

RESOLUTION NO. 08-455

**A RESOLUTION APPROVING A FIRST AMENDMENT TO
THE ECONOMIC INCENTIVE AGREEMENT BETWEEN
THE CITY OF PORT ARTHUR SECTION 4A ECONOMIC
DEVELOPMENT CORPORATION AND TRIANGLE
WASTE PROPERTIES, L.P.**

WHEREAS, Triangle Waste Properties, L.P. ("Triangle"), a Texas limited partnership, has planned to construct a metal recycling facilities, which includes metal collection, sorting, cutting, packaging, and disposal within the Port Arthur Business Park on Spur 93; and

WHEREAS, the City of Port Arthur Section 4A Economic Development Corporation ("PAEDC) has sold a ten (10) acre parcel (the "Property") in the Port Arthur Business Park (the "Park"), with an estimated fair market value of \$310,000, to Triangle at a forty percent (40%) discounted value of \$186,000. Additionally, the Port Arthur Economic Development Board granted Triangle \$250,000 towards the construction of a building and improvement in the Park, which was approved by Resolution No. 07-344 on July 17, 2007; and

WHEREAS, Triangle agreed to hire fifteen (15) new employees, with an estimated annual payroll of \$436,800 by December 2008, as measured by IRS forms W-2 and W-3, and maintain annual payroll through June 30, 2010 ; and

WHEREAS, the Special Warranty Deed, dated August 1, 2007, and the Performance Deed of Trust, dated August 1, 2007, indicated that Triangle Waste would perform the following:

- a. Construction of a covered concrete pad of at least 100' X 100' for metal processing;
- b. Crews on site will operate according to procedures, rules and regulations of the Texas Commission on Environmental Quality (TCEQ);
- c. The capture of rainwater and any process water used at the site will be disposed of in accordance with all applicable rules and regulations of TCEQ;

- d. Design, build and operate so that scrap is not visible to any member of the public standing at ground level on a public way;
- e. Screen property lines from view with an eight (8) foot concrete tiltwall with landscaping on the outside to provide extra protection and help contain dust, noise, and odors;
- f. Metal will be contained in proper storage containers when not being processed;
- g. Metal containing radioactive sources will not be recycled or permitted on the Property in the Park;
- h. All roll off containers kept on the Property will be for non hazardous material and all repairs to these containers will be done at a different location as to insure this area does not become a repair area; and
- i. Store all equipment, trucks, roll off containers, etc., either behind the buildings or inside of the plant, so as not to be visible from South Business Park Drive.

; and

WHEREAS, the EDC has not paid the \$250,000 since no improvements have been made and the EDC has been reserving said funds; and

WHEREAS, the City amended Article IV of Chapter 22 of the Code of Ordinances as it pertains to metal recycling facilities, per Ordinance No. 07-81 on October 23, 2007, after receiving comments and recommendations from Jack Fields, attorney for Triangle Waste, and from the City's environmental attorney, Robin Morse; and

WHEREAS, Ordinance No. 07-81 primarily pertained to a new permitting procedure for Metal Recycling facilities; and

WHEREAS, due to delays in the design of the Improvements to be built at the Business Park and the upgrading of its affiliated facilities on Highway 87, Triangle did not reach its milestones and has not applied for a new permit for the facility at the EDC Business Park; and

WHEREAS, Triangle has requested that its Economic Development Conditional Grant Agreement (the "Original Agreement") be amended to provide a revised Performance Milestone Schedule; and

WHEREAS, the EDC has indicated that Triangle has provided the status reports on its project, as required by the Original Agreement and has advised that they have had delays in the designs and existing improvements as to comport with City and Texas Commission on Environmental Quality regulations; and,

WHEREAS, due to the delays in planning, design, and construction of its proposed Facility in the Park, Triangle will not meet the Covenants and Restrictions for the Park, dated November 30, 2005, as amended, which requires as **CONDITIONS OF SALE** that "Development of facilities (buildings) for user occupancy must be completed within eighteen (18) months of purchase. If there is an incentive agreement with the PAEDC, the construction must be completed within the timetables of the incentive agreement"; and

