

GRANT AWARD AGREEMENT
(Pensacola Airport MRO/Project #120)

THIS GRANT AWARD AGREEMENT (“**Agreement**”), made and entered into this _____ day of _____, 2019 (the “**Effective Date**”), by and between TRIUMPH GULF COAST, INC., a Florida not-for-profit corporation (“**Triumph**”), and the CITY OF PENSACOLA, a Florida municipal corporation (the “**City**”).

WITNESSETH:

WHEREAS, pursuant to its authority under **Section 288.8017, Florida Statutes**, Triumph has agreed to make a Grant (as defined below) to the City, on and subject to the terms and conditions set forth in this Agreement, to provide partial funding for the Project Titan (as defined below) portion of an aircraft Maintenance, Repair, Overhaul Aviation Campus (the “**MRO Campus**”) at Pensacola International Airport. The planning and construction of the following projects are collectively referred to herein as “**Project Titan**”:

- Hangar 2 – 173,000 square feet
- Hangar 3 – 191,000 square feet
- Hangar 4 – 191,000 square feet
- Warehouses/shops/support facilities – 100,000 square feet
- Administrative Offices – 120,000 square feet
- Aircraft taxiways accessing the hangar aprons
- Aircraft aprons at the hangars
- Automobile ingress and egress roadways and auto parking

all as further described in the City's Updated Application for Funds submitted to Triumph on July 5, 2018 (the “**Grant Application**”), which Grant Application is incorporated herein by reference. In the event of a conflict between a provision of the Grant Application and a provision of this Agreement, the provision of this Agreement shall control. The parties acknowledge that Project Titan is in its conceptual design phase and that the details of the elements of Project Titan may change. Notwithstanding such changes, MRO Lessee’s ability to satisfy the performance metrics of Section 8.4 below shall not be materially adversely affected and the MRO Lessee shall continue to be responsible for achieving the performance metrics described in Section 8.4.

WHEREAS, the City, by Council Action dated _____, 2019, a copy of which is attached as **Exhibit “A”** and made a part of this Agreement, has authorized the Mayor of the City to execute this Agreement on its behalf; and

NOW, THEREFORE, for and in consideration of the agreements, covenants and obligations set forth herein and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties, intending to be legally bound hereby, agree as follows:

1. **Purpose of Agreement.** The purpose of this Agreement is to (i) award the Grant, (ii) state the terms and conditions upon which the Grant will be disbursed, and (iii) set forth certain requirements as to the manner in which Project Titan will be undertaken and completed.

2. **Grant Award.** On and subject to the terms and conditions set forth herein, Triumph hereby agrees to make a grant to the City in the aggregate maximum amount of Sixty Six Million and 00/100 Dollars (\$66,000,000.00) (the "**Grant**") to provide partial funding for Project Titan.

3. **Contingencies for Grant.** Triumph's approval of the Grant is expressly contingent upon the following:

3.1 The estimated total planning and construction cost of the entire MRO Campus is \$334,825,000. The estimated total planning and construction cost of the Project Titan portion of the MRO Campus is \$210,125,000, with the Grant constituting \$66,000,000 of that amount. Accordingly, the City's cash or other funding commitments for Project Titan under this Section 3.1 must total not less than \$144,125,000, of which \$35,000,000 must be committed by VT Mobile Aerospace Engineering, Inc. ("**MRO Lessee**"). No Grant funds shall be disbursed to the City unless and until the City has provided Triumph with satisfactory evidence that there are firm and enforceable funding commitments for the Project totaling not less than \$144,125,000, of which not less than \$35,000,000 has been committed by MRO Lessee.

3.2 The City and a qualified construction manager at risk ("**CMAR**") executing a guaranteed maximum price contract (the "**CMAR Contract**") within the Project Titan budget of \$210,125,000 no later than December 31, 2021. Triumph shall have the right to approve the CMAR Contract in accordance with Section 5.7 below. The City shall provide Triumph with a true, correct, complete, and executed copy of the CMAR Contract. In the event that the CMAR Contract is not in place by December 31, 2021, the Grant shall be deemed automatically rescinded and revoked and this Agreement shall be deemed automatically terminated and the parties shall have no further liabilities or obligations to each other hereunder; provided, however, that in the event that Triumph from time to time in its sole discretion extends such deadline either before the expiration thereof or within one hundred twenty (120) days after the expiration of such deadline, this Agreement shall automatically be deemed reinstated and shall continue in full force and effect subject to such extended deadline. If the CMAR Contract is procured pursuant to Chapter 255 for construction services and at the time of the competitive solicitation for Project Titan fifty percent (50%) or more of the cost of Project Titan is to be paid from state-appropriated funds, then the City must comply with the requirements of Sections 255.0991 and 255.0992, F.S.

3.3 Concurrently with the execution of this Agreement, MRO Lessee shall have executed in favor of Triumph and delivered to Triumph the written agreement (the "**MRO Performance Agreement**") which is attached as **Exhibit "B"** and made a part of this Agreement,

pursuant to which MRO Lessee agrees to assume liability for payment of the clawback amounts associated with the performance metrics as set forth therein. In the event that the MRO Performance Agreement is not executed and delivered by MRO Lessee concurrently with execution of this Agreement, the Grant shall be deemed automatically rescinded and revoked and this Agreement shall be deemed automatically terminated and the parties shall have no further liabilities or obligations to each other hereunder.

3.4 The City and MRO Lessee executing, on or before July 1, 2019, (a) a development agreement (the "MRO Development Agreement") providing for the development and construction of Project Titan and (b) a lease agreement (the "MRO Lease") pursuant to which MRO Lessee leases Project Titan from the City for a term of not less than thirty (30) years, and which MRO Lease (i) obligates MRO Lessee to pay the clawback liability associated with the performance metrics as set forth in Section 8.4 below, and (ii) provides that Triumph is designated a third-party beneficiary thereunder with rights to enforce the clawback liability provisions therein as if Triumph were a party to the MRO Lease. Triumph shall have the right to approve the MRO Development Agreement and the MRO Lease in accordance with Section 5.8 below. The City shall provide Triumph with true, correct, complete, and executed copies of the MRO Development Agreement and the MRO Lease. In the event that the MRO Development Agreement and the MRO Lease are not in place by July 1, 2019, the Grant shall be deemed automatically rescinded and revoked and this Agreement shall be deemed automatically terminated and the parties shall have no further liabilities or obligations to each other hereunder; provided, however, that in the event that Triumph from time to time in its sole discretion extends such deadline either before the expiration thereof or within one hundred twenty (120) days after the expiration of such deadline, this Agreement shall automatically be deemed reinstated and shall continue in full force and effect subject to such extended deadline.

4. Disbursement of Grant:

4.1 **Disbursement.** Subject to the satisfaction of the contingencies set forth in Sections 3.1 through 3.4 above and in Section 4.2 below, the Grant will be drawn down generally in accordance with the projected funding schedule attached hereto as **Exhibit "C"** and incorporated herein (the "**Funding Schedule**"). The parties acknowledge that the Funding Schedule may be updated and modified from time to time as the design and construction of Project Titan proceed, based on prudent financial management, the requirements and limitations of the various funding sources, and other considerations; provided that in no event shall the City exceed the limitations of clauses (3) and (4) below. As provided herein, the Grant shall be used only to pay a portion of the amounts due and owing from time to time by the City to the CMAR under and in accordance with the CMAR Contract. Not more than once per calendar month, the City shall submit an application for disbursement in the form of **Exhibit "D"** attached hereto and incorporated herein ("**Application for Disbursement**") for an amount not to exceed the amounts set forth in items (3) and (4) below with respect to the amounts then due and owing from time to time by the City to the CMAR under and in accordance with the CMAR Contract, together with (i) documentation evidencing the extent of completion of each eligible element of Project Titan and the cost of each eligible element of Project Titan incurred to that point, together with an updated Funding Schedule, an updated contract construction schedule in a form

reasonably acceptable to Triumph and the City, progress reports from the architect/engineer, and (if available) aerial photographs, (ii) documentation and invoices in detail sufficient for a proper pre-audit and post-audit thereof, including, but not limited, to, records of the Project account described in Section 7.1 below, and (iii) in order for Triumph to calculate compliance with the limitations set forth in items (3) and (4) below, documentation regarding the cumulative amounts paid and the amounts to be paid by other funding sources with respect to the amounts then due to the CMAR under the CMAR Contract. In addition to the conditions set forth in Section 4.2 below, Triumph's obligation to disburse Grant funds pursuant to an Application for Disbursement shall be subject to the following limitations:

- (1) Prior to the initial disbursement of any Grant funds, all applicable permits, development orders, concurrency certificates, and other governmental approvals (each, a "Permit") necessary for the construction of Hangar 3 shall have been obtained, and copies thereof shall have been provided to Triumph;
- (2) Prior to disbursement of Grant funds in excess of \$20,000,000, all Permits necessary for the construction of Hangar 4 shall have been obtained, and copies thereof shall have been provided to Triumph;
- (3) At any point in time prior to the completion of Project Titan, the cumulative amount disbursed by Triumph shall not exceed forty percent (40%) of the total cumulative amount disbursed to the CMAR by all funding sources (including Triumph) shown on the Funding Schedule; and
- (4) Upon completion of Project Titan, the cumulative amount disbursed by Triumph shall not exceed thirty one and 41/100th percent (31.41%) of the total cumulative amount disbursed to the CMAR by all funding sources including Triumph (i.e., \$66,000,000/ \$210,125,000). To the extent that, upon completion of Project Titan, Triumph has disbursed an amount in excess of thirty-one and 41/100th percent (31.41%) of the total cumulative amount disbursed to the CMAR by all funding sources including Triumph, the City shall upon demand by Triumph repay such excess.

4.2 Conditions to Triumph's Obligations to Disburse the Grant. Within forty-five (45) days of receipt of an Application for Disbursement under Section 4.1 above, Triumph shall either approve or disapprove of the Application for Disbursement in a written notice to the City. If Triumph approves the Application for Disbursement, then it shall disburse the approved amount to the City within thirty (30) days after delivery of the notice of approval. If Triumph disapproves the Application for Disbursement, Triumph shall state in the notice of disapproval the reasons for such disapproval. If Triumph disapproves the Application for Disbursement, Triumph shall state the reasons for such disapproval. The City shall have thirty (30) days to address the reasons for disapproval and submit documentation for reconsideration of the Application for Disbursement. If Triumph fails to approve or disapprove of the Application for Disbursement within forty-five (45) days of receipt, such Application for Disbursement shall be deemed disapproved.

