

RESOLUTION NO. 10-453

**A RESOLUTION APPROVING CLOSING THE ECONOMIC
INCENTIVE CONTRACT AND LOAN AGREEMENT
BETWEEN TRIANGLE WASTE SOLUTIONS, LLC AND THE
CITY OF PORT ARTHUR SECTION 4A ECONOMIC
DEVELOPMENT CORPORATION**

WHEREAS, on November 10, 2005, the City Council of the City of Port Arthur approved Resolution 05-338, authorizing an Economic Incentive Contract and Loan Agreement (the "Agreement") between Triangle Waste Solutions, LLC ("Triangle") and the City of Port Arthur Section 4A Economic Development Corporation (the "PAEDC"); and

WHEREAS, on January 17, 2006, the City Council approved Resolution 06-004, authorizing changes as requested by Triangle Waste to the proposed Agreement, as denoted in Exhibit "A" attached hereto; and

WHEREAS, on April 17, 2006, the City Council approved additional changes to the proposed Agreement, as denoted in Exhibit "B" attached hereto; and

WHEREAS, Triangle Waste has met its contractual obligation, as denoted in the synopsis of their performance of their obligations, attached hereto as Exhibit "C"; and

WHEREAS, on October 4, 2010, the Board of Directors of the PAEDC voted and acknowledged the satisfaction of the contractual obligations, thereby, concluding the Agreement with Triangle Waste.

**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.

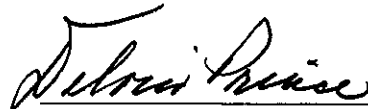
Section 2. That the City Council hereby acknowledges that the contractual obligations in the Economic Incentive Contract and Loan Agreement with Triangle Waste have been met and are complete and therefore approves the closing of the contract.

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 19th day of October A.D., 2010, at a Meeting of the City Council of the City of Port Arthur, Texas, by the following vote: AYES:

Mayor Prince;
Councilmembers Chatman, Segler, Beard, and
Idenderson.

NOES: None.


Deloris "Bobbie" Prince, Mayor

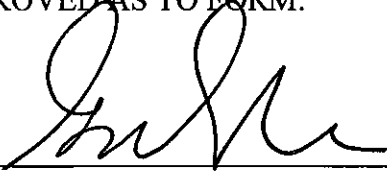
ATTEST:


Sherri Bellard, Acting City Secretary

APPROVED:

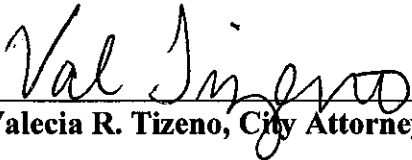

Floyd Batiste, PAEDC CEO

APPROVED AS TO FORM:



Guy N. Goodson, PAEDC Attorney

APPROVED AS TO FORM:



Valecia R. Tizen, City Attorney

EXHIBIT "A"

Exhibit "A" to the Resolution

SUMMARY OF CHANGES TO TRIANGLE WASTE L.L.C.
INCENTIVE CONTRACT
FROM FIRST TO SECOND DRAFT

- To address the requirements of the PAEDC Board and City Council for "no scrap" and "need enclosure/fenced screening for the trucks and portable toilets," Triangle Waste Solutions, L.L.C. agrees to the following additional covenants and restrictions:
 - Screen property lines with 6-foot fencing with landscaping on the outside to provide extra protection;
 - Screen the transfer station inside the plant with internal fencing;
 - Keep Triangle's scrap metal operation at another location; do not move the operation to the Port Arthur Business Park;
 - Design, build and operate the Port Arthur Business Park plant so that scrap is not visible to any member of the public standing at ground level on a public way;
 - Enclose all operations within buildings that have three walls with the open side of the buildings facing toward the inside the plant, so that the inside of buildings are not visible from a public way; and
 - 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.
- An Introduction was added to "insert details of performance as delineated in executive summary or application."
- Exhibit "D" was added because Paragraph F.2. of the Commercial Security Agreement requires an acknowledgement of the PAEDC's lien by issuer of the Certificate of Deposit.
- An Attorney Approval section was added for the City Attorney to verify that the contract is consistent with the City Council's Resolution approving the contract.

