

RESOLUTION NO. 16010

**A RESOLUTION APPROVING AN ECONOMIC  
INCENTIVE CONTRACT & LOAN AGREEMENT  
BETWEEN THE CITY OF PORT ARTHUR SECTION 4A  
ECONOMIC DEVELOPMENT CORPORATION AND  
PURE RENEWABLES PORT ARTHUR, LLC.**

**WHEREAS**, the City Council deems it in the public interest to authorize the City of Port Arthur Section 4A Economic Development Corporation (the "PAEDC") to enter into an Economic Incentive Contract & Loan Agreement (the "Agreement") with Pure Renewables Port Arthur, LLC ("Pure Renewables"); and

**WHEREAS**, Pure Renewables intends to process, treat and rejuvenate pre-consumer textile waste into superior cotton fiber commodities at its manufacturing facility to be located at the Port of Port Arthur in Port Arthur, Texas (the "Port"); and

**WHEREAS**, the PAEDC Board of Directors, at their regular Board meeting of December 7, 2015, agreed to enter into a reimbursable economic incentive agreement with Pure Renewables in the amount of \$1,500,000 subject to the conditions and limitations contained in the Agreement and milestone schedule attached hereto as **Exhibit "A"**; and

**WHEREAS**, PAEDC shall fund One Million Five Hundred Thousand Dollars (\$1,500,000) in arrears over a four-year period based on the total creation of two hundred sixteen (216) jobs for Port Arthur residents; and

**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 PAEDC is herein authorized to enter into the Agreement with Pure Renewables, and the President and Secretary of PAEDC are authorized to sign the Agreement in substantially the same form attached hereto as **Exhibit "A"**.

**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 12<sup>th</sup> day of Jan A.D., 2016, at a Meeting of the City Council of the City of Port Arthur, Texas, by the following vote:

AYES:

Mayor Princi; Mayor Pro Tem Frank  
Councilmembers Scott, Hamilton, Albright,  
Lewis, Levati and Moses

NOES:

None

ATTEST:

Deloris Prince  
Deloris "Bobbie" Prince, Mayor

Sherril Bellard  
Sherril Bellard, City Secretary

APPROVED:

Floyd Batiste  
Floyd Batiste, PAEDC CEO

APPROVED AS TO FORM:

  

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Guy N. Goodson, PAEDC Attorney

APPROVED AS TO FORM:

  

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Valecia R. Tizen, City Attorney

# **EXHIBIT “A”**

**ECONOMIC INCENTIVE CONTRACT & LOAN AGREEMENT  
BETWEEN THE CITY OF PORT ARTHUR SECTION 4A  
ECONOMIC DEVELOPMENT CORPORATION  
&  
PURE RENEWABLES PORT ARTHUR, LLC**

**Executive Summary**

Pure Renewables Port Arthur, LLC ("Incentive Recipient") is a Delaware limited liability corporation which was incorporated in 2015. Incentive Recipient, in conjunction with Pure Systems International, LLC, plans to process, treat and rejuvenate pre-consumer textile waste into superior cotton fiber commodities at its manufacturing facility to be located at the Port of Port Arthur (the "Port") in Port Arthur, Texas (the "Project"). Pure Systems International, Ltd., has secured long term material supply commitments from its customers which include Fortune 500 consumer product and textile companies, which commitments shall be assigned or transferred to Pure. Pure Systems International, LLC controls the intellectual property associated with the rejuvenation of pre-consumer textile waste to superior cotton fibers. Pure Renewables Port Arthur LLC will utilize equipment supplied by various industrial manufacturers, to produce a high value, recycled commodity at a low cost. Such technology shall be licensed for use by Incentive Recipient. Incentive Recipient plans to use incentive funds acquired through the City of Port Arthur Section 4A Economic Development Corporation (the "PAEDC") to equip a retrofitted commercial warehouse located at the Port in order to manufacture cotton fiber from pre-consumer textile waste. PAEDC shall assist Incentive Recipient in this business expansion by a conditional grant/loan in exchange for certain agreement by Incentive Recipient of additional full-time and part-time employment of Port Arthur residents at the Project and designated levels of payroll. Incentive Recipient will be provided a credit against payroll paid to full-time and part-time employees who are residents of Port Arthur as outlined in the Performance Milestone Schedule. Incentive Recipient has been advised that as a condition for the Economic Incentive by PAEDC, Incentive Recipient must continue conducting its business operations in Port Arthur, Texas during the term of the Agreement.

PAEDC has agreed to conditionally grant Incentive Recipient \$1,500,000 subject to the conditions and limitations contained in the Economic Incentive Contract & Loan Agreement (the "Agreement"). PAEDC shall fund One Million Five Hundred Thousand Dollars (\$1,500,000) in arrears over a four year period based on the total creation of two hundred and sixteen (216) jobs for Port Arthur residents.

Incentive Recipient has further agreed to execute the First Source Referral Agreement and to utilize the services of the PAEDC on a non-exclusive basis to find qualified applicants for employment at the Project.

**ECONOMIC INCENTIVE CONTRACT & LOAN AGREEMENT  
BETWEEN THE CITY OF PORT ARTHUR SECTION 4A  
ECONOMIC DEVELOPMENT CORPORATION  
&  
PURE RENEWABLES PORT ARTHUR, LLC  
("INCENTIVE RECIPIENT")**

<b>INTRODUCTION .....</b>	<b>1</b>
<b>AGREEMENT TERM.....</b>	<b>1</b>
<b>PARTIES.....</b>	<b>1</b>
<b>PROMISED PERFORMANCE.....</b>	<b>2</b>
<b>(A) PERFORMANCE BY PAEDC .....</b>	<b>2</b>
<b>(B) PERFORMANCE BY INCENTIVE RECIPIENT .....</b>	<b>3</b>
<b>(C) CREDITS – SUBSTITUTE PERFORMANCE .....</b>	<b>4</b>
<b>PERFORMANCE MILESTONE SCHEDULE.....</b>	<b>4</b>
<b>CONDITIONAL OBLIGATIONS AND LIMITED LIABILITY OF PAEDC.....</b>	<b>5</b>
<b>LIQUIDATED DAMAGES FOR BREACH OF AGREEMENT .....</b>	<b>6</b>
<b>RECORDS / INSPECTION / PAEDC AUDIT .....</b>	<b>6</b>
<b>HOLD HARMLESS.....</b>	<b>8</b>
<b>SUBCONTRACTS.....</b>	<b>8</b>
<b>CONFLICT OF INTEREST / DISCLOSURE OBLIGATION.....</b>	<b>9</b>
<b>NONDISCRIMINATION / EMPLOYMENT / REPORTING.....</b>	<b>9</b>
<b>LEGAL AUTHORITY .....</b>	<b>10</b>
<b>NOTICE OF LEGAL OR REGULATORY CLAIMS.....</b>	<b>10</b>
<b>CHANGES AND AMENDMENTS .....</b>	<b>10</b>
<b>DEFAULT / TERMINATION .....</b>	<b>11</b>
<b>COMPLIANCE AUDITS .....</b>	<b>12</b>
<b>SUPPLEMENTAL COVENANT .....</b>	<b>13</b>
<b>ENVIRONMENTAL REQUIREMENTS .....</b>	<b>13</b>
<b>ORAL AND WRITTEN AGREEMENTS / PRIOR AGREEMENTS .....</b>	<b>13</b>
<b>VENUE .....</b>	<b>14</b>
<b>ADDRESS OF NOTICE AND COMMUNICATIONS .....</b>	<b>14</b>
<b>CAPTIONS .....</b>	<b>14</b>
<b>COMPLIANCE WITH FEDERAL, STATE AND LOCAL LAWS.....</b>	<b>14</b>
<b>CONDITIONS PRECEDENT .....</b>	<b>14</b>
<b>ATTORNEY APPROVALS.....</b>	<b>15</b>
<b>AGREEMENT EXECUTION .....</b>	<b>16</b>

