

RESOLUTION NO. 07-468

A RESOLUTION AS IT PERTAINS TO A SECOND AMENDMENT TO THE ECONOMIC INCENTIVE CONTRACT AND LOAN AGREEMENT BETWEEN THE CITY OF PORT ARTHUR SECTION 4A ECONOMIC DEVELOPMENT CORPORATION AND RELIABLE POLYMER SERVICES, L. P. AND AS IT PERTAINS TO A SUBORDINATION AGREEMENT

WHEREAS, the City of Port Arthur Section 4A Economic Development Corporation and Reliable Polymer Services, L. P. entered into an Economic Incentive Contract and Loan Agreement as authorized by Resolution No. 05-379 and as amended by Resolution No. 06-041; and

WHEREAS, the Board of Directors of the City of Port Arthur Section 4A Economic Development Corporation approved the Second Amendment to the Economic Incentive Contract and a Subordination Agreement, in substantially the same forms as attached hereto as Exhibits "A" and "B"; and

WHEREAS, the City Council deems it in the best interests of the public to approve the Second Amendment to the Economic Incentive Contract and Loan Agreement in substantially the same form as attached hereto as Exhibit "A" and the Subordination Agreement, in substantially the same form as attached hereto as Exhibit "B".

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 President and Secretary of the City of Port Arthur Section 4A Economic Development Corporation are herein authorized to execute the Second Amendment to the Economic Incentive Contract and Loan Agreement in substantially the same form as denoted in Exhibit "A", with the paragraph as to the management/supervisory credit of \$50,000 being deleted, and to execute the Subordination Agreement, as delineated in substantially the same form as denoted in Exhibit "B".

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 9th day of

October, A.D., 2007, at a Meeting of the City Council of the City of Port Arthur, Texas, by the following vote: AYES:

Mayor Prince,
Councilmembers Mayor Pro Tem Sinegal,
Chatman, Jones, Henderson, and,
Williamson.

NOES: None.

Deloris Prince
MAYOR

ATTEST:

Evangelina Green
CITY SECRETARY

APPROVED AS TO FORM:

Mark Scholow

CITY ATTORNEY

EXHIBIT "A"

**SECOND AMENDMENT
TO THE
ECONOMIC INCENTIVE CONTRACT AND LOAN AGREEMENT
BETWEEN THE
CITY OF PORT ARTHUR SECTION 4A ECONOMIC DEVELOPMENT
CORPORATION AND RELIABLE POLYMER SERVICES, L. P.**

WHEREAS, the City of Port Arthur Section 4A Economic Development Corporation and Reliable Polymer Services, L. P. entered into an Economic Incentive Contract and Loan Agreement on or about January 19, 2006, pursuant to Resolution No. 05-379; and

WHEREAS, the City of Port Arthur Section 4A Economic Development Corporation and Reliable Polymer Services, L. P. entered into a First Amendment on or about April 7, 2006, per Resolution No. 06-041; and

WHEREAS, Reliable Polymer Services, L. P. has indicated that they have expended in excess of \$6 million dollars to construct the building and to purchase the equipment for their facility at the Spur 93 Business Park; and

WHEREAS, the parties desire to enter into this Amendment No. 2 as to adjust the milestone schedules, to also provide for credits in regards to the placement of Port Arthur residents in management and supervisory positions and to provide for an addition to the facility of at least 50,000 additional square feet and, therefore,

The parties agree as follows:

1. The milestones in Paragraph 6 of the Agreement are herein amended as delineated in Exhibit "A", in due consideration of Reliable Polymer Services, L. P. building an addition to their facility of at least 50,000 square feet, with at least a \$1,000,000 capital expenditure by June 1, 2008. Reliable Polymers will also provide status reports to the PAEDC Chief Executive Officer or his designee on the following dates:

Date that Reliable Polymers shall submit a written status report	Period covered
February 5, 2008	1/1/2007 to 12/31/2007
July 5, 2008	1/1/2008 to 6/30/2008
February 5, 2009	1/1/2008 to 12/31/2008
July 5, 2009	1/1/2009 to 6/30/2009
February 5, 2010	1/1/2009 to 12/31/2009
July 5, 2010	1/1/2010 to 6/30/2010
February 5, 2011	Close out report for presentation to the PAEDC Board at its February 2011 meeting and shall include period of 1/1/2010 to 12/31/2010

2. Section 4(b)(2) of the Agreement is herein amended to read as follows:

"Reliable will hire at least nineteen (19) or more employees by October 2007; employ thirty-six (36) or more employees by January 2008 or employ fifty-one(51) or more by January 2009; and will sustain employment of fifty-one (51) or more for the remaining Term of the Agreement. Reliable will also start a second full shift in January 2008 and a third full shift in January 2009. Only jobs that are full-time, permanent positions offering full benefits will count toward this promised performance."

