

RESOLUTION NO. 22-097

**A RESOLUTION APPROVING AMENDMENT NO. 1 TO THE
ECONOMIC INCENTIVE CONTRACT AND LOAN
AGREEMENT BETWEEN THE CITY OF PORT ARTHUR
SECTION 4A ECONOMIC DEVELOPMENT CORPORATION
AND HAULIN GAS, LLC**

WHEREAS, per Resolution 22-059, the City Council of the City of Port Arthur approved an Economic Incentive Contract and Loan Agreement (the "Agreement") between the City of Port Arthur Section 4A Economic Development Corporation (the "PAEDC") and Haulin Gas, LLC ("Haulin Gas") in an amount of \$490,516.00 to assist Haulin Gas in its fuel distribution business expansion in Port Arthur, TX; and

WHEREAS, after review of the Agreement by both parties, it was agreed to that the interest rate of ten percent (10%) at which the incentive recipient is to repay the incentive in the event of default and conversion of the incentive to a loan, was outdated and based on a standard rate set forth more than fifteen years ago; and

WHEREAS, at their regular board meeting of February 7, 2022, the PAEDC Board of Directors approved a new standard interest rate of seven percent (7% for all incentive agreements and amending the Agreement with Haulin Gas to reflect the new rate approved by the Board as detailed in the Amended Agreement attached hereto as "Exhibit A".

**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 of the City of Port Arthur approves Amendment No. 1 to the Economic Incentive Contract and Loan Agreement between the Port Arthur Section 4A

Economic Development Corporation and Haulin Gas, LLC as denoted in the Amendment attached hereto as Exhibit "A".

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

READ, ADOPTED AND APPROVED on this 1st day of March A.D., 2022, at a Meeting of the City Council of the City of Port Arthur, Texas, by the following vote: AYES:

Mayor Bartie

Councilmembers Holmes, Jones, Kimbrow and Masie.


NOES: None.


Thurman Bartie, Mayor

ATTEST:


Sherri Bellard, City Secretary

APPROVED:


George Davis, Interim PAEDC Chief Executive Officer

APPROVED AS TO FORM:



Frank Garza, PAEDC Attorney

APPROVED AS TO FORM:



Valecia R. Tizeno, City Attorney

EXHIBIT “A”

**ECONOMIC INCENTIVE CONTRACT AND LOAN AGREEMENT BETWEEN
THE CITY OF PORT ARTHUR SECTION 4A
ECONOMIC DEVELOPMENT CORPORATION
AND HAULIN GAS, LLC.
AMENDMENT NO. ONE**

This is an Amendment to an Economic Development Conditional Grant Agreement between **THE CITY OF PORT ARTHUR ECONOMIC DEVELOPMENT CORPORATION (PAEDC)**, and **HAULIN GAS, LLC** (Incentive Recipient).

WHEREAS, the PAEDC and Incentive Recipient, entered into an Economic Incentive Contract and Loan Agreement (hereinafter referred to as the “Agreement”); and

WHEREAS, per Resolution 22-059, the City Council of the City of Port Arthur approved the Agreement between the City of Port Arthur Section 4A Economic Development Corporation (the “PAEDC”) and Incentive Recipient in an amount of \$490,516.00 to assist Haulin Gas in its fuel distribution business expansion in Port Arthur, TX); and

WHEREAS, after review of the Agreement by both parties, it was agreed to that the interest rate of 10% at which the incentive recipient is to repay the incentive in the event of default and conversion of the incentive to a loan, was outdated and based on a standard rate set forth fifteen (15) years prior; and

WHEREAS, at their regular board meeting of February 7, 2022, the PAEDC Board of Directors approved a new standard interest rate of 7% for all incentive agreements and amending the Agreement with Haulin Gas to reflect the new rate approved by the Board;

NOW, THEREFORE, for and in consideration of mutual covenants and agreements contained herein, and per Section 28 of the Agreement, the parties hereby agree to amend the Agreement as follows:

Section 1. If Incentive Recipient breaches or defaults under this Agreement, then any funds granted by PAEDC will automatically convert to a loan for a period of three (3) years from the date of default, and an interest rate of seven percent (7%) per annum. Therefore, Section 44 of the Agreement should read as follows:

44. 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 seven (7%) percent per annum not later than the 120th day after the date PAEDC notifies Incentive Recipient of a violation.

Section 2. Effective upon the execution of the Amendment, **Exhibit “E” Conditional Commercial Promissory Note** attached to the original Agreement is hereby deleted in its entirety and the attached **Exhibit E Conditional Commercial Promissory Note** is substituted and made part of the original Agreement.

Section 3. The Amendments outlined in Sections 1 and 2 are the only change to the original Economic Incentive Contract and Loan Agreement and all other provisions of the original Agreement, any approved and Exhibits not in conflict with this Amendment shall remain in full force.

Section 4. This Amendment shall be effective upon the execution of this Amendment by both parties.

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

By:

Name: **JERRY LABOVE**

Title: **PRESIDENT**

Date:

ATTEST:

Beverly Raymond, Secretary
PAEDC Secretary

HAULING GAS LLC., A TEXAS CORPORATION

By:

Name: **FARHANA SWATI**

Title: **CHIEF EXECUTIVE OFFICER**

Date:

EXHIBIT "E"
CONDITIONAL COMMERCIAL PROMISSORY NOTE

Port Arthur, Texas

This COMMERCIAL PROMISSORY NOTE becomes effective on the date when Haulin Gas LLC., a Texas 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 _____, 2022

Effective Date of Note: The Note shall be dated effective the _____ day of _____, 202__ which is the date upon which Lender provided notification to Maker of its default under the Economic Incentive Contract & Loan Agreement (the "Agreement") by and between Lender and Maker dated _____, 2021 ("Date of Default").

Principal Amount: Principal amount is \$ _____, which is \$ _____ less the incentive credits earned by Maker according to the Agreement (described hereinabove).

Term of the Loan: From the Date of Default, Maker shall thereafter make equal monthly installments of principal and interest (interest being calculated as hereinafter specified at the rate of seven percent (7%) per annum) until _____ (the "Final Payment Date"). Lender shall provide to Maker, a payment amortization schedule for the monthly installments due hereunder. Maker agrees that all principal and interest on this Note shall be due and payable by the Final Payment Date.

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 **seven percent (7%)** 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 here-for 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 _____, 2022.

Haulin Gas LLC.,

By:

FARHANA SWATI

Its: CHIEF EXECUTIVE OFFICER

THE STATE OF TEXAS

COUNTY OF JEFFERSON

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ACKNOWLEDGEMENT

BEFORE ME, THE UNDERSIGNED Notary Public, on this day personally appeared FARHANA SWATI 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 Haulin Gas LLC., for the purposes and consideration therein expressed, and the Capacities therein stated.

GIVEN UNDER MY HAND AND SEAL OF OFFICE, this the ____ day of _____, 2022.

Notary Public, State of Texas

