

BILL NO. R-13-06-01

RESOLUTION NO. R-_____

**A RESOLUTION OF THE COMMON COUNCIL OF THE
CITY OF FORT WAYNE, INDIANA, APPROVING A JOINT
LEDGE AGREEMENT BETWEEN THE CITY OF FORT
WAYNE, THE ALLEN COUNTY REDEVELOPMENT
COMMISSION, THE ALLEN COUNTY COUNCIL, THE
BOARD OF COMMISSIONERS OF ALLEN COUNTY,
INDIANA, AND FRANKLIN ELECTRIC**

WHEREAS, Franklin Electric will be a significant employer in the City and the County; and

WHEREAS, the City deems it beneficial to support local economic development to attract business by providing certain assistance in order to encourage the expansion of job opportunities in the community; and

WHEREAS, Indiana Code 36-7-14-33 authorizes the City of Fort Wayne to enter into a joint agreement with other agencies to provide financial and other assistance for a redevelopment project; and

WHEREAS, the Allen County Redevelopment Commission, the Allen County Council and the Board of Commissioners of Allen County, Indiana, have entered into a Joint Ledge Agreement (a copy of which is attached hereto and made a part hereof as "Exhibit 1"), which will contribute to local economic development; and

WHEREAS, the Common Council of the City of Fort Wayne, Indiana, the fiscal body of the municipality, shall approve the agreement either prior or subsequent to the execution of the agreement by the respective parties.

NOW, THEREFORE, BE IT RESOLVED BY THE COMMON COUNCIL OF THE CITY OF FORT WAYNE, INDIANA:

SECTION 1. The Common Council of the City of Fort Wayne, Indiana, hereby ratifies and approves the Fort Wayne/Allen County Joint Ledge Agreement between and among Allen County, the Redevelopment Commission of Allen County, the Allen County Council, the Board of Commissioners of Allen County, Indiana and the City of Fort Wayne.

SECTION 2. That, this Resolution shall be in full force and effect from and after its passage and any and all necessary approval by the Mayor.

Member of Council

APPROVED AS TO FORM AND LEGALITY

Carol Helton, City Attorney

EXHIBIT 1

FORT WAYNE/ALLEN COUNTY JOINT LEDGE AGREEMENT
WITH FRANKLIN ELECTRIC

This Joint Ledge Agreement (the "Agreement") is entered as of the Effective Date (as hereinafter defined) by and among the Allen County Redevelopment Commission (the "Redevelopment Commission"), the Board of Commissioners of the County of Allen (the "County"), the Allen County Council ("County Council") the City of Fort Wayne, Indiana (the "City"), the Common Council of the City of Fort Wayne ("the Common Council"), and Franklin Electric Co., Inc., an Indiana corporation ("Recipient") (the Redevelopment Commission, County, County Council, City, Common Council and Recipient being collectively referred to herein as the "Parties"). The Parties, in consideration of the mutual covenants, obligations and stipulations set forth herein, agree as follows:

WHEREAS, the Recipient will be a significant employer in the community of greater Fort Wayne and Allen County; and

WHEREAS, the parties desire to enter into this Agreement to encourage the expansion of job opportunities by the Recipient in the community; and

WHEREAS, I.C. 36-7-14-33 provides for agreement between and among the entities which are parties to this Agreement to provide economic development through the furnishing of financial and other assistance for a redevelopment project;

NOW, THEREFORE, for and in consideration of the joint and mutual consideration hereinafter set forth, the parties hereto agree as follows:

1. **Purpose of the Agreement.** The purpose of this Agreement is to promote job creation by the Recipient in Allen County, Indiana. In furtherance thereof, the Joint Ledge Board (as hereinafter defined) has awarded to the Recipient certain financial assistance set forth herein as a portion of the economic development incentive package to facilitate the location of the Recipient's new Global Corporate Headquarters and Engineering Center of Excellence in Allen County, Indiana (the "Facility") and to create 225 full-time jobs (the "Project"). The annual assistance provided for the benefit of Recipient in this Agreement will be used to lease equipment at the Facility for the benefit of the Recipient.