Reasons for disapproving an Application for Disbursement must include one or more of the following:

- (a) Missing or incomplete documentation required under Section 4.1 above, as identified in writing by Triumph;
- (b) The Application for Disbursement seeks disbursement for more than the amounts actually invoiced by the CMAR under the CMAR Contract;
- (c) The Application for Disbursement seeks disbursement for an amount in excess of the amount permitted by the 40% and 31.41% limitations set forth in Section 4.1 above;
- (d) The amount requested for disbursement under the Application for Disbursement, together with all amounts previously disbursed under the Grant, would exceed the \$66,000,000 maximum amount of the Grant;
- (e) The City made a misrepresentation or omission of a material nature in the Grant Application, or any supplement or amendment to the Grant Application, or with respect to any document or data furnished with the Grant Application or pursuant to this Agreement;
- (f) There is any pending litigation with respect to the performance by the City of any of its duties or obligations which may materially jeopardize or adversely affect Project Titan, this Agreement, or disbursement of the Grant;
- (g) Subject to clauses (1) and (2) of Section 4.1 above, any Permit applicable to Project Titan has been suspended, revoked, terminated, or has expired, without having been reinstated or renewed, or is in any other manner no longer in force or effect;
- (h) The City has taken any action pertaining to Project Titan which, under this Agreement, requires the approval of Triumph, and the City failed to obtain such approval;
- (i) The City has violated any of the provisions of Sections 9.1, 9.4, and/or 9.5 of this Agreement;
- (j) The City is in material violation, default, or breach of or under any provision of this Agreement;
- (k) The City is in breach of any material representation or warranty contained in this Agreement;
- (l) Any federal, state, or local agency (including the City and Escambia County, Florida), and MRO Lessee, providing financial assistance to Project Titan as stated in the Funding Schedule has revoked, suspended, or terminated that financial assistance to Project Titan, including, but not

limited to, the Matching Funds and MRO Lessee's \$35,000,000 funding commitment, without such financial assistance having been reinstated or renewed or replaced by another funding source;

- (m) The City has abandoned or, before completion, discontinued Project Titan, or for any reason (other than *force majeure* as defined herein) the commencement, prosecution, or timely completion of Project Titan by the City is rendered improbable, infeasible, impossible, or illegal for any reason other than *force majeure* as defined in this Agreement;
- (n) All or any portion of the requested disbursement includes disbursement for improvements that are outside the scope of Project Titan that is contemplated under the CMAR Contract; or
- (o) The CMAR Contract has been materially modified, amended, or terminated without the prior consent or approval of Triumph as required by Section 5.7 below. A change order of \$200,000 or less shall not constitute a material modification.

5 Completion of Project Titan:

5.1 General Requirements. The City shall commence, and complete Project Titan with all practical dispatch, in a sound, economical, and efficient manner, and in accordance with the provisions of this Agreement, the Grant Application, the CMAR Contract, and all applicable laws. The City agrees to complete Project Titan within six (6) years after the Effective Date (the "**Completion Deadline**"). If the City does not complete Project Titan by such date, Triumph's obligation to make future distributions of the Grant will expire unless an extension of the time period is requested by the City and granted in writing by Triumph prior to such expiration date. Notwithstanding the foregoing, the Completion Deadline shall be extended on a day-for-day basis by reason of *force majeure* events. The term "*force majeure*" as used herein shall mean that which is beyond the control of the City, including, but not limited to, acts of God (such as epidemics, landslides, lightning, earthquakes, fire, hurricanes, storms, floods, washouts, droughts and adverse weather conditions), strikes, lockouts or other industrial disturbances, acts of the public enemy, orders of any kind of the Government of the United States, or of the state or any civil or military authority, insurrections, riots, arrest, restraining of government and people, civil disturbances, explosions, partial or entire failure of utilities, shortages of or temporary substantial increases in the cost of labor, material, or supplies, or any acts or omissions of third parties not within the City's control, a full or partial shutdown of the federal government, and other such events or circumstances which are beyond the control of the City despite all reasonable efforts to prevent, avoid, delay, or mitigate such causes. For purposes of this Agreement, the Project shall be deemed complete when the entire Project has been substantially completed in substantial compliance with the plans and specifications, and certificates of occupancy for all buildings comprising the Project have been issued by the appropriate governmental authority.

5.2 Total Project Cost. The estimated total planning and construction cost of the entire MRO Campus is \$334,825,000. The estimated total planning and construction cost of the Project Titan portion of the MRO Campus is \$210,125,000, of which (a) a maximum of \$66,000,000 shall be provided by the Grant, (b) the City shall pay using \$15,000,000 of its own funds (the “**Matching Funds**”), (c) MRO Lessee shall pay using \$35,000,000 of its own funds, and (d) \$94,125,000 shall be provided by the other funding sources shown on the Funding Schedule. Using the Grant, its own funds, and funds from other sources, the City agrees to bear the entire cost and expense of Project Titan, including but not limited to, all costs and all expenses in excess of the total estimated cost of Project Titan, it being expressly understood and agreed that the Grant shall operate only to disburse to the City, on and subject to the terms and conditions set forth herein, a portion of the costs and expenses to be paid by the City at the time(s) of such disbursement. The City shall take all steps reasonably necessary to maintain the Funding Schedule. The City shall notify Triumph of any anticipated changes to the Funding Schedule and shall work with Triumph to update and revise the Funding Schedule such that it reflects the anticipated schedule of completion of Project Titan.

5.3 Requirement to Provide Reports/Triumph Right to Inspect. The City shall submit to Triumph such data, reports, records, contracts and other documents relating to Project Titan as Triumph may require. During the construction portion of Project Titan, the City shall on a quarterly basis submit to Triumph an activity report which outlines the progress of construction and the cost of Project Titan incurred to date, and shall submit to Triumph on an annual basis audited financial statements within six months following the end of the City’s fiscal year. Once construction is completed and Triumph has approved such completion in accordance with the provisions set forth hereinbelow, and until such time as the MRO Lessee has achieved the performance metrics described in Section 8.4 below, the City shall, on an annual basis, within six (6) months following the end of the City’s fiscal year, submit to Triumph audited financial statements for such fiscal year. Upon completion of Project Titan, the City shall send Triumph a notice certifying that Project Titan was completed in accordance with the CMAR Contract, and all applicable standards, statutes, rules and regulations. Within thirty (30) days after receipt of certification of completion, Triumph and/or its agents, engineers, and consultants shall have the right to inspect Project Titan to determine if it was in fact completed in accordance with the CMAR Contract. If so, and subject to Triumph’s receipt of an approved Application for Disbursement in accordance with Sections 4.1 and 4.2 above, Triumph shall disburse a final payment of the Grant to the City; if not, no Grant funds shall be disbursed unless and until the City promptly corrects any deficiencies and Triumph thereafter determines that it was finally completed in accordance with the CMAR Contract. In connection with its inspection of Project Titan, the City shall make available to Triumph copies of any and all invoices, contracts, plans and specifications, and other documentation relating to the construction and completion of Project Titan. Triumph and its employees, agents, and contractors shall have the right, at any time and from time to time during normal working hours and upon reasonable notice to the City, to access Project Titan and inspect the work being performed or as completed; provided that Triumph and its employees, agents and contractors shall at all times (i) comply with all applicable security and safety rules and regulations and (ii) be accompanied by the respective representatives of the City and the CMAR. By entering upon the Project Titan site prior to

completion, Triumph and its employees, agents and contractors knowingly and voluntarily assume all risks associated with an active construction site.

5.4 Insurance. At all times during the term of this Agreement, the City shall maintain or cause to be maintained casualty insurance on all improvements, fixtures, and equipment, the cost of which was, in whole or in part, paid using the Grant, to the extent such improvements can in fact be insured. Prior to the date of beneficial occupancy by the MRO Lessee, the City shall cause CMAR to maintain builder's risk insurance on the improvements, fixtures, and equipment. The City shall also cause the MRO Lease to require that the MRO Lessee maintain casualty insurance on improvements, fixtures, and equipment commencing upon the date of beneficial occupancy by the MRO Lessee and continue during the term of the MRO Lease.

5.5 Compliance with Applicable Laws, Including Environmental Regulations. The City shall obtain all required clearances and permits required for construction from the appropriate permitting authorities. The City covenants and agrees that construction will be carried out in conformance with all applicable federal, state and local statutes, rules and regulations, and standards, including, but not limited to, applicable environmental laws and regulations including the securing of any applicable permits. The City shall be solely responsible for any liability in the event of non-compliance with applicable environmental regulations relating to the construction of Project Titan, it being understood that compliance with applicable environmental regulations with respect to any portion of Project Titan operated by MRO Lessee shall be the sole responsibility of MRO Lessee.

5.6 Plans and Specifications. Triumph shall have the right to review the plans and specifications for Project Titan and any material changes to said plans and specifications solely to confirm that the Project described in the plans and specifications is consistent with the project described in the Grant Application, such confirmation not to be unreasonably withheld, conditioned or delayed. The City shall provide true and complete copies of the plans and specifications at the approximate 50%-60% stage of completion and at the approximate 90%-100% stage of completion. Triumph shall have fifteen (15) days from each receipt of the plans and specifications or proposed material change to notify the City of its confirmation or denial that the Project described in the plans and specifications is consistent with the project described in the Grant Application. If Triumph issues a denial, such denial shall be in writing and shall state the specific manner in which the Project described by the plans and specifications is not consistent with the project described in the Grant Application. If Triumph fails to deliver such confirmation or denial within such fifteen (15) day period, the plans and specifications or proposed material change shall be deemed confirmed by Triumph. If the City fails to obtain such confirmation as provided herein, that failure shall be sufficient cause for nonpayment by Triumph as provided in Section 4.2(h).

5.7 CMAR Contract: Triumph shall have the right to review and approve the proposed CMAR Contract and any proposed material amendments, modifications, extensions or other changes to the thereto, which approval shall not be unreasonably withheld, conditioned or delayed. Triumph shall have fifteen (15) days from receipt of the CMAR Contract, any proposed material amendments, modifications, extensions, change orders, or other changes thereto to approve or disapprove the same (all requests for material amendments, modifications,

extensions, change orders, or other changes to the CMAR Contract shall be accompanied by a description or summary of the proposed change and how/whether such change would affect the overall scope of Project Titan. A change order under the CMAR Contract of \$200,000 or less shall not constitute a material modification of the CMAR Contract. If Triumph issues a disapproval, such disapproval shall be in writing and shall state with specificity all reasons for such disapproval. If Triumph fails to approve or disapprove within such fifteen (15) day period, the CMAR Contractor change thereto, as applicable, shall be deemed approved.

5.8 MRO Development Agreement and MRO Lease. Triumph shall have the right to review (a) the MRO Development Agreement and any material changes thereto solely to confirm that the MRO Development Agreement is not inconsistent with the requirements of this Agreement and the Grant Application and (b) the MRO Lease and any material changes thereto solely to confirm inclusion of required performance metrics and Triumph's related enforcement rights. Triumph shall have fifteen (15) days from the receipt of the MRO Development Agreement or any material change thereto and the MRO Lease or material change thereto, respectively, to notify the City of its confirmation or denial that (a) the MRO Development Agreement or material changes thereto is not inconsistent with the requirements of this Agreement and the Grant Application and (b) the MRO Lease or material change thereto includes the required performance metrics and enforcement rights. If Triumph issues a denial, such denial shall be in writing and shall state the specific manner in which (a) the MRO Development Agreement is inconsistent with the requirements of this Agreement or the Grant Application or (b) the MRO Lease or material change thereto fails to include required performance metrics and/or enforcement rights. If Triumph fails to deliver such confirmation or denial within such fifteen (15) day period, the MRO Development Agreement or material change thereto or the MRO Lease or material change thereto, as applicable, shall be deemed confirmed by Triumph. If the City fails to obtain such confirmation as provided herein, that failure shall be sufficient cause for nonpayment by Triumph as provided in Section 4.2(h).

