principal Amount: Principal amount is \$ _____, which is \$ _____ less the incentive credits earned by Maker according to Paragraph 5(C) of the Agreement.

Term of the Loan: From the Date of Default, Maker shall thereafter make equal monthly installments of principal and interest (interest being calculated as hereinafter specified at the rate of 10% per annum) until December 31, 2017 (the "Final Payment Date"). Lender shall provide to Maker, a payment amortization schedule for the monthly installments due hereunder. Maker agrees that all principal and interest on this Note shall be due and payable by the Final Payment Date.

FOR VALUE RECEIVED, the undersigned "Maker", promises to pay to Lender, at its office at P.O. Box 1089, Port Arthur, Texas, 77640-1089, or such other place or places as the holder hereof shall from time to time designate in written notice to Maker, the principal amount, in legal and lawful money of the United States of America, together with interest thereon from the date hereof until maturity at the rate of **ten percent (10%)** per annum as detailed herein.

All past due principal and interest shall bear interest from date of maturity until paid at the rate of **fifteen percent (15%)** per annum, or to the maximum extent allowed by law (whichever is greater) as may hereafter be in effect, payable on demand after maturity.

Any notices required or permitted to be given by the holder hereof to Maker pursuant to the provisions of this note shall be in writing and shall be either personally delivered or transmitted by first class United States mail, addressed to Maker at the address designated below for receipt of notice (or at such other address as Maker may, from time to time, designate in writing to the holder hereof for receipt of notices hereunder). Any such notice personally delivered shall be effective as of the date of delivery, and any notice transmitted by mail, in accordance with the foregoing provisions, shall be deemed to have been given to and received by Maker as of the date on which such notice was deposited with the United States Postal Service, properly addressed and with postage prepaid.

This note is also secured by and entitled to the benefits of all other security agreements, pledges, collateral assignments, deeds of trust, guaranties, mortgages, assignments, and lien instruments, if any, of any kind executed by Maker or by any other party as security for any loans

owing by Maker to the Lender. Such lien instruments shall include those executed simultaneously herewith, those heretofore executed, and those hereafter executed.

If any installment or payment of principal or interest of this note is not paid when due or any drawer, acceptor, endorser, guarantor, surety, accommodation party or other person now or hereafter primarily or secondarily liable upon or for payment of all or any part of this note (each hereinafter called an "other liable party") shall die, or become insolvent (however such insolvency may be evidenced); or if any proceeding, procedure or remedy supplementary to or in enforcement of judgment shall be resorted to or commenced against Maker or any other liable party, or with respect to any property of any of them; or if any governmental authority or any court at the instance thereof shall take possession of any substantial part of the property of or assume control over the affairs or operations of, or a receiver shall be appointed for or take possession of the property of, or a writ or order of attachment or garnishment shall be issued or made against any of the property of Maker or any other liable party; or if any indebtedness for which Maker or any other liable party is primarily or secondarily liable shall not be paid when due or shall become due and payable by acceleration of maturity thereof, or if any event or condition shall occur which shall permit the holder of any such indebtedness to declare it due and payable upon the lapse of time, giving of notice or otherwise; or if Maker or any other liable party (if other than a natural person) shall be dissolved, wound up, liquidated or otherwise terminated, or a party to any merger or consolidation without the written consent of Lender; or if Maker or any other liable party shall sell substantially all or an integral portion of its assets without the written consent of Lender; or if Maker or any other liable party fails to furnish financial information requested by Lender pursuant to this Agreement; or if Maker or any other liable party furnishes or has furnished any financial or other information or statements which are misleading in any respect; or if a default occurs under any instrument now or hereafter executed in connection with or as security for this note;; thereupon, at the option of Lender, the principal balance and accrued interest of this note and any and all other indebtedness of Maker to Lender shall become and be due and payable forthwith without demand, notice of default, notice of acceleration, notice of intent to accelerate the maturity hereof, notice of nonpayment, presentment, protest or notice of dishonor, all of which are hereby expressly waived by Maker and each other liable party. Lender may waive any default without waiving any prior or subsequent default.