Exhibit "A"	Conditional Commercial Promissory Note
Exhibit "B"	Certification Regarding Lobbying
Exhibit "C"	First Source Referral Agreement
Exhibit "D"	Compliance Statement

**ECONOMIC INCENTIVE CONTRACT & LOAN AGREEMENT  
BETWEEN THE CITY OF PORT ARTHUR SECTION 4A  
ECONOMIC DEVELOPMENT CORPORATION  
&  
PURE RENEWABLES PORT ARTHUR, LLC  
("INCENTIVE RECIPIENT")**

**INTRODUCTION**

The Incentive Recipient is a Delaware limited liability corporation having its principal business operations at 6528 East 101<sup>st</sup> Street Suite D-1 #261 Tulsa, Oklahoma. The Incentive Recipient intends to undertake the following business expansion: Incentive Recipient acquires pre-consumer textile waste and processes, treats, and rejuvenates into superior cotton fiber. Incentive Recipient plans to enter into a lease with the Port of Port Arthur, Texas (the "Port") for a commercial building wherein Incentive Recipient can process the cotton fiber. Incentive Recipient proposes to utilize incentive funds acquired through the City of Port Arthur Section 4A Economic Development Corporation (the "PAEDC") to equip the commercial building located at the Port for its business operations (the "Project"). Additionally, Incentive Recipient will, during the first four (4) years of business operations at the Project phase in the employment of two hundred and sixteen (216) Port Arthur residents for full-time and part-time employment in accordance with the Performance Milestone Schedule. PAEDC will assist Incentive Recipient in this business endeavor by providing the hereinafter described conditional grant and/or loan in exchange for the promise by Incentive Recipient to meet the Performance Milestone Schedule set forth in this Agreement.

**AGREEMENT TERM**

**EFFECTIVE DATE**

1. This Economic Incentive Contract and Loan Agreement ("Agreement") is entered into with an effective date of \_\_\_\_\_, \_\_\_\_\_, but in no case later than \_\_\_\_\_, \_\_\_\_\_, by and between the PAEDC and Incentive Recipient.

**TERMINATION DATE**

2. This Agreement expires the earlier of \_\_\_\_\_, \_\_\_\_\_, 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. The period from the effective date of this Agreement through and including the expiration date of this Agreement as provided in the previous sentence hereof, is sometimes referred to in this Agreement as the "Term" of this Agreement.

**PARTIES**

3. City of Port Arthur Section 4A Economic Development Corporation located at

501 Procter, Port Arthur, Texas, 77640, is a corporation. It is duly authorized to do business in the State of Texas under Chapters 501-504, Local Government Code (the "Development Corporation Act of 1979 or Development Act") and duly authorized by Resolution of the City Council of the City of Port Arthur to enter into this Agreement. As so authorized and as provided by the PAEDC bylaws, the President and Secretary of the PAEDC Board have the authority to execute this Agreement.

4. Pure Renewables Port Arthur, LLC ("Incentive Recipient") is a Delaware Limited Liability Company which has applied for registration as a foreign limited liability company with the Secretary of State of the State of Texas. Incentive Recipients corporate address is 6528 East 101<sup>st</sup> Street, Suite D-1 #261 Tulsa, Oklahoma, 74133.

### **PROMISED PERFORMANCE**

5. The parties agree to perform as follows.

#### **(a) PERFORMANCE BY PAEDC**

- i. PAEDC shall conditionally grant Incentive Recipient \$1,500,000 subject to the conditions and limitations herein, which Incentive Recipient is not required to repay unless Incentive Recipient breaches this Agreement. If Incentive Recipient fails to timely cure this Agreement as specified herein, then the conditional grant (less earned credits) shall become a loan as provided in **Exhibit "A"**. The conditional grant to Incentive Recipient shall be for the full-time or part-time employment of approximately two hundred and sixteen (216) Port Arthur residents by December 31, 2019; said job creation to be met within the four (4) year period in the Performance Milestone Schedule at the specified annualized payrolls and with an aggregate payroll by December 31, 2019 of \$17,690,400.
- ii. PAEDC shall provide the conditional grant of \$1,500,000 to Incentive Recipient in four pay outs as set forth in the Performance Milestone Schedule. Specifically, if Incentive Recipient has earned the requisite credits, Incentive Recipient will receive \$500,000 on July 31, 2017, \$375,000 on July 31, 2018, \$500,000 on July 31, 2019 and \$125,000 on July 31, 2020.

These payments are PAEDC's only obligations.

#### **(b) PERFORMANCE BY INCENTIVE RECIPIENT**

- i. Incentive Recipient promises to employ by December 31, 2019 approximately two hundred and sixteen (216) Port Arthur residents per the Performance Milestone Schedules at an annual total payroll as set forth in the Performance Milestone Schedule, as measured by Internal Revenue Service (IRS) forms W-2



and W-3. By December 31, 2019, Incentive Recipient shall have a total Port Arthur resident payroll for the term of the Agreement of \$17,690,400.

- ii. Incentive Recipient promises to employ approximately 72 full-time or part-time Port Arthur Residents by June 30, 2017, an additional 54 full-time or part-time Port Arthur residents by June 30, 2018, an additional 72 full-time or part-time Port Arthur residents by June 30, 2019, and an additional 18 full-time or part-time Port Arthur resident by June 30, 2020 as set forth in the Performance Milestone Schedule.
  - a) Incentive Recipient acknowledges that part-time employment shall be deemed to be Port Arthur residents whose W-2 or W-3 indicates the day they were employed for 18 hours or more during each payroll period and full-time or part-time employees or employees whose W-2 or W-3 indicates they were employed for 30 or more hours during each payroll period.
  - b) Payroll which shall qualify for incentive credit shall be only for Port Arthur residents whose W-2 or W-3 for each year during the term of the incentives shows a Port Arthur address as of December 31.
- iii. On demand by PAEDC and in response to Incentive Recipient's failure to achieve a performance milestone, Incentive Recipient shall provide PAEDC with reasonable assurances as provided by Section 6 of this Agreement, proposed by Incentive Recipient, and acceptable to PAEDC, that it has both the intention and the capabilities to perform fully its contractual obligations as such obligations are more specifically set forth in Paragraph 7 of this Agreement.

#### **(C) CREDITS – SUBSTITUTE PERFORMANCE**

Incentive Recipient may earn credits according to the following terms, to either reduce the duration of this Agreement or reduce the amount of liquidated damages in the event Incentive Recipient breaches the Agreement.

- i. Starting on the effective date of the Agreement and for as long as full-time or part-time Incentive Recipient performs as specified in Section 5(b)(1) of this Agreement, Incentive Recipient will receive a \$1.00 credit for each \$11.79 of payroll for Port Arthur residents.
- ii. Total credit cannot exceed \$1,500,000.
- iii. Incentive Recipient will forfeit any credits it earned during a period for which a report is scheduled but Incentive Recipient fails to issue the report, and

Incentive Recipient does not cure such failure within 15 days after PAEDC gives Incentive Recipient written notice of such failure.

- iv. Once Incentive Recipient has earned credits equal to \$1,500,000, the conditional grant and all obligations to PAEDC shall terminate, and Incentive Recipient shall have no further duties or obligations under this Agreement.
- v. If the conditional grant or any portion thereof is converted to a loan, Incentive Recipient will have a period of three (3) years from the date of conversion to repay the loan. Once Incentive Recipient has paid the loan in full, Incentive Recipient shall be released and discharged from all further obligations under this Agreement.

