

**RESOLUTION NUMBER 2011-05****COPY****APPROPRIATION RESOLUTION OF THE  
CITY OF FRANKLIN REDEVELOPMENT COMMISSION**

**WHEREAS**, the City of Franklin Redevelopment Commission (the "Commission"), as the governing body for the City of Franklin Redevelopment Department (the "Department"), pursuant to Indiana Code 36-7-14, as amended (the "Act"), has previously designated an area known as the Franklin Downtown/I-65 Integrated Economic Development Area (the "Economic Development Area"), as an economic development area pursuant to Section 41 of the Act,

**WHEREAS**, the Commission designated a portion of such Economic Development Area known as the Casting Technology Allocation Area, the Amended Franklin Park Allocation Area, the Expanded Franklin Eastside Allocation Area, and the Franklin Power Products Allocation Area (the "Allocation Areas") as allocation areas pursuant to Section 39 of the Act; and

**WHEREAS**, the Commission finds that there are insufficient funds available or provided for in the existing budget and tax levy to fund expenses associated with the Production Handling Systems Incorporated Relocation Project (the "Project"), and

**WHEREAS**, notice of a hearing on said appropriation has been duly given by publication and posting as required by law, and the hearing on said appropriation has been held, at which all taxpayers had an opportunity to appear and express their views as to such appropriation.


**NOW, THEREFORE, BE IT RESOLVED** by the City of Franklin Redevelopment Commission, that:

Section 1. Additional Appropriation. There is hereby appropriated for the purpose of paying the expenses associated with the Project and related expenses of the Commission, a sum not to exceed One Hundred Ten Thousand and Fifty Dollars (\$110,050) of tax increment revenues collected from the T.I.F. Areas within the Economic Development Area, to be paid pro rata from each individual Allocation Area. Such appropriation shall be in addition to all appropriations provided for in the existing budget and shall continue in effect until the completion of the described purposes.

Section 2. Miscellaneous. The Clerk-Treasurer is directed to pay for the said expenses from invoices generated from vendors for the purchase of equipment of items and expenses of the Project as applicable in the amounts that do not exceed the total appropriation. The President of the Commission, the Secretary of the Commission, the Clerk-Treasurer of the City and any other appropriate officers of the Commission and the City are hereby authorized to take all such actions and execute all such instruments as are necessary or desirable to effectuate this Resolution, including the filing of a report of this appropriation with the Indiana Department of Local Government Finance.

Section 3. Effective Date. This resolution shall be in full force and effect from and after its adoption.

DULY ADOPTED on this 4<sup>th</sup> day of March, 2011 by the Redevelopment Commission of the City of Franklin, Johnson County, Indiana.

  
\_\_\_\_\_  
President


Absent  
\_\_\_\_\_  
Vice President

  
\_\_\_\_\_  
Secretary

  
\_\_\_\_\_  
Member

  
\_\_\_\_\_  
Member

Attest:

  
\_\_\_\_\_  
Janet P. Alexander,  
Clerk Treasurer

## **ECONOMIC DEVELOPMENT AGREEMENT**

THIS ECONOMIC DEVELOPMENT AGREEMENT (the "Agreement") is made and entered into as of the 4th day of March, 2011, by and among the City of Franklin, Indiana ("City"), by and through its Redevelopment Commission (the "RDC"), and Production Handling Systems Incorporated, an Indiana corporation (the "Company"),

### **WITNESSETH:**

**WHEREAS**, the RDC desires to foster economic development within the City; and

**WHEREAS**, the Company has approached the City regarding the purchase or lease, equipping and use of an existing manufacturing facility, including the Company's intention to make an investment in improvements and to employ at least twenty-two (22) persons over a three (3) years period (the "Project"), as more fully described in the attached Exhibit "A"; and

**WHEREAS**, the Company has requested certain economic development assistance from the City; and

**WHEREAS**, the RDC has determined that the completion of the Project is in the best interests of the citizens of the City, and, therefore, the RDC, subject to a review of the Company's financial condition, desires to take certain steps in order to induce the Company to complete the Project; and

**WHEREAS**, to stimulate and induce the development of the Property and the completion of the Project, the RDC agrees, subject to further proceedings as required by law, to provide the economic development incentives stated below;

**NOW, THEREFORE**, in consideration of the foregoing and of the mutual covenants and agreements herein contained, and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties do hereby agree as follows:

### **ARTICLE I. RECITALS**

1.01 **Recitals Part of Agreement.** The representations, covenants and recitations set forth in the foregoing recitals are material to this Agreement and are hereby incorporated into and made a part of this Agreement as though they were fully set forth in this Section 1.01.

