

ECONOMIC DEVELOPMENT INCENTIVE AGREEMENT

THIS ECONOMIC DEVELOPMENT INCENTIVE AGREEMENT (“Agreement”) is made and entered into this ____ day of _____, 2010, by and between the **CITY OF PALM COAST, FLORIDA**, a municipal corporation (“City”) and _____ (“Project Iceman”).

RECITALS:

WHEREAS, Project Iceman is a company looking to develop, manufacture, and assembly electrical/thermal solar technology; and

WHEREAS, prior to the effective date of this Agreement, Project Iceman was contemplating locating its Business both inside and outside the State of Florida, including the City of Palm Coast; and

WHEREAS, Project Iceman has agreed to locate within the City of Palm Coast, Florida and create 180 primary jobs over the next three (3) years under the terms and conditions of this Agreement; and

WHEREAS, the City desires to provide Project Iceman economic incentives in furtherance of the municipal purpose of attracting Project Iceman as a major employer within the City and expanding economic activity within its jurisdictional borders under section 166.021(9), Florida Statutes: and

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

WHEREAS, the City has established terms and conditions herein whereby Project Iceman 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 the County; 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) "City Fiscal Year" shall mean October 1 to September 30.
- (c) "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.
- (d) "Jobs" shall have the meaning given to such terms in Section 288.106(i), Florida Statutes.
- (e) "Local Resident" shall mean a person that has established their domicile within Flagler County, Florida.

3.0 **Commitment by Project Iceman.**

- (a) Upon the Effective Date of this Agreement, Project Iceman shall expeditiously secure, by lease or purchase, appropriate business space with the jurisdictional boundaries of the City of Palm Coast, which is suitable to meet the employment commitments made under this Agreement. Within three (3) business days of securing the business location, Project Iceman shall provide to the City written notice identifying the location of the business space including the address, name of landlord (if any), size (in square feet) of the space that will be actually occupied by Project Iceman, and the total size (in square feet) of the building which includes Project Iceman's business space. The business space secured for this purpose shall serve as the primary location of Project Iceman's business within the United States during the term of this Agreement. If Project Iceman adds or reduces the amount of business space secured hereunder, Project Iceman shall provide the City with a new written notice updating the information required by this subparagraph.
- (b) Within three (3) years of the Effective Date of this Agreement, Project Iceman agrees in good faith to use its reasonable best efforts to establish and maintain a minimum of one hundred eighty (180) Jobs at the City of Palm Coast business location which is secured pursuant to paragraph 3.0(a) herein. However, the Jobs may be created and maintained on a graduated basis as follows: sixty (60) Jobs by

the end of year one; eighty (80) Jobs by the end of year two; and forty (40) Jobs by the end of year three.

- (c) Project Iceman represents and warrants that the Jobs created, on average, will have an average annual wage at least equal to one hundred fifteen percent (115%) above the County average annual wage.
- (d) Within the corporate limits of the City of Palm Coast, Florida and in furtherance of Project Iceman's business operations, Project Iceman agrees to make a total capital investment of not less than \$49,000,000 to real property and tangible personal property (collectively, the "Capital Investment") within three (3) years of the Effective Date. Upon completion of the Capital Investment, in whole or in part, Project Iceman agrees to make formal application(s) with the City for an ad valorem property tax abatement determination. Said application(s) shall be based on any completed Capital Investment only and shall be submitted before the City's grant of authority, which is referenced in Paragraph 4(a) of this Agreement, expires.

4.0 Commitments by City.

- (a) The parties acknowledge that in accordance with Ordinance No. 2003-14, the electorate of the City of Palm Coast has granted the City Council the authority for ten (10) years to grant property tax exemptions for new businesses and expansion of existing businesses. The parties further acknowledge that the Capital Investment to real property and tangible personal property made by Project Iceman hereunder is eligible for an ad valorem tax abatement under the aforementioned Ordinance. Project Iceman shall timely file an application for ad valorem tax abatement, and the City agrees to (i) process the application in good faith and in accordance with the requirements established by the City and under Florida Statutes, and (ii) approve ad valorem tax abatement as follows:

New construction and tangible personal property purchased or relocated to the City of Palm Coast shall be abated for a ten (10) year period based upon a formula containing the following variables: (1) the number of Jobs created and maintained, which employ Local Residents, by Project Iceman at the end of each fiscal year, (2) the schedule, and the (3) maximum tax abatement percentage, provided below.

<u>Fiscal Year</u>	<u>Percentage for Each Job</u>	<u>Maximum</u>
2010/2011	1.667%	100%
2011/2012	0.715%	100%
2012/2013	0.556%	100%
2013/2014	0.556%	100%
2014/2015	0.473%	85%
2015/2016	0.389%	70%
2016/2017	0.306%	55%

2017/2018	0.223%	40%
2018/2019	0.112%	20%
2019/2010	0.056%	10%

If Project Iceman does not make application for tax abatement until Fiscal Year 2013/2014, then essentially the length of the tax abatement would only be seven years instead of ten years.

