



City of Pensacola

City Council

Agenda - Final

Thursday, March 28, 2019, 5:30 PM

Council Chambers, 1st Floor

ROLL CALL

INVOCATION

Pastor Frank Jenkins, Sr., Mount Olive Missionary Baptist Church

PLEDGE OF ALLEGIANCE

Council Member Sherri Myers

FIRST LEROY BOYD FORUM

AWARDS

APPROVAL OF MINUTES

1. [19-00171](#) APPROVAL OF MINUTES: REGULAR MEETING DATED MARCH 14, 2019

Attachments: [Draft: Regular Meeting Minutes Dated 3/14/19](#)

APPROVAL OF AGENDA

CONSENT AGENDA

2. [19-00044](#) HAZARD MITIGATION GRANT PROGRAM (HMGP) GRANT - ACQUISITION OF PROPERTIES LOCATED AT 1104, 1106, 1108, AND 1112 EAST FISHER STREET

Recommendation: That City Council authorize the purchase of 1104 East Fisher Street Parcel ID#00-0S-00-9025-030-349 for \$153,800.00; 1106 East Fisher Street Parcel ID#00-0S-00-9025-170-349 for \$182,000.00; 1108 East Fisher Street Parcel ID#00-0S-00-9025-160-349 for \$182,000.00 and 1112 East Fisher Street Parcel ID#00-0S-00-9025-150-349 for \$104,000.00 for a total amount of \$621,800.00. Further, that City Council authorize the Mayor to take all actions necessary to complete the transactions.

Sponsors: Grover C. Robinson, IV

Attachments: [Contract for Residential Sale and Purchase 1104 E Fisher Street](#)
[Contract for Residential Sale and Purchase 1106 E Fisher Street](#)
[Contract for Residential Sale and Purchase 1108 E Fisher Street](#)
[Contract for Residential Sale and Purchase 1112 E Fisher Street](#)

3. [19-00106](#) APPROVAL OF THE PROJECT DEVELOPMENT AGREEMENT AND THE MASTER LEASE OF REAL PROPERTY WITH VT MOBILE AEROSPACE ENGINEERING, INC.

Recommendation: That City Council approve the Project Development Agreement and the Master Lease of Real Property between VT Mobile Aerospace Engineering, Inc. and the City of Pensacola. Further, that City Council authorize the Mayor to execute the Project Development Agreement and the Master Lease of Real Property and to execute all documents necessary to complete the transaction.

Sponsors: Grover C. Robinson, IV

Attachments: [Project Development Agreement](#)
[Master Lease of Real Property](#)

4. [19-00127](#) PENSACOLA ENERGY - AWARD OF CONTRACT FOR PHASE 2 WAREHOUSE UPGRADE

Recommendation: That City Council award a contract in the amount of \$164,210.90 to CMAC Technology Solutions, Inc. of Alpharetta,, Georgia to provide project management support for the maintenance tool room, meter room, and meter paint room and for the installation of racks, warehouse fixtures, and equipment to complete the upgrade in the Pensacola Energy warehouse. Further, that Council authorize the Mayor to execute the contract and take all actions necessary to complete the work.

Sponsors: Grover C. Robinson, IV

Attachments: [CMAC Technology Solutions, Inc. Contract](#)

5. [19-00149](#) RESCHEDULE THE STARTING TIME OF THE APRIL 11, 2019 MEETING OF THE CITY COUNCIL.

Recommendation: That City Council reschedule the starting time of the April 11, 2019 City Council Meeting, to begin at 4:30 p.m.

Sponsors: Andy Terhaar

6. [19-00112](#) APPOINTMENT TO THE POLICE OFFICERS' RETIREMENT FUND

Recommendation: That City Council ratify the appointment of Rodney Randle as the fifth member trustee of the Police Officers' Retirement Fund.

Sponsors: Grover C. Robinson, IV

7. [19-00140](#) APPOINTMENTS - CONSTRUCTION BOARD OF ADJUSTMENT AND APPEALS

Recommendation: That City Council appoint a general contractor and an at-large member from the public for a term of there (3) years, expiring March 31, 2022.

