

RESOLUTION NO. 09-415

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

WHEREAS, Resolution 05-379 granted an Economic Incentive Contract and Loan Agreement (the "Agreement") to Reliable Polymer Services, L.P. ("RPS"), a Texas limited partnership, in a joint venture with Industrial Transportation, Inc. ("ITI"), a Beaumont, Texas company, and Goldsmith & Eggleton, Inc (G&E"), a Wadsworth, Ohio company to construct a rubber processing facility within the Port Arthur Business Park on Spur 93; and

WHEREAS, the City of Port Arthur Section 4A Economic Development Corporation (the "PAEDC") granted land within its Business Park (the "Park"), with an estimated fair market value of \$392,000, to RPS, and additionally, granted RPS, \$1,000,000 for the construction of a building and improvements on said land within the Park; and

WHEREAS, RPS, promised to distribute \$5,175,000 in payroll over the five-year term of the Agreement, as measured by IRS forms W-2 and W-3; and

WHEREAS, pursuant to the request of RPS, a Second Amendment to the Agreement was requested and approved by PAEDC to adjust the Performance Milestone Schedule and provide for credits in regards to placement of Port Arthur residents in management and supervisory positions and to provide for an addition to the facility of at least 50,000 square feet which Second Amendment was duly approved by the City pursuant to Resolution No. 07-468.

WHEREAS, RPS, submitted correspondence to PAEDC noting that due to changing worldwide market conditions and the global recession, RPS has shutdown it reprocessing operation, but is continuing its sale of synthetic rubber products in the NAFTA region and throughout the world; and

WHEREAS, these changing global market conditions have placed RPS, in a position not to meet the promised performance under its current Performance Milestone Schedule; and

WHEREAS, RPS, plans to continue with a workforce of approximately twenty (20) employees, but with the concurrent decrease of payroll, RPS has requested modifications and extension of its promised performance as reflected in **Exhibit "A"**; and

WHEREAS, RPS has requested that the Agreement be amended to provide a revised Performance Milestone Schedule; and

WHEREAS, PAEDC has approved the Third Amendment to the Agreement providing for additional milestone amendments; said Third Amendment approved by the PAEDC Board of Directors on Monday, July 27, 2009; and

WHEREAS, the Third Amendment to the Agreement is presented to the Port Arthur City Council for approval.

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

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

Section 2. That the PAEDC is herein authorized to enter into the Third Amendment to the Economic Incentive Contract and Loan Agreement with RPS in substantially the same form as denoted in Exhibit "B".

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

READ, ADOPTED AND APPROVED on this 2nd day of September A.D., 2009, at a Meeting of the City Council of the City of Port Arthur, Texas, by the following vote:

AYES:

Mayor Prince; Mayor Pro Tem Segler;
Councilmembers Chatman, Hood, Beard
Williamson, Wise & Henderson.

NOES: None.

Deloris Prince
DELORIS "BOBBIE" PRINCE, MAYOR

ATTEST:

Terri Hanks
TERRI HANKS, CITY SECRETARY

APPROVED:

Floyd Batiste
FLOYD BATISTE, PAEDC CEO

APPROVED AS TO FORM:

Mark Sokolow
MARK T. SOKOLOW, CITY ATTORNEY

EXHIBIT "A"



Reliable Polymer
Services, LP

RECEIVED JUN 02 2009

**May 28, 2009
Mr. Floyd Batiste, CEO
Port Arthur Economic Development Corporation
4173 39th Street
Port Arthur, TX 77642**

Dear Mr. Batiste,

Thank you for your letter of May 6. Enclosed you will find a modified operations plan for RPS for the period of May-December 2009. Highlights of the plan are a payroll of 20 full time employees comprising a single shift operation of ten hours per day. We estimate our payroll for this operation to be between \$543 and \$687,000 annually.

Our operation consists of warehousing and distribution of synthetic rubber. We continue to sell to customers in the NAFTA region and throughout the world. The global recession and the state of the domestic auto industry have severely reduced demand for raw materials. In order for RPS to survive, we have made changes to our business plan. The most significant is the shut-down of our reprocessing operations.

We are aware that we will not be able to meet our agreed on performance milestones. Near-term, we will continue with a headcount of 20 employees. We cannot say at what point it will be sensible to reopen the reprocessing operation. At our present payroll and operation it would take until December 2015 to attain our payroll performance of \$5,175,000. Year to date wages paid are \$379,423. We have realized \$2,290,590 of our goal at this writing.

We certainly hope that this timeline could be compressed and that operations could return to 2008 levels. I cannot predict when that will happen. What I can tell you is that we are doing everything that we know to secure a strong future for RPS and its employees.