If this note is not paid at maturity whether by acceleration or otherwise, and is placed in the hands of any attorney for collection, or suit is filed hereon, or proceedings are had in probate, bankruptcy, receivership, reorganization, arrangement or other legal proceedings for collection hereof, Maker and each other liable party agree to pay Lender its collection costs, including court costs and a reasonable amount for attorney's fees.

It is the intention of Maker and Lender to conform strictly to applicable usury laws. Accordingly, if the transaction contemplated hereby would be usurious under applicable law, then, in that event, notwithstanding anything to the contrary herein or in any agreement entered into in connection with or as security for this note, it is agreed as follows: (i) the aggregate of all consideration which constitutes interest under applicable law that is taken, reserved, contracted for, charged or received under this note or under any of the other aforesaid agreements or otherwise in connection with this note shall under no circumstances exceed the maximum amount of interest allowed by applicable law, and any excess shall be credited on this note by the holder hereof (or, if this note shall have been paid in full, refunded to Maker); (ii) in the event that maturity of this note is accelerated by reason of an election by the holder hereof resulting from any default hereunder or otherwise, or in the event of any required or permitted prepayment, then such consideration that constitutes interest may never include more than the maximum amount allowed by applicable law, and excess interest, if any, provided for in this note or otherwise shall be canceled automatically as of the date of such acceleration or prepayment and, if theretofore prepaid, shall be credited on this note (or if this note shall have been paid in full, refunded to Maker); and (iii) all calculations of the rate of interest taken, reserved, contracted for, charged or

received under this note or under any of the other aforesaid agreements or otherwise in connection with this note, that are made for the purpose of determining whether such rate exceeds the maximum lawful rate shall be made, to the extent permitted by applicable law, by amortizing, prorating, allocating, and spreading such interest over the entire term of the loan evidenced by this note(including all renewal and extended terms).

Maker may prepay all or any part of the principal of this note before maturity without penalty. No partial prepayment shall reduce, postpone or delay the obligation of Maker to continue paying the installments herein provided on their respective due dates following any such partial prepayment until this note is fully paid.

The Maker shall be directly and primarily liable for the payment of all sums called for hereunder; and, except for notices specifically required to be given by the holder hereof to Maker pursuant to the earlier provisions of this note, Maker and each other liable party hereby expressly waive demand, presentment for payment, notice of nonpayment, protest, notice of protest, notice of intention to accelerate maturity, notice of acceleration of maturity, and all other notice, filing of suit and diligence in collecting this note or enforcing or handling any of the security therefor, and do hereby agree to any substitution, exchange or release, in whole or in part, of any security herefor or the release of any other liable party, and do hereby consent to any and all renewals or extensions from time to time, of this note, or any part hereof, either before or after maturity, all without any notice thereof to any of them and without affecting or releasing the liability of any of them. Each holder hereof, in order to enforce payment of this note by any other liable party, shall be required to first institute suit or exhaust its remedies against Maker and to enforce its rights against any security therefor prior to enforcing payment of this Note by any other liable party.

SIGNED AND AGREED TO on the _____ day of _____, 2017.

Port Arthur Recycling, LLC

By: _____

THE STATE OF _____

COUNTY OF _____

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§
§

ACKNOWLEDGEMENT

BEFORE ME, THE UNDERSIGNED Notary Public, on this day personally appeared _____, known to me to be the person whose name is subscribed to the foregoing instrument, and acknowledged to me that he/she executed the same as the act and deed of **Port Arthur Recycling, LLC** for the purposes and consideration therein expressed, and the Capacities therein stated.

GIVEN UNDER MY HAND AND SEAL OF OFFICE, this the ____ day of _____, 2017.

Notary Public, State of _____

EXHIBIT "B"

EQUIPMENT LIST

Equipment:	Current Value:
Hydraulic Excavator Machine	\$85,000.00
Baler Machine	\$30,000.00
Truck Scales	\$32,000.00
Platform Scales	\$3,000.00
Stationary Metal Shears	\$12,000.00

EXHIBIT "C"

DEED OF TRUST

WHEREAS, the City of Port Arthur Section 4A Economic Development Corporation ("PAEDC") and Port Arthur Recycling, LLC ("PA Recycling") entered into an Economic Incentive and Loan Agreement for the expansion of PA Recycling's business; and

WHEREAS, the expansion of PA Recycling's business is located at 2901 Highway 365 W, Port Arthur, Texas 77640 (the "Property"); and

WHEREAS, NG International, LLC, the owner of the Property, has agreed to allow PA Recycling to pledge the Property as collateral to secure the loan in the amount of \$158,700.00.