5.9 Compliance with Consultants' Competitive Negotiation Act. The City shall be deemed an "Agency" under, and shall comply in full with, the provisions of Chapter 287.055, Florida Statutes, Consultants' Competitive Negotiation Act with respect to engineering, architecture or surveying services, and shall certify to Triumph that all selections have been accomplished in compliance with said statute.

5.10 City Responsible for Payments. The City acknowledges and agrees that it is solely responsible for payments that become lawfully due and owing by the City to its agents, employees, contractors (including the CMAR), and consultants. and the City shall indemnify and hold Triumph harmless from any suits, actions, damages, and costs of every name and description, including attorneys' fees, arising from or relating to any denial or reduction of any application submitted by the City to Triumph for disbursement of the Grant under this Agreement; provided that the City shall not indemnify or defend Triumph with respect to any such denial or reduction made by Triumph in violation of the terms of this Agreement

5.11 Workers' Compensation Insurance. The City shall carry or cause CMAR and any of its other contractors and consultants to carry and keep in force Workers' Compensation insurance as required under the Florida Workers' Compensation Law (Chapter 440, Florida Statutes).

6. **Representations and Warranties of the City.** The City hereby makes the following representations and warranties to Triumph, each of which shall be deemed to be a separate representation and warranty, all of which have been made for the purpose of inducing Triumph to enter into this Agreement, and in reliance on which Triumph has entered into this Agreement, and such representations and warranties shall be deemed made as of the date hereof, as of the dates on which the City submits an Application for Disbursement, and as of the dates on which the City receives any disbursement of the Grant:

(a) **Organization; Power and Authority.** The City is a municipal corporation of the State of Florida, and has all requisite power and authority to own, lease, and operate its properties and to carry on its affairs as currently conducted.

(b) **Authorization and Binding Obligation.** The City has all necessary power and authority to execute and deliver this Agreement and to consummate the transactions contemplated hereby. The execution and delivery of this Agreement and the consummation of the transactions contemplated hereby have been duly authorized by all necessary corporate action on the part of the City. This Agreement has been duly executed and delivered by the City and, assuming the due authorization, execution, and delivery of this Agreement by Triumph, constitutes the legal, valid, and binding obligation of the City, enforceable against the City in accordance with its terms (subject to applicable bankruptcy, insolvency, moratorium, reorganization, or similar laws affecting the rights of creditors generally and the availability of equitable remedies); provided that all obligations of the City hereunder shall be payable solely from legally available funds of the City, and nothing in this Agreement shall be construed as a pledge of the faith, credit or taxing power of the City within the meaning of any constitutional or statutory provision, prohibition or limitation, nor as a pledge to encumber any asset or property of the City.

(c) **No Violations.** The execution and delivery by the City of this Agreement and the performance by it of the transactions contemplated hereby does not (i) conflict with or result in a breach of any provision of the City's certificate of incorporation, certificate of formation, bylaws, or similar corporate document, (ii) result in violation or breach of or constitute a default (or an event which, with or without notice or lapse of time or both, would constitute a default) under, or result in the termination, modification, cancellation or acceleration under the terms, conditions, or provisions of any of the City's loan agreements, indentures, material agreements or other material instruments or (iii) violate any applicable law or regulation. The City has not been convicted of a "public entity crime" (as such term is defined in Section 287.133 of the Florida Statutes) nor has the City been placed on the "discriminatory vendor list" (as such term is defined in Section 287.134 of the Florida Statutes). Neither the City nor any person or entity that possesses, directly or indirectly, the power to direct or cause the direction of the management and policies of the City, is listed on the Specially Designated Nationals List or the Foreign Sanctions Evaders List, in each case, as maintained by the United States Department of the Treasury. Neither the City nor its officers, directors, agents, distributors, employees, or other persons or entities acting on its behalf has taken any act

in furtherance of an offer, payment, promise to pay, authorization, or ratification of the payment, directly or indirectly, of any gift, money or anything of value to a government official or to obtain or retain business for any person or entity in violation of applicable law.

(d) **No Material Adverse Change.** No event, change or condition has occurred that has had, or would reasonably be expected to have, a material adverse effect on the assets, operations or financial condition of the City, or Project Titan, in each case, since the date of the Grant Application.

(e) **Litigation; Compliance with Laws.** No litigation, investigation, claim, criminal prosecution, civil investigative demand, imposition of criminal or civil fines and penalties, or any other proceeding of or before any arbitrator or governmental agency is pending or, to the knowledge of the City, threatened by or against the City or against any of its properties or assets, which, individually or in the aggregate, could reasonably be expected to result in a material and adverse effect on the assets, operations, or financial condition of the City, Project Titan, or the City's ability to perform its obligations under this Agreement. No state or federal criminal investigation, criminal prosecution, civil investigative demand, imposition of criminal or civil fines and penalties, or any other proceeding of the Office of the Attorney General of the State of Florida, any State Attorney in the State of Florida, the United States Department of Justice, or any other prosecutorial or law enforcement authority is pending or, to the knowledge of the City, threatened by or against the City or any of its elected officials. No permanent injunction, temporary restraining order or similar decree has been issued against the City which, individually or in the aggregate, could reasonably be expected to have a material and adverse effect on the assets, operations, or financial condition of the City, Project Titan, or the City's ability to perform its obligations under this Agreement. Neither the City, nor any of its material properties or assets has in the last three years been in violation of, nor will the continued operations of its material properties and assets as currently conducted, violate any law, rule, or regulation applicable to the City (including any zoning or building ordinance, code or approval, or any building permit where such violation or default would be material to the City), or is in default with respect to any judgment, writ, injunction, decree, or order applicable to the City of any governmental the City, in each case, where such violation or default could, individually or in the aggregate, reasonably be expected to result in a material and adverse effect on the assets, operations, or financial condition of the City, Project Titan, or the City's ability to perform its obligations under this or constitutes a crime under the laws of the United States, Florida, or any other state or territory of the United States.

(f) **Express Representations and Warranties: No Material Misstatements.** All statements made by the City in the Grant Application were true, complete, and correct in all material respects. Triumph shall be deemed to have relied upon the express statements, representations and warranties set forth herein and in the Grant Application notwithstanding any knowledge on the part of Triumph of any untruth of any such representation or warranty of the City expressly set forth in this Agreement, regardless of whether such knowledge was obtained through Triumph's own investigation or otherwise, and regardless of whether such knowledge was obtained

before or after the execution and delivery of this Agreement. No information, report, financial statement, exhibit or schedule (other than forward-looking statements and projections) furnished by the City to Triumph in connection with the Grant Application and/or the negotiation of this Agreement, or delivered pursuant to this Agreement, when taken together, contained or contains any material misstatement of fact or omitted or omits to state any material fact necessary to make the statements contained herein or therein, in the light of the circumstances under which they were made, not misleading.

(g) **Matching Funds.** The City has on hand as its own funds or irrevocable contractual, grant award, or appropriated funds of not less than \$15,000,000 as the Matching Funds dedicated to completion of Project Titan as contemplated in the Grant Application.

(h) **Bonus or Commission.** The City has not paid, and agrees not to pay, any bonus or commission for the purpose of obtaining an approval of the Grant Application or the entering into of this Agreement.

7. Accounting, Audits, and Records.

7.1 Establishment and Maintenance of Accounting Records. The City shall establish separate accounts to be maintained within its existing accounting system or establish independent accounts with respect to Project Titan. Such accounts are referred to herein collectively as the “**Project Titan account.**” Records of costs incurred under terms of this Agreement shall be maintained in Project Titan account and made available upon request to Triumph at all times during the period of this Agreement and for five (5) years after final payment of the Grant is made. Copies of these documents and records shall be made available to Triumph upon request. Records of costs incurred include the City's general accounting records and Project Titan records, together with supporting documents and records, of the City and all consultants performing work on Project Titan and all other records of the City and consultants considered necessary by Triumph for a proper audit of costs. If any litigation, claim, or audit is started before the expiration of the five (5) year period, the records shall be retained until all litigation, claims, or audit findings involving the records have been resolved.

7.2 Audits. The administration of the Grant and any federal, state, or local resources awarded to the City with respect to Project Titan shall be subject to audits and/or monitoring by Triumph, the Chief Financial Officer of the State of Florida, the Auditor General of the State of Florida, the Florida Office of Program Policy Analysis and Government Accountability, and other state agencies, and by the federal government and agencies and representatives thereof. Without limiting the generality of the foregoing, the City shall comply with all audit and audit reporting requirements as specified below, and such requirements do not limit the authority of Triumph to conduct or arrange for the conduct of additional audits or evaluations of the Grant and federal, state, or local awards or funding, or limit the authority of Triumph or any state or federal official.

(a) In addition to reviews of audits conducted in accordance with Chapter 218, Florida Statutes, monitoring procedures to monitor the City's use of the Grant may include but not be limited to on-site visits by Triumph and/or other procedures

including, reviewing any required performance and financial reports, following up, ensuring corrective action, and issuing management decisions on weaknesses found through audits when those findings pertain to the Grant awarded by Triumph by this Agreement. By entering into this Agreement, the City agrees to comply and cooperate fully with any monitoring procedures/processes deemed appropriate by Triumph. The City further agrees to comply and cooperate with any inspections, reviews, investigations, or audits deemed necessary by Triumph, the Florida Department of Financial Services (DFS), or the State of Florida Auditor General.

(b) The City, as a recipient of state financial assistance awarded by Triumph through this Agreement, may be subject to the following requirements:

(i) Chapter 218, Florida Statutes; applicable rules of the Department of Financial Services; and Chapters 10.550 (local governmental entities) of the Rules of the Auditor General.

(ii) In accordance with Chapters 10.550 (local governmental entities) of the Rules of the Auditor General, copies of financial reporting packages required by this Agreement shall be submitted to Triumph at the address set forth in Section 10.10 below and to the State of Florida Auditor General, Local Government Audits/342, 111 West Madison Street, Room 401, Tallahassee, FL 32399-1450;

(iii) The City, when submitting financial reporting packages to Triumph for audits done in accordance with Chapters 10.550 (local governmental entities) of the Rules of the Auditor General, should indicate the date the reporting package was delivered to the Auditor General in correspondence accompanying the reporting package;

(iv) Upon receipt, and within six months, Triumph may review the City's financial reporting package, including corrective action plans and management letters, to the extent necessary to determine whether timely and appropriate corrective action on all deficiencies has been taken pertaining to the Grant provided through Triumph by this Agreement. If the City fails to have an audit conducted consistent with Chapter 218, Florida Statutes, Triumph may take appropriate corrective action to enforce compliance; and

(v) As a condition of receiving the Grant, the City shall permit Triumph, or its designee, DFS or the Auditor General access to the City's records including financial statements, the independent auditor's working papers and project records as

necessary. Records related to unresolved audit findings, appeals or litigation shall be retained until the action is complete or the dispute is resolved.

