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RESOLUTION NO. 07-2013 OF THE CITY OF LAKE WORTH, FLORIDA, RELATING TO ESTABLISHMENT OF AN ECONOMIC DEVELOPMENT ELECTRICITY INCENTIVE RATE PROGRAM FOR QUALIFIED COMMERCIAL CUSTOMERS OF THE CITY ELECTRIC UTILITY; PROVIDING TERMS, CONDITIONS, APPLICABLE CREDITS AND AN AGREEMENT FOR THE PROGRAM; AND, PROVIDING FOR AN EFFECTIVE DATE AND A DATE FOR TERMINATION OF THE PROGRAM.

WHEREAS, the City of Lake Worth, Florida, desires to create economic development incentive to businesses who bring jobs and economic growth to the community; and

WHEREAS, the City of Lake Worth is authorized to set by resolution uniform rates for its electric utility services; and

WHEREAS, pursuant to the City's authority to set such rates, the City desires to offer an Economic Development Electricity Incentive Rate Program to qualifying commercial electric customers; and

WHEREAS, the establishment of an Economic Development Electricity Incentive Rate Program as set forth herein services a vital public purpose.

NOW, THEREFORE, BE IT RESOLVED BY THE CITY COMMISSION OF THE CITY OF LAKE WORTH, FLORIDA, that:

Section 1. The City shall make an Economic Development Electricity Incentive Rate Program ("Program") available to qualifying commercial customers upon request throughout the municipal boundaries of the City of Lake Worth.

Section 2. The terms, conditions, and applicable credits for the Program are set out in Exhibit "A" to this resolution, which exhibit is incorporated herein. The Program agreement for qualifying customers under the Program is attached to Exhibit "A" and incorporated herein.

Section 3. The Program established by this Resolution shall be available to qualifying customers who commence service under the Program during the period beginning **January 16, 2013 and ending January 15, 2015.**

Section 4. This Resolution shall become effective upon passage.

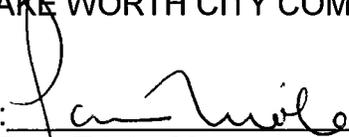
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The passage of this Resolution was moved by Commissioner Szerdi, seconded by Commissioner McVoy, and upon being put to a vote, the vote was as follows:

Mayor Pam Triolo	ABSENT
Vice Mayor Scott Maxwell	AYE
Commissioner Christopher McVoy	AYE
Commissioner Andy Amoroso	AYE
Commissioner John Szerdi	AYE

The Vice Mayor thereupon declared this Resolution duly passed and adopted on this 15<sup>th</sup> day of January, 2013.

LAKE WORTH CITY COMMISSION

By:   
Pam Triolo, Mayor

ATTEST:

  
Pamela J. Lopez, City Clerk

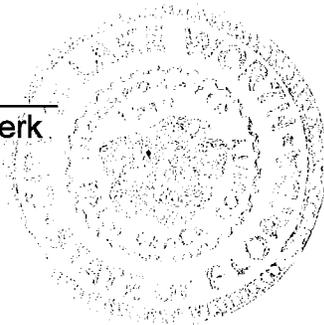


EXHIBIT "A"

ECONOMIC DEVELOPMENT ELECTRICITY INCENTIVE RATE PROGRAM

AVAILABILITY:

Beginning January 16, 2013, the Economic Development Electricity Incentive Rate Program (the "Program") is available throughout the municipal boundaries of the City of Lake Worth as served by the City's electric utility. Application for service under the Program must be made and service must commence prior to **January 15, 2015**.

APPLICATION & QUALIFICATIONS:

The Program is applicable to new electric load associated with:

1. Initial, permanent service to new establishments.
2. Commercial or industrial space that has been vacant for more than one (1) month prior to the application for service under the Program. Verification of vacancy will be established by evidence of no or minimal electric load during the time period in question.
3. The expansion of existing establishments. For existing establishments, new load is the net incremental load above that which existed prior to approval for service under the Program.

