

RESOLUTION NO. 05337

A RESOLUTION APPROVING AN ECONOMIC  
INCENTIVE CONTRACT BETWEEN RELIABLE  
POLYMER SERVICES AND THE CITY OF PORT  
ARTHUR SECTION 4A ECONOMIC DEVELOPMENT  
CORPORATION

WHEREAS, the City Council deems it in the public interest to authorize the City of Port Arthur Section 4A Economic Development Corporation to enter into an economic incentive agreement with Reliable Polymer Services.

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

Section 1. That the facts and opinions in the preamble are true and correct.

Section 2. That the City of Port Arthur Section 4A Economic Development Corporation is herein authorized to enter into an economic incentive agreement with Reliable Polymer Services and the President and Secretary of the City of Port Arthur Section 4A Economic Development Corporation are authorized to sign the agreement in substantially the same form as denoted in Exhibit "A", with the following modifications:

1. Insert details of performance as delineated in executive summary or application.

2. Convey deed once the company is ready for construction and financing is available.
3. Insert a paragraph as to allow designation of covenants and of lots within sixty (60) days with an option for the company to withdraw in fifteen (15) days thereof if they do not agree with the covenants and designation of the lots.

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

READ, ADOPTED AND APPROVED on this 15<sup>th</sup> day of November, A.D., 2005, at a Special meeting of the City of Port Arthur, Texas, by the following vote:

AYES: Mayor Ortiz; Mayor Pro Tem Thompson,  
Councilmembers Lewis, Barker, Henderson,  
Flood, Prince, and Sinegal;

NOES: None.

Oscar D. Ortiz  
OSCAR ORTIZ, MAYOR


ATTEST:

Evangeline Green  
EVANGELINE GREEN, CITY SECRETARY

APPROVED AS TO FORM:

  
\_\_\_\_\_  
CITY ATTORNEY

APPROVED FOR ADMINISTRATION:

  
\_\_\_\_\_  
STEVE FITZGIBBONS, CITY MANAGER

# **EXHIBIT “A”**

# D R A F T

## ECONOMIC INCENTIVE CONTRACT & LOAN AGREEMENT BETWEEN THE CITY OF PORT ARTHUR SECTION 4A ECONOMIC DEVELOPMENT CORPORATION & RELIABLE POLYMER SERVICES

### Executive Summary

Reliable Polymer Services ("Reliable") is a joint venture between Industrial Transportation, Inc. ("ITI"), a Beaumont company, and Goldsmith & Eggleton, Inc. ("G&E"), a Wadsworth, Ohio company. ITI collects scrap from synthetic rubber producers and brokers that waste material internationally. ITI's partner, G&E, processes scrap synthetic rubber from many sources and converts the waste stream into a product that is suitable as a raw material. Many times, G&E's product ends up in the same Company that produced the waste synthetic rubber in the first place – recycle.

Currently, ITI sells to G&E and G&E processes the material in Ohio. G&E can sell substantially more product than it can make at its Ohio facility. If G&E expands its capacity close to the source of the waste material then total processing costs could be significantly reduced, particularly in the midst of high transportation (fuel) costs.

Port Arthur is in close proximity to seventeen (17) synthetic rubber producers and has land available in the new Business Park. The City of Port Arthur Section 4A Economic Development Corporation ("PAEDC") is granting Reliable ten (10) acres of land in the new Business Park, with an estimated fair market value of \$360,000, plus a \$1,000,000 grant to cover most of Reliable's building costs. Reliable plans to build a 75,000-square-foot facility and startup their waste processing operations by June 2006.

In return for the substantial PAEDC grant, Reliable promises to distribute \$5,175,000 in payroll over the five-year life of the contract, as measured by IRS forms W-2 and W-3. Reliable will fulfill this total payroll promise by ramping up to 51 full-time, permanent employees, over a 2½-year period. The jobs will be high quality jobs, with competitive wage and benefits. Seven (7) employees will hold supervisory positions.

If Reliable breaches this agreement then the PAEDC grant, minus any credits earned, will automatically convert to a loan (liquidated damages). The loan will have a three-year term, starting on the date of Reliable's breach, and an interest rate of ten percent (10%). At the same time PAEDC conveys the land to Reliable, Reliable will execute a deed of trust to secure this loan. PAEDC will foreclose on the property if Reliable defaults on the loan, thereby, recovering part of the investment.