(c) The City shall retain sufficient records demonstrating its compliance with the terms of this Agreement for a period five (5) years from the date the audit report is issued and shall allow Triumph, or its designee, DFS or State of Florida Auditor General access to such records upon request. The City shall ensure that the audit working papers are made available to Triumph, or its designee, DFS or State of Florida Auditor General upon request for a period of five (5) years from the date the audit report is issued unless extended in writing by Triumph.

7.3 Public Records. The parties acknowledge that each are public entities and, as such, are obligated to comply with the provisions of Chapter 119 of the Florida Statutes applicable to this Agreement as the same may be limited or construed by other applicable law. In the event that either party receives a request for a "public record" (as such term is defined in Section 119.011 of the Florida Statutes) in connection with this Agreement, that party shall provide written notice to the other party of such request as soon as practicable after that parties receipt of such request. If either party submits records to the other party that are confidential and exempt from public disclosure as trade secrets pursuant to Section 288.075 (3) of the Florida Statutes or proprietary confidential business information pursuant to Section 288.075(4) of the Florida Statutes, such records should be marked accordingly by the submitting party prior to submittal to the other party. In the event that either party's claim of exemption asserted in response to the submitting party's assertion of confidentiality is challenged in a court of law. The submitting party shall defend, assume and be responsible for all fees, costs and expenses in connection with such challenge. It is expressly understood and agreed that all Back-up Data (as defined in Section 8.4 below) and performance metrics under Section 8.4 below shall be deemed "public records" under Section 119.011 of the Florida Statutes.

8. Termination or Suspension of Project/Breach of Agreement/Failure to Achieve Performance Metrics/Clawback of Grant:

8.1 Termination, Suspension, or Expiration of Project. If the City abandons or, before completion, finally discontinues Project Titan; or fails to complete a substantial portion of Project Titan; or for any other reason (other than *force majeure*), the commencement, prosecution, or timely completion of Project Titan by the City is rendered improbable, infeasible, impossible, or illegal, Triumph may, by written notice to the City, (i) suspend any further disbursements of the Grant and/or any or all of Triumph's other obligations under this Agreement until such time as the event or condition resulting in such abandonment, suspension, or discontinuation has ceased or been corrected, and/or (ii) revoke and terminate the Grant. If Triumph issues a final termination or revocation notice, then in accordance with Section 8.3 below the City shall upon written demand by Triumph repay to Triumph all portions of the Grant theretofore disbursed to and received by the City.

8.2 Breach of Agreement. In the event the City shall (i) have made any misrepresentation of a material nature in the Grant Application, or any supplement or

amendment to the Grant Application, or with respect to any document or data furnished with the Grant Application or pursuant to this Agreement, (ii) have breached a material representation or warranty made in this Agreement, and/or (iii) have breached, violated, or is in any way in default (other than by reason of *force majeure*), after the expiration of any notice and/or cure periods, under any of its material obligations under this Agreement, then in accordance with Section 8.3 below the City shall upon written demand by Triumph repay to Triumph all portions of the Grant theretofore disbursed to and received by the City.

8.3 Clawback from City. Upon the occurrence of any of the events described in Sections 8.1 or 8.2 above and the expiration of the cure period provided in Section 10.16, then, upon written demand by Triumph, the City shall within one (1) year of such demand repay to Triumph all amounts of the Grant that were theretofore disbursed to and received by the City, together with interest at the rate *Wall Street Journal Prime Rate* plus three percent (3%) per annum on such amounts to be repaid. Such interest shall accrue commencing on the date of such written demand by Triumph and shall continue to accrue until the amount demanded is repaid in full. Excluding interest, the total repayment of Grant funds to be repaid as provided above shall not exceed the total amount of the Grant actually disbursed to the City. The City and Triumph acknowledge and agree that any amounts set forth in this Section 8.3 to be paid by the City are intended as a repayment of Grant funds conditionally disbursed to the City and are due and payable to Triumph as a result of the occurrence of any of the events described in Sections 8.1 or 8.2 above. Such amounts are not intended as and shall not be deemed damages or a penalty. Notwithstanding the foregoing, to the extent that for any reason such amounts are deemed damages, the City and Triumph agree that (i) such amounts shall constitute liquidated damages, (ii) the actual damages suffered by Triumph would be unreasonably difficult to determine and that Triumph, (iii) Triumph would not have a convenient and adequate alternative to the liquidated damages, (iv) the amounts due Triumph bear a reasonable relationship to any anticipated harm and is a genuine pre-estimate suffered by Triumph, and (v) the City irrevocably waives any right that it may have to raise as a defense that any such liquidated damages are excessive or punitive. Notwithstanding any contrary provision in this Agreement, it is expressly understood and agreed that any obligation of the City to repay all or any portion of the Grant shall terminate one (1) year following completion of construction of Project Titan.

8.4 Performance Metrics/Clawback of Grant from MRO Lessee. The MRO Performance Agreement attached hereto as Exhibit "B" is hereby incorporated herein by reference. The MRO Performance Agreement shall be attached as an exhibit to, and shall be incorporated by reference into and made a part of, each of the MRO Development Agreement and the MRO Lease.

(a) In order for the City to remain qualified for the Grant and for MRO Lessee to avoid imposition of clawbacks as further set forth below, the MRO Lessee must comply with the terms and conditions of the MRO Performance Agreement.

(b) Whether enforced through the MRO Performance Agreement, the MRO Development Agreement, or the MRO Lease, the MRO Lessee will be solely liable to Triumph for all such clawback payments under the MRO Performance Agreement, and such payments shall be made by the MRO Lessee directly to Triumph. The City shall (i) bear fifty percent (50%) of the cost of Triumph's

attorneys' fees and costs incurred in connection with any enforcement actions of the clawback provision against MRO Lessee, whether such enforcement occurs under the MRO Performance Agreement or the MRO Lease; and (ii) cooperate in all reasonable respects with Triumph's efforts to enforce the clawbacks; provided that (a) Triumph shall provide to the City copies of invoices for such attorneys' fees and costs as and when received by Triumph, (b) Triumph shall provide to City copies of all documents, correspondence and pleadings related to such enforcement actions, and (c) Triumph shall, upon the City's request from time to time, provide to City verbal briefings by Triumph and its attorneys concerning the status and progress of such enforcement actions.

(c) It is the Parties' intent that the document attached hereto as Exhibit "B" and referred to herein as the "MRO Performance Agreement" shall at all times be the identical document as the MRO Performance Agreement actually executed and entered into by and between Triumph and MRO Lessee, as the same may be modified and amended from time to time. To that end, in the event of any conflict between Exhibit "B" hereto and the MRO Performance Agreement actually executed and entered into by and between Triumph and MRO Lessee, as the same may be modified and amended from time to time, the provisions of the MRO Performance Agreement and amendments and modifications actually executed and entered into by and between Triumph and MRO Lessee shall control, and the conflicting provisions of Exhibit "B" shall be deemed to be automatically modified and amended to the full extent necessary in order for the provisions of Exhibit "B" to be identical to the MRO Performance Agreement actually executed and entered into by and between Triumph and MRO Lessee, as the same may be modified and amended from time to time. Further, the MRO Performance Agreement actually executed and entered into by and between Triumph and MRO Lessee, as the same may be modified and amended from time to time shall be substituted for and in place of Exhibit "B" hereto, without the consent of Triumph or the City being required, as necessary from time to time in order that at all times the MRO Performance Agreement actually executed and entered into by and between Triumph and MRO Lessee, as the same may be modified and amended from time to time, shall constitute Exhibit "B" to this Agreement. Notwithstanding the foregoing, in no event shall the MRO Performance Agreement or any amendment or modification thereto create any obligation or liability on the party of the City to Triumph, MRO Lessee, or any other person or entity.

9. Other Covenants, Restrictions, Prohibitions, Controls, and Labor Provisions:

9.1 No Lobbying/Gifts. The City shall not expend any funds provided under this Agreement for the purpose of lobbying the Legislature, the judicial branch, or any state agency, and shall at all times comply with 11.062, F.S., and 216.347, F.S. The City shall not, in connection with this or any other agreement, directly or indirectly: (1) offer, confer, or agree to confer any pecuniary benefit on anyone as consideration for any Triumph or State officer or employee's decision, opinion, recommendation, vote, other exercise of discretion, or violation of a known legal duty; or (2) offer, give, or agree to give to anyone any gratuity for the benefit of, or at the direction or request of, any Triumph or State officer or employee. For purposes of clause (2), "gratuity" means any payment of more than nominal monetary value in the form of cash, travel, entertainment, gifts, meals, lodging, loans, subscriptions, advances, deposits of money, services, employment, or contracts of any kind. Upon request of Triumph or any authorized State official, the City shall provide any type of information Triumph or such official reasonably deems relevant to the City's compliance with the foregoing. Such

information may include, but shall not be limited to, the City's business or financial records, documents, or files of any type or form that refer to or relate to this Agreement.

9.2 Costs of Investigations. The City shall reimburse Triumph, the Auditor General or other authorized State official, as the case may be, for the reasonable costs of audits and investigations incurred by Triumph, the Auditor General or other authorized State official, as the case may be, for audits and investigations of the City's compliance with the terms of this Agreement which result in the suspension or debarment of the City. Such costs shall include, but shall not be limited to, salaries of investigators, including overtime; travel and lodging expenses; and expert witness and documentary fees. The City shall not be responsible for any costs of audits or investigations that do not result in the City's suspension or debarment. The City understands and will comply with the requirements of s. 20.055(5), F.S., including but not necessarily limited to, the duty of the City and any of the City's subcontractors to cooperate with the inspector general in any investigation, audit, inspection, review, or hearing pursuant to s. 20.055, F.S.

9.3 Equal Employment Opportunity/Labor Laws. In connection with the carrying out of Project Titan, the City shall not discriminate against any employee or applicant for employment because of race, age, creed, color, sex or national origin. The City will ensure that applicants are employed, and that employees are treated during employment, without regard to their race, age, creed, color, sex, or national origin in accordance with all applicable federal, state and local laws, rules, regulations and ordinances. In addition, the City shall comply with all other applicable labor and employment laws and regulations, including, but not limited to, wage and hour and workplace safety laws and regulations.