2. **Definitions.**

a. "Full-time Equivalents" ("FTE") means a job requiring a minimum of thirty-five (35) hours of an employee's time each week for the entire normal year of Company operations or a job requiring a minimum of thirty-five hours (35) of an employee's time a week for that portion of the first year in which the employee commences employment at the Facility; provided, however, that jobs requiring less than thirty-five (35) hours may be aggregated to FTEs with each aggregate equivalent considered to be a FTE.

b. "Facility" means the Recipient's headquarters and engineering facility located at 9300 block of Coverdale Road, Fort Wayne, Indiana.

c. "Joint Ledge Board" means a board created by this Agreement and composed of two (2) members of the Redevelopment Commission and two (2) members appointed by the Mayor of the City, which is charged with implementation and enforcement of this Agreement. The Redevelopment Commission shall execute the Lease Agreement and Sublease (as hereinafter defined) on behalf of the Joint Ledge Board.

d. "Taxable Year" means a calendar year identified in Section 4 for which a benefit may be allowed subject to the Recipient's compliance with this Agreement.

e. "Total annual payroll" means the ERA Statement of Benefit or IAC 50-10.

f. "Benefit" means an amount (not to exceed the amount set forth in Section 8) which may be claimed by Recipient in the corresponding Taxable Year, subject to compliance with this Agreement.

3. **Term of the Agreement.** This Agreement shall commence effective the date signed by the Recipient (the "Effective Date") and shall continue until the earlier of: (a) the expiration of the term of the Lease Agreement and Sublease between the Recipient and the Joint Ledge Board, the form of which is attached hereto as Exhibit A (the "Lease Agreement") or (b) the tenth (10th) anniversary date of the Effective Date. The Recipient shall use its best commercial efforts to maintain normal business operations at the Facility for a minimum period of ten (10) consecutive years.

4. **Description of the Project.** Recipient will invest the sum of Nineteen Million Three Hundred Thousand Dollars (\$19,300,000) in constructing the Facility prior to December 31, 2014 (the "Project"). Total annual payroll of Recipient's employees employed at the Facility including those to be employed as a result of the Project, shall exceed the amounts set forth below (2013 Payroll to be prorated to the opening date of the Facility).

<u>Year</u>	<u>Cumulative # New Jobs</u>	<u>Annual Payroll</u>
2013	225	\$17,784,000
2014	230	\$18,657,600
2015	240	\$19,968,000

5. **Duration of the Benefit.** Recipient may claim a Benefit under this Agreement for any one (1) or more Taxable Years (as hereinafter defined), provided that Recipient may not claim a benefit under this Agreement in any year after 2017.

6. **First Taxable Year for Which the Benefit is Claimed.** The first year in which a benefit may be claimed under this Agreement is Recipient's fiscal year ending on or before December 31, 2013.

7. **Contribution Limits.** The City shall contribute seventy-five percent (75%) and the County shall contribute twenty-five percent (25%) of the Ledge Benefit (as hereinafter defined) in each year a benefit is paid. Failure of either the City or the County to contribute its share of the Benefit shall not require the other party to make up any deficiency.

The City and the County shall each be responsible for making the annual payment to the Recipient for its respective share of the Ledge Benefit.

8. **The Ledge Benefit Allowed for Each Taxable Year.** The Ledge Benefit shall not, in any event, exceed a maximum of \$360,000 and will be paid over a period of three (3) years. The maximum Ledge Benefit amount that will be allowed for each such year is set forth below.

<u>Year</u>	<u>Maximum Ledge Benefit</u>	<u>Projected Jobs</u>
2013	\$60,000	225
2014	\$120,000	230
2015	\$120,000	240
2016	\$60,000	250

No Ledge Benefit under this Agreement shall be allowed in any Taxable Year in which Recipient's net FTE at the Facility falls below eighty percent (80%) of projected jobs for more than three (3) months in such Taxable Year or in which Recipient is otherwise in default in the performance of its obligations hereunder. Notwithstanding the foregoing, 2013's FTEs at the Facility, for the purposes of the above requirement, shall be evaluated based on June 1, 2013 through December 31, 2013.

Recipient shall not be responsible or liable in any way for its failure to perform its obligations hereunder, if such failure to perform is beyond the control of said party, whether caused by acts of God, unavailability or shortages of raw materials from normal sources of supply, or unavailability or shortages of energy necessary to produce and/or deliver the products by usual modes of transportation, fire, flood, war, terrorism, unforeseen market forces, embargo, explosions, riots, or loss, rules, regulations, restrictions and orders of any governmental authority to which such entity is subject, or any other cause (excepting labor disputes and strikes), excepting financial, beyond the reasonable control of the Recipient. Such failure shall not terminate this Agreement but the obligations of the Recipient shall be suspended during the period when performance is so suspended, unless such period exceeds one hundred and eighty (180) days, in which event any party hereto shall have the right at any time thereafter during the existence of such force majeure condition to terminate this Agreement upon written notice to the other parties. Recipient shall immediately notify and keep the other parties from time to time apprized regarding such force majeure condition and shall exercise its best efforts to remove or overcome the cause of such inability to comply with its obligations under this Agreement. Nothing herein shall be construed to require the settlement of strikes, lockouts or other labor difficulties by the Recipient contrary to its wishes.