Sponsors: Andy Terhaar

Attachments: [Member List](#)
[Application of Interest - Donald Hanto](#)
[Application of Interest - Clay Whittaker](#)
[Ballots](#)

8. [19-00142](#) APPOINTMENT - ESCAMBIA COUNTY MASS TRANSIT ADVISORY COMMITTEE (MTAC)

Recommendation: That City Council appoint a citizen to the Escambia County Mass Transit Advisory Committee as its representative filling an unexpired term ending May 1, 2021, subject to confirmation by a majority vote of the Board of County Commissioners.

Sponsors: Andy Terhaar

Attachments: [Nomination Forms - Dr. Charletha Powell](#)
[Application of Interest - Charletha Powell](#)
[Resume - Charletha Powell](#)
[Ballot](#)

9. [19-00146](#) APPOINTMENT - WESTSIDE COMMUNITY REDEVELOPMENT BOARD

Recommendation: That City Council appoint a citizen that is either a redevelopment area resident, member of an area neighborhood association or owner or operator of a business located in the redevelopment area, to serve on the Westside Community Redevelopment Board to fill an unexpired term ending January 31, 2021.

Sponsors: Andy Terhaar

Attachments: [Member List](#)
[Nomination Form - Jimmie Perkins](#)
[Application of Interest - Jimmie Perkins](#)
[Ballot](#)

REGULAR AGENDA10. [19-00159](#) ESCAMBIA - PENSACOLA HUMAN RELATIONS COMMISSION (HRC)

Recommendation: That City Council terminate the Interlocal Agreement regarding the HRC effective April 1, 2019 with the operation of the HRC to be suspended for a period of thirty (30) days in order to allow for the restructuring of the organization.

Sponsors: Jewel Cannada-Wynn

11. [19-00151](#) RECOMMENDATION FROM THE ENVIRONMENTAL ADVISORY BOARD - CITY JOIN THE INTERNATIONAL COUNCIL FOR LOCAL ENVIRONMENTAL INITIATIVE - LOCAL GOVERNMENTS FOR SUSTAINABILITY USA

Recommendation: That the City Council follow the recommendation of the Environmental Advisory Board (EAB), recommending that the City (Mayor & City Council) become a member of the International Council for Local Environmental Initiatives (ICLEI) - Local Governments for Sustainability USA.

Sponsors: Sherri Myers

12. [19-00154](#) RECOMMENDATION FROM THE ENVIRONMENTAL ADVISORY BOARD (EAB) - THE CITY CONDUCT A GREENHOUSE GAS (GHG) EMISSIONS INVENTORY TO SERVE AS THE BASELINE FOR MEASURING PROGRESS ON CLIMATE CHANGE.

Recommendation: That the City Council adopt and recommend to the Mayor that the City conduct a Greenhouse Gas (GHG) emissions inventory to serve as the baseline for measuring progress on climate change.

Sponsors: Sherri Myers

13. [19-00156](#) RECOMMENDATION FROM THE ENVIRONMENTAL ADVISORY BOARD FOR THE CITY TO ESTABLISH AN OFFICE OF SUSTAINABILITY.
- Recommendation:** That a recommendation is made to the Mayor, within FY2020 and no later than FY 2021, establish an Office of Sustainability in accordance with the Climate Mitigation and Adaptation Task Force Report and Recommendations. Further, that City Council fund such Office of Sustainability at the time presented.

Sponsors: Sherri Myers

14. [19-00111](#) TRIUMPH GULF COAST, INC. GRANT AWARD AGREEMENT
- Recommendation:** That City Council authorize the Mayor to accept and execute the Triumph Gulf Coast, Inc. Grant Award Agreement in the amount of \$66,000,000 related to Pensacola MRO Expansion/Project #120. Further, that City Council approve the grant resolution and authorize the Mayor or his designee to take all actions necessary related to the finalization of the grant. Finally, that City Council approve a supplemental budget resolution appropriating the funds for the project.

Sponsors: Grover C. Robinson, IV

Attachments: [Triumph grant agreement](#)
[Resolution for Grant](#)
[Supplemental Budget Resolution](#)
[Supplemental Budget Explanation](#)

15. [2019-11](#) RESOLUTION NO. 2019-11 - TRIUMPH GULF COAST, INC. GRANT AWARD AGREEMENT

Recommendation: That City Council adopt Resolution No. 2019-11.