9.4 Prohibited Interests. Except as otherwise permitted under Section 112.313(12), Florida Statutes, the City shall not enter into a contract or arrangement in connection with Project Titan or any property included or planned to be included in Project Titan, with any officer, director or employee of the City, or any entity of which the officer, director or employee or the officer's, director's or employee's spouse or child is an officer, partner, director, or proprietor or in which such officer, director or employee or the officer's, director's or employee's spouse or child, or any combination of them, has a material interest.

- (1) "Material Interest" means direct or indirect ownership of more than 5% of the total assets or capital stock of any business entity.
- (2) The City shall not enter into any contract or arrangement in connection with Project Titan or any property included or planned to be included in Project Titan, with any person or entity who was represented before the City by any person who at any time during the immediately preceding two (2) years was an officer, director or employee of the City.
- (3) The provisions of this subsection shall not be applicable to any agreement between the City and its fiscal depositories, any agreement for utility services the rates for which are fixed or controlled by the government, or any agreement between the City and an agency of state government.

9.5 Interest of Members of, or Delegates to, Congress or Legislature. No member or delegate to the Congress of the United States, or member of the State of Florida legislature, or any director, staff member, or consultant of Triumph, shall be permitted to share in or be a part of this Agreement or any benefit arising hereunder.

9.6 Grant Funds. The City acknowledges and agrees that the funds for the Grant are not and shall not be deemed a general obligation of the State of Florida, nor is the Grant or this Agreement backed by the full faith and credit of the State of Florida. Subject to the satisfaction of the funding contingencies set forth in Sections 3 and 4 above, \$56,000,000 of the Grant shall be available for disbursement as of the date of execution of this Agreement out of uncommitted funds currently held by Triumph. However, the remaining Grant amount of \$10,000,000 shall only be available for disbursement to the City as follows: \$5,000,000 shall be available if and when additional funds are received by Triumph pursuant to Section 288.8013, Florida Statutes, for the expected receipt of funds by Triumph on or about April 8, 2020, and \$5,000,000 shall be available if and when additional funds are received by Triumph pursuant to Section 288.8013, Florida Statutes, for the expected receipt of funds by Triumph on or about April 8, 2021.

10. Miscellaneous Provisions:

10.1 Triumph Not Obligated to Third Parties. Triumph shall not be obligated or liable hereunder to any party other than the City. Without limiting the generality of the foregoing, neither MRO Lessee nor any of its affiliates, nor any person or entity providing funding to Project Titan (other than the City), nor CMAR or any other contractor, subcontractor, or materialman, shall be a third-party beneficiary under this Agreement.

10.2 When Rights and Remedies Not Waived. In no event shall the making by Triumph of any payment of Grant funds to the City constitute or be construed as a waiver by Triumph of any breach of covenant or any default which may then exist, on the part of the City, and the making of such payment by Triumph while any such breach or default shall exist shall in no way impair or prejudice any right or remedy available to Triumph with respect to such breach or default.

10.3 Severability. If any provision of this Agreement is held invalid, the remainder of this Agreement shall not be affected. In such an instance the remainder would then continue to conform to the terms and requirements of applicable law.

10.4 Contractual Indemnity. To the extent provided by Section 768.28, Florida Statutes, the City shall indemnify, defend, and hold harmless Triumph and all of its officers, agents, and employees from any claim, loss, damage, cost, charge, or expense arising out of any negligent act or negligent failure to act by the City, its agents, or employees, during the performance of this Agreement, except that neither the City, its agents, or its employees will be liable under this paragraph for any claim, loss, damage, cost, charge, or expense arising out of

any negligent act or negligent failure to act by Triumph or any of its officers, agents, or employees during the performance of the Agreement. Nothing in this Agreement shall be construed as a waiver by the City of any sovereign immunity protections that may be provided by Section 768.28, Florida Statutes. When Triumph receives a notice of claim for damages that may have been caused by the City in the performance of services required under this Agreement, Triumph will immediately forward the claim to the City. The City and Triumph will evaluate the claim and report their findings to each other within fourteen (14) working days and will jointly discuss options in defending the claim. After reviewing the claim, Triumph will determine whether to require the participation of the City in the defense of the claim or to require that the City defend Triumph in such claim as described in this Section 10.4. Triumph's failure to promptly notify the City of a claim shall not act as a waiver of any right herein to require the participation in or defense of the claim by the City. Triumph and the City will each pay its own expenses for the evaluation, settlement negotiations, and trial, if any. However, if only one party participates in the defense of the claim at trial, that party is responsible for all expenses at trial.

10.5 Limitations of Liability. Neither the City nor Triumph shall be liable to the other for any special, indirect, punitive, or consequential damages, even if the other party has been advised that such damages are possible. Neither the City nor Triumph shall be liable for lost profits, lost revenue, or lost institutional operating savings. In addition, Triumph shall not assume or incur any liability related to its approval or deemed approval of the CMAR Contract, any other contract related to Project Titan, any plans or specifications for Project Titan, any construction work, or any other matter for which Triumph has the right or obligation to review and/or approve under this Agreement.

10.6 Non-Assignment. The City shall not assign, subcontract, or otherwise transfer its rights, duties, or obligations under this Agreement, by operation of law or otherwise, without the prior written consent of Triumph, which consent may be withheld in Triumph's sole and absolute discretion. Triumph shall at all times be entitled to assign or transfer its rights, duties, or obligations under this Agreement to another person or entity upon giving prior written notice to the City. Any attempted assignment of this Agreement or any of the rights hereunder in violation of this provision shall be void *ab initio*.

10.7 Intentionally Omitted.

10.8 Construction: Interpretation. The title of and the section and paragraph headings in this Agreement are for convenience of reference only and shall not govern or affect the interpretation of any of the terms or provisions of this Agreement. The term "this Agreement" means this Agreement together with all Exhibits hereto, as the same may from time to time be amended, modified, supplemented, or restated in accordance with the terms hereof. All words used in this Agreement in the singular form shall extend to and include the plural. All words used in the plural form shall extend to and include the singular. The use in this Agreement of the term "including" and other words of similar import mean "including, without limitation" and where specific language is used to clarify by example a general statement contained herein, such specific language shall not be deemed to modify, limit, or restrict in any manner the construction of the general statement to which it relates. The word "or" is not exclusive and the words "herein," "hereof," "hereunder" and other words of similar import refer

to this Agreement as a whole, including any Exhibits, and not to any particular section, subsection, paragraph, subparagraph, or clause contained in this Agreement. The recitals of this Agreement are incorporated herein by reference and shall apply to the terms and provisions of this Agreement and the parties hereto. Time is of the essence with respect to the performance of all obligations under this Agreement. The parties hereto have participated jointly in the negotiation and drafting of this Agreement. In the event an ambiguity or question of intent or interpretation arises, this Agreement shall be construed as if drafted jointly by the parties hereto, and no presumption or burden of proof shall arise favoring or disfavoring any party by virtue of the authorship of any of the provisions of this Agreement.

10.9 Preservation of Remedies. No delay or omission to exercise any right, power, or remedy accruing to either party hereto upon breach or default by either party hereto under this Agreement, will impair any such right, power, or remedy of either party; nor will such delay or omission be construed as a waiver of any breach or default or any similar breach or default.

10.10 Entire Agreement; Amendment; Waiver. This Agreement embodies the entire agreement of the parties hereto with respect to the subject matter hereof. There are no provisions, terms, conditions, or obligations other than those contained in this Agreement; and this Agreement supersedes all previous communications, representations, or agreements, either verbal or written, between the parties. No amendment will be effective unless reduced to writing and signed by an authorized officer of the City and the authorized officer of Triumph. No waiver by a party hereto of any of the provisions hereof shall be effective unless explicitly set forth in writing and signed by the party so waiving. No waiver by any party hereto shall operate or be construed as a waiver in respect of any failure, breach or default not expressly identified by such written waiver, whether of a similar or different character, and whether occurring before or after that waiver. No failure to exercise, or delay in exercising, any right, remedy, power or privilege arising from this Agreement shall operate or be construed as a waiver thereof; nor shall any single or partial exercise of any right, remedy, power or privilege hereunder preclude any other or further exercise thereof or the exercise of any other right, remedy, power or privilege.

10.11 Notices. All notices and demands to be given or delivered under or by reason of the provisions of this Agreement shall be in writing and shall be deemed to have been given (i) when personally delivered, (ii) when transmitted via facsimile to the number set out above if the sender on the same day sends a confirming copy of such notice by a recognized overnight delivery service (charges prepaid), (iii) the day following the day (except if not a business day then the next business day) on which the same has been delivered prepaid to a reputable national overnight air courier service, or (iv) the third business day following the day on which the same is sent by certified or registered mail, postage prepaid. Notices and shall be sent to the applicable address set forth below, unless another address has been previously specified in writing in accordance with this Section 10.11:

If to Triumph:

Triumph Gulf Coast, Inc.

If to the City:

City of Pensacola

P.O. Box 12007
Tallahassee, FL 32317
Attention: Executive Director

222 W. Main Street
Pensacola, FL 32502
Attention: City Administrator
City Attorney
Chief Financial Officer

10.12 Attorney's Fees. In the event litigation arises (at the trial or appellate level) in connection with this Agreement, the prevailing party will be entitled to be reimbursed for all costs incurred in connection with such litigation, including without limitation reasonable attorneys' fees and costs.

10.13 TO THE FULLEST EXTENT LEGALLY PERMISSIBLE, THE PARTIES HERETO WAIVE TRIAL BY JURY IN RESPECT OF ANY CLAIM, DISPUTE OR ACTION ARISING OUT OF, RELATED OR PERTAINING TO THIS AGREEMENT, THE GRANT APPLICATION, AND/OR THE GRANT. THIS WAIVER IS KNOWINGLY, WILLINGLY AND VOLUNTARILY MADE AND EACH PARTY HEREBY REPRESENTS THAT NO REPRESENTATIONS OF FACT OR OPINION HAVE BEEN MADE BY ANY PERSON OR ENTITY TO INDUCE THIS WAIVER OF TRIAL BY JURY OR TO IN ANY WAY MODIFY OR NULLIFY ITS EFFECT. THIS PROVISION IS A MATERIAL INDUCEMENT FOR THE PARTIES ENTERING INTO THIS AGREEMENT. EACH PARTY IS HEREBY AUTHORIZED TO FILE A COPY OF THIS SECTION IN ANY PROCEEDING AS CONCLUSIVE EVIDENCE OF THIS WAIVER OF JURY TRIAL. EACH PARTY REPRESENTS AND WARRANTS THAT IT HAS BEEN REPRESENTED IN THE SIGNING OF THIS AGREEMENT AND IN THE MAKING OF THIS WAIVER BY INDEPENDENT LEGAL COUNSEL, OR HAS HAD THE OPPORTUNITY TO BE REPRESENTED BY INDEPENDENT LEGAL COUNSEL SELECTED OF ITS OWN FREE WILL, AND THAT IT HAS HAD THE OPPORTUNITY TO DISCUSS THIS WAIVER WITH COUNSEL.

