

ECONOMIC DEVELOPMENT INCENTIVE AGREEMENT

THIS ECONOMIC DEVELOPMENT INCENTIVE AGREEMENT (“Agreement”) is made and entered into this ____ day of _____, 2011, by and between the **CITY OF PALM COAST, FLORIDA**, a municipal corporation (“City”) and **CONTEMPORARY MACHINERY AND ENGINEERING SERVICES, INC., a Florida Corporation** (“Project Modern”) and **JAMES A. SMITH** and **JULIA M. SMITH**, owners of the real property referenced herein (“Owners”).

RECITALS:

WHEREAS, Project Modern is an existing local company that manufactures high tech machinery for the railroad industry, currently employs twenty-five (25) persons, and is seeking to expand its current operations; and

WHEREAS, Project Modern, and the real property on which its business is located, is currently located outside the City of Palm Coast’s jurisdictional boundaries, however, Project Modern and said real property are currently provided water services by the City; and

WHEREAS, Project Modern is currently utilizing a septic tank system to handle sewerage flows from its business, but Project Modern desires to cease the use of its septic tank system and instead hookup to the City’s sanitary sewer system; and

WHEREAS, Project Modern has agreed to expand its current operations, create an additional thirty (30) primary jobs over the next three (3) years, connect to the City’s sanitary sewer system under the terms and conditions of this Agreement; and

WHEREAS, Owners are the owners of the real property on which Project Modern’s business operates; and

WHEREAS, Owners have represented to the City that Allen W. Smith is deceased, and have presented to the City a copy of Allen W. Smith’s death certificate as proof thereof, and that Owners are the sole beneficiaries of Allen W. Smith with respect to any and all interest that he may have possessed in the real property which is subject to this Agreement; and

WHEREAS, Owners acknowledge that the City is relying on the accuracy of aforementioned representation in good faith for purposes of entering into this Agreement; and

WHEREAS, Owners are signatories of this Agreement for the sole purpose of agreeing to the voluntary annexation petition with the City set forth in **EXHIBIT “A”** and the sewer connection referenced herein; and

WHEREAS, the City desires to provide Project Modern economic incentives in furtherance of the municipal purpose of expanding economic activity within its future jurisdictional borders under section 166.021(9), Florida Statutes; and

WHEREAS, the City desires to provide Project Modern with sanitary sewer services and lessen the environmental impacts of the use of a septic system by an industrial user; and

WHEREAS, the parties recognize this Agreement is necessary to ensure that the economic incentives provided by the City to Project Modern ultimately serve their intended municipal purpose; and

WHEREAS, the City has established terms and conditions herein whereby Project Modern and Owners by complying with these terms and conditions, can receive the benefit outlined in this Agreement, while the City can fulfill the City's desire to support employers which will create jobs and significantly enhance the prospects of local economic development; and

WHEREAS, the parties agree that the economic incentives provided by the City hereunder are for the benefit of the public health, safety, welfare and convenience of the citizens of the City of Palm Coast, Florida; and

WHEREAS, the City Council finds and declares that this Agreement serves a public purpose, which includes promotion of economic development, job growth, and the future expansion of the City's tax base.

NOW THEREFORE, in consideration of the mutual promises and covenants herein, and other good and valuable consideration which the parties agree has been exchanged and received the parties agree as follows:

- 1.0 **Recitals.** The foregoing recitals are deemed to be true and accurate and are fully incorporated herein by reference.
- 2.0 **Definitions.** For purposes of this Agreement, the following terms and words shall have the meaning ascribed to them, unless the context clearly indicates otherwise:
 - (a) "County" shall mean Flagler County, Florida
 - (b) "Effective Date" shall be the date on which the last signatory hereto shall execute this Agreement, and it shall be the date on which this Agreement shall go into effect. The Agreement shall not be effective against any part until said date.
 - (c) "Jobs" shall have the meaning given to such terms in Section 288.106(j), Florida Statutes.
 - (d) "Current Location" shall generally mean the approximate 5.35 acre parcel of real property addressed as 551 Roberts Road and identified as Parcel Number 02-12-