The foregoing notwithstanding, the Ledge Benefit for any Taxable Year shall be reduced in an amount equal to any assessed and unpaid real or personal property taxes associated with the Facility regardless of ownership of the Facility at the time of assessment. If subsequently paid, said Ledge Benefit shall be restored by the amount of taxes paid.

9. **Responsibilities of Recipient.** Recipient has made certain representations and covenants to the Joint Ledge Board regarding the Project including the amount of private sector investment, the number of jobs to be created in Allen County, and the annual payroll to be generated

by the Project during each Taxable Year. Recipient represents and covenants that it will use commercially reasonable efforts to maintain normal business operations at the Facility for a minimum of ten (10) consecutive years. In the event Recipient breaches any of such representations or covenants or breaches the obligations set forth in Section 4 or, in any other provision of this Agreement, as determined solely by the Joint Ledge Board, the Benefit allowed shall be repaid by Recipient according to the following schedule:

In the event that the FTE employment at the Facility falls below eighty percent (80%) of the projected jobs based on the annual average FTE in any year of the ten (10) year covenant, then for each year of non-compliance, the LEDGE benefit reduction will be calculated as follows:

$$(\text{Projected Jobs} - \text{Average annual FTE}) / \text{Projected Jobs} \times (\text{Benefit Received} \times .1 \times \text{Total number of years of non-compliance})$$

The parties hereto acknowledge that the Recipient's investment in the Project and the Joint Ledge Board's investment in granting the Benefit described in Section 8 will encourage economic growth within the County. The Joint Ledge Board acknowledges that in certain instances, economic conditions or other factors not within the Recipient's control may prevent the Recipient from complying fully with this Agreement. In such event, Recipient may notify the Joint Ledge Board of such conditions or factors and request an opportunity to explain the conditions or factors which are preventing Recipient from complying in all respects with this Agreement, and the Joint Ledge Board will exercise good faith in evaluating the conditions or factors affecting the Recipient's performance hereunder prior to taking any action authorized under this Agreement. Notwithstanding the above, under no circumstance shall Recipient be required to pay back an amount greater than the Benefit received.

The Recipient shall submit to the Joint Ledge Board no later than March 31st of each year following the Taxable Year in which this Agreement is in force, the information listed below:

- a. The number of FTE at the Project for each month during the previous Taxable Year.
- b. The average annual FTE during the previous Taxable Year.
- c. The Recipient's federal identification number and taxpayer account number as assigned by the Indiana Department of Workforce Development for the purpose of unemployment insurance, to assist in the verification of the provided information.
- d. The total annual payroll paid to all employees employed at the Facility during the previous Taxable Year. W-2 tapes provided to the State of Indiana shall be the basis for this information. Recipient will not be required to provide individual payroll information for employees at the Facility.
- e. Any other information reasonably required by the Joint Ledge Board to perform its duties, so long as Recipient is given notice of such information requirements sufficient to allow Recipient reasonable time to prepare such

information and so long as such information is available from the records maintained by Recipient in the ordinary course of its business.

f. In addition to the information provided under the provisions of the subsections contained in this Section 9, within ten (10) days of any modification, any changes in the Lease Agreement.

However, as an alternative to the requirements set forth above, the Joint Ledge Board will accept the annual Compliance with the Statements of Benefits Form (CF-1) for any year Recipient is required to file same.

Recipient shall certify under oath the accuracy of the above information submitted to the Joint Ledge Board. The information submitted to the Joint Ledge Board shall be kept confidential by the Joint Ledge Board unless law or judicial order requires disclosure of such information. The Joint Ledge Board may, upon request, share such information with the other Parties to this Agreement, who shall also keep said information confidential financial information pursuant to IC 5-14-3-4(a)(5), unless applicable law or judicial order required disclosure of such information. The Joint Ledge Board will provide notice to the Recipient (30 days if possible) before the release of any information as required above.

Any repayment of a prior Benefit under Section 9 shall be paid by the Recipient to the Joint Ledge Board within one-hundred eighty (180) days of a written request from the Joint Ledge Board.