Reliable may earn credits to reduce the duration of this contract or to reduce liquidated damages in the event of a breach. Starting on the effective date of the contract, Reliable will receive a \$1.00 credit for each \$4.00 of payroll.

To avoid surprises, Reliable agrees to send PAEDC brief status reports, every three (3) months for the first year and every six months thereafter, until issuance of a close out report. Reliable will forfeit its credits for any reporting period for which it did not issue a report in a timely manner.

**D R A F T**

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

**AND**

**RELIABLE POLYMER SERVICES**

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ECONOMIC INCENTIVE CONTRACT & LOAN AGREEMENT

BETWEEN

THE CITY OF PORT ARTHUR SECTION 4A  
ECONOMIC DEVELOPMENT CORPORATION  
AND

RELIABLE POLYMER SERVICES

**CONTRACT DATES**

**CONTRACT START DATE**

1. This Economic Incentive Contract and Loan Agreement ("Agreement") is entered into with an effective date of \_\_\_\_\_, 2005, but in no case later than December 21, 2005, by and between the City of Port Arthur Section 4A Economic Development Corporation ("PAEDC") and Reliable Polymer Services ("Reliable").

**CONTRACT END DATE**

2. This contract expires the earlier of January 15, 2011, or 30 days after Reliable either performs fully or breaches the contract, subject to earlier termination or extension, voluntary or involuntary, as provided herein. In the event of breach, although this contract expires, the promissory note in *Exhibit "A"* becomes effective.

**PARTIES**

3. City of Port Arthur Section 4A Economic Development Corporation ("PAEDC"), located at 4173-39<sup>th</sup> Street, Port Arthur, Texas, 77642, is a corporation. It is duly authorized to do business in the State of Texas under Section 4A, Article 5190.6 V.T.C.A. (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 contract. So authorized and as provided by the PAEDC bylaws, the President and Secretary of the PAEDC Board have the authority to execute this contract.

4. Reliable Polymer Services ("Reliable") is a joint venture of Industrial Transportation, Inc. ("ITI"), a (add state) corporation headquartered in Beaumont, Texas, who owns forty-nine percent (49%), and Goldsmith & Eggleton, Inc. ("G&E"), a (add state) corporation headquartered in Wadsworth, Ohio, who owns (51%). John May is duly authorized to enter into and execute this contract for ITI. Michael J. Fagan is duly authorized to enter into and execute this contract for G&E. The registered agents in Texas for ITI and G&E are \_\_\_\_\_ at \_\_\_\_\_ and \_\_\_\_\_

\_\_\_\_\_ at \_\_\_\_\_, respectively.

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## PROMISED PERFORMANCE

5. The parties agree to perform as follows.

### (a) PERFORMANCE BY PAEDC

- (1) PAEDC shall convey to Reliable ten (10) acres of land in the new PAEDC Industrial Business Park (the "Park"), with an estimated fair market value of THREE HUNDRED SIXTY THOUSAND AND NO/100 DOLLARS (\$360,000).

Within sixty (60) days of contract execution, PAEDC will designate the exact location of the acreage granted, but in every case the location will be adjacent to an improved road. Reliable will have the option of terminating this contract within 15 days of the site designation.

PAEDC has installed underground utility mains into the Park, but PAEDC is not responsible for the cost of installing underground facility service lines from the mains. Additionally, PAEDC will not pay utility connection costs.

- (2) PAEDC will pay up to ONE MILLION AND NO/100 DOLLARS (\$1,000,000) of the cost for Reliable's 75,000 square-foot rubber reprocessing and service building. PAEDC will use its best efforts to pay the invoices within forty-five (45) days of receipt. Alternatively, Reliable may pay an invoice and submit the receipt to PAEDC for reimbursement.

These are PAEDC's only obligations.