A RESOLUTION AUTHORIZING AND DIRECTING THE MAYOR OF THE CITY OF PENSACOLA TO EXECUTE GRANT AWARD AGREEMENT PENSACOLA AIRPORT MRO/PROJECT #120 WITH TRIUMPH GULF COAST, INC. FOR AN AIRCRAFT MAINTENANCE, REPAIR, OVERHAUL AVIATION CAMPUS AT PENSACOLA INTERNATIONAL AIRPORT; PROVIDING AN EFFECTIVE DATE.

Sponsors: Grover C. Robinson, IV

Attachments: [Resolution No. 2019-11](#)
[Triumph grant agreement](#)

16. [2019-13](#) SUPPLEMENTAL BUDGET RESOLUTION 2019-13 - TRIUMPH GULF COAST, INC. GRANT AWARD AGREEMENT

Recommendation: That City Council approve Supplemental Budget Resolution No. 2019-13.

A RESOLUTION AUTHORIZING AND MAKING REVISIONS AND APPROPRIATIONS FOR THE FISCAL YEAR ENDING SEPTEMBER 30, 2019; PROVIDING AN EFFECTIVE DATE.

Sponsors: Grover C. Robinson, IV

Attachments: [Supplemental Budget Resolution No. 2019-13](#)
[Supplemental Budget Explanation No. 2019-13](#)

17. [2019-15](#) RESOLUTION NO. 2019-15 - AUTHORIZING THE ISSUANCE OF A TAXABLE AIRPORT FACILITIES SPECIAL REVENUE NOTE, IN THE PRINCIPAL AMOUNT NOT TO EXCEED \$20,000,000 TO FINANCE A PORTION OF THE COST OF THE EXPANSION AND IMPROVEMENT OF THE AEROSPACE MAINTENANCE, REPAIR AND OVERHAUL CAMPUS AND RELATED FACILITIES AT THE PENSACOLA INTERNATIONAL AIRPORT.

Recommendation: That City Council adopt Resolution No. 2019-15.

A RESOLUTION AUTHORIZING THE ISSUANCE BY THE CITY OF PENSACOLA, FLORIDA OF A TAXABLE AIRPORT FACILITIES SPECIAL REVENUE NOTE, IN THE PRINCIPAL AMOUNT NOT TO EXCEED \$20,000,000 TO FINANCE A PORTION OF THE COST OF THE EXPANSION AND IMPROVEMENT OF THE AEROSPACE MAINTENANCE, REPAIR AND OVERHAUL CAMPUS AND RELATED FACILITIES AT THE PENSACOLA INTERNATIONAL AIRPORT; PROVIDING FOR THE PAYMENT OF SUCH NOTE FROM CERTAIN LEGALLY AVAILABLE NON-AD VALOREM REVENUES OF THE CITY BUDGETED AND APPROPRIATED THEREFOR; ESTABLISHING CRITERIA FOR DETERMINING THE DATE, INTEREST RATES, SERIES DESIGNATION AND MATURITY SCHEDULE FOR SUCH NOTE; AUTHORIZING THE EXECUTION AND DELIVERY OF A LOAN AGREEMENT; AUTHORIZING THE EXECUTION OF OTHER RELATED FINANCING DOCUMENTS IN CONNECTION WITH SUCH NOTE; AUTHORIZING THE AWARD OF THE SALE OF SUCH NOTE ON A NEGOTIATED BASIS; AUTHORIZING FURTHER OFFICIAL ACTION IN CONNECTION WITH THE DELIVERY OF SUCH NOTE; PROVIDING FOR SEVERABILITY; PROVIDING FOR REPEAL OF INCONSISTENT PROVISIONS; AND PROVIDING AN EFFECTIVE DATE.

Sponsors: Grover C. Robinson, IV

Attachments: [Resolution No. 2019-15](#)

18. [19-00132](#) STATE OF FLORIDA DEPARTMENT OF ECONOMIC OPPORTUNITY
GRANT AGREEMENT

Recommendation: That City Council authorize the Mayor to accept and execute the State of Florida Department of Economic Opportunity Florida Job Growth Infrastructure Grant Agreement G0050 when finalized in the amount of \$10,000,000 related to the Pensacola International Airport Maintenance, Repair and Overhaul (MRO) Aviation Campus expansion project. Further, that City Council approve the grant resolution and authorize the Mayor or his designee to take all actions necessary related to the finalization of the grant.