10. **Exclusive Use of the Benefits by Recipient for Lease Payments on the Project.** Subject to appropriation, the Joint Ledge Board shall use the benefits provided under the provisions of this Agreement exclusively from the Recipient for the payment of lease obligations pursuant to the Lease Agreement.

11. **Duties and Responsibilities of the Joint Ledge Board.** Upon the timely receipt from Recipient of the information described under Section 9 of this Agreement,, the Joint Ledge Board shall review the claim for prior Taxable Year Benefit and supporting information and shall within forty-five (45) days thereafter provide the Recipient with (1) written notice of concurrence with the Benefit claimed for the prior Taxable Year, or (2) written notice of the adjusted Benefit the Joint Ledge Board determined appropriate, Based on Recipient's performance hereunder, for the prior Taxable Year together with justification of the modification from the amount claimed. Subject to the terms and conditions of this Agreement, City and County shall concurrently pay the Benefit to Recipient. The City and County shall have no obligation to make any payment to or for the benefit of Recipient in any Taxable Year in which Recipient is in default under this Agreement.

If the Joint Ledge Board determines that the Recipient is not in compliance with the requirements of this Agreement, it may, upon notice to all Parties and upon providing the Recipient an opportunity to explain the reasons for the noncompliance and the reasonable opportunity to cure, take any action it deems appropriate, including the termination of this Agreement. Recipient hereby releases each of the Parties hereto, and the Joint Ledge Board from any and all claims, demands, liabilities or causes of action, whether now existing or hereafter arising, known and unknown, which Recipient may have against any such party resulting from the termination of this Agreement.

Notice to Parties. Any notice, statement or other communications sent to the Joint Ledge Board or the Recipient, shall be sent to the following addresses, unless otherwise specifically advised.

To the Joint Ledge Board:

Mark Royse
Allen County Redevelopment Commission
200 East Berry St., Suite 150
Fort Wayne, IN 46802
PH: (260) 449-7607
FAX: (260) 449-7682
e-mail: mark.royse@co.allen.in.us

To the Recipient:

Franklin Electric Co., Inc
3801 West Ferguson Road, Suite 209
Fort Wayne, IN 46809-3194
ATTN: Patrick Davis
PH: (260) 827-5103
FAX:
e-mail: pdavis@fele.com

12. **Authority to Bind.** Notwithstanding anything in this Agreement to the contrary, the signatory for the Recipient represents that he/she has been duly authorized by the Recipient to execute this Agreement and to bind the Recipient to each of the representations, covenants, and obligations of Recipient entered herein.

13. **Amendment of this Agreement.** This Agreement or any portion hereof may only be amended by written amendment executed by all parties hereto.

14. **Assignability.** The Recipient shall not assign this Agreement or any portion thereof without the prior written consent of the Joint Ledge Board, which consent shall not be unreasonably withheld.

15. **Remedies not Impaired.** No delay or omission of any party in exercising any right or remedy available under this Agreement shall impair any such right or remedy, or constitute a waiver of any default or acquiescence thereto.

16. **Compliance with Laws.** The Recipient agrees to comply with all applicable federal, state and local laws, rules, regulations and ordinances and all provisions required thereby whether now existing or hereafter enacted, are included and incorporated by reference herein.

Pursuant to I.C. '22-9-1-10 and the Civil Rights Act of 1964, Recipient shall not discriminate against any employee or applicant for employment, to be employed in the performance of this contract, with respect to the hire, tenure, terms, conditions or privileges of employment, or any matter directly or indirectly related to employment, because of his race, color, religion, sex, disability, national origin, handicap or ancestry. Breach of this covenant may be regarded as a material breach of this Agreement.

The Recipient affirms under the penalties of perjury that he/she/it does not knowingly employ an unauthorized alien. The Recipient affirms under the penalties of perjury that he/she/it has enrolled and is participating in the E-Verify program as defined in IC 22-5-1.7-3. The Recipient agrees to provide documentation to the State that he/she/it has enrolled and is participating in the E-Verify program. Additionally, the Recipient is not required to participate if the Recipient is self-employed and does not employ any employees. The State may terminate for default if the

Recipient fails to cure a breach of this provision no later than thirty (30) days after being notified by the State.

17. **Governing Laws.** This Agreement shall be construed in accordance with and governed by the laws of the State of Indiana, notwithstanding its choice of law rules to the contrary or any other state's choice of law rules. Suit, if any, shall be brought in a court of applicable jurisdiction situated in Allen County, Indiana.