3. Reliable Polymer Service, L. P. will be allowing an affiliated company, Industrial Transportation, Inc., to occupy the planned addition at the EDC Spur 93 Business Park. Once the addition is completed, Reliable Polymer Service, L.P. will receive credit for Port Arthur residents that are employed by Industrial Transportation, Inc. at the Spur 93 Business Park at \$1 credit for each \$4 for aggregate compensation and for the numbers required to be hired under Paragraph 4(b) (2) of this Agreement.

4. Reliable Polymer Service, L.P. will also obtain an additional credit for each Port Arthur resident that is placed in a supervisory or management position at the Spur 93 site whether he/she is hired directly by Reliable Polymers or Industrial Transportation, Inc. on the condition that, (a) the person is paid more than \$32,000 per year in base salary, and (b) the person stays in the supervisory or management position

for at least one year. Said credit shall be \$10,000 per employee, not to exceed a total of \$50,000 in credits. Reliable will promptly notify the PAEDC Chief Executive Officer when Port Arthur residents are retained in supervisory or management positions and said information thereon shall be included in the written status reports.

SIGNED AND AGREED TO on this the __ day of _____,
2007.

RELIABLE POLYMER SERVICES, L. P.

BY: _____

SIGNED AND AGREED TO on this the __ day of _____,
2007.

CITY OF PORT ARTHUR SECTION 4A
ECONOMIC DEVELOPMENT CORPORATION

BY: _____
PRESIDENT

BY: _____
SECRETARY

EXHIBIT "A"

**TO THE SECOND AMENDMENT
TO THE
ECONOMIC INCENTIVE CONTRACT
AND
LOAN AGREEMENT**

PAEDC Grant
Plan Staffing
Payroll Commitment \$5,175,000

	Sep-07 #	Wages Jan-07 Dec.'07	Jan-08 #	Wages Jan-08 Dec-08	Jan-09 #	Wages Jan-09 Dec-09	Jan-10 #	Wages Jan-10 Dec-10	Jan-11 #	Wages Jan-11 Dec-11
Staffing										
Reliable Polymer Services										
Weekly-Hourly	15	\$358,000	30	\$780,000	45	\$1,176,000	45	\$1,176,000	45	\$1,176,000
Bi-Weekly-Plt.Managemt/Supv.	4	\$159,000	6	\$240,000	6	\$240,000	6	\$240,000	6	\$240,000
Total New Positions-RPS	19	\$517,000	36	\$1,020,000	51	\$1,416,000	51	\$1,416,000	51	\$1,416,000
Industrial Transportation Inc.										
Weekly-Hourly			12	\$198,000	12	\$264,000	12	\$264,000	12	\$264,000
Bi-Weekly-Plt.Managemt/Supv.			2	\$75,000	2	\$100,000	2	\$100,000	2	\$100,000
Total New Positions-ITI			14	\$273,000	14	\$364,000	14	\$364,000	14	\$364,000
Total New Positions-Both Operations	19	\$517,000	50	\$1,293,000	65	\$1,780,000	65	\$1,780,000	65	\$1,780,000
Total Accum. New Wages-Both Operations		\$517,000		\$1,810,000		\$3,590,000		\$5,370,000		\$7,150,000

EXHIBIT "B"

SUBORDINATION AND PRIORITY AGREEMENT

Date: October__, 2007

WHEREAS, the CITY OF PORT ARTHUR SECTION 4A ECONOMIC DEVELOPMENT CORPORATION and Reliable Polymer Services, L.P. have entered into an incentive agreement at the Spur 93 Business Park that was approved by Resolution No. 05-337 and later amended by Resolution No. 06-041, and by Resolution No. 07-__, as to construct a building, addition, and improvements in an approximately 10 acre site, on South Business Drive as described in Attachment "A"; and

WHEREAS, said agreement as amended provided a second deed of trust subject to the senior lien of Wachovia Bank as the lending bank, said senior lien not to exceed \$6,000,000 of indebtedness; and

WHEREAS, the CITY OF PORT ARTHUR SECTION 4A ECONOMIC DEVELOPMENT CORPORATION has deeded this property to Reliable Polymers, L.P. with covenants and conditions as to maintenance of said property and compliance with the Deed Restrictions; and