### (b) PERFORMANCE BY RELIABLE

- (1) Reliable will select an architect and general contractor who will build an attractive rubber reprocessing and service facility that both complies with the Park's covenants and restrictions and has been pre-approved by the EDC Board. The Park's covenants and restrictions are contained in *Exhibit "B"* and incorporated by reference into this contract in their entirety.
- (2) Reliable will hire at least twenty-three (23) employees by June 1, 2006; employ thirty-seven (37) or more by November 1, 2006; employ fifty-one (51) or more by November 1, 2008; and will sustain employment of fifty-one (51) or more for the remaining life of the contract. Only jobs that are full-time, permanent positions offering full benefits will count toward this promised performance.
- (3) Over the life of the contract, Reliable shall distribute at least FIVE MILLION ONE HUNDRED SEVENTY FIVE AND NO/100 DOLLARS (\$5,175,000) to employees at its Park facility, as measured by Internal Revenue Service (IRS) forms W-2 and W-3.

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Reliable may use incentive credits to modify this performance obligation, as discussed in Section 5(c).

- (4) Reliable will use its best efforts to hire Port Arthur, Texas, residents to the maximum extent feasible and shall track and report actual performance as a percent of total employees.
- (5) Contemporaneously with PAEDC's land grant to Reliable, Reliable will execute a deed of trust on both the land and the land improvements. See Exhibit "C."
- (6) On demand by PAEDC and in response to Reliable's failure to achieve a performance milestone, Reliable shall provide PAEDC with assurances that it has both the intention and the capabilities to perform fully its contractual obligations.
- (7) Reliable, as one of the first residents of the Park shall use its best efforts to be the model of cleanliness, maintenance, and beauty.

### **(c) RELIABLE CREDITS – SUBSTITUTE PERFORMANCE**

Reliable may earn credits according to the following formulas, to either reduce the duration of this contract or reduce the amount of liquidated contract damages in the event Reliable breaches the contract.

- (1) Starting on the effective date of the contract, Reliable will receive a \$1.00 credit for each \$4.00 of payroll reportable to the IRS.
- (2) Total credit cannot exceed \$1,360,000.
- (3) Reliable will forfeit any credits it earned during a period for which a report is scheduled but Reliable fails to issue it.

### **RELIABLE'S 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 Reliable and/or demand reasonable assurances<sup>1</sup> from Reliable that it can and will fully perform its contractual obligations. Failure to provide demanded assurances is a breach of contract.

7. Reliable's performance milestones are contained in the table on the following page.

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<sup>1</sup> Examples of reasonable assurances are copies of pending contracts and customer commitment letters.

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## RELIABLE'S PERFORMANCE MILESTONE SCHEDULE

	<u>Deadline</u>	<u>Milestone</u>
(a)	Feb 5, 2006	Issue a <u>status report</u> <sup>2</sup> to PAEDC's Chief Executive Officer ("CEO") for the period from the effective date of this contract to January 31, 2006.
(b)	Feb. 8, 2006	Review architectural plans with the EDC Board for approval
(c)	Apr 5, 2006	<u>Status report</u> for January 1, 2006 to March 31, 2006.
(d)	May 30, 2006	Complete construction of 75,000 square-foot building
(e)	June 30, 2006	Achieve performance of 23 full-time, permanent employees; Annualized payroll of \$600,000.
(f)	July 5, 2006	<u>Status report</u> for April 1, 2006 to June 30, 2006.
(g)	Oct. 5, 2006	<u>Status report</u> for July 1, 2006 to September 30, 2006.
(h)	Nov. 30, 2006	Achieve performance of 37 full-time, permanent employees; Annualized payroll of \$1,000,000.
(i)	Feb 5, 2007	<u>Status report</u> <sup>3</sup> for January 1, 2006 to December 31, 2006.
(j)	July 5, 2007	<u>Status report</u> for January 1, 2007 to June 30, 2007
(k)	Feb. 5, 2008	<u>Status report</u> for Jan. 1, 2007 to December 31, 2007.
(l)	July 5, 2008	<u>Status report</u> for Jan. 1, 2008 to June 30, 2008.
(m)	Nov. 30, 2008	Achieve performance of 51 full-time, permanent employees; Annualized payroll of \$1,350,000.
(n)	Feb. 5, 2009	<u>Status report</u> for Jan. 1, 2008 to December 31, 2008.
(o)	July 5, 2009	<u>Status report</u> for Jan. 1, 2009 to June 30, 2009.
(p)	Feb. 5, 2010	<u>Status report</u> for Jan. 1, 2009 to December 31, 2009.
(q)	July 5, 2010	<u>Status report</u> for Jan. 1, 2010 to June 30, 2010.
(r)	Feb. 5, 2011 <sup>4</sup>	<u>Close out report</u> for presentation to the PAEDC Board at its February 2011 meeting.