31-0000-01010-0020. The Current Location is legally described on the warranty deed attached hereto and incorporated herein as **EXHIBIT “B.”**

- (e) “Expansion Location” shall mean the approximate 4.84 acre parcel of real property identified as Parcel Number 02-12-31-0000-01010-0021. The Expansion Location is legally described in **EXHIBIT “C”** which is attached hereto and incorporated herein by this reference.

3.0 **Commitment by Project Modern and Owners.**

- (a) In furtherance of its business operations, Project Modern agrees to make a total capital investment of not less than three million dollars (\$3,000,000.00) to real property and tangible personal property at its Expansion Location (collectively, the “Capital Investment”) within three (3) years of the Effective Date.
- (b) At such time the City provides Owners and Project Modern with written notice that City sewer services are available at the Expansion Location, Project Modern and Owners agrees to connect the Expansion Location to the City’s sanitary sewer system within thirty (30) days of said notice. Said connection shall include Project Modern’s construction of all required pumping facilities and shall be subject to the City’s sewer services policies.
- (c) Owner agrees to connect the Current Location to the City’s sanitary sewer system within three (3) years of the Effective Date.
- (d) Within three (3) years of the Effective Date of this Agreement, Project Modern agrees in good faith to use its reasonable best efforts to establish and maintain for the term of this Agreement a minimum of fifty-five (55) Jobs at its Current Location.
- (e) Project Modern represents and warrants that the Jobs created, on average, will have an average annual wage at least equal to one hundred fifty percent (150%) above the County average annual wage.
- (f) Simultaneously with the execution of this Agreement, Owners agree to execute the voluntary annexation petition attached to and hereby incorporated into this Agreement as **“EXHIBIT A”** thereby irrevocably agreeing to annex its Current and Expansion Location into the jurisdictional boundaries of the City of Palm Coast. Furthermore, Owners and Project Modern agree not to directly or indirectly through any third party challenge, contest or object to the annexation of the Current and Expansion Location by the City at such time the Current and Expansion Location becomes contiguous to the jurisdictional boundaries of the City of Palm Coast.

4.0 **Commitments by City.**

- (a) The City shall extend the City's sanitary sewer force main system along Roberts Road in order to make City sanitary sewer services available to Project Modern at the Current and Expansion Location. Upon availability, Project Modern and Owner shall connect the Current and Expansion Location to the City's sanitary sewer system under the terms and conditions of this Agreement.
- (b) The City shall utilize City economic development funds to offset one hundred percent (100%) of Owner's/Project Modern's impact fees and connection charges for the Expansion Location related to the sanitary sewer service connection required by this Agreement.
- (c) Offset one hundred percent (100%) of sewer and connection fees for the Current Location if connection to the sanitary sewer system occurs within three (3) years of the Effective Date.
- (d) In order to facilitate Project Modern's commitments under this Agreement, the City shall expedite the processing of all City permit applications submitted to the City by Project Modern, including, but not limited to, utility related permits and/or agreements.

5.0 **Progress Reports.** Upon request by the City, Project Modern shall submit in sufficient and reasonable detail a written progress report, along with supporting documentation, as to the status of the number of employees employed by Project Modern. If the detail is not sufficient in the City's Manager's reasonable discretion to permit the City to determine compliance with this Agreement, the City may seek more reasonable written detail from Project Modern.

6.0 **Compliance with Laws.** Project Modern shall be responsible for complying with all applicable laws, ordinances, rules, regulations, and lawful orders of any public authority regarding the location and continued operation of its business.