For example, if Project Iceman created and maintained 140 Jobs employing Local Residents by Fiscal Year 2013/2014. Project Iceman would receive tax abatement of 77.8% (0.556% x 140 Jobs) of the City property and tangible taxes.

- (b) In accordance with City Resolution 2009-13, the City shall apply the ninety percent (90%) discount to any building permits that Project Iceman applies for before the Resolution sunset date of January 1, 2012.
- (c) The parties acknowledge that Project Iceman may need to recruit candidates for the Jobs mentioned in paragraph 3.0 (b), who are not currently a Local Resident. As such, during the first two (2) years of this Agreement, the City shall reimburse fifty percent (50%) of Project Iceman's job actual out-of-pocket job relocation costs in an amount not-to-exceed \$1,500 per employee recruited to fill the aforementioned Jobs. Only those employees relocated from outside the County and with an annual average wage of two hundred percent (200%) above the County's average annual wage shall qualify for the reimbursement. The City's reimbursement for this incentive shall be limited to a total of twenty (20) employees. The reimbursement shall be made within thirty (30) days of receipt of written documentation by Project Iceman that is acceptable to the City.
- (d) In order to facilitate Project Iceman's timeline, the City shall expedite the processing of all City permit applications submitted to the City by Project Iceman including, but not limited to, applicable land development permits and business licenses.
- (e) Upon request by Project Iceman, the City shall consider entering into future partnerships and other agreements with Project Iceman to promote products that conserve natural resources, including possible participation in pilot programs.
- (f) The City shall not make any public announcements regarding this Agreement and the transactions contemplated hereunder unless and until such public announcements have been approved by and coordinated with Project Iceman and the Office of the Governor of the State of Florida.

5.0 **Progress Reports.** Upon request by the City, Project Iceman 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 Iceman at its offices within the City of Palm Coast. 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 Iceman.

- 6.0 **Compliance with Laws.** Project Iceman 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 within the City of Palm Coast.
- 7.0 **Work is a Private Undertaking.** With regards to Project Iceman'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 Iceman is such that the Project Iceman is an independent contractor and not an agent of the City. Project Iceman 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 one hand, and Project Iceman and its contractors, Partners, employees, or agents, under this Agreement.
- 8.0 **Compliance Monitoring.** Project Iceman 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 within City of Palm Coast.
- 9.0 **Audit and Inspections; Job Compliance Check.** Project Iceman agrees that any records with respect to Project Iceman's Obligations to the City 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 Iceman, no more than once every calendar year, to audit, examine, and make excerpt or transcripts of all data relevant confirming that Project Iceman's compliance with the Agreement. Any audit shall be conducted to Government Auditing Standards, or Generally Acceptable Auditing Standards, as applicable at the time of audit. Notwithstanding the foregoing, (1) Project Iceman shall not be required to make available any documents or information that (i) are attorney/ client privileged, (ii) constitute a trade secret under the Uniform Trade Secret Act, or (iii) which are determined exempt from disclosure under Florida's Public Records Laws as trade secrets; and (2) with respect to any information regarding the amount of employee wages for specific Jobs, the City shall (a) treat such information as confidential, (b) not release such information to any third party, (c) not take any notes with respect to the information reviewed, and (d) not make any copies of any of the information reviewed, Any deficiencies noted in audit reports prepared by the City must be fully cleared by Project Iceman within thirty (30) days after notice of said deficiencies were received by Project Iceman. The City shall also conduct a written annual compliance check on the number of employees employed by Project Iceman on each anniversary date of this Agreement. Subject to restrictions set forth in this Paragraph, Project Iceman shall fully cooperate with the City providing access to appropriate payroll documentation to verify the total number of employees and whether such employees are part-time or full-time. Failure of Project Iceman to reasonably comply with the above audit requirements will constitute a material breach of this Agreement and may result, at

the sole discretion of the City, in the withholding of future economic incentives, terminating pending economic incentives, the reimposition of any ad valorem taxes abated under this Agreement, or termination of any other obligation required hereunder. Notwithstanding the foregoing, the parties agree to submit any dispute under this Paragraph to nonbinding mediation before the City's exercise of its rights hereunder for alleged violation by Project Iceman.