<sup>2</sup> Status reports shall include copies of invoices and check payments for machinery and equipment purchased with PAEDC funds.

<sup>3</sup> February 5<sup>th</sup> status reports shall also include identity of current General Manager and members who own more than 5% of the shares.

<sup>4</sup> Or thirty (30) days after Reliable fully performs. The EDC Board will determine if performance is complete.

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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 Reliable in writing within a reasonable time after such fact is reasonably determined by the PAEDC Board of Directors. The PAEDC, at its sole option, may then terminate this Agreement without further liability. In the event of such termination by the PAEDC, the PAEDC may, at its sole option, immediately cease all further funding, if any, required by this Agreement and the PAEDC shall not be liable to Reliable or to any third parties for failure to make payments to Reliable under the terms and conditions of this Agreement.

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

10. Reliable 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 Reliable, which application is incorporated herein for all purposes.

11. Funds granted by the PAEDC hereunder shall not be utilized by Reliable for repayment of costs, expenditures or expenses incurred prior to the date of this Agreement.

### **LIQUIDATED DAMAGES FOR BREACH OF CONTRACT BY RELIABLE**

12. In the event Reliable fails to perform its obligations under this contract, the PAEDC grant, minus any credits earned, will automatically convert to a loan (liquidated damages), effective on the day of breach, as agreed by Reliable in the executed Commercial Promissory Note contained in *Exhibit "A."* PAEDC, at its sole option, may terminate its remaining funding obligations, if any, detailed in Section 4 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.

13. 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 Contract 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.

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## RECORDS / INSPECTION / PAEDC AUDIT

14. Reliable must establish and maintain sufficient records, as reasonably determined by the PAEDC, to account for the expenditure and utilization of funds received by Reliable from PAEDC under the terms and conditions of this Agreement.

15. Reliable 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 Reliable's application. Reliable shall provide reports of utilization of said funds, as reasonably requested by the PAEDC, and upon final termination of this contract.

16. Reliable 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 Reliable pertaining to this Agreement. Such rights to access shall continue as long as the records are maintained by Reliable. Reliable agrees to maintain such records in an accessible location. As to job creation performance, interim status reports shall include documentation substantiating the accuracy of such reports, including, for example, 941 payment reports, Texas Workforce Commission reports, or other such reports confirming total jobs, payroll and other relevant information. Driver's license information is appropriate for interim reporting of Port Arthur residents hired. Year end reports shall be substantiated with IRS Forms W-2 and W-3. The reporting objective is to include documentation necessary to for PAEDC to verify said report without further outside inquiry.

17. All records pertinent to this Agreement shall be retained by Reliable at least three years 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 Reliable detailing Reliable's 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 machinery or equipment purchased with PAEDC funds.

18. Reliable shall provide PAEDC with all reports necessary for PAEDC compliance with Article 5190.6 V.T.C.A.

19. It is expressly understood and agreed by the parties hereto that if Reliable fails to submit to PAEDC in a timely and satisfactory manner any report required by this Contract, PAEDC may, at its sole discretion, withhold further payments to Reliable and/or demand assurances that Reliable can and will fully perform its contractual obligations. If Reliable fails to provide adequate assurances then Reliable is in breach and any monies advanced by PAEDC automatically become a loan. If PAEDC withholds such payments, it shall notify Reliable in writing of its decision and the reasons therefore. Payments withheld

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pursuant to this paragraph may be held by PAEDC until such time as the delinquent obligations for which funds are withheld are fulfilled by Reliable.