### **ARTICLE II. MUTUAL ASSISTANCE**

2.01 **Mutual Assistance.** The parties agree, subject to further proceedings required by law, to take such actions, including the execution and delivery of such documents, instruments, petitions and certifications (and, in the case of the City Bodies, the adoption of such ordinances and resolutions), as may be necessary or appropriate, from time to time, to carry out the terms, provisions and intent of this Agreement and to aid and assist each other in carrying out said terms, provisions and intent.

### **ARTICLE III. PROJECT DEVELOPMENT**

3.01 **Project Description and Development.** The Project shall consist of the items and/or parameters set forth in Exhibit A attached hereto. The Company shall commence construction of the Project by no later than thirty (30) days following the successful procurement of all permits and other governmental approvals, and shall complete construction and equipping of the Project within three (3) years of the execution of this agreement, subject to permitted delays provided for in Section 3.02 hereof.

3.02 **Permitted Delays.** Whenever performance is required of any party hereunder, such party shall use all due diligence and take all necessary measures in good faith to perform; provided, however, that if completion of performance shall be delayed at any time by reason of acts of God, war, civil commotion, riots, strikes, picketing, or other labor disputes, unavailability of labor or materials, or damage to work in progress by reason of fire or other casualty or similar causes beyond the reasonable control of a party (such as unforeseen delays in obtaining licensing or permits, but other than financial reasons), then the time for performance as herein specified shall be appropriately extended by the time of the delay actually caused by such circumstances. If (i) there should arise any permitted delay for which the Company or any of the City Bodies is entitled to delay its performance under this Agreement and (ii) the Company or such City Body anticipates that such permitted delay will cause a delay in its performance under this Agreement, then the Company or such City Body, as the case may be, agrees to provide written notice to the other parties of this Agreement of the nature and the anticipated length of such delay.

### **ARTICLE IV. ECONOMIC DEVELOPMENT INCENTIVES**

4.01 **Creation of Economic Development Area (If Necessary), Pledge of TIF Revenues, Leasehold Interests, and Right to Purchase.**

(a) **ERA/TIF Designation.** The Redevelopment Commission and City Council have created or shall, subject to further proceedings required by law, create pursuant to IC 36-7-14, an economic development area and tax increment financing allocation area ("TIF Area") that includes the Property.

(b) **\$110,000 Job Creation Incentive:** To further incentivize the Company to perform and complete the Project, the Redevelopment Commission will purchase with TIF Revenues One Hundred Ten Thousand Dollars (\$110,000) worth of personal property for the Company's use and benefit. At the Company's option, (1) if title remains vested in the Redevelopment Commission, the Company's lease payments will be as follows; or (2) if title transfers to the Company, the Company will make the following purchase price payments by way of a promissory note (and grant a corresponding security interest in the personal property) structured as follows in favor of the Redevelopment Commission:

i) **Credit for Job Creation.** The Company will receive a credit to off-set any payments owed to the Redevelopment Commission as they come due in the amount of Three Thousand Five Hundred Dollars (\$3,500.00) for each full-time employee employed at the end of the project period

(December, 2103) whose compensation excluding benefits exceeds Fourteen Dollars (\$14.00) per hour. For purposes of illustration only, if the Company's employees (full-time, over-county-average wage, etc.) number twenty two (22) at the end of the project period, the credit will be Seventy Seven Thousand Dollars (\$77,000.00) (22 employees x \$3,500 = \$77,000).

ii) Credit for Using Local Economy. The Company will receive an additional credit for working with subcontractors in the local Franklin area. The amount of the credit will be determined from invoices submitted from local Franklin businesses to and paid by the Company, and will be in an amount equal to eight percent (8%) of the invoice, excluding taxes and delivery charges. The amount of this credit is capped at Thirty Three Thousand Dollars (\$33,000.00).

iii) Repayment of Incentive. After January 1, 2014, and on demand, the Company will repay the full incentive, less any credits earned as described above.

iv) Credits cannot exceed the incentive – any such excess is void.

4.02 Semi-Annual Reporting. The Company will provide semi-annual reports to the Redevelopment Commission beginning six (6) months after the date of this agreement showing the number, full-time status, and compensation of its employees, as well an accounting for any credits earned for using local subcontractors.

4.03 Alternative Financing. If the parties agree that an alternative form of financing the incentive would better accomplish the purposes of this Agreement, the terms of this Agreement will be amended to provide for such alternative financing.

## ARTICLE V. AUTHORITY

5.01 Actions. The RDC represents and warrants that it has taken or will take (subject to further proceedings required by law and the Company's performance of its agreements and obligations hereunder) such action(s) as may be required and necessary to enable it to execute this Agreement and to carry out fully and perform the terms, covenants, duties and obligations on its part to be kept and performed as provided by the terms and provisions hereof.

5.02 Powers. The RDC represents and warrants that it has full constitutional and lawful right, power and authority, under currently applicable law, to execute and deliver and perform their respective obligations under this Agreement.