7.0 **Work is a Private Undertaking.** With regards to Project Modern's business operations and compliance with applicable laws, ordinances, rules, and regulations, it is specifically understood and agreed to by and between the parties hereto that the contractual relationship between the City and Project Modern is such that the Project Modern is an independent contractor and not an agent of the City. Project Modern and its contractors, partners, agents, and employees are independent contractor and not employees of the City. Nothing in this Agreement shall be interpreted to establish any relationship other than that of an independent contractor, between the City, on the one hand, and Project Modern and its contractors, partners, employees, or agents, under this Agreement.

8.0 **Audit and Inspections; Job Compliance Check.** Project Modern agrees that any records with respect to Project Modern's commitments to the City listed in subsections 3(c) and 3 (d) under this Agreement shall be made available to the City, at any time during normal business hours upon seventy-two (72) hours written notice to Project Modern, no more than once every calendar year, to audit, examine, and make excerpt or

transcripts of all data relevant confirming that Project Modern's compliance with the Agreement.

- 9.0 **Promotion of Economic Incentives.** The City and/or Project Modern may issue news releases, public announcements, advertisements, or other form of publicity concerning its efforts in connection with this Agreement. However, unless otherwise agreed, the party publicizing its efforts shall provide a courtesy copy of any written material to the other party for review and comments prior to publication.
- 10.0 **Severability.** Should any paragraph or any part of any paragraph of this Agreement be rendered void, invalid, or enforceable by any paragraph of this Agreement to render, void, invalid, or enforceable any other paragraph or any part of any paragraph in this Agreement.
- 11.0 **Integration; Modification; Exhibits.** The drafting, execution, and delivery of this Agreement and the annexation petition by the parties has not been induced by any representations, statements, warranties, or agreements other than those expressed herein. This Agreement embodies the entire understanding of the parties, and there are no further or other agreements or understandings, written or oral, in effect between the parties relating to the subject matter hereof except for the annexation petition attached as **EXHIBIT "A"** and any other agreements expressly referred to herein. Modifications of this Agreement shall only be made in writing signed by both referred to herein. Modifications of this Agreement shall only be made in writing signed by both parties. The exhibits attached to this Agreement are incorporated herein and shall be considered a part of this Agreement for the purposes stated herein, except if there is conflict between an exhibit and provisions of this Agreement, the provisions of this Agreement shall prevail over the exhibit.
- 12.0 **Attorney's Fees.** Unless otherwise provided herein, the parties agree to bear their own attorney fees and cost in furtherance of this Agreement.
- 13.0 **Headings.** All headings in this Agreement are for convenience only and shall not be used to interpret or construe its provisions.
- 14.0 **Waiver.** No failure to insist on the prompt performance by Project Modern and Owner of their respective commitments under this Agreement shall be construed as a waiver by the City of its rights to demand performance. Further, any waiver by the City of any breach or violation of Project Modern's or Owner's commitments under this Agreement shall not be construed as a continuing waiver or consent to any subsequent breach or violation or impede the City's ability to enforce the terms of this Agreement.
- 15.0 **Notices.** All notices required or permitted under this Agreement and any written consents or approvals requires hereunder shall be in writing (including telecopy communication) and shall be (as elected by the person giving such notice) hand-delivered by messenger or overnight courier service, telecopied or mailed by registered or certified mail (postage pre-paid), returned receipt requested, and addressed to each party at their respective

addresses as set forth below or to such other addresses any party may designate by notice complying with the terms of this Paragraph:

Attn: Jim Landon, City Manager
City of Palm Coast
160 Cypress Point Pkwy
Suite B-106
Palm Coast, FL 32164

With copy to:

Anthony A. Garganese, Esquire
Brown, Garganese, Weiss & D'Agresta, PA
PO Box 2873
Orlando, FL 32802-2873

With copy to:

Such notice, request, or other communication shall be considered given and deemed delivered: (a) on the date delivered if by personal delivery or courier service; (b) on the date of transmission with confirmed answer back if by telecopier if transmitted prior to 5:00 p.m. on a business day, and on the next business day if transmitted after 5:00 p.m. or on a non-business day, provided that copy of the notice is provided within two business days thereafter by one of the other methods permitted by this Paragraph: or (c) on the date upon which the return receipt is signed or delivery is refused or the notice is designated by the postal authorities as not deliverable, as the case may be, if mailed.