#### **PERFORMANCE MILESTONE SCHEDULE**

6. Although failure to achieve a performance milestone is not a breach of contract, a failure is grounds for PAEDC to withhold further payments to Incentive Recipient and/or demand reasonable assurances<sup>1</sup> from Incentive Recipient that it can and will fully perform its contractual obligations. Failure to provide such reasonable assurances within 30 days following demand of PAEDC is a breach of contract.

- 7. Incentive Recipient's performance milestones are contained in the following table.

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<sup>1</sup> Examples of reasonable assurances are copies of pending contracts and customer commitment letters.

**PERFORMANCE MILESTONE SCHEDULE  
PURE RENEWABLES PORT ARTHUR LLC  
MILESTONE SCHEDULE**

	<u>Deadline</u>	<u>Milestone</u>
(a)	December 31, 2015	PURE Renewables Port Arthur, LLC Issue a <u>status report</u> to PAEDC CEO on expansion of the facility at the Port of Port Arthur
(b)	June 30, 2016	PAEDC CEO Issue a <u>status report</u> on business expansion and installation of new equipment and estimated completion date of expansion by Pure System International, Ltd
(c)	June 30, 2017	Achieve employment of seventy two (72) full-time Port Arthur residents in Various Positions within the company with an average wage of \$14.00 per hours and average annualized payroll of \$2,083,536.00
(d)	July 31, 2017	PAEDC issue Economic Development Incentive Payment for credit earned through June 30, 2017 on PA Residents wages not to exceed \$500,000
(e)	December 31, 2017	Issue a <u>business operational report</u> to PAEDC CEO for the period December 2015 to December, 2017
(f)	June 30, 2018	Achieve employment of an additional fifty-four (54) full time Port Arthur Residents in various positions within the company with an annualized payroll for the estimated 126 Port Arthur residents of \$3,642,912.00
(g)	July 31, 2018	PAEDC issue Economic Development Incentive Payment for credit earned through June 30, 2018 on PA Residents wages not to exceed \$375,000
(h)	December 31, 2018	Issue a <u>business operational report</u> to PAEDC CEO for the period December, 2017 to December, 2018
(i)	June 30, 2019	Achieve employment of an additional seventy-two (72) full-time Port Arthur Residents in various position making a total of 198 Port Arthur working with an Annualized payroll of \$5,726,448
(j)	July 31, 2019	PAEDC issue Economic Development Incentive Payment for credit earned through June 30, 2019 on PA Residents wages not to exceed \$500,000
(k)	December 31, 2019	Issue a <u>business operational report</u> to PAEDC CEO for the period December, 2018 to December 31, 2019
(l)	June 30, 2020	Achieve employment of an additional eighteen (18) full-time Port Arthur Residents In various position making a total of 216 Port Arthur residents employed with PU Systems International, Ltd with an annualized payroll of \$6,237,504
(m)	July 31, 2020	PAEDC issue Economic Development Incentive Payment for credit earned through June 30, 2020 on PA Residents wages not to exceed \$125,000
(n)	December 31, 2020	Issue a <u>business operational report</u> to PAEDC CEO for the period December, 2019 to December 31, 2020
(o)	June 30, 2020	PURE Renewables Port Arthur, LLC meets all their contractual requirement. File is closed.

## **PAEDC'S CONDITIONAL OBLIGATIONS AND LIMITED LIABILITY**

8. It is expressly understood and agreed by the parties hereto that the PAEDC funding obligations herein are contingent upon the actual receipt of adequate sales tax revenue funds to meet the PAEDC's liabilities under this Agreement. If adequate funds are not available to make payments under this Agreement, the PAEDC shall notify Incentive Recipient in writing within a reasonable time after such fact is reasonably determined by the PAEDC Board of Directors. The PAEDC, at its sole option, may then terminate this Agreement without further liability. In the event of such termination by the PAEDC, the PAEDC may, at its sole option, immediately cease all further funding, if any, required by this Agreement and the PAEDC shall not be liable to Incentive Recipient or to any third parties for failure to make payments to Incentive Recipient under the terms and conditions of this Agreement, and likewise Incentive Recipient shall be released from all further duties, liabilities and obligations under this Agreement.

9. The PAEDC shall not be liable, in Agreement or otherwise, to Incentive Recipient, or to any person or entity claiming by or through Incentive Recipient, for any expense, expenditure or cost incurred by or on behalf of Incentive Recipient related to the project made the basis of this Agreement. The PAEDC's sole liability/obligations, if any, shall be to Incentive Recipient and shall be limited to the obligations detailed in Section 5(a) of this Agreement.

10. Incentive Recipient shall not use the funds herein for any purpose(s) other than that specifically disclosed herein and as further disclosed within that certain application made by or on behalf of Incentive Recipient, which application is incorporated herein for all purposes.

11. Funds granted by the PAEDC hereunder shall not be utilized by Incentive Recipient for repayment of costs, expenditures or expenses incurred prior to the date of this Agreement.

## **LIQUIDATED DAMAGES FOR BREACH OF AGREEMENT**

12. In the event Incentive Recipient fails to perform its obligations under this Agreement, following notice thereof from PAEDC and thirty-day (30-day) opportunity to cure the same, the PAEDC conditional grant, minus any credits earned, will automatically convert to a loan (liquidated damages) for a term ending three (3) years from the Effective Date, effective on the day of breach, as agreed by Incentive Recipient in the executed Conditional Commercial Promissory Note contained in **Exhibit "A."** Following such conversion to a loan as aforesaid, the PAEDC, at its sole option, may terminate its remaining funding obligations, if any, detailed in Section 5 herein. Further, the PAEDC shall be entitled to recover its reasonable and customary attorney's fees and court costs incurred in collection of said obligation and such remedies as are provided at law or in equity.

13. It is expressly understood and agreed by the parties that any right or remedy shall not preclude the exercise of any other right or remedy under this Agreement or under any provision of law, nor shall any action taken in the exercise of any right or remedy be deemed a waiver of any other rights or remedies. Failure to exercise any right or remedy hereunder shall not constitute a waiver of the right to exercise that or any other right or remedy at any time.

#### **RECORDS / INSPECTION / PAEDC AUDIT**

14. Incentive Recipient must establish and maintain sufficient records, as reasonably determined by the PAEDC, to account for the expenditure and utilization of funds received by Incentive Recipient from PAEDC under the terms and conditions of this Agreement

15. Incentive Recipient shall maintain records of the receipt and disposition of all funds provided hereunder as necessary to allow the PAEDC to audit and verify proper utilization of said funds in compliance with this Agreement and the representations and warranties contained herein and in Incentive Recipient's application. Incentive Recipient shall provide reports of utilization of said funds, as reasonably requested by the PAEDC, and upon termination of this Agreement.

16. Upon ten-day (10-day) advance notice, Incentive Recipient shall give the PAEDC, or any of its duly authorized representatives, access to and right to examine all books, accounts, records, reports, files and other papers, things or property belonging to or in use by Incentive Recipient, but excluding any books and records containing any trade secrets or other confidential proprietary information that belongs to Incentive Recipient or which Incentive Recipient has a duty to keep confidential (the "Confidential Information"). Such rights to access shall continue as long as the records are maintained by Incentive Recipient. Incentive Recipient agrees to maintain such records in an accessible location. All information obtained by the PAEDC, or its duly authorized representatives, shall be regarded as the confidential business information of Incentive Recipient (regardless of whether or not such information is in fact confidential or constitutes Confidential Information) and the PAEDC shall take reasonable measures to protect such information from disclosure to third parties; however, PAEDC is subject to the requirements of the Texas Public Information Act and Open Meetings Act (Tex.Gov.Code, 551 & 552). Incentive Recipient agrees that disclosures to the public required by the Texas Open Meetings Act, Texas Public Information Act or any other legal requirement will not expose PAEDC (or any party acting by, through or under PAEDC) to any claim, liability or action by Incentive Recipient (or any party working by, through or under).