Date: _____, 2017

Grantor: NG International, LLC

Grantors' Mailing Address
(including county): 200 Memorial Fwy
Nederland, Texas 77627
(Jefferson County)

Trustee: GUY N. GOODSON

Trustee's Mailing Address: Germer PLLC
P.O. Box 4915
Beaumont, Texas 77704
(Jefferson County)

Beneficiary: City of Port Arthur Section 4A Economic
Development Corporation (the "PAEDC")

Beneficiary's Mailing Address
(including county): 501 Procter Street
Port Arthur, Texas 77640
(Jefferson County)

Note

Date: _____, 2017

Amount: \$158,700, less the Incentive Credit earned by Port Arthur
Recycling, LLC according to that certain Economic

Incentive Contract and Loan Agreement between Port
Arthur Recycling, LLC and Beneficiary.
Maker: NG International, LLC.
Payee: PAEDC (Beneficiary)
Final Maturity Date: June 30, 2020

Property: See Attachment for legal description.
Physical address is 2901 Highway 365, Port Arthur, Texas 77640.

The Property covered by this Instrument includes the Land and the following items, whether now owned or hereafter acquired, all of which, including replacements and additions thereto, shall be deemed to be and remain part of the Property covered by this Instrument, and all rights, hereditaments and appurtenances pertaining thereto, all of which are referred to as the "Property":

- (a) Any and all buildings, improvements, and tenements now or hereafter attached to or placed, erected, constructed, or developed on the Land;
- (b) all fixtures, now or hereafter attached to Land or Improvements, that are necessary or useful for the complete and comfortable use and occupancy of the Land and Improvements;
- (c) all water and water rights, timber, crops, and mineral interest pertaining to the Land;
- (d) all building materials and fixtures now or hereafter delivered to and intended to be installed in or on the Land or the Improvements;
- (e) all plans and specifications for the Improvements;
- (f) all Grantor's rights (but not Grantor's obligations) under any contracts tied to the Land or the Improvements that cannot be transferred elsewhere for Grantor's use;
- (g) all Grantor's rights (but not Grantor's obligations) under any documents, contract rights, accounts, commitments, construction contracts (and all payment and performance bonds, statutory or otherwise, issued by any surety in connection with any such construction contracts, and the proceeds of such bonds), architectural contracts and engineering contracts arising from or by virtue of any transactions tied to the Land or the Improvements that cannot be transferred elsewhere for Grantor's use;
- (h) all permits, licenses, franchises, certificates, and other rights and privileges now owned or held or hereafter obtained in connection with the Land and the Improvements;
- (i) all development rights, utility commitments, water and wastewater taps, capital improvement project contracts, utility construction agreements with any governmental authority, including municipal utility districts, or with any utility

- companies (and all refunds and reimbursements thereunder) tied to the Land or the Improvements;
- (j) all proceeds, to the extent necessary to satisfy amounts owed to Beneficiary, arising from or by virtue of the sale, lease or other disposition of the Land or the Improvements;
 - (k) all proceeds (including premium refunds), to the extent necessary to satisfy amounts owed to Beneficiary, of each policy of insurance relating to the Land and the Improvements;
 - (l) all proceeds, to the extent necessary to satisfy amounts owed to Beneficiary, from the taking of any of the Land or the Improvements or any rights appurtenant thereto by right of eminent domain or by private or other purchase in lieu thereof, including change of grade of streets, curb cuts or other rights of access, for any public or quasi-public use under any law;
 - (m) all right, title, and interest of Grantor in and to all streets, roads, public places, easements, and rights-of-way, existing or proposed, public or private, adjacent to or used in connection with, belonging or pertaining to the Land;
 - (n) all of the Leases, rents, royalties, bonuses, issues, profits, revenues, or other benefits of the Land or the Improvements, including without limitation cash or securities deposited pursuant to leases to secure performance by the tenants of their obligations thereunder (subject to the Assignment of Rents made in Article V below); and
 - (o) other interest of every kind and character that Grantor now has or at any time hereafter acquires in and to the Land and the Improvements, including rights of ingress and egress and all reversionary rights or interests of Grantor with respect to such property and all of Grantor's rights (but not Grantor's obligations) under any covenants, conditions, and restrictions for the Land, as the same may be amended from time to time, including Grantor's rights, title, and interests thereunder as declarant or developer, if applicable.