16.0 **Term; Termination; Termination by Parties.**

- (a) Unless sooner terminated by the City or Project Modern or Owner under this Agreement or terminated by mutual consent, the Agreement shall terminate four (4) years from the Effective Date. The City may terminate this Agreement in the event of a material breach of any provision of this Agreement by Project Modern or Owners, which shall include, but not be limited to, failing to fulfill any of their

commitments under Paragraph 3.0. The City may also terminate this Agreement if: (i) Project Modern is declared bankrupt or insolvent; (ii) Project Modern adopts a plan or resolution of liquidation of Project Modern or substantially sells all of its assets; (iii) Project Modern engages in fraud or misleading compliance reporting against the City; or (iv) a receiver or trustee is appointed on behalf of Project Modern for purposes of taking control of substantially all of Project Modern's assets within the City of Palm Coast, Florida or the said assets are judicially seized for any reasons, and possession of said assets are not released to Project Modern within ninety (90) days. Project Modern or Owners may terminate the Agreement in the event of a material breach of any provision of this Agreement by the City which shall include, but not be limited to, failing to fulfill any of its legal commitments under Paragraph 4.0. Prior to exercising its right to terminate this Agreement, the terminating party shall provide the other party with written notice of termination setting forth the reason for termination ("Default") and at least a thirty (30) day opportunity to cure the Default.

- (b) The City and Project Modern acknowledge and agree that Project Modern's performance under the terms of this Agreement is conditioned upon the approval by the State of Florida of other agreements related to Project Modern's business operations. Project Modern shall have the right to either accept or reject this Agreement until September 30, 2011 at 5:00 P.M. EST ("Acceptance Date"). On or before the Acceptance Date, Project Modern shall deliver to the City written confirmation of its acceptance of the Agreement. In the event such acceptance confirmation is not delivered to the City prior to the Acceptance Date, this Agreement shall be deemed terminated and shall be null and void and of no further force and effect and the parties shall have no further obligations hereunder.

17.0 **Indemnification and Hold Harmless.**

- (a) Project Modern assumes any all risk of personal injury and property damage to the extent attributable to the intentional and negligent acts or omissions of Project Modern and its officers, employees, servant, and agent thereof while acting within the scope of their employment with Project Modern and performing Project Modern's requirements and commitments under the terms and conditions set forth in this Agreement. Owners assumes any all risk of personal injury and property damage to the extent attributable to the intentional and negligent acts or omissions of themselves and performing their respective commitments under the terms and conditions set forth in this Agreement. The City assumes any and all risks of personal injury and property damages to the extent attributable to the intentional and negligent acts or omissions of the City's officers, employees, servants, and commitments of the City under this Agreement. Project Modern, Owners, and the City further agree that nothing contained herein shall be construed or interpreted as (1) denying to either party any remedy or defense available to such party under the laws of the State of Florida: or (2) a waiver of sovereign immunity of the City beyond the waiver provided in Section 768.28, Florida Statutes. The limits of

liability on the City set forth in section 768.08, Florida Statutes are hereby fully incorporated herein by this reference.