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

### **HOLD HARMLESS**

21. Reliable 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 grant funds provided by this Agreement.

### **SUBCONTRACTS**

22. Reliable may not subcontract for performance credits described in this Contract without obtaining PAEDC's written approval, which may be withheld for any reason. Reliable shall only subcontract for performance credits described in this Contract after Reliable has submitted Subcontractor Eligibility Request, as specified by PAEDC, for each proposed subcontract, and Reliable has obtained PAEDC's prior written approval, based on the information submitted, of Reliable's intent to enter into such proposed subcontract. Reliable, in subcontracting for any performances described in this contract, expressly understands that in entering into such subcontracts, PAEDC is in no way liable to Reliable's subcontractor(s).

23. In no event shall PAEDC's prior written approval of a subcontractor's eligibility, be construed as relieving Reliable of the responsibility for ensuring that the performances rendered under all subcontracts are rendered so as to comply with all terms of this Contract, as if such performances rendered were rendered by Reliable. PAEDC's approval does not constitute adoption, ratification, or acceptance of Reliable's or subcontractor's performance hereunder. PAEDC maintains the right to insist upon Reliable's full compliance with the terms of this Contract, 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 Contract.

24. Reliable, 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 Contract.

### **CONFLICT OF INTEREST / DISCLOSURE OBLIGATION**

25. 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

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related to this contract (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. Reliable shall ensure compliance with applicable provisions under Article 5190.6 V.T.C.A. and Chapter 171 Local Government Code V.T.C.A.

26. **Disclosure:** In conjunction with execution of this Agreement, Reliable has fully disclosed to PAEDC all known and potential owners of interests in Reliable (whether stockholder, manager, member or otherwise). In the event of any change in ownership or control of Reliable of five percent (5 %) or greater, Reliable shall notify PAEDC in writing. Further, Reliable 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 Contract, 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 Reliable. 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**

27. Reliable 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 Contract. 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 Contract be given to Port Arthur residents; and
- (b) To the greatest extent feasible, contracts 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.
- (c) If Reliable advertises for employment then it will advertise in the Port Arthur News.

### **LEGAL AUTHORITY**

28. Reliable assures and guarantees that Reliable possesses legal and/or corporate authority to enter into this Contract, receive funds authorized by this Contract, and to perform the services Reliable has obligated to perform hereunder and has provided, and will in the future provide, as requested by the PAEDC, such corporate resolutions necessary to evidence this authority.

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

### **NOTICE OF LEGAL OR REGULATORY CLAIMS AGAINST RELIABLE**

30. Reliable shall give PAEDC immediate notice in writing of 1) any legal or regulatory action, including any proceeding before an administrative agency filed against Reliable, directly or indirectly; and 2) any material claim against Reliable, which may impact continued operations. For purposes herein, "material" claims shall mean claims in excess of \$15,000. Except as otherwise directed by PAEDC, Reliable shall furnish immediately to PAEDC copies of all pertinent documentation of any kind received by Reliable with respect to such action or claim.

### **CHANGES AND AMENDMENTS**

31. Except as specifically provided otherwise in this Contract, any alterations, additions, or deletions to the terms of this Contract shall be by amendment in writing and executed by all parties to this Contract.

32. It is understood and agreed by the parties hereto that performances under this Contract must be rendered in accordance with Article 5190.6 V.T.C.A. (the Development Corporation act of 1979), the regulations promulgated under Article 5190.6 V.T.C.A., the assurances and certifications made to PAEDC by Reliable, 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 Contract by all parties, it is agreed by the parties hereto that the performances under this Contract 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 Contract issue policy directives which serve to establish, interpret, or clarify performance requirements under this Contract. 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 Contract and shall be binding upon Reliable, as if written herein.

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

### **DEFAULT / TERMINATION**

34. In the event of default of any of the obligations of Reliable detailed herein or in the event of breach of any of the representations of or warranties of Reliable either detailed herein or in Reliable's application to the PAEDC, the PAEDC may, at its sole

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option, terminate this Agreement, in whole or in part. In the event of such termination, in addition to (i) any other remedies available to the PAEDC as provided by the laws of the State of Texas or (ii) any other remedies available to the PAEDC as provided herein, 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. If Reliable defaults on the note, then the PAEDC may exercise its default remedies provided under collateral documentation executed in conjunction with said Note and this Agreement
- (b) Exercise any remedies provided herein and/or within the Loan/Collateral Documents;
- (c) Withhold, whether temporarily or otherwise, disbursement of grant proceeds pending correction of the deficiency(s) by Reliable;
- (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 Reliable's application to the PAEDC;
- (e) Withhold and/or disallow further PAEDC incentives to Reliable;
- (f) Take any and all other remedies that may be legally available to the PAEDC, as authorized by the terms and conditions of this Agreement, and as may be authorized by the laws of the State of Texas;

35. 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.