Prior Lien(s) (including recording information): None

Other Exceptions to Conveyance and Warranty:

This conveyance is made expressly SUBJECT TO any and all restrictions, covenants, conditions, easements, right-of-ways, and mineral and/or royalty reservations of record, if any, affecting this Property.

For value received and to secure payment of the Note, Grantor conveys the property to Trustee in trust. Grantor warrants and agrees to defend the title to the property. If Grantor performs all the covenants and pays the notes according to their terms, this deed of trust shall have no further effect, and Beneficiary shall immediately release it at Grantor's expense.

Grantor's Obligations

Grantor agrees to:

1. keep the property in good repair and condition;

2. pay all taxes and assessments on the property when due and, by January 31 of the year immediately following, furnishing Beneficiary copies of tax receipts showing that all such taxes and assessments have been paid;
3. preserve the lien's priority as it is established in this deed of trust;
4. maintain, in a form acceptable to Beneficiary, an insurance policy that
 - a. covers all improvements for their full insurable value as determined when the policy is issued and renewed, unless Beneficiary approves a smaller amount in writing;
 - b. contains an 80% coinsurance clause;
 - c. provides fire and extended coverage, including windstorm coverage;
 - d. protects Beneficiary with a standard mortgage clause;
 - e. provides flood insurance at any time the property is in a flood hazard area; and
 - f. contains such other coverage as Beneficiary may reasonably require;
5. comply at all times with the requirements of the 80% coinsurance clause;
6. deliver the insurance policy to Beneficiary and deliver renewals to Beneficiary within twenty days before expiration;
7. keep any buildings occupied as required by the insurance policy; and
8. if this is not a first lien, pay all lien notes that Grantor is personally liable to pay and abide by all prior lien instruments.

Beneficiary's Rights

1. Beneficiary may appoint in writing a substitute or successor trustee, succeeding to all rights and responsibilities of Trustee;
2. If the proceeds of the Note are used to pay any debt secured by prior liens, Beneficiary is subrogated to all of the rights and liens of the holders of any debt so paid;
3. Beneficiary shall apply any proceeds received under the insurance policy to repair or replace damaged or destroyed improvements covered by the policy, unless Grantor is in default of the Note or Deed of Trust in which case insurance proceeds may be applied to reduce Grantor's obligation under the Note or Deed of Trust;
4. If Grantor fails to perform any of Grantor's obligations, Beneficiary may perform those obligations and be reimbursed by Grantor on demand at the place where the Note is payable for any sums so paid, including attorney's fees, plus interest on those sums from the dates of payments at the rate stated in the note for matured, unpaid amounts. The sum to be reimbursed shall be secured by this deed of trust.
5. If Grantor defaults on the Note or fails to perform any of Grantor's obligations or if default occurs on a prior lien note or other instrument, and the default continues after Beneficiary gives Grantor notice of the default and the time within which it must be cured, as may be required by law or by written agreement, then Beneficiary may:
 - a. Declare the unpaid principle balance and earned interest on the note

- immediately due;
- b. Request Trustee to foreclose this lien, in which case Beneficiary or Beneficiary's agent shall give notice of the foreclosure sale, as provided by the Texas Property Code as then amended; and
- c. Purchase the property at any foreclosure sale by offering the highest bid and such purchase shall fully and completely satisfy the Note.

Trustee's Duties

If requested by Beneficiary to foreclose this lien, Trustee shall:

1. Either personally or by agent give notice of the foreclosure sale as required by the Texas Property Code as then amended;
2. Sell and convey all or part of the property to the highest bidder for cash with a general warranty binding Grantor subject to prior liens and other exceptions to conveyance and warranty; and
3. From the proceeds of the sale, pay in this order:
 - a. Expenses of foreclosure;
 - b. To Beneficiary, the full amount of principle, interest, attorney's fees, and other charges due and unpaid;
 - c. Any amount required by law to be paid before payment to Grantor; and
 - d. To Grantor, any balance.