10.14 Governing Law. The laws of the State of Florida shall govern the construction, enforcement and interpretation of this Agreement, regardless of and without reference to whether any applicable conflicts of laws principles may point to the application of the laws of another jurisdiction. The exclusive personal jurisdiction and venue to resolve any and all disputes between them including, without limitation, any disputes arising out of or relating to this Agreement shall be in the state courts of the State of Florida in the County of Escambia. The parties expressly consent to the exclusive personal jurisdiction and venue in any state court located in Escambia County, Florida, and waive any defense of forum non conveniens, lack of personal jurisdiction, or like defense, and further agree that any and all disputes between them shall be solely in the State of Florida. Should any term of this Agreement conflict with any applicable law, rule, or regulation, the applicable law, rule, or regulation shall control over the provisions of this Agreement.

10.15 Counterparts. This Agreement may be executed in one or more counterparts, each of which shall be deemed an original, and all of which taken together shall constitute one and the same instrument.

10.16 Notice and Right to Cure. Notwithstanding any contrary provision in this Agreement, Triumph shall give the City written notice of any event or occurrence that would permit Triumph to revoke or terminate the Grant or this Agreement or to exercise any other right or remedy hereunder, and the City shall be entitled to cure, remedy or correct such event or occurrence within thirty (30) days after its receipt of such notice; provided that if such event or occurrence cannot reasonably be cured, remedied or corrected within such thirty-day period, the City shall have a reasonable time, not to exceed ninety (90) days after the City's receipt of such notice, to cure, remedy or correct such event or occurrence. Notwithstanding the foregoing, the provisions of this Section shall not apply with respect to Applications for Disbursement; rather any notice and cure rights with respect to Applications for Disbursement shall be governed solely by Section 4.2.

10.17 Mayor's Authority. Any notice or consent required or permitted by this Agreement to be given by the City may be given by the Mayor of the City, or the Mayor's designee, and the Mayor or the Mayor's designee shall be entitled to exercise any discretion permitted by this Agreement to be exercised by the City. Further, the Mayor or the Mayor's designee may amend, modify or waive any term or provision of this Agreement on behalf of the City provided that the amendment, modification or waiver does not materially and adversely affect the rights and obligations of the City under this Agreement or is required in order to correct a scrivener's error. Any action taken by the Mayor or the Mayor's designee under the terms of this Section shall bind the City, and Triumph shall be entitled to rely thereon.

[signature page follows]

IN WITNESS WHEREOF, the parties hereto have caused this Agreement be executed as of the day and year first above written.

THE CITY:

TRIUMPH:

CITY OF PENSACOLA,
a Florida municipal corporation

TRIUMPH GULF COAST, INC., a Florida
not-for-profit corporation

By: _____
Print Name: Grover C. Robinson, IV
Title: Mayor

By: _____
Print Name: _____
Title: Chairman

By: _____
Print Name: _____
Title: Treasurer

ATTEST:

ATTEST:

By: _____
Print Name: _____
Title: _____

By: _____
Print Name: _____
Title: Secretary

Approved As To Content:

Daniel E. Flynn, Airport Director

Approved As To Form

By: _____
Susan A. Woolf, City Attorney

EXHIBIT "A"

Resolution of City

EXHIBIT "B"

MRO PERFORMANCE AGREEMENT

DRAFT 3/15/19

PERFORMANCE AGREEMENT

This Performance Agreement (this “**Agreement**”) is made and entered into as of _____, 2019 by and between Triumph Gulf Coast, Inc., a Florida not-for-profit corporation (“**Triumph**”) and VT Mobile Aerospace Engineering, Inc., an Alabama corporation (“**VT**”).

RECITALS:

WHEREAS, Triumph and the City of Pensacola, Florida (the “**City**”) are parties to that certain Grant Award Agreement dated _____, 2019 (the “**Grant Agreement**”).

WHEREAS, pursuant to the Grant Agreement, and subject to the terms and conditions therein, Triumph has agreed to make a grant to the City in the maximum amount of \$66,000,000 (the “**Grant**”) to provide partial funding for the planning and construction of an aircraft Maintenance, Repair, Overhaul Aviation Campus (MRO Campus) consisting of following projects (collectively, “**Project Titan**”) at Pensacola International Airport (the “**Airport**”):

- Hangar 2 – 173,000 square feet
- Hangar 3 – 191,000 square feet
- Hangar 4 – 191,000 square feet
- Warehouses/shops/support facilities – 100,000 square feet
- Administrative Offices – 120,000 square feet
- Aircraft taxiways accessing the hangar aprons
- Aircraft aprons at the hangars
- Automobile ingress and egress roadways and auto parking

WHEREAS, VT, as lessee, and the City, as lessor, are entering into a separate lease agreement pursuant to which VT will occupy all or a portion of Project Titan (the “**MRO Lease**”).

WHEREAS, VT and the City are entering into a separate Development Agreement which governs the construction and development of Project Titan (the “**MRO Development Agreement**”).

WHEREAS, Section 8.4 of the Grant Agreement contains certain job creation performance metrics that must be satisfied by VT.

WHEREAS, the Grant Agreement provides that, as a condition to Triumph making the Grant to the City, VT shall enter into this Agreement, pursuant to which, among other things, VT agrees to re-pay to Triumph certain “clawback” amounts in the event the job creation performance metrics are not timely satisfied.

WHEREAS, VT will derive a substantial benefit from the making of the Grant to the City and the completion of Project Titan and has received and thus is receiving good and valuable consideration for entering into this Agreement.

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

1. Accuracy of Recitals. Triumph and VT acknowledge and agree that the foregoing Recitals are true and accurate.
2. Performance Metrics. VT hereby covenants and agrees as follows:
 - (a) VT hereby covenants and agrees that:

(1) (A) **Project Jobs:** Prior to the end of the Job Maintenance Review Period for Project Jobs (as defined below), VT shall (i) create at least one thousand three hundred twenty five (1,325) net new, private sector, full-time equivalent jobs (defined as 2,080 man-hours per year) for Project Titan in Escambia County (but excluding Project Stallion jobs until the number of Project Stallion jobs reaches 400); and (ii) maintain all (or more) of such 1,325 Project Jobs during any seven (7) years (which seven years need not be consecutive) during the period beginning no later than five (5) years after the Date of Beneficial Occupancy of Hangar 4 of Project Titan and ending ten (10) years thereafter. The new jobs required herein are referred to as “Project Jobs.” As used herein, “Project Jobs” shall have the meaning set forth in Section 288.106(2)(i), Florida Statutes. In order for a Project Job under this paragraph (A) to have been created and maintained for seven (7) out of ten (10) years in accordance with the terms of this Agreement, it must have been created no later than five (5) years after the Date of Beneficial Occupancy of Hangar 4 of Project Titan, and maintained for at least seven (7) out of ten (10) years thereafter. Such ten (10) year period is herein referred to as the “**Job Maintenance Review Period for Project Jobs.**”

(B) Once 1,325 Project Jobs have been created in Escambia County and maintained in accordance with paragraph (a)(1) (A) above, (i) the jobs creation

requirements of this Agreement shall be considered satisfied; (ii) the Grant Performance Completion Date (hereinafter defined) shall be deemed to have occurred; and (iii) this Agreement shall be deemed terminated without any further action being required by the parties. As a start-up project, Project Titan will not have a “Base Period” for the calculation of Project Jobs. No Project Jobs may be transferred by VT from other parts of the State of Florida in fulfillment the jobs creation requirements described herein.

(2) The average annual wage of Project Jobs, to be created and maintained hereunder as specified in Paragraph (a) above will be at least \$44,461, excluding benefits, for each year during the term of this Agreement. Unless otherwise indicated, compliance with this paragraph (2) shall be required in establishing compliance with the requirements for “maintaining” or “maintenance” of Project Jobs hereunder.

(3) The “Grant Performance Completion Date” shall be the later of (a) the date on which the entirety of the Grant has been disbursed as described herein; or (b) the date on which VT shall have established as required herein that it has satisfied each requirement of this Paragraph (a).

(b) VT acknowledges that the Grant Agreement may be terminated by Triumph upon failure of VT to comply with any material term or condition of the MRO Lease and/or the MRO Development Agreement to be performed or complied with by VT that has not been cured within thirty (30) days of VT’s receipt of written notice of default thereof, or a decision by VT not to proceed with Project Titan. Notwithstanding the foregoing, a cure period shall be extended for an appropriate period of time should such default arise beyond the reasonable control of VT, provided that VT is making diligent efforts to cure the default.

(c) VT acknowledges that any termination under Paragraph (b) will result in the City’s loss of eligibility for receipt of the Grant payments previously authorized. In addition, VT will be required to pay to Triumph an amount equal to all amounts of the Grant disbursed as of the date of termination, together with interest thereon at a rate per annum determined as set forth in Paragraph (h) below from the date of termination until the applicable Grant is repaid. VT will be given credit against its payment obligations in the amount of \$49,811.32 [$\$66,000,000 / 1,325$] for each Project Job created and maintained for three years in accordance with the requirements of this Agreement and for any payments that have been previously required.

(d) For any year during the Job Maintenance Review Period for Project Jobs that the average number of Project Jobs falls below 1,060 [80% of 1,325;], then VT shall pay to Triumph an amount equal to one-fifth (1/5) of the Grant, together with interest thereon at a rate per annum determined as set forth in Paragraph (h) below from the date noncompliance is established until the applicable portion of the Grant is repaid.

(e) Intentionally Omitted

(f) If during the Job Maintenance Review Period for Project Jobs VT fails to achieve the creation and maintenance of 1,325 Project Jobs, then VT will submit for approval of Triumph a plan to return to compliance with the jobs creation and maintenance schedule (the "**Compliance Plan**"). Such plan will include dated benchmarks. The benchmarks for the creation and maintenance of Project Jobs set forth in any compliance schedule will be used to determine compliance with the requirements of Paragraph (d) above. In the event VT fails to comply with the benchmarks in the Compliance Plan within one (1) year of its institution, VT shall be required to pay the amounts described in Paragraph (b) above.

(g) If the Grant Performance Completion Date has not occurred by the end of the Job Maintenance Review Period for Project Jobs (or such later date as may be agreed upon in the Compliance Plan described in paragraph (f) above), then VT shall be required to pay the amounts described in Paragraph (c) above

(h) The interest rate per annum shall be determined by the annualized interest rate received by the State on funds in the State's Special Purpose Investment Account in January of the year in which the performance standard was not met by VT. This rate is published online at <http://fltreaury.org>. Additionally, the same interest penalty may be imposed for any period for which the required performance report is overdue, or during which period VT, after being notified in writing of any inadequacies in the performance report and/or the supporting documentation and being provided a 30-day period, or such longer period as contemplated by Paragraph (a) above, to cure any such inadequacies, has failed to correct the specified inadequacies.

