

RESOLUTION NO. 10-090

**A RESOLUTION APPROVING A SECOND AMENDMENT  
TO THE ECONOMIC INCENTIVE AGREEMENT  
BETWEEN 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 facility, which includes metal collection, sorting, cutting, packaging, and disposal within the Port Arthur Business Park on Spur 93 (the “Project”); 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 PAEDC Board granted Triangle a \$250,000 incentive for construction costs of a building and improvement in the Park as approved by the City Council of the City of Port Arthur pursuant to 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 Deed of Trust, dated August 1, 2007, indicated that Triangle 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 PAEDC has not advanced the \$250,000 incentive payment as no facility on the Property has been constructed; 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, 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**, by letter request, dated May 14, 2009 (see attached), Triangle requested a delay in the startup of its metal recycling facility scheduled for May 31, 2010, due to the construction of a detention pond for later this year and due to the unfavorable business climate in the metal recycling business; and

**WHEREAS**, the PAEDC has recently awarded a contract for the detention pond and related improvements; and

**WHEREAS**, PAEDC did not seek to amend the "Original Agreement" until the detention contract was awarded; and

**WHEREAS**, Triangle has now requested that the Original Agreement be amended to provide a revised Performance Milestone Schedule now that there is a scheduled development of the detention pond and related improvements; and

**WHEREAS**, Triangle has provided status reports on its Project, as required by the Original Agreement, as amended; and

**WHEREAS**, PAEDC proposes a revised Performance Milestone Schedule, which includes the start of construction by July 31, 2011, and the completion of construction of the Facility on or before May 31, 2012; 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, and ratified in Resolution No. 08-455, 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 indicating that it will not hire undocumented workers, in substantially the same form as attached to Resolution No. 08-256; and

**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 Second Amendment to Economic Incentive Agreement with Triangle Waste Properties, L.P., as to allow a revised Performance Milestone Schedule, which includes the start of construction by July 31, 2011, and the completion of construction of the Facility on or before May 31, 2012.

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

**READ, ADOPTED AND APPROVED** on this 9<sup>th</sup> day of March A.D., 2010, 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, Albright, Flood, Beard,  
Williamson, Wise & Henderson.

NOES: None.

Deloris Prince  
DELORIS "BOBBIE" PRINCE, MAYOR

ATTEST:

Terrri Hanks  
TERRI HANKS, CITY SECRETARY

APPROVED: Floyd Batiste  
FLOYD BATISTE, PAEDC CEO

APPROVED AS TO FORM: [Signature]  
GUY N. GOODSON, PAEDC ATTORNEY

APPROVED AS TO FORM: Val Tizeno  
VALECIA R. TIZENO, CITY ATTORNEY

# **EXHIBIT "A"**

**SECOND AMENDMENT  
TO ECONOMIC INCENTIVE CONTRACT  
BETWEEN  
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 (the "PAEDC") and Triangle Waste Properties, LP ("Triangle") approved by Resolution No. 07-344 (the "Original Agreement") is hereby amended to revise the promised performance by Triangle and to revise the Performance Milestone Schedule.

The Original Incentive Agreement was modified and amended by First Amendment to Economic Incentive Contract (the "First Amendment"), and except as specified herein, all terms, conditions, performance obligations, covenants and agreements of Triangle or the PAEDC as specified in the Original Incentive Agreement and the First Amendment were ratified and affirmed, and each party covenants and represents that there were no defaults in the Original Agreement.

Triangle 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.

Triangle requested in May, 2009 to delay startup of its proposed metal recycling facility (the "Facility") (i) due to the construction of a retention pond scheduled for proposed construction by the PAEDC and (ii) due to changes in the metal recycling business which would materially effect their projected revenues from this business. The retention pond has now been approved and awarded for construction by the Board of Directors of the PAEDC.

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 as required by the Original Agreement. 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 the Original 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 BBVA 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 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.

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.

2. 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 within six (6) months from completion of its building (scheduled for July 31, 2011).