- 10.0 **Promotion of Economic Incentives.** Either party 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.
- 11.0 **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.
- 12.0 **Integration; Modification; Exhibits.** The drafting, execution, and delivery of this Agreement 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, and there are no further or other agreements or understandings, written or oral, in effect between the parties relating to the subject matter hereof unless 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.
- 13.0 **Attorney's Fees.** Unless otherwise provided herein, each party agrees to bear their own attorney fees and cost in furtherance of this Agreement.
- 14.0 **Headings.** All headings in this Agreement are for convenience only and shall not be used to interpret or construe its provisions.
- 15.0 **Waiver.** No failure to insist on the prompt performance by Project Iceman of its obligations 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 Iceman's Obligations under this Agreement shall not be construed as continuing waiver or consent to any subsequent breach or violation or impede the City's ability to enforce the terms of this Agreement.

16.0 **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.

17.0 **Term; Termination; Termination by Parties.**

- (a) Unless sooner terminated by the City or Project Iceman under this Agreement or terminated by mutual consent, the Agreement shall terminate ten (10) 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 Iceman, which shall include, but not be limited to, failing to fulfill any of its obligations under Paragraph 3.0. The City may also terminate this Agreement if: (i) Project Iceman is declared bankrupt or insolvent; (ii) Project Iceman adopts a plan or resolution of liquidation of Project Iceman or substantially sells all of its assets; (iii) Project Iceman engages in fraud or misleading compliance reporting against the City; or (iv) a receiver or trustee is appointed on behalf of Project Iceman for purposes of taking control of substantially all of Project Iceman'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 Iceman within ninety (90) days. Project Iceman 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 obligations 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. In the event of termination under this Paragraph by Project Iceman, Project Iceman shall have all remedies available at law, including, without limitation, the right to sue for damages.
- (b) The City and Project Iceman acknowledge and agree that Project Iceman's performance under the terms of this Agreement is conditioned upon the approval by the State of Florida of other agreements related to Project Iceman's business operations. Project Iceman shall have the right to either accept or reject this Agreement until January 5, 2011 at 5:00 P.M. EST ("Acceptance Date"). On or before the Acceptance Date, Project Iceman 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.

18.0 **Indemnification and Hold Harmless.**

- (a) Project Iceman assumes any all risk of personal injury and property damage to the extent attributable to the intentional and negligent acts or omissions of Project Iceman and its officers, employees, servant, and agent thereof while acting within the scope of their employment with Project Iceman and performing Project Iceman's requirements and obligations 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 obligations of the City under this Agreement. Project Iceman 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. This Paragraph shall survive termination of this Agreement.

- (b) Project Iceman shall indemnify, defend and hold the City, and its employees, officers, and agents harmless from and against any and all third party claim or cause of action, and liabilities, expenses, losses, costs personal injury (including death), damages, fines, and penalties of every kind and character or incurred or suffered by the City as a result thereof, based upon events arising out of or resulting from Project Iceman's use, operation, or occupancy by Project Iceman of the City Offices Property.
- (c) The obligations arising under this Paragraph 18.0 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.

19.0 **Assignment.** This Agreement and the grant provided hereunder shall not be assigned by Project Iceman without the prior written consent of the City.

20.0 **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.

21.0 **Conflict of Interest.** Project Iceman represents and warrants, and this Agreement is being made by the City in reliance thereon, that Project Iceman and its officers, employees, and agents are neither officers nor employees 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.

22.0 **Representations of Project Iceman.** Project Iceman represents to the City that (i) Project Iceman is an entity organized in the State of Delaware and Duly authorized to conduct business in Florida; (ii) Project Iceman has the authority to enter into the Agreement and perform the requirements of this Agreement; (iii) to Project Iceman's best knowledge, Project Iceman's performance under this Agreement shall not violate any applicable judgment, order, law or regulation; (iv) to Project Iceman's best knowledge, Project Iceman'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 Iceman shall have sufficient capital to perform its obligations under this Agreement; and (vi) Project Iceman does not require any third party consent to execute, deliver and perform its obligations under this Agreement unless otherwise stated in this Agreement.

23.0 **Project Iceman's Continuing Disclosure Requirement.** Project Iceman must promptly notify the City of any developments that materially and adversely impact this Agreement and Project Iceman's obligations 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.

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

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: _____
CITY CLERK

Date: _____

STATE OF FLORIDA
COUNTY OF _____

The foregoing instrument was acknowledged before me this _____ day of _____, 2010, by the CITY OF PALM COAST, JIM LANDON, City Manager and _____, 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: _____

(THIS SPACE LEFT INTENTIONALLY BLANK)

WITNESSES:

Printed Name

Printed Name

By: _____

Name: _____

Its: _____

Date: _____

STATE OF FLORIDA
COUNTY OF FLAGLER

The foregoing instrument was acknowledged before me this _____ day of _____, 2009, by _____ the _____ of _____, (check one) who is personally known to me or who produced _____ as identification.

Notary Public
Print Name: _____
My Commission expires: _____