(i) The amount of any payment made by VT pursuant to Paragraph (d) above shall be reduced by the amount, if any, of any prior recapture payments made by VT in prior years; provided, however, that (i) in the event the cumulative amount of prior recapture payments exceed the amounts then due pursuant to Paragraph (d) for a given year, Triumph shall not be obligated to refund any such excess prior recapture payments. Furthermore, the amount required to be paid pursuant to this Paragraph shall never exceed the value of the total Grant plus interest as determined in Paragraph (h) above.

(j) Any required undisputed payment, together with interest thereon, is due to Triumph within thirty (30) days of receipt of written notice from Triumph.

(k) Triumph, or its designated agent, may conduct on site visits of Project Titan facilities to verify VT's investment, employment and wage records and VT will provide access to its facility during normal business working hours and to its financial records to accommodate such inspections. Triumph or its designated agent must provide VT notice of at least ten (10) business days before an impending on-site visit.

(l) If during the Job Maintenance Review Period for Project Jobs there occurs one or more Force Majeure Events (as defined below) that materially and adversely affect VT's business and its ability to comply with the Minimum Jobs Level, VT may exercise a one-time election to extend the Job Maintenance Review Period for Project Jobs, by twenty-four (24) months without payment penalty. A "Force Majeure Event" is hereby defined to include each of the following events:

1. A global or United States recession as determined by the National Bureau of Economic Research (NBER);
2. Damages to the facilities from hurricanes and other natural disasters materially and adversely affecting normal operations;
3. Local, State or Federal Government and/or Federal Aviation Administration regulatory actions or policy changes affecting the business;
4. Adverse conditions that prevent air operators from continuing normal air services;
5. Loss of a major key account;
6. Customer actions resulting in early fleet retirement, aircraft storage or part-out; or
7. Tight labor market affecting recruitment of new employees or attracting local candidates for workforce development program.

(m) (A) At any time and from time to time, upon written request by Triumph, VT shall, within ten (10) days of such request, deliver to Triumph such data, reports, payroll records, financial statements and reporting, and other documents, instruments, State of Florida employment reporting forms, and such other information as Triumph requires in order to determine whether VT achieved any or all of the above performance metrics (collectively, "Back-up Data"), (B) within thirty (30) days after the end of each calendar quarter VT shall deliver to Triumph a copy of its RT-6 re-employment tax return, and (C) annually within six (6) months after the end of each fiscal year, deliver to Triumph audited financial statements. VT's refusal or failure to timely provide any requested Back-up Data and other information described above shall be deemed a breach of a material obligation of this Agreement.

(n) Triumph shall have the discretion to waive, reduce, extend, or defer any amounts due under the claw back provisions if (i) it determines in its sole and absolute discretion that, based on quantitative evidence, the metrics were not achieved due to negative economic conditions beyond VT's control, including but not limited to VT's inability to hire sufficient qualified workers, (ii) it determines in its sole and absolute discretion that VT made a good faith effort to achieve full performance metrics and its failure to fully achieve the metrics does not substantially frustrate the general purpose of the grant, (iii) it determines in its sole and absolute discretion that, based on quantitative evidence, the effects of a named hurricane or tropical storm, or specific acts of terrorism, adversely affected VT's ability to achieve the performance metrics, (iv) it determines in its sole and absolute discretion that regulatory policy changes or VT loss of major customer accounts impede VT's ability to carry on business as usual, or (v) it determines in its sole and absolute discretion that

VT has demonstrated reasonable best efforts to comply with the requirements of the performance metrics.

(o) VT and Triumph acknowledge and agree that any amounts set forth in this Section 2 to be paid by VT are intended as a third-party repayment of Grant funds conditionally disbursed to the City and are due and payable to Triumph as a result of VT's failure to timely satisfy the performance metrics set forth herein. Such amounts are not intended as and shall not be deemed damages or a penalty. Notwithstanding the foregoing, to the extent that for any reason such amounts are deemed damages, VT and Triumph agree that (i) such amounts shall constitute liquidated damages, (ii) the actual damages suffered by Triumph would be unreasonably difficult to determine and that Triumph would not have a convenient and adequate alternative to the liquidated damages, (iii) the amounts due Triumph bear a reasonable relationship to any anticipated harm and is a genuine pre-estimate suffered by Triumph, and (iv) VT irrevocably waives any right that it may have to raise as a defense that any such liquidated damages are excessive or punitive.

3. Representations and Warranties of VT. VT hereby makes the following representations and warranties to Triumph:

(a) **Organization; Power and Authority.** VT is a corporation duly organized, validly existing, and in good standing under the laws of the State of Alabama and is duly qualified to do business in and is in good standing in the State of Florida, and has all requisite power and authority to own, lease, and operate its properties and to carry on its affairs as currently conducted.

(b) **Authorization and Binding Obligation.** VT has all necessary power and authority to execute and deliver this Agreement and to consummate the transactions contemplated hereby. The execution and delivery of this Agreement and the consummation of the transactions contemplated hereby have been duly authorized by all necessary corporate action on the part of VT. This Agreement has been duly executed and delivered by VT and, assuming the due authorization, execution, and delivery of this Agreement by Triumph, constitutes the legal, valid, and binding obligation of VT, enforceable against VT in accordance with its terms (subject to applicable bankruptcy, insolvency, moratorium, reorganization, or similar laws affecting the rights of creditors generally and the availability of equitable remedies).

(c) **No Violations.** The execution and delivery by VT of this Agreement and the performance by it of the transactions contemplated hereby does not (i) conflict with or result in a breach of any provision of VT's articles/certificate of incorporation, certificate of formation, bylaws, or similar corporate document, (ii) result in violation or breach of or constitute a default (or an event which, with or without notice or lapse of time or both, would constitute a default) under, or result in the termination, modification, cancellation or acceleration under the terms, conditions, or provisions of any of VT's loan agreements, indentures, material agreements or other material instruments or (iii) violate any applicable law or regulation. VT has not been

convicted of a “public entity crime” (as such terms defined in Section 287.133 of the Florida Statutes) nor has VT been placed on the “discriminatory vendor list” (as such term is defined in Section 287.134 of the Florida Statutes). Neither VT nor any person or entity that possesses, directly or indirectly, the power to direct or cause the direction of the management and policies of VT, is listed on the Specially Designated Nationals List or the Foreign Sanctions Evaders List, in each case, as maintained by the United States Department of the Treasury. Neither VT nor its officers, directors, agents, distributors, employees, or other persons or entities acting on its behalf has taken any act in furtherance of an offer, payment, promise to pay, authorization, or ratification of the payment, directly or indirectly, of any gift, money or anything of value to a government official or to obtain or retain business for any person or entity in violation of applicable law.

(d) **Litigation; Compliance with Laws.** No litigation, investigation, claim, criminal prosecution, civil investigative demand, imposition of criminal or civil fines and penalties, or any other proceeding of or before any arbitrator or governmental agency is pending or, to the knowledge of VT, threatened by or against VT or against any of its properties or assets, which, individually or in the aggregate, could reasonably be expected to result in a material and adverse effect on the assets, operations, or financial condition of the VT, Project Titan, or VT’s ability to perform its obligations under this Agreement. No state or federal criminal investigation, criminal prosecution, civil investigative demand, imposition of criminal or civil fines and penalties, or any other proceeding of the Office of the Attorney General of the State of Florida, any State Attorney in the State of Florida, the United States Department of Justice, or any other prosecutorial or law enforcement authority is pending or, to the knowledge of VT, threatened by or against VT or any of its officers. No permanent injunction, temporary restraining order or similar decree has been issued against VT which, individually or in the aggregate, could reasonably be expected to have a material and adverse effect on the assets, operations, or financial condition of VT, Project Titan, or VT’s ability to perform its obligations under this Agreement.

4. **Miscellaneous Provisions:**

4.1 **Severability.** If any provision of this Agreement is held invalid, the remainder of this Agreement shall not be affected. In such an instance the remainder would then continue to conform to the terms and requirements of applicable law.

4.2 **Non-Assignment.** VT shall not assign, subcontract, or otherwise transfer its rights, duties, or obligations under this Agreement, by operation of law or otherwise, without the prior written consent of Triumph, which consent may be withheld in Triumph’s sole and absolute discretion. Triumph shall at all times be entitled to assign or transfer its rights, duties,

or obligations under this Agreement to another person or entity upon giving prior written notice to VT. Any attempted assignment of this Agreement or any of the rights hereunder in violation of this provision shall be void *ab initio*. However, that this section is not intended to apply to or prevent the assignment of this Agreement, in its entirety, to any corporation or other entity with which VT may merge (regardless of whether VT is the surviving entity, so long as the surviving entity assumes and agrees to pay and perform all obligations of VT under this agreement) or to an affiliate or subsidiary. VT shall promptly notify Triumph in writing of any merger by or with VT and any assignment of this Agreement to an affiliate or subsidiary.

4.3 Construction; Interpretation. The title of and the section and paragraph headings in this Agreement are for convenience of reference only and shall not govern or affect the interpretation of any of the terms or provisions of this Agreement. The term “this Agreement” means this Agreement, as the same may from time to time be amended, modified, supplemented, or restated in accordance with the terms hereof. All words used in this Agreement in the singular form shall extend to and include the plural. All words used in the plural form shall extend to and include the singular. The use in this Agreement of the term “including” and other words of similar import mean “including, without limitation” and where specific language is used to clarify by example a general statement contained herein, such specific language shall not be deemed to modify, limit, or restrict in any manner the construction of the general statement to which it relates. The word “or” is not exclusive and the words “herein,” “hereof,” “hereunder” and other words of similar import refer to this Agreement as a whole, and not to any particular section, subsection, paragraph, subparagraph, or clause contained in this Agreement. Time is of the essence with respect to the performance of all obligations under this Agreement. The parties hereto have participated jointly in the negotiation and drafting of this Agreement. In the event an ambiguity or question of intent or interpretation arises, this Agreement shall be construed as if drafted jointly by the parties hereto, and no presumption or burden of proof shall arise favoring or disfavoring any party by virtue of the authorship of any of the provisions of this Agreement.

4.4 Preservation of Remedies; Severability. No delay or omission to exercise any right, power, or remedy accruing to either party hereto upon breach or default by either party hereto under this Agreement, will impair any such right, power, or remedy of either party; nor will such delay or omission be construed as a waiver of any breach or default or any similar breach or default. If any term or provision of this Agreement is found to be illegal, invalid, or unenforceable, such term or provision will be deemed stricken, and the remainder of this Agreement will remain in full force and effect.

4.5 Entire Agreement; Amendment; Waiver. This Agreement embodies the entire agreement of the parties hereto with respect to the subject matter hereof. There are no provisions, terms, conditions, or obligations other than those contained in this Agreement; and this Agreement supersedes all previous communications, representations, or agreements, either verbal or written, between the parties. No amendment will be effective unless reduced to writing and signed by an authorized officer of the VT and the authorized officer of

Triumph. No waiver by a party hereto of any of the provisions hereof shall be effective unless explicitly set forth in writing and signed by the party so waiving. No waiver by any party hereto shall operate or be construed as a waiver in respect of any failure, breach or default not expressly identified by such written waiver, whether of a similar or different character, and whether occurring before or after that waiver. No failure to exercise, or delay in exercising, any right, remedy, power or privilege arising from this Agreement shall operate or be construed as a waiver thereof; nor shall any single or partial exercise of any right, remedy, power or privilege hereunder preclude any other or further exercise thereof or the exercise of any other right, remedy, power or privilege.