## ARTICLE VI. GENERAL PROVISIONS

6.01 Indemnity; No Joint Venture or Partnership. The Company covenants and agrees at its expense to pay and to indemnify and save the RDC, and its officers and agents (the "Indemnitees") harmless of, from and against, any and all claims, damages, demands, expenses and liabilities, including reasonable attorneys fees, relating to bodily injury or property damage

resulting directly or indirectly from the Company's (and/or any affiliate's thereof) development and operating activities with respect to the Project unless such claims, damages, demands, expenses or liabilities arise by reason of the negligent act or omission of the City Bodies, or other Indemnitees. However, nothing contained in this Agreement shall be construed as creating either a joint venture or partnership relationship between the RDC and the Company or any affiliate thereof.

6.02 Time of Essence. Time is of the essence of this Agreement. The parties shall make every reasonable effort to expedite the subject matters hereof (subject to any time limitations described herein) and acknowledge that the successful performance of this Agreement requires their continued cooperation.

6.03 Breach. Before any failure of any party of this Agreement to perform its obligations under this Agreement shall be deemed to be a breach of this Agreement, the party claiming such failure shall notify, in writing, the party alleged to have failed to perform such obligation and shall demand performance. No breach of this Agreement may be found to have occurred if performance has commenced to the reasonable satisfaction of the complaining party within thirty (30) days of the receipt of such notice. If after said notice, the breaching party fails to cure the breach, the non-breaching party may seek any remedy available at law or equity.

6.04 Amendment. This Agreement, and any exhibits attached hereto, may be amended only by the mutual consent of the parties, by the adoption of an ordinance or resolution of the RDC approving said amendment, as provided by law, and by the execution of said amendment by the parties or their successors in interest.

6.05 No Other Agreement. Except as otherwise expressly provided herein, this Agreement supersedes all prior agreements, negotiations and discussions relative to the subject matter hereof and is a full integration of the agreement of the parties.

6.06 Severability. If any provision, covenant, agreement or portion of this Agreement or its application to any person, entity or property, is held invalid, such invalidity shall not affect the application or validity of any other provisions, covenants, agreements or portions of this Agreement and, to that end, any provisions, covenants, agreements or portions of this Agreement are declared to be severable.

6.07 Indiana Law. This Agreement shall be construed in accordance with the laws of the State of Indiana.

6.08 Notices. All notices and requests required pursuant to this Agreement shall be deemed sufficiently made if delivered, as follows:

To the Company:      Production Handling Systems Incorporated  
                                 P.O. Box 474  
                                 Franklin, IN 46131

To the RDC:            Franklin Redevelopment Commission  
                                 70 East Monroe Street  
                                 Franklin IN 46131

or at such other addresses as the parties may indicate in writing to the other either by personal delivery, courier, or by registered mail, return receipt requested, with proof of delivery thereof. Mailed notices shall be deemed effective on the third day after mailing; all other notices shall be effective when delivered.

6.09 Counterparts. This Agreement may be executed in several counterparts, each of which shall be an original and all of which shall constitute but one and the same agreement.

6.10 Assignment. The rights and obligations contained in this Agreement may not be assigned by the Company or any affiliate thereof without the express prior written consent of each of the City Bodies; provided, however, that the Company may transfer all or a portion of its rights and obligations hereunder to an affiliate of the Company upon notice to but without the consent of the City Bodies, but any such transfer to an affiliate of the Company shall not have the effect of releasing the Company from its obligations hereunder. Further, the Company may operate under an assumed business name.

6.11 No Third Party Beneficiaries. This Agreement shall be deemed to be for the benefit solely of the parties hereto and shall not be deemed to be for the benefit of any third party.

6.12 Effective Date. Notwithstanding anything herein to the contrary, this Agreement shall not be effective until all parties hereto have executed this Agreement and the RDC has approved or ratified this Agreement at public meetings.

IN WITNESS WHEREOF, the parties have duly executed this Agreement pursuant to all requisite authorizations as of the date first above written.

CITY OF FRANKLIN REDEVELOPMENT COMMISSION

By: 

President

PRODUCTION HANDLING SYSTEMS INCORPORATED

By: 

President

**Exhibit A****Project Description****Job Creation Estimates:**

- 2011 – Total Employees: 15 Total
- 2011 – Annual Payroll: \$1,096,259
- 2012 – Total Employees: 19 Total
- 2012 – Annual Payroll: \$1,301,139
- 2013 – Total Employees: 22 Total (actual)
- 2013 – Annual Payroll: \$1,376,019

**Funds to be used for following items:**

- 1.) Moving Expenses
- 2.) Installation of Equipment
- 3.) Electrical Equipment / Installation
- 4.) Office Equipment
- 5.) Lease Payments