"(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" was not added because the covenants and restrictions are now final and recorded, and the lot is selected.

EXHIBIT "B"

GERMER GERTZ L.L.P.
ATTORNEYS AT LAW

AUSTIN BEAUMONT HOUSTON
www.germer.com

KATHLEEN A. McGLYNN
ASSOCIATE

Direct Line: 409.813.8000
kmcglynn@germer.com

March 10, 2006

Via Facsimile No. 1-409-962-4445

Mr. Floyd Batiste
Chief Executive Officer
City of Port Arthur EDC
P.O. Box 3934
Port Arthur, Texas 77642

Re: *Triangle Waste Properties LP; GG File #56257*
Contract for submission to Joint EDC Board/City Council Meeting on March 14, 2006.

Dear Mr. Batiste:

Attached is the Executive Summary and Contract for the revised City of Port Arthur Section 4A Economic Development Corporation's ("PAEDC's") contract with Triangle Waste Properties LP. The changes made since the contract was approved by the EDC Board and City Council are noted on the attachments; however, the key changes are as follows:

- PAEDC will contract with, and convey the land to, Triangle Waste Properties, LP, not Triangle Waste Solutions, LLC. Since Triangle Waste Solutions, LLC is the General Partner of the newly formed Triangle Waste Properties LP, Triangle Waste Solutions, LLC is liable for the acts or omissions committed by Triangle Waste Properties, LP (hereinafter "Triangle"). As a result, we do not need a guaranty from Triangle Waste Solutions, LLC to protect PAEDC's interests.
- PAEDC will grant Triangle an additional \$500,000, paid annually in \$100,000 increments, with the first payment due after Triangle starts construction on the new facility. The additional grant will be secured with a second Deed of Trust on the property, junior to the Texas State Bank's Deed of Trust for the Construction loan. Safeguards similar to those developed for the Second Deed of Trust for Reliable Polymer Services are incorporated into this Second Deed of Trust, for example, the senior lien must be limited to \$4,000,000.
- The milestone schedule has been adjusted to better match the schedule now anticipated. This includes advancing the target date to achieve 21 new jobs from December 31, 2006 to December 31, 2007.
- Many of the changes to the contract are based on language negotiations between Germer Gertz, L.L.P. and Triangle's attorney, Mr. Jack Field. Nothing was changed that would impair the rights of PAEDC to enforce this contract. Some example changes are (1) the form of Deed is now included in the contract and (2) Exhibit "H" has been added to clarify the basic intent of the contract.

The contract revisions have been approved by Germer Gertz, L.L.P. as to legality and the project is still an eligible Section 4A project.

Sincerely,

GERMER GERTZ, L.L.P.

By: 

Kathleen A. McGlynn

KAM/lr

cc: Jana Barnes
Guy N. Goodson (in the firm)

EXHIBIT "C"

Performance by Triangle

Per Triangle's contract with PAEDC, their promised performance was to:

1. (1) Triangle has an attractive facility that complies with the Business Park's covenants and restrictions.
2. (2 a- f) additional covenants and restrictions to be address by Triangle, the property has proper screening inside and outside there is 6-foot fencing with landscaping on the outside to provide extra protection. The scrap metal operation is not located at the Business Park site. Particles are not visible at ground level in the public way nor are operations within buildings inside the plant visible. Heavy equipment is stored inside the plant with proper screening from South Business Park Drive.
3. (3) and 4. (4)

By December 31, 2007, Triangle had 154 employees (of which 30 were Port Arthur residents—19%) and paid wages totaling \$3,762,194.70. On December 31, 2008, they had 154 employees (of which 29 were Port Arthur residents—18%) and paid wages totaling \$4,512,721.10. On December 31, 2009 they had 166 employees (of which 29 were Port Arthur residents—17%) and paid wages totaling \$4,851,092.68. And as of July 7, 2010 they had 119 employees (of which 29 were Port Arthur residents—15%) and paid wages totaling \$2,737,768.05.

5. (5) Commercial security agreement giving PAEDC a security interest with a \$392,040 Certificate of Deposit at Texas State Bank; completed
6. (6) Triangle has achieved their performance milestones in a timely manner
7. (7) Triangle is a model of cleanliness, maintenance, and beauty in the Business Park