The new load applicable under the Program for new and vacant establishments must be a minimum of 150kW per month at a single delivery point. In the case of expansion of existing facilities, the added new load must be a minimum of 150kW per month at a single delivery point. Prior load shall be the average monthly energy use and demand for the Customer for over a maximum of three (3) years.

In addition to the load requirement, to qualify for service under the Program, the Customer must:

1. Employ a new work force of at least 10 full-time employees at the delivery point to which the load is added for the full term of the agreement under the Program.
2. Be on or elect to be on the City's existing Schedule "Demand Commercial Service" (Schedule D-S) or its successor rate for the full term of the agreement under the Program.
3. Provide sufficient evidence to the City to establish that the availability

121 of the Program is a significant factor in the Customer's location or  
122 expansion decision.

123  
124 If a change in ownership occurs after the Customer enters an agreement  
125 under this Program, the successor Customer may be allowed to fulfill the  
126 balance of the agreement under the Program and continue the schedule of  
127 credits outlined below.

128  
129 The Program is not available for load shifted from one establishment to  
130 delivery point on the City to Lake Worth system to another on the City of Lake  
131 Worth system.

132  
133 MONTHLY RATE:

134  
135 The rates and all other terms and conditions of the Customer's otherwise  
136 applicable rate schedule shall be applicable under the Program. An annual  
137 credit based on the percentages below will be applied to the demand charges  
138 and non-fuel (base) energy charges of the Customer's otherwise applicable  
139 rate schedule associated with the Customer's new load:

140  
141 Year 1 - 23.6% reduction on applicable charges from Year 1 and applied in  
142 Year 2

143  
144 Year 2 - 20% reduction on applicable charges from Year 2 and applied in  
145 Year 3

146  
147 Year 3 - 15% reduction on applicable charges from Year 3 and applied in  
148 Year 4

149  
150 Year 4 - 10% reduction on applicable charges from Year 4 and applied in  
151 Year 5

152  
153 Year 5 - 5% reduction on applicable charges from Year 5 and applied in Year  
154 6

155  
156 The City shall review the Customer's qualifications on the annual anniversary  
157 of the Customer's agreement under the Program and, if the qualifications are  
158 met, apply the aforementioned credit from the prior year towards applicable  
159 charges occurring in the next year. The City will not issue any refunds under  
160 the Program for credit earned. The above credit will be deducted from the  
161 Customer's applicable rate schedule before application of any discounts or  
162 adjustments.

163  
164 TERM OF SERVICE AND CONDITIONS:

165

166 The Customer agrees to a five-year agreement term. Service under the  
167 Program will terminate at the end of the fifth year; however, any credits  
168 earned in Year 5 will be applied by the City to the applicable charges  
169 accruing in the next year (Year 6). The City may terminate the Customer's  
170 agreement for service under the Program at any time if the Customer fails to  
171 comply with all applicable rules and regulations for the City's electric utility  
172 system and/or with the terms and conditions of the Program including, but  
173 not limited to, failure to: (1) pay all charges and fees for electricity; (2)  
174 maintain the level of employment specified in the Customer's agreement; or,  
175 (3) purchase from the City the amount of load specified in the Customer's  
176 agreement.

177  
178 If the City terminates the Customer's agreement for service under the  
179 Program for the Customer's failure to comply with its provisions, or if the  
180 Customer opts to terminate service under the Program, the Customer will be  
181 required to reimburse the City for all credits received under the Program and  
182 no further credits will be provided by the City.

183  
184 At least 20 days prior to the end of each anniversary year of the Program (as  
185 applicable to each Customer), the Customer shall submit to the Economic  
186 Development Manager an annual report in the format required by the  
187 Economic Development Manager documenting compliance with the  
188 requirement for employment of 10 new, full-time employees for the year.  
189 Failure to submit the annual report will forfeit the credit for that year and may  
190 be grounds for termination of the Program.