Sponsors: Grover C. Robinson, IV

Attachments: [Grant Resolution](#)

19. [2019-16](#) RESOLUTION NO. 2019-16 - STATE OF FLORIDA DEPARTMENT OF
ECONOMIC OPPORTUNITY GRANT AGREEMENT

Recommendation: That City Council adopt Resolution No. 2019-16.

A RESOLUTION AUTHORIZING AND DIRECTING THE MAYOR OF THE CITY OF PENSACOLA TO EXECUTE DEO AGREEMENT NO. G0050, FLORIDA JOB GROWTH INFRASTRUCTURE GRANT AGREEMENT, WITH THE STATE OF FLORIDA DEPARTMENT OF ECONOMIC OPPORTUNITY FOR THE PENSACOLA INTERNATIONAL AIRPORT MAINTENANCE, REPAIR AND OVERHAUL (MRO) AVIATION CAMPUS EXPANSION PROJECT; PROVIDING AN EFFECTIVE DATE.

Sponsors: Grover C. Robinson, IV

Attachments: [Resolution No. 2019-16](#)

20. [19-00117](#) FY18 EDWARD BYRNE MEMORIAL JUSTICE ASSISTANCE GRANT
(JAG) PROGRAM: LOCAL SOLICITATION

Recommendation: That City Council approve and authorize the Mayor to execute the acceptance of the 2018 Edward Byrne Memorial Justice Assistance Grant (JAG) Program: Local Solicitation, between the City of Pensacola and the U.S. Department of Justice, Office of Justice Programs in the amount of \$27,010 upon award of grant. Further, that City Council authorize the Mayor to take all actions necessary relating to the finalization of the grant. Finally, that City Council adopt the supplemental budget resolution appropriating the grant funds.

Sponsors: Grover C. Robinson, IV

Attachments: [FY 18 Local Solicitation Budget Detail Worksheet](#)
[Supplemental Budget Resolution](#)
[Supplemental Budget Explanation](#)

21. [2019-12](#) SUPPLEMENTAL BUDGET RESOLUTION NO. 2019-12 - FY18
EDWARD BYRNE MEMORIAL JUSTICE ASSISTANCE GRANT (JAG)
PROGRAM: LOCAL SOLICITATION

Recommendation: That City Council adopt Supplemental Budget Resolution No. 2019-12.

A RESOLUTION AUTHORIZING AND MAKING REVISIONS AND APPROPRIATIONS FOR THE FISCAL YEAR ENDING SEPTEMBER 30, 2019; PROVIDING FOR AN EFFECTIVE DATE.

Sponsors: Grover C. Robinson, IV

Attachments: [Supplemental Budget Resolution No. 2019-12](#)
[Supplemental Budget Explanation No. 2019-12](#)

22. [2019-20](#) RESOLUTION NO. 2019-20 - ESTABLISHING YOUTH IN GOVERNMENT DAY

Recommendation: That City Council adopt Resolution No. 2019-20.

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF PENSACOLA,
FLORIDA ESTABLISHING A YOUTH IN GOVERNMENT DAY TO BE HELD APRIL 22, 2019 WITHIN THE CITY OF PENSACOLA; PROVIDING AN EFFECTIVE DATE

Sponsors: Jewel Cannada-Wynn

Attachments: [Resolution No. 2019-20](#)

23. [07-19](#) PROPOSED ORDINANCE NO. 07-19 - REQUEST FOR ZONING MAP AMENDMENT - 3100 NAVY BOULEVARD

Recommendation: That City Council adopt Proposed Ordinance No. 07-19 on second reading.

AN ORDINANCE AMENDING THE ZONING CLASSIFICATION OF CERTAIN PROPERTY PURSUANT TO AND CONSISTENT WITH THE COMPREHENSIVE PLAN OF THE CITY OF PENSACOLA; AMENDING THE ZONING MAP OF THE CITY OF PENSACOLA; REPEALING CLAUSE AND EFFECTIVE DATE.