17. All records pertinent to this Agreement shall be retained by Incentive Recipient at least three years following the date of termination of this Agreement, whether said termination is a result of default or whether said termination is a result of final submission of a close out report by Incentive Recipient detailing its compliance with its obligations provided herein. Further, in the event any litigation, claim or audit arising out of or related to this Agreement is instituted before the expiration of the three (3) year period and extends beyond the three year

period, the records will be maintained until all litigation, claims or audit findings involving this Agreement and the records made the basis of same have been resolved. Further, records relating to real property acquisition, including any long-term lease, shall be retained for a period equal to the useful life of any asset purchased with PAEDC funds.

18. Incentive Recipient shall provide PAEDC with all reports necessary for PAEDC compliance with the Development Act.

19. It is expressly understood and agreed by the parties hereto that if Incentive Recipient fails to submit to PAEDC in a timely and satisfactory manner any report required by this Agreement, PAEDC may, at its sole discretion, withhold further payments to Incentive Recipient and/or demand assurances that Incentive Recipient can and will fully perform its contractual obligations. If Incentive Recipient fails to provide adequate assurances then Incentive Recipient is in breach, and any monies advanced by PAEDC automatically become a loan. If PAEDC withholds such payments, it shall notify Incentive Recipient in writing of its decision and the reasons therefore. Payments withheld pursuant to this paragraph may be held by PAEDC until such time as the delinquent obligations for which funds are withheld are fulfilled by Incentive Recipient.

20. The PAEDC reserves the right, from time to time, to carry out field inspections/audits to ensure compliance with the requirements of this Agreement. After completion of any such audit, the PAEDC may provide Incentive Recipient with a written report of the audit findings. If the audit report details deficiencies in its performance under the terms and conditions of this Agreement, the PAEDC may establish requirements for the timely correction of any such deficiencies by Incentive Recipient. Incentive Recipient shall have the right to review, dispute and contest any audit findings and to have a second audit performed by an independent auditor selected by it.

#### **HOLD HARMLESS**

21. INCENTIVE RECIPIENT AGREES TO HOLD HARMLESS THE PAEDC AND THE CITY OF PORT ARTHUR FROM ANY AND ALL CLAIMS, DEMANDS, AND CAUSES OF ACTION OF ANY KIND OR CHARACTER WHICH MAY BE ASSERTED BY ANY THIRD PARTY OCCURRING, ARISING OUT OF OR IN ANY WAY RELATED TO THIS AGREEMENT, THE PROJECT MADE THE BASIS OF THIS AGREEMENT, AND THE UTILIZATION OF GRANT FUNDS PROVIDED BY THIS AGREEMENT, PROVIDED THAT SUCH CLAIM, DEMAND OR CAUSE OF ACTION DOES NOT ARISE FROM ANY FRAUD OR MISCONDUCT ON THE PART OF THE PAEDC OR THE CITY OF PORT ARTHUR, OR ANY AGENT, EMPLOYEE OR REPRESENTATIVE OF EITHER.

#### **SUBCONTRACTS**

22. Incentive Recipient may not subcontract for performance credits described in this Agreement without obtaining PAEDC's written approval, which may be withheld for any reason. Incentive Recipient shall only subcontract for performance credits described in this Agreement after Incentive Recipient has submitted a Subcontractor Eligibility Request, as specified by PAEDC, for each proposed subcontract, and Incentive Recipient has obtained PAEDC's prior written approval. Incentive Recipient, in subcontracting for any performances described in this Agreement, expressly understands that in entering into such subcontracts, PAEDC is in no way liable to Incentive Recipient's subcontractor(s).

23. In no event shall PAEDC's prior written approval of a subcontractor's eligibility, be construed as relieving Incentive Recipient of the responsibility for ensuring that the performances rendered under all subcontracts are rendered so as to comply with all terms of this Agreement, as if such performances rendered were rendered by Incentive Recipient. PAEDC's approval does not constitute adoption, ratification, or acceptance of Incentive Recipient's or subcontractor's performance hereunder. PAEDC maintains the right to insist upon Incentive Recipient's full compliance with the terms of this Agreement, and by the act of subcontractor approval, PAEDC does not waive any right of action which may exist or which may subsequently accrue to PAEDC under this Agreement.

24. Incentive Recipient, as well as all of its approved subcontractors, shall comply with all applicable federal, state, and local laws, regulations, and ordinances for making procurement under this Agreement.

#### **CONFLICT OF INTEREST / DISCLOSURE OBLIGATION**

25. Conflict of Interest: No employee, agent, officer or elected or appointed official of the City of Port Arthur or the PAEDC who has participated in a decision making process related to this Agreement (without recusing him/herself and executing a conflict affidavit) may obtain a personal or financial interest or benefit from an PAEDC assisted activity, or have an interest in any contract, subcontract, or agreement (or proceeds thereof) with respect to an PAEDC assisted activity, during their tenure or for one (1) year thereafter. Insofar as relates to the conduct hereunder of Incentive Recipient, its agents, employees or representatives, Incentive Recipient shall ensure compliance with applicable provisions under Chapter 504, Local Government Code, as amended, and Chapter 171, Local Government Code, as amended.

26. Disclosure: In conjunction with execution of this Agreement, Incentive Recipient has fully disclosed to PAEDC all known and potential owners of interests in Incentive Recipient (whether shareholder, partner, limited partner, manager, member or otherwise). In the event of any change in ownership or control of Incentive Recipient of five percent (5 %) or greater, Incentive Recipient shall notify PAEDC in writing. Further, Incentive Recipient shall be obligated to notify in writing the PAEDC in the event any time prior to, during or one (1) year after the term of this Agreement, any City or PAEDC employee or representative or any third party with a conflict of interest obtains or proposes to obtain a financial benefit, direct or

indirect, from Incentive Recipient. Failure to provide said notice immediately or no later than five (5) business days after receipt of information shall constitute a default herein.

### **NONDISCRIMINATION / EMPLOYMENT / REPORTING**

27. Incentive Recipient shall ensure that no person shall on the grounds of race, color, religion, sex, handicap, or national origin be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any program or activity funded in whole or in part with funds provided under this Agreement. Additionally, funds shall be used in accordance with the following requirements:

- (a) To the greatest extent feasible, opportunities for training and employment arising in connection with the planning and carrying out of any project assisted with PAEDC funds provided under this Agreement be given to Port Arthur residents; and
- (b) To the greatest extent feasible, Agreements for work to be performed in connection with any such project be awarded to Port Arthur residents and businesses, including, but not limited to, individuals or firms doing business in the field of planning, consulting, design, architecture, building construction, rehabilitation, maintenance, or repair, which are located in or owned in substantial part by persons residing in the City of Port Arthur, Texas.
- (c) If Incentive Recipient advertises for employment then it shall among any other advertising that it chooses to undertake covenants that it will advertise in the Port Arthur News. Incentive Recipient acknowledges that PAEDC does not intend to restrain any advertising in additional publications or media nor direct any others than that stated.