**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	February 1, 2008	Status report for the period from the effective date of this Agreement to December 31, 2007
D	February 1, 2009	Status report for the period from the effective date of this Agreement to December 31, 2008
E	February 1, 2010	Status report for the period from the effective date of this Agreement to December 31, 2009
F	July 31, 2010	Status report for the period from the effective date of this Agreement to June 30, 2010
G	January 31, 2011	Status report for the period from the effective date of this Agreement to December 31, 2010
H	April 1, 2011	Present updated architectural plans to the PAEDC Board for approval and provide status report on Project
I	July 31, 2011	Start Construction of Facility
J	October 31, 2011	Status report on Construction Progress from July 31, 2011 to September 30, 2011
K	January 31, 2012	Status report on Construction Progress from October 1, 2011 to December 31, 2011
L	April 30, 2012	Status report on Construction Progress from Jan. 1, 2012 to March 31, 2012



M	July 31, 2012	Complete facility construction; Status Report
N	Dec. 31, 2012	Achieve performance of 15 full-time, permanent employees; Annualized payroll of \$436,800;
O	Feb. 1, 2013	Status report from January 1, 2012 to December 31, 2012 Employment and payroll sustained
P	July 31, 2013	Status report from January 1, 2013 to June 30, 2013; Employment and payroll sustained
Q	Feb. 1, 2014	Status report from January 1, 2013 to December 31, 2013; Employment and payroll sustained
R	July 31, 2014	Status report From January 1, 2014 to June 30, 2014; Employment and payroll sustained;
S	Sept. 30, 2014	Close out report for presentation to the PAEDC Board at its October 2014 meeting submitted.

3. 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 BBVA 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.

4. 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**

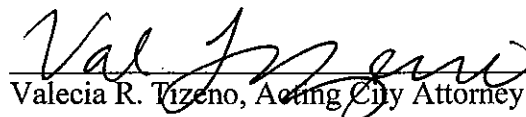
APPROVED AS TO FORM:



Guy N. Goodson  
General Counsel for PAEDC

VERIFIED AS CONSISTENT  
WITH CITY COUNCIL RESOLUTION:

Resolution Number: 10-090

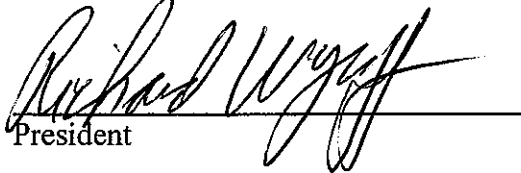


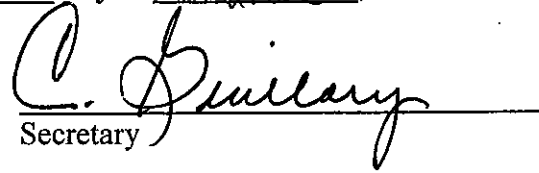
Valecia R. Tizeno, Acting City Attorney

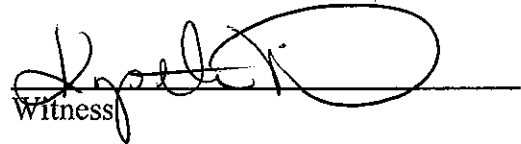
**SECOND AMENDMENT EXECUTION**

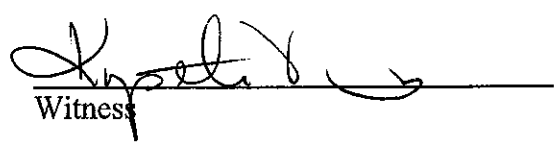
**CITY OF PORT ARTHUR SECTION 4A  
ECONOMIC DEVELOPMENT CORPORATION**

SIGNED AND AGREED TO on the 22<sup>nd</sup> day of March, 2010.

  
\_\_\_\_\_  
President

  
\_\_\_\_\_  
Secretary


  
\_\_\_\_\_  
Witness

  
\_\_\_\_\_  
Witness

**TRIANGLE WASTE PROPERTIES, LP**

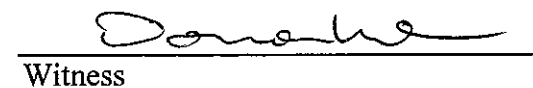
SIGNED AND AGREED TO on the 27 day of May, 2010.

**TRIANGLE WASTE PROPERTIES, LP**


  
\_\_\_\_\_  
Signature

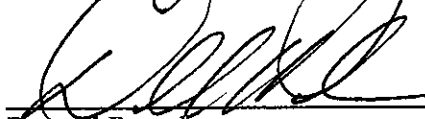
Joe Swinbank  
\_\_\_\_\_  
Print

President GP  
\_\_\_\_\_  
Position

  
\_\_\_\_\_  
Witness

The undersigned in accordance with paragraph 4 of the herein specified Second 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 acknowledgment from BBVA Compass Bank of the first priority lien of PAEDC against Certificates of Deposit #37773999 and 3777408.

  
\_\_\_\_\_  
Joe Swinbank

  
\_\_\_\_\_  
Donald Poarch  
Poarch Family Limited Partnership