General Provisions

1. If any of the property is reconveyed under this deed of trust, Grantor shall immediately surrender possession to the Beneficiary. If Grantor fails to do so, Grantor shall become a tenant at sufferance of the Beneficiary, subject to an action for forcible detainer.
2. Recitals in any Trustee's deed conveying the property will be presumed to be true.
3. Proceeding under this deed of trust, filing suit or pursuing any other remedy will not constitute an election of remedies.
4. This lien shall remain superior to liens later created even if the time of payment of all or part of the note is extended or part of the property is released.
5. If any portion of the Note cannot be lawfully secured by this deed of trust, payments shall be applied first to discharge that portion.
6. Grantor assigns to Beneficiary all sums payable to or received by Grantor from condemnation of all or part of the property, from private sale in lieu of condemnation, and from damages caused by public works or construction on or near the property. After deducting any expenses incurred, including attorney's fees, Beneficiary may release any remaining sums to Grantor or apply such sums to reduce the note. Beneficiary shall not be liable for failure to collect or to exercise diligence in collecting any such sums.
7. Grantor assigns to Beneficiary absolutely, not only as collateral, all present and future rent and other income and receipts from the property. Leases are not assigned. Grantor warrants the validity and enforceability of the assignment.

8. Interest on the debt secured by this deed of trust shall not exceed the maximum amount of nonusurious interest that may be contracted for, taken, reserved, charged, or received under law; any interest in excess of that maximum amount shall be credited on the principal of the debt or, if that has been paid, refunded. On any acceleration or required or permitted prepayment, any such excess shall be canceled automatically as of the acceleration or prepayment or, if already paid, credited on the principal of the debt or, if the principal of the debt has been paid, refunded. This provision overrides other provisions in this and all other instruments concerning the debt.
9. When the context requires, singular nouns and pronouns include the plural.
10. The term Note includes all sums secured by this deed of trust.
11. This deed of trust shall bind, inure to the benefit of, and be exercised by successors in interest of all parties.
12. If Grantor and Maker are not the same person, the term Grantor shall include Maker.
13. If all or any part of the Property is sold, conveyed, leased for a period longer than three (3) years, leased with the option to purchase, or otherwise sold (including contract for deed), without the prior written consent of Beneficiary, then Beneficiary may at its option declare the outstanding balance of the Note(s), plus accrued interest to be immediately due and payable. The creation of a subordinate lien, any sale thereunder, any deed under threat or order of condemnation, any conveyance solely between Makers, the passage of title by reason of the death of a Maker or by operation of law shall not be construed as a sale or conveyance of the Property.
14. THIS DEED OF TRUST IS GRANTED IN CONJUNCTION WITH THAT CERTAIN ECONOMIC INCENTIVE CONTRACT AND LOAN AGREEMENT OF EVEN DATE.

SIGNED AND AGREED TO on the ____ day of _____, 2017.

NG International LLC.,
a Texas limited liability corporation

By: _____
_____, Its: _____

THE STATE OF TEXAS
COUNTY OF JEFFERSON

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§
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ACKNOWLEDGEMENT

BEFORE ME, THE UNDERSIGNED Notary Public, on this day personally appeared _____, known to me to be the person whose name is subscribed to the foregoing instrument, and acknowledged to me that he/she executed the same as the act and deed of **NG International LLC**, a Texas limited liability company, for the purposes and consideration therein expressed, and the Capacities therein stated.

GIVEN UNDER MY HAND AND SEAL OF OFFICE, this the ____ day of _____, 2017.

Notary Public, State of Texas

AFTER RECORDING RETURN TO:

Guy N. Goodson
GERMER PLLC.
P.O. Box 4915
Beaumont, Texas 77704

Attachment to Deed of Trust

Legal Property Description

Lot 11, Block 1, S369, 19' of W681.2' Part of Lot 11, Blk 1 Port Acres 5.802 Acres of Land,
Jefferson County, Texas.