### **LEGAL AUTHORITY**

28. Incentive Recipient assures and guarantees it possesses legal and/or corporate authority (i) to enter into this Agreement, receive funds authorized by this Agreement, and (ii) to perform the obligations hereunder. Incentive Recipient has provided, or shall provide, as requested by the PAEDC, such resolutions or other required authorizations necessary to evidence this authority.

29. The person or persons signing and executing this Agreement on behalf of Incentive Recipient, or representing themselves as signing and executing this Agreement on behalf of Incentive Recipient, do hereby warrant and guarantee that he, she, or they have been duly authorized by Incentive Recipient to execute this Agreement on behalf of Incentive Recipient and to validly and legally bind Incentive Recipient to all terms, performances, and provisions herein set forth.

### **NOTICE OF LEGAL OR REGULATORY CLAIMS**



30. Incentive Recipient shall give PAEDC immediate notice in writing of 1) any legal or regulatory action, including any proceeding before an administrative agency filed against Incentive Recipient, directly or indirectly; and 2) any material claim against Incentive Recipient, which is reasonably expected to adversely impact continued operations. For purposes herein, "material" claims shall mean claims in excess of \$5,000. Except as otherwise directed by PAEDC, Incentive Recipient shall furnish promptly to PAEDC copies of all pertinent documentation of any kind received by Incentive Recipient with respect to such action or claim.

### **CHANGES AND AMENDMENTS**

31. Except as specifically provided otherwise in this Agreement, any alterations, additions, or deletions to the terms of this Agreement shall be by amendment in writing and executed by all parties to this Agreement. Such amendments must be approved by the PAEDC Board of Directors and, in many cases, by the City Council for City of Port Arthur.

32. It is understood and agreed by the parties hereto that performances under this Agreement must be rendered in accordance with the regulations promulgated under the Development Corporation Act, the assurances and certifications made to PAEDC by Incentive Recipient, and the assurances and certifications made to the City of Port Arthur with regard to the operation of the PAEDC's Projects. Based on these considerations, and in order to ensure the legal and effective performance of this Agreement by all parties, it is agreed by the parties hereto that the performances under this Agreement are by the provisions of the PAEDC Program and any amendments thereto and may further be amended in the following manner: PAEDC may from time to time during the period of performance of this Agreement issue policy directives which serve to interpret, or clarify performance requirements under this Agreement. Such policy directives shall be promulgated by the PAEDC Board of Directors in the form of PAEDC issuances, shall be approved by the City Council and shall have the effect of qualifying the terms of this Agreement and shall be binding upon Incentive Recipient, as if written herein, provided that all policy directives shall be issued on a uniform basis and made applicable to all grant recipients.

33. Any alterations, additions, or deletions to the terms of this Agreement which are required by changes in Federal, state law or local law are automatically incorporated into this Agreement without written amendment hereto, and shall become effective on the date designated by such law or regulation.

### **DEFAULT / TERMINATION**

34. In the event of default of any of the obligations of Incentive Recipient detailed herein or in the event of breach of any of the representations of or warranties of Incentive Recipient either detailed herein or in its application to the PAEDC, and following any written notice and opportunity to cure and Incentive Recipient's failure to cure such default within 30

days, the PAEDC may, at its sole option, terminate this Agreement, in whole or in part. In the event of such termination, the PAEDC may, at its sole option, utilize one or more of the following actions to resolve or otherwise remedy said default:

- (a) Declare the Conditional Commercial Promissory Note executed in conjunction with this Agreement immediately effective. If Incentive Recipient defaults on the note, then the PAEDC may exercise its default remedies provided under collateral documentation executed in conjunction with said Note and this Agreement
- (b) Exercise any remedies provided herein and/or within the Collateral Security Documents;
- (c) Withhold, whether temporarily or otherwise, disbursement of grant proceeds pending correction of the deficiency(s) by Incentive Recipient;
- (d) Disallow all or a part of the incentives which are not in compliance with the terms and conditions of this Agreement or in compliance with the representations and warranties contained within this Agreement and Incentive Recipient's application to the PAEDC;
- (e) Withhold and/or disallow further PAEDC incentives to Incentive Recipient; and
- (f) Exercise any and all other remedies that may be legally available to the PAEDC, under the laws of the State of Texas and as authorized by the terms and conditions of this Agreement.

35. In addition to the foregoing, the parties agree that this Agreement may be terminated at any time when both parties agree, in writing, to the terms and conditions of any such voluntary termination.

#### **COMPLIANCE AUDITS**

36. If directed by PAEDC Board, Incentive Recipient shall arrange for the performance of a compliance audit, by a certified public accountant, of funds received and performances rendered under this Agreement, subject to the following conditions and limitations:

- (a) Incentive Recipient shall have a compliance audit which may be limited to use of funds received from the PAEDC, made for any of its fiscal years included within the Term of this Agreement in which Incentive Recipient receives more than \$50,000 in PAEDC financial assistance provided by PAEDC in the form of grants, contracts, loans, loan guarantees, property, cooperative agreements, interest subsidies, or direct appropriations. Backup documentation regarding actual expenditures shall be provided by Incentive Recipient. Said audit must be received and accepted by the Chief Executive Officer of PAEDC and/or the PAEDC Board.

Such audits may not be required more than once a year, and Incentive Recipient shall be entitled to review, contest and dispute the audit findings and to have a second audit performed by a neutral auditor selected by it, the results of which may be used to support its position.

- (b) At the option of Incentive Recipient, each audit required by this section may cover either its entire operations or each department, agency, or establishment of Incentive Recipient which received, expended, or otherwise administered PAEDC funds;
- (c) Unless otherwise specifically authorized by PAEDC in writing, Incentive Recipient shall submit the report of such audit to PAEDC within thirty (30) days after completion of the audit, but no later than one hundred twenty (120) days after the end of each fiscal period included within the Term of this Agreement.

37. Incentive Recipient understands and agrees that it shall be liable to reimburse immediately PAEDC for any costs disallowed pursuant to financial and compliance audit(s) of funds received under this Agreement and it may be required to submit formal audits at its expense.

38. Incentive Recipient shall take all necessary actions to facilitate the performance of any and all such audits, whether annual, mandatory or otherwise requested under this Agreement.

39. Subject to financial privacy requirements of Incentive Recipient and properly designated requests for non-disclosure due to proprietary reasons, all approved audit reports may be made available for public inspection, but excluding all Confidential Information.

40. PAEDC shall not release any funds for costs incurred by Incentive Recipient under this Agreement until PAEDC has received certification from Incentive Recipient that its fiscal control and fund accounting procedures are adequate to assure proper disbursement of and accounting for funds provided under this Agreement. PAEDC shall specify the content and form of such certification.

#### **SUPPLEMENTAL COVENANT**

41. Incentive Recipient and any branch, division or department of Incentive Recipient certifies that they have not and will not knowingly employ an "undocumented worker" which means "an individual who, at the time of employment, is not lawfully admitted for permanent residence to the United States or authorized under law to be employed in that manner in the United States."

42. Incentive Recipient acknowledges that it has reviewed Chapter 2264, Texas

Government Code and hereby affirmatively agrees by execution of this Agreement to repay the amount of any incentive with interest at the rate of ten (10%) percent per annum not later than the 120<sup>th</sup> day after the date PAEDC notifies Incentive Recipient of a violation.

43. Incentive Recipient acknowledges PAEDC may bring a civil action or cover any amounts owed under this Chapter and further acknowledges that PAEDC may recover court costs and reasonable attorneys' fees incurred in an action brought under §2264.101(a). Incentive Recipient is not liable for a violation of this Chapter by a subsidiary, affiliate or franchisee of the Incentive Recipient or by a person with whom the Incentive Recipient contracts.