WHEREAS, a deed of trust was filed by the CITY OF PORT ARTHUR SECTION 4A ECONOMIC DEVELOPMENT CORPORATION on said 10 acre site on South Business Drive, recorded in Clerk's File # 2006014674; and

WHEREAS, Wachovia Bank has lent to Reliable Polymer Services, L.P. building loans of \$2,765,000 and \$750,000 totaling \$3,515,000 as to construct a building and improvements on the 10 acre tract and obtain a first lien security interest on the 10 acre site; and

WHEREAS, Wachovia Bank has filed Deeds of Trust and security documents as delineated herein:

Deed of Trust and Assignment of Rents dated July 25, 2006 as to secure the loan for \$2,765,000 as recorded in Clerk's File No. 2006028831, and

Subordination Agreement dated July 25, 2006 as to also secure the loan for \$2,765,000 as recorded in Clerk's File No. 2006031034, and

Deed of Trust and Assignment of Rents dated February 8, 2007 as to secure an additional loan of \$750,000 as recorded in Clerk's File No. 2007007223, and

WHEREAS, Wachovia Bank has also lent Reliable Polymer Services, L.P., an equipment loan of \$2,000,000; and

WHEREAS, Wachovia Bank plans to lend to Reliable Polymers an additional \$1,500,000 to \$2,000,000 as to build an expansion to the existing building of 50,000 square feet on the 10 acre tract

Senior Lender: Wachovia Bank, National Association
Address: 4000 Twin City Hwy.
Groves, Texas 77619

Junior Lender: City of Port Arthur Section 4A Economic Development Corporation
Address: 4173 39th Street
Port Arthur, Texas 77642

Borrower: Reliable Polymer Services L.P.
Address: 950 South Business Park Drive
Port Arthur, Texas 77640

Property: Tract I: That certain 10.00 acre tract out of Block 1 of the Port Arthur Economic Development Corporation Business Park, a plat recorded in Clerk's File #2005044721 of the Official Real Property Records of Jefferson County, Texas; said 10.00 acre tract being more particularly described by metes and bounds on Attachment "A" attached hereto and incorporated herein for all intents and purposes.

(i) All those certain tracts of land in the City of Port Arthur, County of Jefferson, State of Texas described above (the "Land"); (ii) all buildings and improvements now or hereafter erected on the Land; (iii) all fixtures, machinery, equipment and other articles of real, personal or mixed property attached to, situated or installed in or upon, or used in the operation or maintenance of, the Land or any buildings or improvements situated thereon, whether or not such real, personal or mixed property is or shall be affixed to the Land; (iv) all building materials, building machinery and building equipment delivered on site to the Land during the course of, or in connection with, any construction, repair or renovation of the buildings and improvements situated or to be situated thereon; (v) all leases, licenses or occupancy agreements of all or any part of the Land and all extensions, renewals, and modifications thereof, and any options, rights of first refusal or guarantees relating thereto; all rents, income, revenues, security deposits, issues, profits, awards and payments of any kind payable under the leases or otherwise arising from the Land; (vi) all contract rights, accounts receivable and general intangibles relating to the Land or the use, occupancy, maintenance, construction, repair or operation thereof; all management agreements, franchise agreements, utility agreements and deposits; all maps, plans, surveys and specifications; all warranties and

guaranties; all permits, licenses and approvals; and all insurance policies; (vii) all estates, rights, tenements, hereditaments, privileges, easements, and appurtenances of any kind benefiting the Land; all means of access to and from the Land, whether public or private; and all water and mineral rights; and (viii) all "Proceeds" of any of the above-described property, which term shall have the meaning given to it in the Uniform Commercial Code of the jurisdiction where this Deed of Trust is recorded (the "UCC"), whether cash or non-cash, and including insurance proceeds and condemnation awards; and all replacements, substitutions and accessions thereof.

Senior Lien Documents: Deed of Trust, Assignment of Rents and Security Agreement dated October_, 2007, by and between Reliable Polymer Services L.P. and Wachovia Bank, National Association.

Junior Lien Documents: 1. Deed of Trust executed by Reliable Polymers dated April 7, 2006 and recorded under County Clerk's File No. 2006014674 Official Public Records of Real Property of Jefferson County, Texas, for the benefit of Port Arthur 4A Economic Development Corporation and re-filed on May 11, 2007 recorded under County Clerk's File No. 2007019255

Regardless of the frequency or manner of renewal, extension, change, or alteration of the notes, liens, or obligations held by Senior Lender or owed to Senior Lender by Borrower, Junior Lender subordinates all its liens and interests in or against any part of the Property and subordinates all liens and interests described in the Junior Lien Documents to (a) the liens and interests of Senior Lender in or against any part of the Property and (b) the liens described in the Senior Lien Documents.