4.6 Notices. All notices and demands to be given or delivered under or by reason of the provisions of this Agreement shall be in writing and shall be deemed to have been given (i) when personally delivered, (ii) when transmitted via facsimile to the number set out above if the sender on the same day sends a confirming copy of such notice by a recognized overnight delivery service (charges prepaid), (iii) the day following the day (except if not a business day then the next business day) on which the same has been delivered prepaid to a reputable national overnight air courier service, or (iv) the third business day following the day on which the same is sent by certified or registered mail, postage prepaid. Notices and shall be sent to the applicable address set forth below, unless another address has been previously specified in writing in accordance with this Section 4.6:

If to Triumph:

Triumph Gulf Coast, Inc.
P.O. Box 12007
Tallahassee, FL 323d7
Attention: Executive Director

If to VT:

VT Mobile Aerospace Engineering, Inc.

Attention: _____

4.7 Attorney's Fees. In the event litigation arises (at the trial or appellate level) in connection with this Agreement, the prevailing party will be entitled to be reimbursed for all costs incurred in connection with such litigation, including without limitation reasonable attorneys' fees and costs.

4.8 TO THE FULLEST EXTENT LEGALLY PERMISSIBLE, THE PARTIES HERETO WAIVE TRIAL BY JURY IN RESPECT OF ANY CLAIM, DISPUTE OR ACTION ARISING OUT OF, RELATED OR PERTAINING TO THIS AGREEMENT, THE GRANT APPLICATION, AND/OR THE GRANT. THIS WAIVER IS KNOWINGLY, WILLINGLY AND VOLUNTARILY MADE AND EACH PARTY HEREBY REPRESENTS THAT NO REPRESENTATIONS OF FACT OR OPINION HAVE BEEN MADE BY ANY PERSON OR ENTITY TO INDUCE THIS WAIVER OF TRIAL BY JURY OR TO IN ANY WAY MODIFY OR NULLIFY ITS EFFECT. THIS PROVISION IS A MATERIAL INDUCEMENT FOR THE PARTIES ENTERING INTO THIS

AGREEMENT. EACH PARTY IS HEREBY AUTHORIZED TO FILE A COPY OF THIS SECTION IN ANY PROCEEDING AS CONCLUSIVE EVIDENCE OF THIS WAIVER OF JURY TRIAL. EACH PARTY REPRESENTS AND WARRANTS THAT IT HAS BEEN REPRESENTED IN THE SIGNING OF THIS AGREEMENT AND IN THE MAKING OF THIS WAIVER BY INDEPENDENT LEGAL COUNSEL, OR HAS HAD THE OPPORTUNITY TO BE REPRESENTED BY INDEPENDENT LEGAL COUNSEL SELECTED OF ITS OWN FREE WILL, AND THAT IT HAS HAD THE OPPORTUNITY TO DISCUSS THIS WAIVER WITH COUNSEL.

4.9 Governing Law. The laws of the State of Florida shall govern the construction, enforcement and interpretation of this Agreement, regardless of and without reference to whether any applicable conflicts of laws principles may point to the application of the laws of another jurisdiction. The exclusive personal jurisdiction and venue to resolve any and all disputes between them including, without limitation, any disputes arising out of or relating to this Agreement shall be in the state courts of the State of Florida in the County of Escambia. The parties expressly consent to the exclusive personal jurisdiction and venue in any state court located in Escambia County, Florida, and waive any defense of forum non conveniens, lack of personal jurisdiction, or like defense, and further agree that any and all disputes between them shall be solely in the State of Florida. Should any term of this Agreement conflict with any applicable law, rule, or regulation, the applicable law, rule, or regulation shall control over the provisions of this Agreement.

4.10 Counterparts. This Agreement may be executed in one or more counterparts, each of which shall be deemed an original, and all of which taken together shall constitute one and the same instrument.

4.11 Aerospace Academy. As soon as practicable following the execution of the grant agreement with the City, Triumph and VT will develop a Memorandum of Understanding to jointly fund the establishment of an Aerospace Academy to train a qualified workforce for the private sector aerospace and aviation industry in Northwest Florida. The Aerospace Academy will focus on its recruiting effort in three (3) principal areas:

- i) Partnering with local public education institutes to foster an interest in aviation as a career, resulting in enrollment in post-secondary training programs with VT;
- ii) Aligning with Workforce Escarosa to identify and recruit under employed and otherwise disadvantaged (working poor) community members providing a pathway into specialized aviation career training; and
- iii) Recognizing and evaluating local area resident veterans with aviation or similar relevant military training to provide a track to a commercial aviation career.

The Aerospace Academy will commit to provide above training opportunities for up to 50 local resident candidates annually for a period of five (5) years.

4.12 Future Additional Jobs. VT will make a good faith effort to locate additional divisions of the VT and or its affiliates or additional jobs to Northwest Florida.

[signature page follows]

IN WITNESS WHEREOF, the parties hereto have caused this Agreement be executed as of the day and year first above written.

VT:

VT Mobile Aerospace Engineering, Inc., an Alabama corporation

By: _____
Print Name: Bill Hafner
Title: President

TRIUMPH:

TRIUMPH GULF COAST, INC., a Florida not-for-profit corporation

By: _____
Print Name: _____
Title: Chairman

By: _____
Print Name: _____
Title: Treasurer

ATTEST:

By: _____
Print Name: _____
Title: Secretary

EXHIBIT "C"

FUNDING SCHEDULE

EXHIBIT "D"

FORM OF

Application for Disbursement of Grant

Pursuant to Section 4.1 of that certain Grant Award Agreement dated _____, 2018 (the "Agreement"), by and between the City of Pensacola, Florida, a political subdivision of the State of Florida ("the City") and Triumph Gulf Coast, Inc., a Florida not-for-profit corporation ("Triumph"), the City hereby requests a disbursement from the Grant (as defined in the Agreement) as follows (all capitalized terms herein shall have the same meanings ascribed to them as set forth in the Agreement):

1. Amount of Grant Disbursement Requested Hereby to Pay CMAR:
\$ _____

2. (a) Amounts of Grant previously disbursed under the Agreement: \$ _____
(b) Amount of disbursement requested in Item 1 above: \$ _____
(c) Cumulative amounts disbursed from Grant if this request is approved (add (a) and (b) above): \$ _____
(d) Remaining amount of Grant to be disbursed \$66,000,000 minus the amounts in (c) above: \$ i i

3. (a) Cumulative amounts disbursed from Grant if this request is approved (same as (c) above): \$ _____
(b) Cumulative amounts disbursed for Project Titan by all funding sources (including Triumph) to date \$ _____
(c) Cumulative Grant disbursed to date as a percentage of Cumulative amount of all funding sources (including Triumph) disbursed to date _____ %*

* This percentage should not exceed 40.0% during construction or 31.41% upon completion of Project Titan. See Section 4.1 of the Agreement.

4. Attached hereto are (1) true, correct, and complete copies of the invoices supporting the amount requested in Item 1 above, and (2) photographs and/or reports evidencing the completion of the work that is the subject of such invoices. The following additional information is also attached:

-
-
5. None of the amount described in Item 1 above for which disbursement is requested hereunder shall also have been or will in the future be in any manner (a) reimbursed, returned, refunded, rebated, or otherwise credited to, the City by any contractor, materialman, vendor, or any other person or entity, or (b) paid, reimbursed, returned, refunded, rebated, or otherwise credited to the City by the State of Florida, the United States, or any agency or instrumentality of any of the foregoing, whether under any grant or loan program or other method of contribution.
6. The City hereby certifies, represents, and warrants to Triumph that the following statements are true and correct:
- (a) This Application for Disbursement does not seek disbursement for more than the amounts actually invoiced by CMAR under the CMAR Contract;
 - (b) The City made no misrepresentation or omission of a material nature in the Grant Application, or any supplement or amendment to the Grant Application, or with respect to any document or data furnished with the Grant Application or pursuant to the Agreement;
 - (c) There is no pending litigation with respect to the performance by the City of any of its duties or obligations which may jeopardize or adversely affect Project Titan, the Agreement, or disbursement of the Grant;
 - (d) Subject to clauses (1) and (2) of Section 4.1 of the Agreement, no Permit applicable to Project Titan has been suspended, revoked, terminated, or has expired, without having been reinstated or renewed, or is in any other manner no longer in force or effect;
 - (e) The City has not taken any action pertaining to Project Titan which, under the Agreement, requires the approval of Triumph, and the City failed to obtain such approval;
 - (f) The City has not violated any of the provisions of Sections 9.1, 9.4 and/or 9.5 of the Agreement;
 - (g) The City is not in material violation, default, or breach of or under any other provision of the Agreement;

(h) The City is not in breach of any material representation or warranty contained in the Agreement, and all representations and warranties contained in the Agreement are accurate in all material respects as of the date hereof;

(i) No federal, state, or local agency (including the City and Escambia County, Florida) or MRO Lessee providing financial assistance to Project Titan has revoked, suspended, or terminated that financial assistance to Project Titan, including, but not limited to, the Matching Funds and the MRO Lessee's \$35,000,000 funding commitment;

(j) The City has paid, and has provided Triumph with evidence of payment of, the Matching Funds toward the costs of Project Titan.

(k) The City has not abandoned or, before completion, discontinued Project Titan, nor has the commencement, prosecution, or timely completion of Project Titan by the City been rendered improbable, infeasible, impossible, or illegal for any reason other than *force majeure* as defined in the Agreement;

(l) No portion of the requested disbursement includes disbursement for improvements that are outside the scope of Project Titan that is contemplated under the CMAR Contract;

(m) The CMAR Contract has not been materially modified, amended, or terminated without the prior consent or approval of Triumph as required by Section 5.7 of the Agreement;

(n) Completion of Project Titan is substantially on schedule for completion pursuant to the Funding Schedule as the same may have been modified as provided in the Agreement;

(o) The City, CMAR or the MRO Lessee maintains in full force and effect all insurance required under Section 5.4 of the Agreement;

(p) The City is in compliance with all applicable environmental laws and regulations in accordance with Section 5.5 of the Agreement;

(q) The City is in compliance with the Consultants' Competitive Negotiation Act as required by Section 5.8 of the Agreement; and

(r) The City is in compliance with the equal employment opportunity and other labor provisions as required by Section 9.3 of the Agreement;

The undersigned, in his/her capacity as _____ i _____ of the City, hereby certifies to Triumph that the above statements are true and correct. The undersigned also agrees to provide Triumph with such other documents as Triumph shall require in order to determine that the requested disbursement is consistent with the purposes of the Grant.

Date: _____

Print Name: _____