191  
192 In addition to the annual report, Customers must allow the City to conduct an  
193 annual site inspection and audit for the purpose of ensuring compliance with  
194 the Program agreement.

195

196 **APPLYING FOR THE PROGRAM:**

197  
198 In order to obtain service under this Program, interested applicants  
199 shall contact the City's Economic Development Manager to apply for  
200 the Program. The applicant will be required to provide documentation  
201 verifying that the availability of the Program is a significant factor in the  
202 applicant's location/expansion decision and verifying the employment of  
203 10 new full-time employees. In the case of new load associated with  
204 Commercial or Industrial space that has been vacant for more than one  
205 (1) month, the applicant must verify that they have no affiliation with the  
206 previous occupant.

207  
208 The City's Economic Development Manager will review the  
209 qualifications of each applicant with the Utilities Department and  
210 determine if an applicant qualifies under the Program. If the applicant  
211 qualifies, the applicant will be required to execute the Program's written

212 agreement with the City. The City Manager or his/her designee is  
213 authorized to sign the Program agreement on behalf of the City.

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**ECONOMIC DEVELOPMENT ELECTRICITY  
INCENTIVE RATE PROGRAM AGREEMENT**

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The below named customer is applying for service under the City of Lake Worth's (the "City") Economic Development Electricity Incentive Rate Program (the "Program") based on new or expanded load as indicated below (check one):

- New Load associated with a new establishment.
- New Load established in commercial or industrial space that has been vacant for more than one (1) month.
- Expanded Load associated with an existing establishment.

CUSTOMER NAME \_\_\_\_\_

SERVICE ADDRESS \_\_\_\_\_

TELEPHONE NUMBER \_\_\_\_\_

FAX \_\_\_\_\_

TYPE OF BUSINESS \_\_\_\_\_

The Customer hereto agrees as follows:

1. For new and vacant establishments, a minimum of 150kW per month of measured demand must be added at a single delivery point.
2. For existing establishments that are expanding, a minimum of 150kW per month of measured demand must be added to the existing demand at a single delivery point.
3. In all cases, the Customer must employ an additional work force of at least 10 full-time employees at the delivery point to which the load is added for the full term of this agreement.
4. That the quantity of new or expanded load shall be \_\_\_\_\_ kW of Demand.
5. The nature of this new or expanded load is \_\_\_\_\_.
6. To initiate service under this Program on \_\_\_\_\_, \_\_\_\_\_ and terminate service under this Program on \_\_\_\_\_, \_\_\_\_\_. This shall constitute a term of five years. If service under the Program is delayed, service must be initiated no later than January 15, 2015 and the term of this agreement will expire five years

261 thereafter.

262

263 7. To comply with all terms and conditions of the Program as set forth in the  
264 City Resolution establishing the Program and in this agreement.

265

266 8. To provide thirty (30) days written notice to the City's Utility Department if  
267 the Customer desires to terminate this agreement.

268

269 9. To have this agreement terminated by the City upon thirty (30) days written  
270 notice to the Customer's billing address if Customer fails to:

271

272 a. Pay all applicable charges, fees, taxes or other costs related to or  
273 arising from the City's provision of electric utility services to the  
274 Customer; and/or,

275 b. Comply with all terms and conditions of the Program; and/or,

276 c. Comply with all applicable rules and regulations of the City's electric  
277 utility system.

278

279 10. If this agreement is terminated prior to the end of the five-year term by  
280 either the City or the Customer, the Customer will be required to reimburse  
281 the City for all credits received under the Program and no further credits  
282 will be provided by the City.

283

284 11. Upon termination or expiration of this agreement, the Customer's service  
285 will revert back to the City's then existing electric rate schedule applicable  
286 to the Customer and all applicable rules and regulations associated with  
287 such service.

288

289 12. This Agreement is not renewable.

290

291 13. Customer is subject to all terms and conditions contained in the Schedule  
292 "Commercial Demand Service" (Schedule CD-S), or its successor Rate  
293 Schedule. Customer acknowledges that this agreement addresses only  
294 the Economic Development Electricity Incentive Rate Program; it does not  
295 address the other terms and conditions related to electric service provided  
296 by the City which otherwise govern Customer's service.