Our request to the PAEDC is to give us time to adjust to the current economic conditions and improve our business. We need to have a continuing dialogue on our progress.

Thank you and the Board for your understanding and patience during this difficult economy.

Very Truly Yours,

**Michael J. Fagan
President, CEO**

**Cc: Johnny May
Jim Talarico
Gary Ratcliff
Paul Alic
Tiffney Lewis**

EXHIBIT "B"

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

The Economic Incentive Contract and Loan Agreement (the "Original Agreement") between the City of Port Arthur Section 4A Economic Development Corporation (the "PAEDC") and Reliable Polymer Services, L.P. ("Incentive Recipient") dated January 19, 2005 is hereby amended to revise the promised performance by Incentive Recipient by revising the Performance Milestone Schedule and amending certain other incentive conditions in the Original Agreement.

The Original Agreement was previously modified by the First Amendment to Economic Incentive Contract and Loan Agreement to revise the promised performance by Incentive Recipient contained in the Performance Milestone Schedule, to clarify responsibilities of the Incentive Recipient as to hiring employees and to grant a deed of trust for the benefit of the PAEDC (the "Deed of Trust") as a second lien, junior in priority to a deed of trust on property and improvements of Incentive Recipient (the "First Amendment"). The First Amendment provided a modified Performance Milestone Schedule and modified the Deed of Trust.

The Original Agreement as amended by the First Amendment was further amended pursuant to the request of the Incentive Recipient to provide an amendment to the Performance Milestone Schedule and to provide credits in regards to the placement of Port Arthur residents in management and supervisory positions and to provide for an addition to the facilities of the Incentive Recipient with at least 50,000 additional square feet of space (the "Second Amendment"). Due to changed economic and business conditions, Incentive Recipient has requested an additional amendment to the Original Agreement to modify promised performance to be reflected in the Performance Milestone Schedule; however, except as specified herein, all terms, conditions, performance obligations, covenants and agreements of Incentive Recipient or PAEDC as specified in the Original Agreement, as amended, are ratified and affirmed, and each party covenants and represents that except as stated herein, there are no defaults in the Original Agreement, as amended.

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

EXECUTIVE SUMMARY

Reliable Polymer Services, L. P., a Texas limited partnership ("Incentive Recipient") 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.

Previously, ITI sold to G&E and G&E processed the material in Ohio. G&E sold more product than it produced at its Ohio facility. G&E expanded its capacity close to the source of the waste material to reduce total processing costs 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. PAEDC granted Incentive Recipient ten (10) acres of land in the new Business Park, with an estimated fair market value of \$392,040, plus a \$1,000,000 grant to cover Incentive Recipient's building costs. Incentive Recipient built a 75,000-square-foot facility and startup their waste processing operations in June 2006.

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

Incentive Recipient acknowledged that any breach in the Agreement would automatically convert the grant to a loan (liquidated damages). The loan would have a three-year term, starting on the date of Incentive Recipient's breach, and an interest rate of ten percent (10%). At the same time PAEDC conveyed the land to Incentive Recipient, Incentive Recipient executed a deed of trust to secure the loan. PAEDC would foreclose on the property if Incentive Recipient defaulted on the loan, thereby, recovering part of the investment. G&E and ITI provided guaranties of Incentive Recipient's performance.

Pursuant to paragraph 3 of the Second Amendment, the Incentive Recipient earned credits to reduce the duration of this Agreement or to reduce liquidated damages in the event of a breach. Starting on the effective date of the Agreement, Incentive Recipient received a \$1.00 credit for each \$4.00 of payroll.

Pursuant to paragraph 4 of the Second Amendment, Incentive Recipient obtained an additional credit that is 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 the Incentive Recipient or by the 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, but not to exceed a total of \$50,000 in credit with Incentive Recipient to provide due notification to the Chief Executive Officer of the PAEDC.

Incentive Recipient is responsible to provide PAEDC status reports, every three (3) months during the first year and every six months thereafter, until issuance of a close out report. Incentive Recipient may forfeit its credits for any reporting period for which it did not issue a report in a timely manner.

Incentive Recipient has submitted correspondence to the PAEDC dated May 28, 2009, noting that due to changing worldwide market conditions and the global recession, Incentive

Recipient has shutdown its reprocessing operations, but is continuing its sale of synthetic rubber products in the NAFTA region and throughout the world. These changing global market conditions have placed Incentive Recipient in a position not to meet the promised performance under its current Performance Milestone Schedule. Incentive Recipient plans to continue with a workforce of approximately twenty (20) employees, but with the concurrent decrease of payroll, Incentive Recipient has requested modifications and extensions of its promised performance as reflected in the amendments to the Amended Performance Milestone Schedule set forth in this Third Amendment.