### **ENVIRONMENTAL REQUIREMENTS**

44. Incentive Recipient understands and agrees that by execution of this Agreement, Incentive Recipient shall be responsible for providing to PAEDC all information, concerning this PAEDC funded project, required for PAEDC to meet its responsibilities for environmental review, decision making, and other action which applies to PAEDC in accordance with and to the extent specified in Federal, State and Local Law. Incentive Recipient further understands and agrees that Incentive Recipient shall make all reasonable efforts to assist PAEDC in handling inquiries and complaints from persons and agencies seeking redress in relation to environmental reviews covered by approved certifications.

### **ORAL AND WRITTEN AGREEMENTS / PRIOR AGREEMENTS**

45. All oral and written contracts between the parties to this Agreement relating to the subject matter of this Agreement that were made prior to the execution of this Agreement have been reduced to writing and are contained in this Agreement.

46. The documents required below are hereby made a part of this Agreement, and constitute promised performances by Incentive Recipient in accordance with this Agreement:

#### **Required**

_____	Exhibit "A"	Conditional Commercial Promissory Note
_____	Exhibit "B"	Certification Regarding Lobbying
_____	Exhibit "C"	First Source Referral Agreement
_____	Exhibit "D"	Compliance Statement
_____	Incentive Recipient Application to PAEDC	

### **VENUE**

47. For purposes of litigation that may accrue under this Agreement, venue shall lie in Jefferson County, Texas, where substantially all the performance will occur.

### **ADDRESS OF NOTICE AND COMMUNICATIONS**

City of Port Arthur Section 4A Economic Development Corporation  
501 Procter Street  
Port Arthur, Texas 77640  
ATTN: Floyd Batiste, Chief Executive Officer

Pure Renewables Port Arthur, LLC  
6528 East 101<sup>st</sup> Street  
Suite D-1 #261  
ATTN: Joy Nunn

### **CAPTIONS**

48. This Agreement has been supplied with captions to serve only as a guide to the contents. The caption does not control the meaning of any paragraph or in any way determine its interpretation or application.

### **COMPLIANCE WITH FEDERAL, STATE AND LOCAL LAWS**

49. Incentive Recipient shall comply with all Federal, State and local laws, statutes, ordinances, resolutions, rules, regulations, orders and decrees of any court or administrative body or tribunal, including those related to the activities and performances of Incentive Recipient under this Agreement. Upon request by PAEDC and by the City, Incentive Recipient shall furnish satisfactory proof of its compliance herewith.

### **CONDITIONS PRECEDENT**

50. This Agreement has no legal consequences, and neither party shall rely on the agreement, unless and until all of the following conditions have been met to the satisfaction of PAEDC.

- a. Both the PAEDC Board and the Port Arthur City Council approve the Agreement in its final executed form.
- b. PAEDC has received and approved documentation to its satisfaction on the Assignment and/or transfer of material supply commitments to Incentive Recipient for the business operations at the Project.
- c. Documentation satisfactory to PAEDC as to the assignment or transfer of technology licensing and/or related agreements to Incentive Recipient for the business operations at the Project.
- d. Documentation satisfactory to PAEDC as to offtake or related production agreements for the business operations at the Project.

### **FORCE MAJEURE**

51. All performance dates, milestone dates and time required for completing performance hereunder by Incentive Recipient shall be extended, as reasonably necessary and appropriate, to the extent Incentive Recipient's performance of its obligations hereunder have been delayed, hindered or prevented by force majeure or other events beyond its reasonable control.

**ATTORNEY APPROVALS**

APPROVED AS TO FORM:

\_\_\_\_\_  
Guy Goodson, General Counsel for PAEDC

VERIFIED BY  
CITY COUNCIL RESOLUTION:

Resolution Number: \_\_\_\_\_

\_\_\_\_\_  
Valecia R. Tizenso, City Attorney

**AGREEMENT EXECUTION**

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

**SIGNED AND AGREED TO** on the \_\_\_\_ day of \_\_\_\_\_, 2016.

By: \_\_\_\_\_

By: \_\_\_\_\_  
President

Secretary

\_\_\_\_\_

EDC Representative

EDC Representative

**PURE RENEWABLES PORT ARTHUR, LLC**

**SIGNED AND AGREED TO** on the \_\_\_\_ day of \_\_\_\_\_, 2016.

**Pure Renewables Port Arthur, LLC,**  
a Delaware Limited Liability Company

By: \_\_\_\_\_

\_\_\_\_\_  
Title

\_\_\_\_\_  
Acknowledgment

## EXHIBIT "A"

### CONDITIONAL COMMERCIAL PROMISSORY NOTE

Port Arthur, Texas

This COMMERCIAL PROMISSORY NOTE becomes effective on the date when Pure Renewables Port Arthur, LLC, a Delaware limited liability corporation (hereinafter called "Maker") breaches that certain Economic Incentive Contract and Loan Agreement between the City of Port Arthur Section 4A Economic Development Corporation (hereinafter called "Lender") and Maker, dated \_\_\_\_\_, 2016.

**Effective Date of Note:** This Note shall become effective on the date of breach of its obligations under this Agreement and following notice thereof from PAEDC and thirty-day (30-day) opportunity to cure, said date being the \_\_\_\_ day of \_\_\_\_\_, 2016 ("Note Date").

**Principal Amount:** \$ \_\_\_\_\_, which is \$750,000 minus the incentive credits earned by Maker according to that certain Economic Incentive Contract and Loan Agreement between the Lender and Maker (described hereinbefore).

**Term of the Loan:** This loan shall have a term from the Note Date to \_\_\_\_\_ (the "Final Payment Date").

**Payment Schedule:** The principal amount together with interest at the hereinafter described rate shall be payable in equal monthly installments from the Note Date until \_\_\_\_\_, and all outstanding principal and interest due hereunder shall be due and payable.

FOR VALUE RECEIVED, the undersigned "Maker", promises to pay to Lender, at its office at P.O. Box 1089, Port Arthur, Texas, 77640-1089, or such other place or places as the holder hereof shall from time to time designate in written notice to Maker, the principal amount, in legal and lawful money of the United States of America, together with interest thereon from the date hereof until maturity at the rate of **ten percent (10%)** per annum as detailed herein.

All past due principal and interest shall bear interest from date of maturity until paid at the rate of **fifteen percent (15%)** per annum, or to the maximum extent allowed by law (whichever is greater) as may hereafter be in effect, payable on demand after maturity.

Any notices required or permitted to be given by the holder hereof to Maker pursuant to the provisions of this note shall be in writing and shall be either personally delivered or transmitted by first class United States mail, addressed to Maker at the address designated below for receipt of notice (or at such other address as Maker may, from time to time, designate in writing to the holder hereof for receipt of notices hereunder). Any such notice personally delivered shall be effective as of the date of delivery, and any notice transmitted by mail, in accordance with the foregoing provisions, shall be deemed to have been given to and received by Maker as of the date on which such notice was deposited with the United States Postal Service, properly addressed and with postage prepaid.

This note is also secured by and entitled to the benefits of all other security agreements, pledges, collateral assignments, deeds of trust, guaranties, mortgages, assignments, and lien instruments, if any, of any kind executed by Maker or by any other party as security for any loans owing by Maker to the Lender. Such lien instruments shall include those executed simultaneously herewith, those heretofore executed, and those hereafter executed.