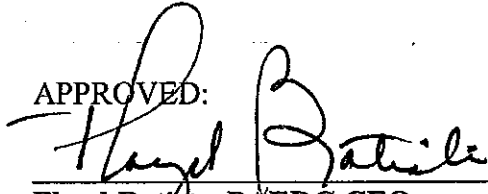
WHEREAS, PAEDC has proposed an amended milestones, which include the start of construction by July 31, 2009, and the completion of construction of the Facility on or before May 31, 2010; and

WHEREAS, PAEDC may grant variances to the Covenants and Restrictions and such variance has been requested by Triangle as to the period for construction of its building and improvements in the Park; and

WHEREAS, Triangle has further consented to the execution of a Subordination and Priority Agreement, as approved by Resolution No. 07-444 on September 25, 2007, which facilitated the financing by Wachovia Bank of \$4,480,000 for the building and improvements; and

WHEREAS, Triangle will be required to sign a Supplement that it will not hire undocumented workers, in substantially the same form as attached to Resolution No. 08-256; and

APPROVED:



Floyd Batiste, PAEDC CEO

APPROVED AS TO FORM:



Mark T. Sokolow, City Attorney

EXHIBIT "A"

**FIRST AMENDMENT
TO ECONOMIC INCENTIVE CONTRACT
BETWEEN
THE CITY OF PORT ARTHUR SECTION 4A ECONOMIC DEVELOPMENT CORP.
&
TRIANGLE WASTE PROPERTIES, LP**

The Economic Incentive Contract between the City of Port Arthur Section 4A Economic Development Corporation and Triangle Waste Properties, LP approved by Resolution No. 07-344 is hereby amended to revise the promised performance by Triangle Waste Properties, LP and to revise the Performance Milestone Schedule.

The Original Incentive Agreement is further modified and amended by this First Amendment to Economic Incentive Contract (the "First Amendment"), and except as specified herein, all terms, conditions, performance obligations, covenants and agreements of Triangle Waste Properties, LP or the City of Port Arthur Section 4A Economic Development Corporation as specified in the Original Incentive Agreement and the First Amendment are ratified and affirmed, and each party covenants and represents that there are no defaults in the Original Incentive Agreement.

Triangle Waste already entered into a subordination agreement as approved by Resolution No. 07-444 and will enter into a Supplement that it will not employ undocumented workers as required by Resolution No. 08-256.

1. The Executive Summary is amended and restated to read as follows:

EXECUTIVE SUMMARY

Triangle Waste Properties, LP, a Texas limited partnership, ("Triangle") is engaged in metal recycling, which includes metal collection, sorting, cutting, packaging and disposal. Triangle intends to sell the recycled metal in Beaumont, Texas and Houston, Texas.

The City of Port Arthur Section 4A Economic Development Corporation ("PAEDC") sold a ten (10) acre parcel (the "Property") in the PAEDC Business Park (the "Park"), with an estimated fair market value of \$310,000, to Triangle at a forty percent (40%) discounted value of \$186,000. Additionally, PAEDC granted Triangle \$250,000 towards the construction of a building and improvements in the Park (the "Facility"). Triangle's total grant value is \$374,000, which includes the forty percent (40%) discounted land value and the cash grant of 250,000. In exchange, Triangle agreed to hire 15 new employees, with an estimated annual payroll of \$436,800 by December 31, 2008, as measured by IRS forms W-2 and W-3, and to maintain said new employees and annual payroll through June 30, 2010. Triangle promised to use its best efforts to hire Port Arthur, Texas residents. Additionally, Triangle agreed to meet or exceed the Park's original and amended Covenants and Restrictions; agreed to meet Triangle-specific restrictions as specified in this Economic Incentive Contract (the "Agreement"); agreed to allow the PAEDC to pre-approve the architectural drawings for the Facility; and agreed to serve as a model of cleanliness and maintenance for other Park occupants.

If breached, the PAEDC grant of \$374,000, minus any credits earned, would automatically convert to a loan (liquidated damages). The loan would have a three-year term, starting on the date of Triangle's breach, and an interest rate of ten percent (10%). To secure the loan, (1) Joe Swinbank and Donald Poarch provided Compass Bank (formerly Texas State Bank) a Certificate of Deposit in the amount of \$374,000, according to a Commercial Security Agreement executed by such parties, and perfected by filing a Financing Statement (UCC-1 Form) with the Secretary of State, and (2) Triangle

granted PAEDC a subordinated Deed of Trust, with PAEDC holding a second priority lien on the Property.