### **RELIABLE AUDITS**

36. If directed by PAEDC Board, Reliable shall arrange for the performance of a compliance audit by a certified public accountant of funds received and performances rendered under this Contract, subject to the following conditions and limitations:

- (a) Reliable 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 contract period in which Reliable 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 Reliable. Said audit must be received and accepted by the Director of PAEDC and/or the PAEDC Board.

## D R A F T

- (b) At the option of Reliable, each audit required by this section may cover either Reliable's entire operations or each department, agency, or establishment of Reliable which received, expended, or otherwise administered PAEDC funds;
  - (c) Unless otherwise specifically authorized by PAEDC in writing, Reliable 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 period of this Contract.
  - (d) As a part of its audit, Reliable shall verify that the expenditures were exclusively for the 75,000-square-foot building on its Park land. Any discrepancies in excess of \$1,000 shall be specifically documented in writing.
37. Reliable 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 Contract and it may be required to submit formal audits at Reliable's expense.
38. Reliable shall take all necessary actions to facilitate the performance of any and all such audits, whether annual, mandatory or otherwise requested under this Agreement.
39. Subject to financial privacy requirements of Reliable and properly designated requests for non-disclosure due to proprietary reasons, all approved audit reports may be made available for public inspection.
40. PAEDC shall not release any funds for costs incurred by Reliable under this Contract until PAEDC has received certification from Reliable that its fiscal control and fund accounting procedures are adequate to assure proper disbursement of and accounting for funds provided under this Contract. PAEDC shall specify the content and form of such certification.

### ENVIRONMENTAL CLEARANCE REQUIREMENTS

41. Reliable understands and agrees that by execution of this Contract, Reliable shall be responsible for providing to PAEDC all information, concerning this PAEDC funded project, 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. Reliable further understands and agrees that Reliable shall make all reasonable efforts to assist PAEDC in handling inquiries and complaints from persons and agencies seeking redress in relation to environmental reviews covered by approved certifications.

# D R A F T

## ORAL AND WRITTEN CONTRACTS / PRIOR AGREEMENTS

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

43. The documents listed below are hereby made a part of this Contract, and constitute promised performances by Reliable in accordance with this Contract:

*Exhibit "A"* Commercial Promissory Note  
*Exhibit "B"* Industrial Park Covenants and Restrictions  
*Exhibit "C"* Deed of Trust  
*Exhibit "D"* Certification Regarding Lobbying

Reliable Application to PAEDC for funding, by reference

## VENUE

44. For purposes of litigation that may accrue under this Contract, 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  
444 4th Street  
Port Arthur, Texas 77640  
ATTN: Deborah Echols, Executive Director

Reliable Polymer Services

\_\_\_\_\_  
\_\_\_\_\_  
ATTN: \_\_\_\_\_

## CAPTIONS

45. This contract 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

46. Reliable 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 related to the activities and performances of Reliable under this Contract. Upon request by PAEDC and by the City, Reliable shall furnish satisfactory proof of its compliance herewith.

**D R A F T**

**CONDITIONS PRECEDENT**

47. This contract has no legal consequences unless and until both the PAEDC Board and the City of Port Arthur City Council approve the contract in its final form.

APPROVED AS TO FORM:

\_\_\_\_\_  
Guy Goodson, General Counsel for PAEDC

**CONTRACT EXECUTION**

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

**SIGNED AND AGREED TO** on the \_\_\_\_ day of \_\_\_\_\_, 200\_\_.

By: \_\_\_\_\_  
President Eli Roberts

By: \_\_\_\_\_  
Secretary Linda Spears

\_\_\_\_\_  
Witness

\_\_\_\_\_  
Witness

**RELIABLE POLYMER SERVICES<sup>5</sup>**

**SIGNED AND AGREED TO** on the \_\_\_\_ day of \_\_\_\_\_, 200\_\_.

**INDUSTRIAL TRANSPORTATION, INC.**

**GOLDSMITH & EGGLETON, INC.**

By: \_\_\_\_\_  
John May

By: \_\_\_\_\_  
Michael J. Fagan

\_\_\_\_\_  
Position

\_\_\_\_\_  
Position

\_\_\_\_\_  
Witness

\_\_\_\_\_  
Witness

<sup>5</sup> ITI and G&E are jointly and severally liable for performance under this contract.