If any installment or payment of principal or interest of this note is not paid when due or any drawer, acceptor, endorser, guarantor, surety, accommodation party or other person now or hereafter primarily or secondarily liable upon or for payment of all or any part of this note (each hereinafter called an "other liable party") shall die, or become insolvent (however such insolvency may be evidenced); or if any proceeding, procedure or remedy supplementary to or in enforcement of judgment shall be resorted to or commenced against Maker or any other liable party, or with respect to any property of any of them; or if any governmental authority or any court at the instance thereof shall take possession of any substantial part of the property of or assume control over the affairs or operations of, or a receiver shall be appointed for or take possession of the property of, or a writ or order of attachment or garnishment shall be issued or made against any of the property of Maker or any other liable party; or if any indebtedness for which Maker or any other liable party is primarily or secondarily liable shall not be paid when due or shall become due and payable by acceleration of maturity thereof, or if any event or condition shall occur which shall permit the holder of any such indebtedness to declare it due and payable upon the lapse of time, giving of notice or otherwise; or if Maker or any other liable party (if other than a natural person) shall be dissolved, wound up, liquidated or otherwise terminated, or a party to any merger or consolidation without the written consent of Lender; or if Maker or any other liable party shall sell substantially all or an integral portion of its assets without the written consent of Lender; or if Maker or any other liable party fails to furnish financial information requested by Lender; or if Maker or any other liable party furnishes or has furnished any financial or other information or statements which are misleading in any respect; or if a default occurs under any instrument now or hereafter executed in connection with or as security for this note; or any event occurs or condition exists which causes Lender to in good faith deem itself insecure or in good faith believe the prospect of payment or performance by Maker or any other liable party under this note, under any instrument or agreement executed in connection with or as security for this note, or under any other indebtedness of Maker or any other liable party to Lender is impaired; thereupon, at the option of Lender, the principal balance and accrued interest of this note and any and all other indebtedness of Maker to Lender shall become and be due and payable forthwith without demand, notice of default, notice of acceleration, notice of intent to accelerate the maturity hereof, notice of nonpayment, presentment, protest or notice of dishonor, all of which are hereby expressly waived by Maker and each other liable party. Lender may waive any default without waiving any prior or subsequent default.

If this note is not paid at maturity whether by acceleration or otherwise, and is placed in the hands of any attorney for collection, or suit is filed hereon, or proceedings are had in probate, bankruptcy, receivership, reorganization, arrangement or other legal proceedings for collection hereof, Maker and each other liable party agree to pay Lender its collection costs, including court costs and a reasonable amount for attorney's fees.

It is the intention of Maker and Lender to conform strictly to applicable usury laws. Accordingly, if the transaction contemplated hereby would be usurious under applicable law, then, in that event, notwithstanding anything to the contrary herein or in any agreement entered into in connection with or as security for this note, it is agreed as follows: (i) the aggregate of all consideration which constitutes interest under applicable law that is taken, reserved, contracted for, charged or received under this note or under any of the other aforesaid agreements or otherwise in connection with this note shall under no circumstances exceed the maximum amount of interest allowed by applicable law, and any excess shall be credited on this note by the holder hereof (or, if this note shall have been paid in full, refunded to Maker); (ii) in the event that maturity of this note is accelerated by reason of an election by the holder hereof resulting from any default hereunder or otherwise, or in the event of any required or permitted prepayment, then such consideration that constitutes interest may never include more than the maximum amount allowed by applicable law, and excess interest, if any, provided for in this note or otherwise shall be canceled automatically as of the date of such acceleration or prepayment and, if theretofore prepaid, shall be credited on this note (or if this note shall have been paid in full, refunded to Maker); and (iii) all calculations of the rate of interest taken, reserved, contracted for, charged or received under this note or under any of the other aforesaid agreements or otherwise in connection

with this note, that are made for the purpose of determining whether such rate exceeds the maximum lawful rate shall be made, to the extent permitted by applicable law, by amortizing, prorating, allocating, and spreading such interest over the entire term of the loan evidenced by this note(including all renewal and extended terms).

Maker may prepay all or any part of the principal of this note before maturity without penalty. No partial prepayment shall reduce, postpone or delay the obligation of Maker to continue paying the installments herein provided on their respective due dates following any such partial prepayment until this note is fully paid.

The Maker shall be directly and primarily liable for the payment of all sums called for hereunder; and, except for notices specifically required to be given by the holder hereof to Maker pursuant to the earlier provisions of this note, Maker and each other liable party hereby expressly waive demand, presentment for payment, notice of nonpayment, protest, notice of protest, notice of intention to accelerate maturity, notice of acceleration of maturity, and all other notice, filing of suit and diligence in collecting this note or enforcing or handling any of the security therefor, and do hereby agree to any substitution, exchange or release, in whole or in part, of any security herefor or the release of any other liable party, and do hereby consent to any and all renewals or extensions from time to time, of this note, or any part hereof, either before or after maturity, all without any notice thereof to any of them and without affecting or releasing the liability of any of them. Each holder hereof, in order to enforce payment of this note by any other liable party, shall be required to first institute suit or exhaust its remedies against Maker and to enforce its rights against any security therefor prior to enforcing payment of this Note by any other liable party.

**SIGNED AND AGREED TO** on the \_\_\_\_ day of \_\_\_\_\_, 2016.

**Pure Renewables Port Arthur, LLC**  
a Delaware Limited Liability Company

By: \_\_\_\_\_  
Signature

Its: \_\_\_\_\_  
Title

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

§  
§  
§

**ACKNOWLEDGEMENT**

**BEFORE ME, THE UNDERSIGNED** Notary Public, on this day personally appeared \_\_\_\_\_, known to me to be the person whose name is subscribed to the foregoing instrument, and acknowledged to me that he/she executed the same as the act and deed of \_\_\_\_\_, a \_\_\_\_\_, for the purposes and consideration therein expressed, and the Capacities therein stated.

**GIVEN UNDER MY HAND AND SEAL OF OFFICE**, this the \_\_\_\_ day of \_\_\_\_\_, 20\_\_.

\_\_\_\_\_

Notary Public, State of Texas

**MAKERS' ADDRESS FOR RECEIPT OF NOTICE:**

Pure Renewables Port Arthur, LLC,  
a Delaware Limited Liability Company  
c/o K. Joy Nunn  
6528 East 101<sup>st</sup> Street  
Suite D-1 #261  
Tulsa, OK 74133

CC. David Herrold/ Leah Ward  
Doerner, Saunders, Daniel and Anderson LLP  
2 W 2<sup>nd</sup> Street #700  
Tulsa, OK 74103

**EXHIBIT "B"**

**CERTIFICATION REGARDING LOBBYING**

For Contracts, Grants, Loans, and Cooperative Agreements

The undersigned certifies, to the best of his knowledge and belief, that:

1. No funds have been paid or will be paid, by or on behalf of the undersigned, to any person for influencing or attempting to influence an officer or employee of any agency, a member of the City or of the PAEDC in connection with the awarding of any contract, the making of any grant, the making of any loan, the entering into of any cooperative agreement, or modification of any contract, grant, loan, or cooperative agreement.
2. The undersigned shall require that the language of this certification be included in the award documents for all sub-awards at all tiers (including subcontracts, sub-grants, and contracts under grants, loans, and cooperative agreements), and that all Subs shall certify and disclose accordingly.

This certification is material representation of fact which reliance was placed when this transaction was made or entered into. Submission of this certification is a prerequisite for making or entering into this transaction.