297

298 14. Customer shall be responsible to pay all miscellaneous fees, charges and  
299 taxes as set forth in the Schedule CD-S. All charges for electric service  
300 pursuant to this agreement shall be subject to any applicable state or  
301 federal energy tax, and any other governmental taxes, duties, or fees, as  
302 may be revised from time to time by the relevant regulatory authority,  
303 applicable to electric service provided by the City.

304

305 15. This Agreement is personal to Customer and shall not be assigned or  
306 transferred in whole or in part without the prior written consent of the City's

307 Economic Development Manager, which consent shall not be  
308 unreasonably withheld. Any attempt by Customer to make such an  
309 assignment or transfer without the City's prior written consent shall be void  
310 and shall confer no right on any third party.

311

312 16. The City shall not be liable for any damages including, but not limited to,  
313 consequential, incidental, indirect, or special damages, whether in  
314 contract, tort, or strict liability including, but not limited to, lost profits,  
315 property damage, personal injury and loss of power, arising out of or in any  
316 way related to power outages, surges, other electric service interruption(s),  
317 or the City's performance or nonperformance of its obligations under this  
318 agreement or termination of this agreement.

319

320 17. WAIVER OF TRIAL BY JURY: TO ENCOURAGE PROMPT AND  
321 EQUITABLE RESOLUTION OF ANY LITIGATION, EACH PARTY  
322 HEREBY WAIVES ITS RIGHTS TO A TRIAL BY JURY IN ANY  
323 LITIGATION RELATED TO THIS AGREEMENT.

324

325 18. The validity of this agreement and of any of its terms or provisions, as well  
326 as the rights and duties of the parties hereunder, shall be governed by the  
327 laws of the State of Florida and venue shall be in Palm Beach County,  
328 Florida.

329

330 19. Should any part, term or provision of this agreement or the Program or any  
331 document required herein to be executed be declared invalid, void or  
332 unenforceable, all remaining parts, terms and provisions hereof shall  
333 remain in full force and effect and shall in no way be invalidated, impaired  
334 or affected thereby.

335

336 20. This agreement may be executed in counterparts, each of which shall be  
337 an original, but all of which shall constitute one and the same document.

338

339 21. This agreement shall not be construed more strongly against either party  
340 regardless of who was more responsible for its preparation.

341

342 22. In accordance with Palm Beach County ordinance number 2011-009, the  
343 Customer acknowledges that this agreement may be subject to  
344 investigation and/or audit by the Palm Beach County Inspector General.

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346 **REMAINDER OF THIS PAGE INTENTIONALLY LEFT BLANK**  
347 **SIGNATURE PAGE FOLLOWS**

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351 IN WITNESS WHEREOF the parties hereto have made and  
352 executed this Economic Development Electricity Incentive Rate Program  
353 agreement on the day and year inserted below by the City.

354

**CITY OF LAKE WORTH, FLORIDA**

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DATE: \_\_\_\_\_ By: \_\_\_\_\_  
City Manager or Designee

360

361

362

363

**CUSTOMER:** \_\_\_\_\_

364

365

366

By \_\_\_\_\_

367

[Corporate Seal] Print Name: \_\_\_\_\_

369

370

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

371

372

373

STATE OF FLORIDA )

374

COUNTY OF \_\_\_\_\_ )

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376

The foregoing instrument was acknowledged before me this \_\_\_\_\_ day of  
377 \_\_\_\_\_, 20\_\_ by \_\_\_\_\_, as  
378 \_\_\_\_\_ (applicable title), an individual or a Florida  
379 corporation and who is personally known to me or who has produced the  
380 following \_\_\_\_\_ as identification.

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Notary Public:

383

384

Print Name: \_\_\_\_\_

385

My commission expires: \_\_\_\_\_

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