Sponsors: Grover C. Robinson, IV

Attachments: [Proposed Ordinance No. 07-19](#)
[Rezoning Application, 3100 Navy Boulevard](#)
[Survey, 3100 Navy Boulevard](#)
[Technical Comments, 3100 Navy Boulevard](#)
[February 12, 2019 Planning Board Minutes](#)
[PROOF OF PUBLICATION: ORDINANCES 2ND READING](#)

24. [09-19](#) PROPOSED ORDINANCE NO. 09-19 - AMENDMENT TO SECTION 14-1-136 - DEMOLITION

Recommendation: That City Council adopt Proposed Ordinance No. 09-19 on second reading:

AN ORDINANCE AMENDING SECTION 14-1-136 OF THE CODE OF THE CITY OF PENSACOLA, FLORIDA ENTITLED "DEMOLITION"; PROVIDING FOR SEVERABILITY; REPEALING CLAUSE; PROVIDING AN EFFECTIVE DATE.

Sponsors: Ann Hill

Attachments: [Proposed Ordinance No. 09-19](#)
[PROOF OF PUBLICATION: ORDINANCES 2ND READING](#)

COUNCIL EXECUTIVE'S REPORT

MAYOR'S COMMUNICATION

COUNCIL COMMUNICATIONS

CIVIC ANNOUNCEMENTS

SECOND LEROY BOYD FORUM

ADJOURNMENT

Any opening invocation that is offered before the official start of the Council meeting shall be the voluntary offering of a private person, to and for the benefit of the Council. The views or beliefs expressed by the invocation speaker have not been previously reviewed or approved by the City Council or the city staff, and the City is not allowed by law to endorse the religious or non-religious beliefs or views of such speaker. Persons in attendance at the City Council meeting are invited to stand during the invocation and to stand and recite the Pledge of Allegiance. However, such invitation shall not be construed as a demand, order, or any other type of command. No person in attendance at the meeting shall be required to participate in any opening invocation that is offered or to participate in the Pledge of Allegiance. You may remain seated within the City Council Chambers or exit the City Council Chambers and return upon completion of the opening invocation and/or Pledge of Allegiance if you do not wish to participate in or witness the opening invocation and/or the recitation of the Pledge of Allegiance.

If any person decides to appeal any decision made with respect to any matter considered at such meeting, he will need a record of the proceedings, and that for such purpose he may need to ensure that a verbatim record of the proceedings is made, which record includes the testimony and evidence upon which the appeal is to be based.

The City of Pensacola adheres to the Americans with Disabilities Act and will make reasonable accommodations for access to City services, programs and activities. Please call 435-1606 (or TDD 435-1666) for further information. Request must be made at least 48 hours in advance of the event in order to allow the City time to provide the requested services.



City of Pensacola

222 West Main Street
Pensacola, FL 32502

Memorandum

File #: 19-00171

City Council

3/28/2019

SUBJECT:

APPROVAL OF MINUTES: REGULAR MEETING DATED MARCH 14, 2019



City of Pensacola

CITY COUNCIL

Regular Meeting Minutes

March 14, 2019

5:30 P.M.

Council Chambers

Council President Terhaar called the meeting to order at 5:34 P.M.

ROLL CALL

Council Members Present: Andy Terhaar, P.C. Wu, Ann Hill, Sherri Myers, Jared Moore, Jewel Cannada-Wynn

Council Members Absent: Gerald Wingate

Also Present: Mayor Grover C. Robinson, IV

INVOCATION

Pastor C. Marcel Davis, Adoration for a New Beginning

PLEDGE OF ALLEGIANCE

Council Member Jared Moore's son - - Jones Moore

FIRST LEROY BOYD FORUM

Karen Kilpatrick: Addressed Council regarding the demographics of usage of parks within our neighborhoods reminding that they provide for citizens of all ages and should be provided for in all neighborhoods. She also indicated the demolition of the church behind her property has been completed.

The following individuals addressed Council regarding the proposed expansion of soccer facilities at Hitzman Optimist Park and/or various youth sports programming:

Paulette Drasutis
Sharon Dickinson

Paul Hobgood
Krista Hobgood

COUNCIL EXECUTIVE'S REPORT

Council Executive Kraher advised of the following:

- There is a workshop scheduled for March 25th (immediately following the 3:30 P.M. Agenda Conference) regarding the *Port Vision Final Report* which the document is quite large - - hard copies are available in the Council's Office.
- There is a special City Council meeting scheduled for March 28th beginning at 4:00 P.M. for *Review of Architectural Review Board Decision related to 312 West Gonzalez Street (North Hill Preservation District NHPD/PRIAAA, Contributing Structure, February 21, 2019)*.
- Announced on April 11th Studer Properties has their market study consultant scheduled to make their presentation related to the vacant parcels at the Community Maritime Park and the vacant land just west of CMP on the north side of Main Street (entire block being the former site of the ECUA Wastewater Treatment Facility).