Triangle earns credits to reduce the duration of the Original Incentive Agreement or to reduce liquidated damages in the event of a breach. When Triangle achieves a payroll level of \$436,800 (annualized) and said payroll continues for as long as Triangle maintains at least that level of employment, Triangle shall receive a \$1.00 credit for each \$6.00 of payroll paid to residents of Port Arthur. Payroll to non-Port Arthur residents cannot be credited.

Triangle agreed to send PAEDC brief status reports, every three (3) months for the first year and every six (6) months thereafter, until issuance of a close out report. Triangle will forfeit its credits if it fails to cure such default within five (5) days for any reporting period for which it did not issue a report in a timely manner.

2. Requested Amendments to Performance Milestone Schedule. Triangle has advised that during the last six (6) months, it has devoted countless hours to bringing its existing scrap metal facility located at 2340 S. Gulfway Drive in Port Arthur, Texas into compliance with new regulations of the City of Port Arthur, Texas (the "City"). Triangle advised that this process took much longer than expected due to unforeseen details that had to be addressed in response to each compliance issue. Triangle indicates that in addition to time issues, substantial costs were incurred in bringing the Facility into compliance, and work continues as improvements are made to the Facility.

Triangle submits that its metal collection, sorting, cutting, packaging and disposal facility (the "C&D Recycle Center") is still underway, but there have been delays primarily due to its focus on its existing Facility. Triangle indicates that engineering and planning for the Facility has also been delayed due to changes in the original design layout and Texas Commission on Environmental Quality (the "TCEQ") regulations. The new City regulations on recycling and scrap facilities have also impacted the planning, design and engineering for the Facility. Triangle believes it is near final acceptance of its engineering plans and that construction of the Facility will be offered to its current general contractor and plan to start after the plans have been approved and a construction date can be set. Triangle acknowledges that final completion date is simply an estimate at this time and may seek an additional amendment to the Performance Milestone Schedule if the requested Performance Milestone Schedule amendment as set forth in this Second Amendment cannot be achieved.

Triangle has indicated that due to the additional responsibilities to meet regulatory compliance issues that the administrative staff for the Facility should increase by 4 to 6 additional employees.

Triangle will agree to continue to provide the status reports as specified in its previous Performance Milestone Schedule.

3. In order to provide the modified Performance Milestone Schedule, the following schedule of the Original Incentive Agreement as amended by the First Amendment is amended and restated again to read as follows:

a. **Section 5(b)(1):** Incentive Recipient promises to employ fifteen (15) employees at an annual total payroll of \$436,800 as measured by Internal Revenue Service (IRS) forms W-2 and W-3 by December 31, 2010.

b. **Section 5(b)(3):** Incentive Recipient will select an architect and general contractor who will build facility that complies with the Park's covenants and restrictions, original and amended, and have been pre-approved by the PAEDC Board. The Park's Covenants and Restrictions are

contained in *Exhibit "A"* to the Original Incentive Agreement and are incorporated by reference into the Original Incentive Agreement in their entirety. The plans for the facility shall be submitted to the Board of the PAEDC after approval by the City. The PAEDC Board shall have a period of thirty (30) days within which to approve such plans or advise Incentive Recipient of any reasonable objections to such plans with specific recommendations for resolution of such objections. Incentive Recipient shall then have a period of fifteen (15) days within which to resubmit revised plans for approval of the PAEDC Board, which shall then have a period of fifteen (15) days within which to approve the resubmitted plans or advise Incentive Recipient of any reasonable objections thereto. This process of approval or rejection for resubmission shall continue with the same fifteen (15) day limitations for each party as aforesaid until plans are ultimately approved in their entirety for the Facility.

c. **Section 7:** Triangle's amended Performance Milestone is contained in the table below:

PERFORMANCE MILESTONE SCHEDULE

A	Sept. 1, 2007	Review architectural plans with the PAEDC Board for approval
B	Oct. 31, 2007	Issue a status report to PAEDC's Chief Executive Officer ("CEO") for the period from the effective date of this Agreement to September 30, 2007
C	Feb. 1, 2007	Status report for the period from the effective date of this Agreement to December 31, 2007
D	Dec. 31, 2008	Review updated architectural plans with the PAEDC Board for approval and submit Status Report on Project
E	July 31, 2009	Start Construction of Facility
F	Oct. 31, 2009	Status Report on Construction Progress from July 31, 2009 to September 30, 2009
G	Jan. 29, 2010	Status Report on Construction Progress October 1, 2009 to December 31, 2009
H	April 30, 2010	Status Report on Construction Progress Jan. 1, 2010 to March 31, 2010
I	May 31, 2010	Complete facility construction; Status Report
J	Dec. 31, 2010	Achieve performance of 15 full-time, permanent employees; Annualized payroll of \$436,800;
K	Feb. 1, 2011	Status report from January 1, 2010 to December 31, 2010 Employment and payroll sustained

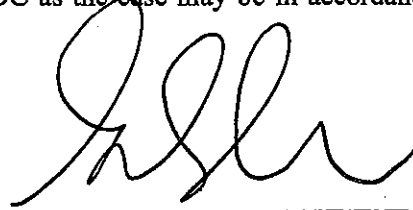
L	July 31, 2011	Status report from January 1, 2011 to June 30, 2011; Employment and payroll sustained
M	Feb. 1, 2012	Status report from January 1, 2011 to December 31, 2011; Employment and payroll sustained
N	July 31, 2012	Status Report from January 1, 2012 to June 30, 2012; Employment and payroll sustained;
O	Sept. 30, 2012	Close out report for presentation to the PAEDC Board at it October 2012 meeting submitted.

4. Extension of Collateral. In consideration of the granting of this Second Amendment to Incentive Agreement, Joe Swinbank and Donald Poarch ratify and affirm the pledge of a security interest in a \$374,000 certificate of deposit at Compass Bank (formerly Texas State Bank) (see Exhibit "C" and "E" to the Original Incentive Agreement) and shall obtain acknowledgement from Compass Bank (formerly Texas State Bank) of the first priority lien of the PAEDC against certificate of deposit # 37773999 in the name of Joe Swinbank and against certificate of deposit 3777408 in the name of Poarch Family Limited Partnership to secure incentives for performance of the Original Incentive Agreement amended only by the terms and conditions set forth in the First Amendment.

5. Paragraph 43 of the Original Incentive Agreement is modified to include a reference to the EXECUTIVE SUMMARY as a part of the Original Incentive Agreement for all purposes and constitutes promise performance by Triangle and/or PAEDC as the case may be in accordance with the Original Incentive Agreement.

ATTORNEY APPROVALS

APPROVED AS TO FORM:



Guy N. Goodson
General Counsel for PAEDC

VERIFIED AS CONSISTENT
WITH CITY COUNCIL RESOLUTION:

Resolution Number: _____

Mark T. Sokolow, City Attorney

FIRST AMENDMENT EXECUTION

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

SIGNED AND AGREED TO on the 3rd day of December, 2008.

Keith Quinn
President

Paula Anne-Muen
Secretary

Kupell [Signature]
Witness

Kupell [Signature]
Witness

TRIANGLE WASTE PROPERTIES, LP

SIGNED AND AGREED TO on the 18 day of December, 2008.

TRIANGLE WASTE PROPERTIES, LP

Donna [Signature]
Signature

Donovan Welder
Print

President
Position

[Signature]
Witness

The undersigned in accordance with paragraph 4 of the herein specified First Amendment hereby ratify and affirm the pledge of a security interest in that certain \$374,000 Certificate of Deposits at Compass Bank (formerly Texas State Bank) as referenced in Exhibit "C" and "E" to the Original Incentive Agreement and shall provide acknowledgement from Compass Bank of the first priority lien of PAEDC against Certificates of Deposit #37773999 and 3777408.

Joe Swinbank
Joe Swinbank

Donald Poarch
Donald Poarch
Poarch Family Limited Partnership