**D R A F T**

## EXHIBIT "A"

### COMMERCIAL PROMISSORY NOTE

Port Arthur, Texas

This COMMERCIAL PROMISSORY NOTE becomes effective on the date when Reliable Polymer Services, hereinafter called "Maker," a joint venture of Industrial Transportation, Inc. and Goldsmith & Eggleton, Inc., 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 \_\_\_\_\_, 2005.

**Effective Date:** the \_\_\_\_\_ day of \_\_\_\_\_, 200 \_\_\_\_ ("date of breach")

**Principal Amount:** \$ \_\_\_\_\_, which is \$1,360,000 minus the incentive credits earned by Maker according to that certain Economic Incentive Contract and Loan Agreement between the Lender and Maker (described hereinbefore).

**Term of the Loan:** Three years from effective date.

**Payment Schedule:** Monthly until principal is paid fully.

FOR VALUE RECEIVED, the undersigned "Maker", whether one or more, and if more than one, then jointly and severally, promise(s) 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 principle 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 less) as may hereafter be in effect, payable on demand after maturity.

This note is due and payable as follows: On demand with accrued interest from the effective date.

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; 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; or any event occurs or condition exists which causes Lender to in good faith deem itself insecure or in good faith believe the prospect of payment or performance by Maker or any other liable party under this note, under any instrument or agreement executed in connection with or as security for this note, or under any other indebtedness of Maker or any other liable party to Lender is impaired; 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 and each other liable party are and shall be directly and primarily, jointly and severally, 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 here-for 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 other liable party does further agree that it will not be necessary for the holder hereof, in order to enforce payment of this note by such other liable party, to first institute suit or exhaust its remedies against Maker or any other liable party or to enforce its rights against any security therefor.

**SIGNED AND AGREED TO** on the \_\_\_\_ day of \_\_\_\_\_, 200\_\_.

**INDUSTRIAL TRANSPORTATION, INC.**

By: \_\_\_\_\_  
John May

\_\_\_\_\_  
Position

**GOLDSMITH & EGGLETON, INC.**

By: \_\_\_\_\_  
Michael J. Fagan

\_\_\_\_\_  
Position

**ACKNOWLEDGEMENT**

THE STATE OF TEXAS  
COUNTY OF JEFFERSON

\*  
\*

**BEFORE ME, THE UNDERSIGNED** Notary Public, on this day personally appeared \_\_\_\_\_, a representative of Industrial Transportation, Inc., 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 the Industrial Transportation, Inc., for the purposes and consideration therein expressed, and the Capacities therein stated.

**GIVEN UNDER MY HAND AND SEAL OF OFFICE**, this the \_\_\_\_ day of \_\_\_\_\_, 200\_\_.

\_\_\_\_\_  
NOTARY PUBLIC, STATE OF TEXAS

THE STATE OF \_\_\_\_\_  
COUNTY OF \_\_\_\_\_

\*  
\*

**BEFORE ME, THE UNDERSIGNED** Notary Public, on this day personally appeared \_\_\_\_\_, a representative of GoldSmith & Eggleton, Inc., 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 the GoldSmith & Eggleton, Inc., for the purposes and consideration therein expressed, and the Capacities therein stated.

**GIVEN UNDER MY HAND AND SEAL OF OFFICE**, this the \_\_\_\_ day of \_\_\_\_\_, 200\_\_.

\_\_\_\_\_  
NOTARY PUBLIC, STATE OF \_\_\_\_\_

**MAKERS' ADDRESS FOR RECEIPT OF NOTICE:**

**INDUSTRIAL TRANSPORTATION, INC.**

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**GOLDSMITH & EGGLETON, INC.**

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