Incentive Recipient has acknowledged its breach and default under the Original Agreement, as amended, of certain obligations including levels of payroll prior to the request set forth in their correspondence of May 28, 2009. While Incentive Recipient and PAEDC acknowledge that pursuant to the Original Agreement, as amended, funds granted by PAEDC would automatically convert to a three (3) year loan on an interest rate of 10% per annum due to breaches or defaults, PAEDC shall weigh the noted breaches or defaults under the Original Agreement in consideration of the promised performance by Incentive Recipient pursuant to the Amended Performance Milestone Schedule. Should Incentive Recipient fail or refuse to meet the promised performance under the Amended Performance Milestone Schedule in this Third Amendment, then PAEDC reserves any and all rights to enforce rights contained in the Original Agreement including but not limited to conversion of any incentive to a loan as therein provided.

As noted in the promised performance under the revised Performance Milestone Schedule, Incentive Recipient must continue to provide PAEDC with reports as to employment, payroll and updates on global market conditions that effect Incentive Recipient's ability to meet its promised performance or those conditions that might accelerate its ability to meet its promised performance. Incentive Recipient agrees that should market conditions improve, and it is able to restart its reprocessing operations or if it undertakes other business operations at its facility in the PAEDC Business Park, Incentive Recipient shall reinstate its prior payroll and employment obligations to the PAEDC under terms and conditions as established by PAEDC.

2. The following sections of the Original Agreement are amended and restated to read (all amendments to the Original Agreement as set forth in the First and Second Amendments are ratified and affirmed except as modified) as follows:

- (a) **Section 2.** The initial sentence of Section 2 of the Original Agreement is amended to read as follows:

"This Agreement and the obligations of performance of Incentive Recipient shall continue to February 15, 2015 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."

- (b) **Section 4(b)(2).** This section is amended to read as follows:

"Incentive Recipient from and after July 1, 2009 will maintain employment at twenty (20) employees or more during the remaining term of this Agreement. If

Incentive Recipient restarts its reprocessing operation at its facility in the PAEDC Business Park, Incentive Recipient shall provide an updated business plan as to additional employees to be rehired for the reprocessing operation and the hourly wages of such employees. Incentive Recipient agrees that the Agreement has been modified to provide it an opportunity to meet its initial obligations to PAEDC by extending the period of time to meet employment and payroll requirements during the period of contracted business operations. Incentive Recipient agrees that this Agreement with employment and payrolls requirements shall continue until February 15, 2015 without the opportunity for Incentive Recipient to earn credits to earlier terminate this Agreement. Incentive Recipient agrees that payroll at not less than twenty (20) employees and average hourly rate of not less than \$12.84 shall be maintained through February 15, 2015 and at the annualized payroll of not less than \$534,186.00. By extending the Term of the Agreement, any restarting of the reprocessing operations will not provide for termination of this Agreement before February 15, 2015.

- (c) **Section 46.** This section is amended by adding a new subsection (d) wherein the guarantors, Goldsmith & Eggleton, Inc. and Industrial Transportation, Inc., shall execute this Amendment and any and all amendments to the Original Agreement to affirm their continuation of their Guaranty Agreement executed as a part of the Incentive between Incentive Recipient and PAEDC, and said guaranty obligations shall continue until performance by the Incentive Recipient under the Amended Performance Milestone Schedule (i.e. April 5, 2015).

3. The Performance Milestone Schedule set forth in the Original Agreement is amended as follows:

**RELIABLE POLYMER SERVICE
AMENDED PERFORMANCE MILESTONE SCHEDULE**

	<u>Deadline</u>	<u>Milestone</u>
(a)	December 18, 2009	<u>Status Report</u> for July 1, 2009 to November 30, 2009
(b)	February 15, 2010*	Achieve performance of 20 full-time permanent employees, annualized payroll of \$534,186.
(c)	July 5, 2010	<u>Status Report</u> for January 1, 2010 to June 30, 2010
(d)	January 10, 2011	<u>Status Report</u> for July 1, 2010 to December 31, 2010
(e)	February 15, 2011*	Achieve performance of 20 full-time permanent employees, annualized payroll of \$534,186.
(f)	July 5, 2011	<u>Status Report</u> for January 1, 2011 to June 30, 2011
(g)	January 10, 2012	<u>Status Report</u> for July 1, 2011 to December 31, 2011
(h)	February 15, 2012*	Achieve performance of 20 full-time permanent employees, annualized payroll of \$534,186.
(i)	July 5, 2012	<u>Status Report</u> for January 1, 2012 to June 30, 2012