**Pure Renewables Port Arthur, LLC**

By: \_\_\_\_\_  
Signature

Its: \_\_\_\_\_  
Title

**EXHIBIT "C"**

**FIRST SOURCE REFERRAL AGREEMENT**

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

**FIRST SOURCE REFERRAL AGREEMENT**

**Resolution Number:** \_\_\_\_\_

**Project Name:** \_\_\_\_\_

**Project Address:** \_\_\_\_\_

**Project Contact Person:** \_\_\_\_\_

**Project Contact Person Phone Number:** \_\_\_\_\_

This First Source Referral Agreement (the "Agreement"), for recruitment, referral, and placement of **City of Port Arthur Section 4A Economic Development Corporation** (the "PAEDC"), hereinafter, and **Pure Renewables Port Arthur, LLC** (the "EMPLOYER"). Under this Agreement, the EMPLOYER will use PAEDC as its first source for recruitment, referral, and placement of new hires or employees for the new jobs created by their project and will hire the number of Port Arthur residents specified for new jobs created by the Project in that certain Economic Incentive Contract & Loan Agreement (the "Incentive Agreement") between PAEDC and the EMPLOYER.

**I. GENERAL TERMS**

A. The EMPLOYER will use PAEDC as its first source for the recruitment, referral and placement of employees.

B. PAEDC participation in this Agreement will be carried out by its Chief Executive Officer which is responsible for referral and placement of employees, designated by PAEDC.

C. PAEDC will provide recruitment, referral and placement services to the EMPLOYER subject to the limitations set out in this Agreement.

D. This Agreement shall take effect when signed by the parties below and shall be fully effective for the duration of the Agreement and any extensions or modifications to the contract.

E. PAEDC and the EMPLOYER agree that for purposes of this Agreement, new hires and jobs created include all EMPLOYER'S job openings and vacancies in the Port Arthur Area created as a result of internal promotions, terminations, and expansions of the EMPLOYER'S workforce, as a result of this project.

## **II. RECRUITMENT**

A. The EMPLOYER will complete the attached Employment Plan, which will indicate the number of new jobs projected, salary range, and hiring dates. The EMPLOYER will notify PAEDC of its specific need for new employees as soon as that need is identified.

B. Notification of specific needs, as set forth in Section II.A. must be given to PAEDC at least five (5) business days (Monday - Friday) before using any other referral source, and shall include, at a minimum, the number of employees needed by job title, qualification, hiring date, rate of pay, hours of work, duration of employment, and work to be performed.

C. Job openings to be filled by internal promotion from the EMPLOYER'S current workforce need not be referred to PAEDC for placement and referral.

D. The EMPLOYER will submit to PAEDC, prior to starting work on the project, the names, and social security numbers of all current employees, including apprentices, trainees, and laid-off workers who will be employed on the project.

### **III. REFERRAL**

PAEDC will screen and refer applicants according to the qualifications supplied by the EMPLOYER.

### **IV. PLACEMENT**

A. PAEDC will notify the EMPLOYER, prior to the anticipated hiring dates, of the number of applicants PAEDC will refer. PAEDC will make every reasonable effort to refer at least two qualified applicants for each job opening.

B. The EMPLOYER will make all decisions on hiring new employees but will in good faith use reasonable efforts to select its new hires or employees from among the qualified persons referred by PAEDC.

C. In the event PAEDC is unable to refer the qualified personnel requested, within five (5) business days (Monday - Friday) from the date of notification, the EMPLOYER will be free to directly fill remaining positions for which no qualified applicants have been referred. Notwithstanding, the EMPLOYER will still be required to hire Port Arthur residents in the percentage specified for new jobs created by the Project in that certain Incentive Agreement.

D. After the EMPLOYER has selected its employees, PAEDC will not be responsible for the employees' actions and the EMPLOYER hereby releases PAEDC, from any liability for employees' actions.

## **V. TRAINING**

PAEDC and the EMPLOYER may agree to develop skills training and on-the-job training programs; the training specifications and cost for such training will be mutually agreed upon by the EMPLOYER and PAEDC and set forth in a separate Training Agreement.

## **VI. CONTROLLING REGULATIONS AND LAWS**

A. To the extent this Agreement is in conflict with any labor laws or governmental regulations, the laws or regulations shall prevail.

B. PAEDC will make every effort to work within the terms of all collective bargaining agreements to which the EMPLOYER is a party.

C. The EMPLOYER will provide PAEDC with written documentation that the EMPLOYER has provided the representative of any involved collective bargaining unit with a copy of this Agreement and has requested comments or objections. If the representative has any comments or objections, the EMPLOYER will promptly provide them to PAEDC.

## **VII. EXEMPTIONS**

A. Employment openings the contractor will fill with individuals already employed by the company.

B. Job openings to be filled by laid-off workers according to formally established recall procedures and rosters.



C. Suppliers located outside of the Port Arthur Area and who will perform no work in the Port Arthur Area.

#### **VIII. AGREEMENT MODIFICATIONS, RENEWAL, MONITORING, AND PENALTIES**

A. If, during the term of this Agreement, the EMPLOYER should transfer possession of all or a portion of its business concerns affected by this Agreement to any other party by lease, sale, assignment, merger, or otherwise, the EMPLOYER as a condition of transfer shall:

1. Notify the party taking possession of the existence of the EMPLOYER'S Agreement.

2. Notify the party taking possession that full compliance with this Agreement is required in order to avoid termination of the project.

3. EMPLOYER shall, additionally, advise PAEDC within seven (7) business/calendar days of the transfer. This advice will include the name of the party taking possession and the name and telephone of that party's representative.

B. PAEDC shall monitor EMPLOYER'S performance under this Agreement. The EMPLOYER will cooperate in PAEDC' monitoring effort and will submit a Contract Compliance Form to PAEDC quarterly.

C. To assist PAEDC in the conduct of the monitoring review, the EMPLOYER will make available payroll and employment records for the review period indicated.

D. If additional information is needed during the review, the EMPLOYER will provide the requested information to PAEDC.

E. With the EMPLOYER submission of the final request for closure of Agreement from the Board, the EMPLOYER shall:

1. Document in a report to the Compliance Officer compliance with the hiring requirements specified in the Incentive Agreement to be Port Arthur residents; or
2. Submit a request to the Compliance Officer for a waiver of compliance with the hiring requirement at the project to be Port Arthur residents and include the following documentations:
  - a. Material supporting a good faith effort to comply;
  - b. Referrals provided by PAEDC and other referral sources; and
  - c. Advertisement of job openings listed with PAEDC and other referral sources.

F. Willful breach of the First Source Referral Agreement by the EMPLOYER, or failure to submit the Compliance Report may be enforced by the Compliance Officer through notification and possible termination of the Incentive Agreement.

G. The EMPLOYER and PAEDC, or such other agent as PAEDC may designate, may mutually agree to modify this Agreement.

H. The project may be terminated because of the EMPLOYER'S noncompliance with the provisions of this Agreement.

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

**SIGNED AND AGREED TO** on the \_\_\_\_ day of \_\_\_\_\_, 2016.

By: \_\_\_\_\_  
Pat Holmes, President

By: \_\_\_\_\_  
Carol Womack , Secretary

**EDC Representative**

**EDC Representative**

**PURE RENEWABLES PORT ARTHUR, LLC**

**SIGNED AND AGREED TO** on the \_\_\_\_ day of \_\_\_\_\_, 2016.

By: \_\_\_\_\_

\_\_\_\_\_  
**Acknowledgment**

**EXHIBIT "D"**

**COMPLIANCE STATEMENT**

Pure Renewables Port Arthur, LLC hereby certifies that it has fully complied with Local Government Code §176.006, effective June 18, 2005, which mandates the disclosure requirements for persons who contract or seek to contract with a local governmental entity.

**Pure Renewables Port Arthur, LLC,  
a Delaware Limited Liability Company**

By: \_\_\_\_\_  
Signature

Its: \_\_\_\_\_  
Title