18. **Entire Agreement.** This Agreement, together with the Lease Agreement(s) entered into of even date herewith, and any attachments hereto, contain the entire understanding of the parties and this Agreement supersedes all prior agreements and understandings, oral or written, with respect to the subject matter.

19. **Indemnification.** The Recipient shall indemnify, defend and hold harmless each of the other Parties hereto and their respective representatives, agents, officers and employees (collectively, the "Indemnitees") from and against all claims, demands, charges, lawsuits, costs and expenses (including legal costs and, attorneys fees) caused by any act or omission of the Recipient and/or its subcontractors, vendors, suppliers, employees, representatives, licensees and authorized agents and in connection with the design, construction, operation, management and control of the Facility. No other Party hereto shall provide any indemnification hereunder to the Recipient. Recipient hereby forever releases Indemnitees and each of them from any and all claims, demands and charges, known and unknown, whether now existing or hereafter arising, that Recipient has or may have against Indemnitees, or any of them, under this Agreement. Notwithstanding anything herein contained, Recipient shall not be obligated to indemnify, defend or hold harmless any Indemnatee for any action or injury above due to the gross negligence or intentional act of said Indemnatee.

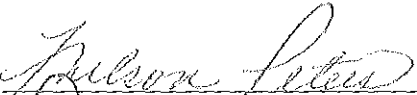
20. **Penalties and Interest.** The Indemnitees will in good faith perform their required obligations hereunder and shall not in any event be required to pay any direct, liquidated, incidental, specific, punitive or consequential damages in the event of breach of this Agreement by Indemnitees or any of them.

21. **Mutual Attorneys Fees Provision.** If any Party hereto brings an action or proceeding to enforce the terms of this Agreement or of the Lease Agreement (or Sublease) executed of even date herewith between the Parties hereto, the prevailing party in any such proceeding, action or appeal thereon, shall be entitled to reasonable attorneys fees. Such fees may be awarded in the same suit or recovered in a separate suit, whether or not such action or proceeding is pursued to decision or judgment. The term "Prevailing Party" shall include, without limitation, a party who substantially obtains or defeats the relief sought, as the case may be, whether by compromise, settlement, judgment or the abandonment by the party of its claims or defense. The attorneys' fee award shall not be computed in accordance with any court fee schedule, but shall be such as to fully reimburse all reasonable attorneys fees incurred.

22. **Severability.** The invalidity of any section, subsection, clause or provision of this Agreement shall not affect the validity of the remaining sections, subsections, clauses, or provisions of this Agreement.

IN WITNESS WHEREOF, the parties hereby, by their duly authorized representatives,
have executed this Agreement on the dates entered below.

The Board of Commissioners of the County of Allen

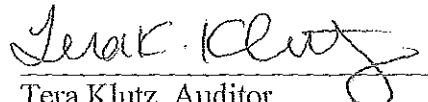

F. Nelson Peters, President

Date: 5/20/13


Linda K. Bloom, Vice President

Attest:


Therese Brown, Secretary


Tera Klutz, Auditor

Allen County Council


Darren Vogt, President

Date: 5/9/13

Allen County Redevelopment Commission


Richard E. Beck, Jr., President

Date: 5/14/13

Fort Wayne City Council

Tom Didier, President

Date: _____

City of Fort Wayne

Tom Henry, Mayor

Date: _____

Franklin Electric Co., Inc.

Date: _____

Its: _____

Admn. Appr. _____

DIGEST SHEET

TITLE OF ORDINANCE: Resolution Authorizing Fort Wayne Common Council to enter into a Joint Ledge Agreement with Allen County

DEPARTMENT REQUESTING ORDINANCE: Community Development Division

SYNOPSIS OF ORDINANCE: This Resolution authorizes Fort Wayne Common Council to enter into a Joint Ledge Agreement with Allen County. The Agreement provides for the City's participation in local economic development incentives offered to Franklin Electric.

EFFECT OF PASSAGE: Will allow the City to offer Franklin Electric local economic development incentives for the development of a global corporate headquarters and engineering center of excellence and will aid in the creation of 225 full-time jobs

EFFECT OF NON-PASSAGE: Potential loss of new development

MONEY INVOLVED (DIRECT COSTS, EXPENDITURES, SAVINGS): No expenditures of public funds required.

ASSIGNED TO COMMITTEE (PRESIDENT): Glynn Hines and Russell Jehl