EXHIBIT “D”

FIRST SOURCE REFERRAL AGREEMENT

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

FIRST SOURCE REFERRAL AGREEMENT

Resolution Number: 17-025

Project Name: Port Arthur Recycling, LLC

Project Address: 2901 Highway 365 W., Port Arthur, Texas 77640

Project Contact Person: Ahmed U. Vaid

Project Contact Person Phone Number: (281) 235-2464

This First Source Referral Agreement (the "Agreement"), for recruitment, referral, and placement of **City of Port Arthur Section 4A Economic Development Corporation** (the "PAEDC"), hereinafter, and **Port Arthur Recycling, LLC** (the "EMPLOYER"). Under this Agreement, the EMPLOYER will use PAEDC as its first source for recruitment, referral, and placement of new hires or employees for the new jobs created by their project and will hire the number of Port Arthur residents specified for new jobs created by the Project in that certain Economic Incentive Contract & Loan Agreement (the "Incentive Agreement") between PAEDC and the EMPLOYER.

I. GENERAL TERMS

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

B. PAEDC participation in this Agreement will be carried out by its Chief Executive Officer which is responsible for referral and placement of employees, designated by PAEDC.

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 and any extensions or modifications to the contract.

E. PAEDC and the EMPLOYER agree that for purposes of this Agreement, new hires and jobs created include all EMPLOYER'S job openings and vacancies in the Port Arthur Area created as a result of internal promotions, terminations, and expansions of the EMPLOYER'S workforce, as a result of this project.

II. RECRUITMENT

A. The EMPLOYER will complete the attached Employment Plan, which will indicate the number of new jobs projected, 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 (Monday - Friday) before using any other referral source, and shall include, at a minimum, the number of employees needed by job title, qualification, hiring date, rate of pay, hours of work, duration of employment, and 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 and referral.

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 the 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 (Monday - Friday) from the date of notification, the EMPLOYER will be free to directly fill remaining positions for which no qualified applicants have been referred. Notwithstanding, the EMPLOYER will still be required to hire Port Arthur residents in the percentage specified for new jobs created by the Project in that certain Economic Incentive Contract & Loan Agreement (the "Incentive Agreement") between PAEDC and the EMPLOYER.

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.

V. TRAINING

PAEDC and the EMPLOYER may agree to develop skills training and on-the-job training programs; the 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. Employment openings the contractor will fill with individuals already employed by the company.

B. Job openings to be filled by laid-off workers according to 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 possession 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 the EMPLOYER'S Agreement.
2. Notify the party taking possession that full compliance with this Agreement is required in order to avoid termination of the project.
3. EMPLOYER shall, additionally, advise PAEDC within seven (7) business/calendar days of the transfer. This advice 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 submission of the final request for closure of Agreement from the Board, the EMPLOYER shall:

1. Document in a report to the Compliance Officer compliance with the hiring requirements specified in the Incentive Agreement to be Port Arthur residents; or
2. Submit a request to the Compliance Officer for a waiver of compliance with the hiring requirement at the project to be Port Arthur residents and include the following documentations:
 - a. Material supporting a good faith effort to comply;
 - b. Referrals provided by PAEDC and other referral sources; and
 - c. Advertisement of job openings listed with PAEDC and other referral sources.

F. Willful breach of the First Source Referral Agreement by the EMPLOYER, or failure to submit the Compliance Report may be enforced by the Compliance Officer through notification and possible termination of the Incentive Agreement.

G. The EMPLOYER and PAEDC, or such other agent as PAEDC may designate, may mutually agree to modify this Agreement.

H. The project may be terminated because of the EMPLOYER'S noncompliance with the provisions of this Agreement.

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

SIGNED AND AGREED TO on the ____ day of _____, 2017.

By: _____ By: _____
Ingrid Holmes, President **Dallas Smith, Secretary**

EDC Representative **EDC Representative**

PORT ARTHUR RECYCLING, LLC

SIGNED AND AGREED TO on the _____ day of _____, 2017.

By: _____

Acknowledgment

EXHIBIT "E"

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.

Port Arthur Recycling, LLC

Date: _____

By: _____
Signature

Its: _____
Title

EXHIBIT "F"
COMPLIANCE STATEMENT

Port Arthur Recycling, LLC 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.

Port Arthur Recycling, LLC

Date: _____

By: _____
Signature

Its: _____
Title