Regardless of the frequency or manner of renewal, extension, change, or alteration of the notes, liens, or obligations held by Senior Lender or owed to Senior Lender by Borrower, Borrower, Senior Lender, and Junior Lender agree that the liens and interests described in the Senior Lien Documents are prior and superior to (a) the liens in favor of Junior Lender against all or any part of the Property and (b) the liens described in the Junior Lien Documents, so that any foreclosure against any of the Property by Senior Lender or the owner or holder of any liens or interests under any of the Senior Lien Documents or the obligations secured by the Senior Lien Documents shall foreclose and discharge all security interests, liens, and mortgages against any part of the Property securing any notes or obligations to Junior Lender and any purchaser at any such foreclosure sale shall take title to the Property or part thereof purchased free of all security interests, liens, and mortgages securing any notes or obligations to Junior Lender, and free and clear of the liens described in the Junior Lien Documents.

Borrower, Senior Lender, and Junior Lender agree to take all actions and execute all documents requested by Lender necessary for performance of this agreement.

This agreement is performable in the Jefferson County, Texas.

Notwithstanding any other term in this agreement, the principal amount advanced or paid under the Senior Lien Documents shall not exceed a total of \$6,000,000 in principal as to property described in Exhibit "A" and shall not exceed a total of \$2,000,000 in principal as to the loans on the equipment. The foregoing maximum shall not apply to amounts other than principal, such as amounts advanced for insurance, taxes, repairs or otherwise and shall not apply to interest or costs of collection or enforcement or protection of the rights of Senior Lender.

Notwithstanding any other term in this agreement, Senior Lender agrees not to increase the maximum principal amount of the indebtedness secured by the Senior Lender Documents.

Notwithstanding any other term in this agreement, the senior lien of Wachovia shall not affect the viability and enforceability of the covenants, easements and restrictions as denoted in the Special Warranty Deed from the City of Port Arthur Section 4A Economic Development Corporation to Reliable Polymers Waste dated April 7, 2006, except to the extent the performance of such covenants, easements and restrictions is secured by any of the Junior Lien Documents in which case the Senior Lien Documents do impair and affect Junior Lender's rights under the Junior Lien Documents.

Senior Lender agrees to give to the Junior Lender twenty days notice in writing before any foreclosure sale under the Senior Lien Documents.

Junior Lender agrees to give to Senior Lender twenty days notice in writing as to any default by Reliable Polymer Services, L. P.

Reliable Polymer Services, L.P. further agrees to provide the City of Port Arthur Section 4A Economic Development Corporation copies of all notices, financial statements, reports and other information provided to the senior lien holder, punctually pay or cause to be paid the principal and interest to become due in respect of the senior debt according to the terms thereof, perform all of its obligations under the senior lender documents, immediately report to the City of Port Arthur Section 4A Economic Development Corporation any default by Reliable Polymer Services, L.P. under the Senior Lien documents, immediately report to the City of Port Arthur Section 4A Economic Development corporation in writing any tax, judgment, materialman's or mechanic's lien on the Property and in the event the City of Port Arthur Section 4A Economic Development Corporation herein deems itself reasonably insecure in its ability to realize upon its junior lien in the Property, upon notice thereof to Reliable Polymer Services, L.P., provide the City of Port Arthur Section 4A Economic Development Corporation such additional collateral as may reasonably secure the position of the City

of Port Arthur Section 4A Economic Development Corporation, subject to the rights and restrictions imposed on the Senior Lien Holder.

This instrument shall bind, inure to the benefit of, and be exercised by successors in interest of all parties.

BORROWER:

RELIABLE POLYMER SERVICES, L.P.

By: GEITI, LLC, a Texas Limited Liability company and the general partner of RELIABLE POLYMER SERVICES, LP.

By: _____

THE STATE OF TEXAS }
COUNTY OF JEFFERSON }

BEFORE ME, the undersigned authority, on this day personally appeared, _____ President of _____ a Texas limited liability company,

☐ known to me
☐ proved to me on the oath of
or through _____

to be the person whose name is subscribed to the foregoing instrument and acknowledged to me that he executed the same for the purposes and consideration therein expressed and in the capacities therein stated, both individually and on behalf of GEITI, LLC as the act and deed of said Reliable Polymer Services, L.P..

GIVEN UNDER MY HAND AND SEAL OF OFFICE ON THIS ____ DAY OF _____, 2007.