(j)	January 10, 2013	<u>Status Report</u> for July 1, 2012 to December 31, 2012
(k)	February 15, 2013*	Achieve performance of 20 full-time permanent employees, annualized payroll of \$534,186.
(l)	July 5, 2013	<u>Status Report</u> for January 1, 2013 to June 30, 2013
(m)	January 10, 2014	<u>Status Report</u> for July 1, 2013 to December 31, 2013
(n)	February 15, 2014*	Achieve performance of 20 full-time permanent employees, annualized payroll of \$534,186.
(o)	July, 5 2014	<u>Status Report</u> for January 1, 2014 to June 30, 2014
(p)	January 10, 2015	<u>Status Report</u> for July 1, 2014 to December 31, 2014
(q)	February 15, 2015*	Achieve performance of 20 full-time permanent employees, annualized payroll of \$534,186.
(r)	April 5, 2015	<u>Close out report</u> for presentation to the PAEDC Board at its April 2015 meeting

* Notification is required within thirty (30) days of Incentive Recipient restarting its *reprocessing operation* with an amended business plan showing the number of additional employees to be employed in the reprocessing operation and additional annualized payroll over and above the required annualized payroll of \$534,186.00. The restarting of the reprocessing operation shall not amend the obligations of annualized payroll of Incentive Recipient to February 15, 2015.

4. Paragraph 42 of the Original Agreement is modified to include a reference to the EXECUTIVE SUMMARY as a part of the Original Agreement for all purposes and constitutes promised performance by Incentive Recipient and/or PAEDC in accordance with the Original Agreement, as amended.

ATTORNEY APPROVALS

APPROVED AS TO FORM:

Guy Goodson, General Counsel for PAEDC

VERIFIED AS CONSISTENT
WITH CITY COUNCIL RESOLUTION:

Resolution No: _____

Mark T. Sokolow, City Attorney

THIRD AMENDMENT EXECUTION

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

SIGNED AND AGREED TO on the _____ day of _____, 2009.

By: _____
President

By: _____
Secretary

Witness

Witness

RELIABLE POLYMER SERVICES, L.P.

SIGNED AND AGREED TO on the _____ day of _____, 2009.

**RELIABLE POLYMER SERVICES, L.P., a
Texas limited partnership**

By: _____
GEITI, LLC, a Texas limited liability
company and the general partner of
RELIABLE POLYMER SERVICES, L.P.

Title

Witness

CONSENT TO AMENDMENT

The undersigned guarantors under the Economic Incentive Contract and Loan Agreement between the City of Port Arthur Section 4A Economic Development Corporation and Reliable Polymer Services, L.P. hereby ratify their previously executed Guaranty Agreement as provided respectfully in Exhibits "E1" and "E2" to the Original Agreement, ratify and approve the previously executed First and Second Amendments and this Third Amendment to the Original Agreement and the amended Milestone Schedules including the amendment herein stated through April 5, 2015, and acknowledge that each of their Guaranty Agreement shall continue in full force and affect during the Term of this Amendment and the Amended Performance Milestone Schedule.

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Goldsmith & Eggleton, Inc.

By: _____
Michael J. Fagan, President/CEO

STATE OF OHIO §
 §
COUNTY OF SUMMIT §

On this _____ day of _____, 2009, before me, a Notary Public in and for said County and State, personally appeared Michael J. Fagan, President/CEO, authorized agent of Goldsmith & Eggleton, Inc., who acknowledged that, with due authorization, he did sign the foregoing instrument on behalf of Goldsmith & Eggleton, Inc. and that the same is his free act and deed individually as such officer and the free act and deed of Goldsmith & Eggleton, Inc.

IN WITNESS WHEREOF, I have hereunto subscribed my name and affixed my official seal on the day and year aforesaid.

(SEAL)

Notary Public, State of Ohio

Industrial Transportation, Inc.

By: _____
Johnny May, President

STATE OF TEXAS

COUNTY OF JEFFERSON



On this _____ day of _____, 2009, before me, a Notary Public in and for said County and State, personally appeared Johnny May, President, authorized agent of Industrial Transportation, Inc., who acknowledged that, with due authorization, he did sign the foregoing instrument on behalf of Industrial Transportation, Inc. and that the same is his free act and deed individually as such officer and the free act and deed of Industrial Transportation, Inc.

IN WITNESS WHEREOF, I have hereunto subscribed my name and affixed my official seal on the day and year aforesaid.

(SEAL)

Notary Public, State of Ohio