MAYOR'S COMMUNICATION

Mayor Robinson advised of his recent visit to Washington D.C., along with City Administrator Holley, for a National League of Cities conference. They were also able to attend meetings with congressional and senate representatives.

City Administrator Holley introduced Rod Powell, recently hired as Interim Human Resources Director. Mr. Powell is retired from Escambia County where he served as Director of Human Resources and will assist the City with the hiring of a permanent director.

Mayor Robinson further addressed the Council related to the following:

- He is moving back to the City "Seal" as the symbol of Pensacola (rather than the "swave". He stated Pensacola's prominence as it relates to the history of Florida and with the upcoming celebration of the 200th Anniversary of Florida in 2021, he will be moving forward with the message that "Pensacola is where Florida begins".
- Relayed upcoming events such as ribbon cutting on the newly built Fire Station #3 and being out of town on business next week in Tallahassee.

COUNCIL COMMUNICATIONS

Some Council Members made announcements of upcoming events and meetings throughout the community.

Council President Terhaar referenced the April 11th presentation scheduled by Studer Properties (mentioned earlier during the Council Executive’s report) beginning at 7:00 P.M. with the regularly scheduled City Council meeting scheduled on the same date beginning at 5:30 P.M. Some discussion took place among Council. Council President Terhaar indicated he will bring forward an action item (on 3/28/19) for Council to consider beginning their meeting on April 11th at 4:30 P.M. in an attempt for Council Members to attend the 7:00 P.M. Studer Properties presentation.

CIVIC ANNOUNCEMENTS

None.

SECOND LEROY BOYD FORUM

Larry Downs, Jr.: Made comments clarifying statements he made earlier (during the first LeRoy Boyd Forum).

Rand Hicks: Addressed Council regarding the upcoming *Ciclovía* event taking place downtown on March 23rd.

ADJOURNMENT

WHEREUPON the meeting was adjourned at 6:36 P.M.

Adopted: _____

Approved: _____
R. Andy Terhaar, President of City Council

Attest:

Ericka L. Burnett, City Clerk



Memorandum

File #: 19-00044

City Council

3/28/2019

LEGISLATIVE ACTION ITEM

SPONSOR: Grover C. Robinson, IV, Mayor

SUBJECT:

HAZARD MITIGATION GRANT PROGRAM (HMGP) GRANT - ACQUISITION OF PROPERTIES LOCATED AT 1104, 1106, 1108, AND 1112 EAST FISHER STREET

RECOMMENDATION:

That City Council authorize the purchase of 1104 East Fisher Street Parcel ID#00-0S-00-9025-030-349 for \$153,800.00; 1106 East Fisher Street Parcel ID#00-0S-00-9025-170-349 for \$182,000.00; 1108 East Fisher Street Parcel ID#00-0S-00-9025-160-349 for \$182,000.00 and 1112 East Fisher Street Parcel ID#00-0S-00-9025-150-349 for \$104,000.00 for a total amount of \$621,800.00. Further, that City Council authorize the Mayor to take all actions necessary to complete the transactions.

HEARING REQUIRED: No Hearing Required

SUMMARY:

As a result of the April 2014 natural disaster flood event, the City submitted applications via contract consultant (Arcadis) to the Florida Department of Emergency Management (FDEM) for public assistance through the State Hazard Mitigation Grant Program (HMGP). More specifically, an application was submitted to purchase residential properties located at 1104, 1106, 1108, and 1112 East Fisher Street that had been impacted by historical repetitive flooding issues. The application was approved by FDEM and the HMGP grant provides 100% cost reimbursement from the State to the City for the entire project, including the purchase of the properties.