NOTARY PUBLIC, STATE OF TEXAS

SENIOR LENDER:

**WACHOVIA BANK, NATIONAL
ASSOCIATION**

By: _____
Its: _____

**THE STATE OF TEXAS }
COUNTY OF JEFFERSON }**

BEFORE ME, the undersigned authority, on this day personally appeared _____, _____ of Wachovia Bank, National Association,

☐ known to me
☐ proved to me on the oath of
or through _____

to be the person whose name is subscribed to the foregoing instrument and acknowledged to me that he/she executed the same for the purposes and consideration therein expressed and in the capacities therein stated, both individually and on behalf of Wachovia Bank, National Association as the act and deed of said Wachovia Bank, National Association.

GIVEN UNDER MY HAND AND SEAL OF OFFICE ON THIS ____ DAY OF _____, 2007.

NOTARY PUBLIC, STATE OF TEXAS

JUNIOR LENDER:

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

By: _____
Its: _____

By: _____
Its: _____

**THE STATE OF TEXAS }
COUNTY OF JEFFERSON }**

BEFORE ME, the undersigned authority, on this day personally appeared _____ of City of Port Arthur Section 4A Economic Development Corporation,

☐ known to me

☐ proved to me on the oath of
or through _____

to be the person whose name is subscribed to the foregoing instrument and acknowledged to me that he/she executed the same for the purposes and consideration therein expressed and in the capacities therein stated, both individually and on behalf of City of Port Arthur Section 4A Economic Development Corporation as the act and deed of said City of Port Arthur Section 4A Economic Development Corporation.

GIVEN UNDER MY HAND AND SEAL OF OFFICE ON THIS ____ DAY OF _____, 2007.

NOTARY PUBLIC, STATE OF TEXAS

THE STATE OF TEXAS }
COUNTY OF JEFFERSON }

BEFORE ME, the undersigned authority, on this day personally appeared _____ of City of Port Arthur Section 4A Economic Development Corporation,

☐ known to me
☐ proved to me on the oath of
or through _____

to be the person whose name is subscribed to the foregoing instrument and acknowledged to me that he/she executed the same for the purposes and consideration therein expressed and in the capacities therein stated, both individually and on behalf of City of Port Arthur Section 4A Economic Development Corporation as the act and deed of said City of Port Arthur Section 4A Economic Development Corporation.

GIVEN UNDER MY HAND AND SEAL OF OFFICE ON THIS ____ DAY OF _____, 2007.

NOTARY PUBLIC, STATE OF TEXAS

EXHIBIT “A”

LEGAL DESCRIPTION OF TRACT

Exhibit "A"
FIELD NOTE DESCRIPTION
FOR A
10.00 ACRE TRACT
OUT OF THE
WM. McFADDIN SURVEY, ABSTRACT 416,
JEFFERSON COUNTY, TEXAS
MARCH 24, 2006

That certain 10.00 acre tract out of the Wm. McFaddin Survey, Abstract 416, Jefferson County, Texas, being out of Block 1 of the Port Arthur Economic Development Business Park, a plat recorded in Clerks File #2005044721 of the Official Public Records of Real Property of Jefferson County, Texas, said 10.00 acres being more particularly described by metes and bounds as follows:

Note: Basis of Bearings is based on the south line of said Block 1 having been called West.

COMMENCING at a ½" capped iron rod set for the southeast corner of a 75' utility easement and reserve and the southwest corner of said Block 1;

THENCE East along the south line of said Block 1 a distance of 795.64 feet (called East) to a ½" capped iron rod set for the southwest corner of the said 10.00 acre tract and the **POINT OF BEGINNING**;

THENCE North along the west line of the said 10.00 acre tract a distance of 547.63 feet to a ½" capped iron rod set in the south right-of-way line of South Business Park Drive and the north line of said Block 1 for the northwest corner of the said 10.00 acre tract;

THENCE East along the said south right-of-way line of South Business Park Drive and the said north line of Block 1 and the 10.00 acre tract a distance of 795.44 feet (called East) to a ½" capped iron rod set for the northeast corner of the said 10.00 acre tract;

THENCE South along the east line of the said 10.00 acre tract a distance of 547.63 feet to a ½" capped iron rod set in the said south line of Block 1 for the southeast corner of the said 10.00 acre tract;

THENCE West along the said south line of Block 1 and the said 10.00 acre tract a distance of 795.44 feet (called West) to the **POINT OF BEGINNING** and containing 10.00 acres of land, more or less.

This Field Note Description is based on a survey performed by Filtz & Shipman, Inc. on December 9, 2005.

Walter J. Ksiazek
Registered Professional Land Surveyor No. 5321