- (b) The obligations arising under this Paragraph 17.0 shall survive the expiration or termination of this Agreement, as to claims or causes of action, liabilities, expenses, losses, costs, reasonable attorneys fees, damages, fines and penalties of every kind and character or incurred or suffered by the City as a result thereof, based upon events arising prior to the date of termination of this Agreement.
- 18.0 **Assignment.** This Agreement and the grant provided hereunder shall not be assigned by Project Modern without the prior written consent of the City.
- 19.0 **No City Obligation for Future Funds.** No provisions in this Agreement shall be constructed as requiring the City to provide additional economic incentives of any kind, other than as specifically provided herein.
- 20.0 **Conflict of Interest.** Project Modern and Owners represent and warrant, and this Agreement is being made by the City in reliance thereon, that Project Modern and its officers, employees, and agents, and the Owners are neither officers, employees nor agents of the City. Further, that no consideration of any kind is being paid, transferred, or conveyed directly to any City officer or employee, or indirectly to any City officer or employee through some other third party including a relative or legal entity, for the City's commitment to enter into this Agreement.
- 21.0 **Representations of Project Modern and Owners.** Project Modern represents to the City that (i) Project Modern is an entity organized in the State of Florida and duly authorized to conduct business in Florida; (ii) Project Modern has the authority to enter into the Agreement and perform the requirements of this Agreement; (iii) to Project Modern's best knowledge, Project Modern's performance under this Agreement shall not violate any applicable judgment, order, law or regulation; (iv) to Project Modern's best knowledge, Project Modern's performance under this Agreement shall not result in the creation of any claims against the City for money or performance, any lien, charge, encumbrance or security interest upon any asset of the City; (v) Project Modern shall have sufficient capital to perform its commitments under this Agreement; and (vi) Project Modern does not require any third party consent to execute, deliver and perform its commitments under this Agreement unless otherwise stated in this Agreement. Owners represent to the City that they have the full authority to bind the Current and Expansion Locations to the terms and conditions of this Agreement.
- 22.0 **Project Modern's and Owners Continuing Disclosure Requirement.** Project Modern and Owners must promptly notify the City of any developments that materially and adversely impact this Agreement and Project Modern's and Owner's commitments stated herein including, but not limited to, compliance with all applicable laws, rules, and regulations pertaining to clean air permits, initiation any law suits or bankruptcy proceedings, sale or conveyance of real property, labor disputes, and changes in business operations.

23.0 **No Delegation of Police Power.** Project Modern and Owners shall not pledge the credit of the City nor make the City a guarantor of payment or surety for any contract, debt, or judgment, lien, or any form of indebtedness. The parties agree that this Agreement does not nor shall it be construed as a delegation of any of the City's authority or police powers to Project Modern.

24.0 **Compliance Monitoring.** Project Modern agrees that City control and monitoring of the economic incentives granted hereunder is necessary to insure that Project Modern's implementation of their commitments to the City set forth in this Agreement are in furtherance of the municipal purposes declared by the City herein.

IN WITNESS THEREOF, this Agreement is entered into as of the day and year the last party signs this Agreement as stated below.

WITNESSES:

CITY OF PALM COAST, FLORIDA

Printed Name

By: _____
JIM LANDON, CITY MANAGER

ATTEST:

Printed Name

By: _____
VIRGINIA A. SMITH, CITY CLERK

Date: _____

STATE OF FLORIDA
COUNTY OF _____

The foregoing instrument was acknowledged before me this _____ day of _____, 2011, by the CITY OF PALM COAST, JIM LANDON, City Manager and VIRGINIA SMITH, City Clerk, of the City of Palm Coast, Florida, (check one) who are personally known to me or who produced _____ as identification.

Notary Public
Print Name: _____
My Commission expires:

WITNESSES:

Printed Name

Printed Name

CONTEMPORARY MACHINERY AND
ENGINEERING SERVICES, INC.

By: _____

Name: JAMES A. SMITH

Its: PRESIDENT

Date: _____

STATE OF FLORIDA
COUNTY OF FLAGLER

The foregoing instrument was acknowledged before me this _____ day of _____, 2011, by James A. Smith the President of Contemporary Machinery and Engineering Services, Inc., a Florida Corporation (check one) who is personally known to me or who produced _____ as identification.