The subject residential properties currently occupy a natural low area that are located within a platted subdivision with historical repetitive flooding issues. The project will consist of purchasing the properties at fair market value and demolishing them to create an area to expand the existing stormwater pond immediately to the south. The expansion of the existing pond will help to alleviate chronic flooding issues in this immediate area by providing more storage volume for stormwater runoff that drains directly to the location. As part of this pond expansion, a portion of Fisher Street (east) will be permanently removed and included in the overall expansion area. Full access from Fisher Street will still remain in place to the remaining residence at the west end of the block.

PRIOR ACTION:

None

FUNDING:

| | | |
|---------|----------------------|--|
| Budget: | \$ 621,800.00 | HMGP Grant Award - Natural Disaster Fund |
| Actual: | \$ 153,800.00 | Purchase Price, 1104 East Fisher Street |
| | 182,000.00 | Purchase Price, 1106 East Fisher Street |
| | 182,000.00 | Purchase Price, 1108 East Fisher Street |
| | <u>104,000.00</u> | Purchase Price, 1112 East Fisher Street |
| | <u>\$ 621,800.00</u> | Total |

FINANCIAL IMPACT:

Funding for this HMGP Grant Project is appropriated in the Natural Disaster Fund. All closing cost associated with the project will be fully funded by the State.

CITY ATTORNEY REVIEW: Yes

3/15/2019

STAFF CONTACT:

Christopher L. Holley, City Administrator
L. Derrick Owens, Director of Public Works and Facilities/City Engineer

ATTACHMENTS:

- 1) Contract for Residential Sale and Purchase 1104 E Fisher Street
- 2) Contract for Residential Sale and Purchase 1106 E Fisher Street
- 3) Contract for Residential Sale and Purchase 1108 E Fisher Street
- 4) Contract for Residential Sale and Purchase 1112 E Fisher Street

PRESENTATION: No

Contract for Residential Sale and Purchase

1* 1. Sale and Purchase: Timothy J. & Sara M. McNicoll, Trustees for McNicoll Family Trust ("Seller")
2* and The City of Pensacola ("Buyer")

3 (the "parties") agree to sell and buy on the terms and conditions specified below the property described as:

4* Street Address: 1104 E. Fisher Street

5* City: Pensacola Zip Code: 32503 County: Escambia

6* Legal Description: LT 18 BLK 349 New City Tract, City of Pensacola, according to the map of said City

7 Copyrighted by Thomas D. Watson in 1906.

8* Tax ID No.: 000S009025180349 together with all existing improvements and attached
9 items, including fixtures; built-in furnishings; major appliances including but not limited to range(s), refrigerator(s), dishwasher(s),
10* washer(s), and dryer(s); (#) ceiling fans (all ceiling fans if left blank); light fixtures; attached wall-to-wall carpeting; and rods,
11 draperies, and other window treatments as of date of Buyer's initial offer. The only other items included in the purchase are:
12*
13

14* The following attached items are excluded from the purchase: With the exception of the exterior walls, doors,
15 windows, and hardware required to secure the building, sellers can remove any and all items, including attached
16 items, up to the day of closing.

17 The real and personal property described above as included in the purchase is referred to as the "Property."
18 Personal property listed in this Contract is included in the purchase price, has no contributory value, and is being
19 left for Seller's convenience.

20* 2. Purchase Price: \$153,800.00 payable by Buyer in U.S. currency as follows:

21 All deposits will be made payable to "Escrow Agent" named below and held in escrow by:

22* Escrow Agent's Name: William H. Mitchem, Attorney at Law

23* Escrow Agent's Address: 501 Commendancia Street, Pensacola, FL 32502

24* Escrow Agent's Phone: (850) 469-3318

25* (a) \$ 0.00 "Initial Deposit" (\$0 if left blank) (Check if applicable)
26* accompanies offer
27* to be delivered to Escrow Agent within _____ days (3 days if left blank) after
28 Effective Date

29* (b) \$ 0.00 Additional deposit to be delivered to Escrow Agent by _____ or within
30* _____ days (10 days if left blank) after Effective Date

31* (c) \$ 0.00 Total Financing (see Paragraph 3 below) (express as a dollar amount or percentage)

32* (d) \$ _____ Other: _____

33* (e) \$ 153,800.00 Balance to close (not including Buyer's closing costs, prepaid items, and prorations)
34 All funds paid at Closing must be paid by wire transfer or other Collected funds.