Notary Public
Print Name: _____
My Commission expires: _____

WITNESSES:

Printed Name

Printed Name

James A. Smith

Date: _____

STATE OF FLORIDA
COUNTY OF FLAGLER

The foregoing instrument was acknowledged before me this _____ day of _____, 2011, by James A. Smith (check one) who is personally known to me or who produced _____ as identification.

Notary Public
Print Name: _____
My Commission expires: _____

WITNESSES:

Julia M. Smith

Printed Name

Date: _____

Printed Name

STATE OF FLORIDA
COUNTY OF FLAGLER

The foregoing instrument was acknowledged before me this _____ day of _____, 2011, by Julia M. Smith (check one) who is personally known to me or who produced _____ as identification.

Notary Public:
Print Name: _____
My Commission expires: _____

“EXHIBIT A”

Prepared by:
Catherine Reischmann, Esq.

Return to:
City Clerk
City of Palm Coast
160 Cypress Point Pkwy Ste B106
Palm Coast, FL 32164

PETITION TO VOLUNTARILY ANNEX REAL PROPERTY TO THE CITY OF PALM COAST FLORIDA

Petitioner, James A. Smith and Julia M. Smith, (hereinafter “Petitioner”) whose mailing address is 557 N. Beach Street, Ormond Beach, Fl 32174 hereby voluntarily petition the City of Palm Coast, Florida to annex real property to the City of Palm Coast, Florida (hereafter “City”) pursuant to and in accordance with the provisions of Chapter 171.044, Florida Statutes, and state(s):

- (1) Petitioner is the sole owner of the real property whose Flagler County Tax Parcel Identification Number(s) is 02-12-31-0000-01010-0020, which is located at 551 Roberts Road, and 02-12-31-0000-01010-0021, and more particularly described on Exhibit “A” attached hereto and by this reference made a part of this Petition (hereinafter the “Real Property”), as evidenced by a deed of other document recorded in Official Records Book(s) 0370, Pages(s) 720-722 and Official Records Book(s) 462, Page(s) 484-486 Public Records of Flagler County, Florida,.
- (2) When the Real Property is annexed to the City, Petitioners agree to and will abide by and comply with all of the existing and future laws, rules and regulations which presently and from time to time in the future may be in effect within the City.
- (3) Petitioners agree that this is a continuous and perpetual request of the property owner for annexation to the City that will be fulfilled when the City determines the Real Property meets with the requirements of law.
- (4) This Petition shall be recorded in the Public Records of Flagler Florida and shall constitute an irrevocable petition annex into the City of Palm Coast which shall run with the Real Property and shall be binding on all subsequent purchasers, successors in interest and assigns of the Real Property.

(5) This Petition may be executed in counterparts by the owners of the Real Property.

Wherefore, Petitioners request that the City take action to approve this Petition and to annex the Real Property into the City. The undersigned's affirm and represent that all corporate or entity actions required to be accomplished to authorize the action taken herein have, in fact, been taken.

WITNESSES:

James A. Smith

Date: _____

Printed Name

Printed Name

STATE OF FLORIDA
COUNTY OF FLAGLER

The foregoing instrument was acknowledged before me this _____ day of _____, 2011, by James A. Smith (check one) who is personally known to me or who produced _____ as identification.

Signature

(Seal)

WITNESSES:

Julia M. Smith

Printed Name

Date: _____

Printed Name

STATE OF FLORIDA
COUNTY OF FLAGLER

The foregoing instrument was acknowledged before me this _____ day of _____, 2011, by Julia M. Smith (check one) who is personally known to me or who produced _____ as identification.

Signature

(Seal)

ATTEST:

CITY OF PALM COAST

Virginia A. Smith
City Clerk

Jim Landon
City Manager

STATE OF FLORIDA)
COUNTY OF FLAGLER)

The foregoing instrument was acknowledged before me this _____ day of _____, 2011, by Jim Landon as City Manager of the City of Palm Coast, on its behalf, who is personally known to me.

Signature

(Seal)