35 3. Financing: (Check as applicable)

36* (a) Buyer will pay cash or obtain financing for the purchase of the Property. This Contract is not contingent on
37 financing or appraised value unless otherwise stated herein.

38* (b) Buyer will apply for new conventional FHA VA other (specify) _____
39 financing specified in Paragraph 2(c) at the prevailing interest rate and loan costs based on Buyer's
40* creditworthiness (the "Financing") within _____ days (5 days if left blank) after Effective Date and provide
41 Seller with either a written Financing commitment or approval letter ("Commitment") or written notice that Buyer
42* is unable to obtain a Commitment within _____ days (the earlier of 30 days after Effective Date or 10 days
43 before Closing Date if left blank) after Effective Date ("Commitment Period"). Buyer will keep Seller and Broker
44 fully informed about loan application status, progress, and Commitment issues and authorizes the mortgage
45 broker and lender to disclose all such information to Seller and Broker. If, after using diligence and good faith,
46 Buyer is unable to obtain a Commitment and provides Seller with written notice before expiration of the
47 Commitment Period that Buyer is unable to obtain a Commitment, either party may thereafter cancel this

Buyer () () and Seller () () acknowledge receipt of a copy of this page, which is Page 1 of 9.

48 Contract; and **Buyer's** deposit(s) will be refunded. **Buyer's** failure to timely provide **Seller** with written notice
49 that **Buyer** is unable to obtain a Commitment will result in forfeiture of **Buyer's** deposit(s) if **Buyer** fails to close.
50 Once **Buyer** provides the Commitment to **Seller**, the financing contingency is waived and **Seller** will be entitled
51 to retain the deposit(s) if the transaction does not close by the Closing Date unless (i) the Property appraises
52 below the purchase price and either the parties cannot agree on a new purchase price or **Buyer** elects not to
53 proceed, or (ii) the property related conditions of the Commitment have not been met (except when such
54 conditions are waived by other provisions of this Contract), or (iii) the loan is not funded due to financial failure
55 of **Buyer's** lender, or (iv) another provision of this Contract provides for cancellation.

56 **4. Closing Date; Occupancy:** Unless the Closing Date is specifically extended by **Seller** and **Buyer** or by any other
57 provision in this Contract, the Closing Date will prevail over all other time periods including, but not limited to,
58* financing and inspection periods. Closing of this Contract (the "Closing") will occur on May 6, 2019
59 ("Closing Date") at the time established by the Closing Agent, by which time **Seller** will (i) have removed all personal
60 items and trash from the Property and swept the Property clean and (ii) deliver the deed, occupancy, and
61 possession, along with all keys, garage door openers, and access codes to **Buyer**. If on Closing Date insurance
62 underwriting is suspended, **Buyer** may postpone Closing for up to 5 days after the insurance suspension is lifted.
63 If Paragraph **3(b)** is selected and closing funds from **Buyer's** lender(s) are not available on Closing Date due to
64 Consumer Financial Protection Bureau Closing Disclosure delivery requirements (CFPB Requirements), then
65 Closing Date will be extended for such period necessary to satisfy CFPB Requirements, provided such period does
66 not exceed 10 days. If this transaction does not close for any reason, **Buyer** will immediately return all **Seller**-
67 provided title evidence, surveys, association documents, and other items, failing which **Buyer** authorizes Closing
68* Agent to reimburse **Seller** \$0.00 (\$100 if left blank) from the deposit(s) for the cost of the documents.

69 **5. Closing Procedure; Costs:** Closing will take place in the county where the Property is located and may be
70 conducted by mail or electronic means. If title insurance insures **Buyer** for title defects arising between the title
71 binder effective date and recording of **Buyer's** deed, Closing Agent will disburse at Closing the net sale proceeds
72 to **Seller** and brokerage fees to Broker as per Paragraph **19**. In addition to other expenses provided in this Contract,
73 **Seller** and **Buyer** will pay the costs indicated below.

74 **(a) Seller Costs:**
75 Taxes and surtaxes on the deed
76 Recording fees for documents needed to cure title
77* Repairs and Permits: **Seller** will pay up to \$0.00 or _____% (1.5% if left blank) of the purchase
78* price for repairs to warranted items ("Repair Limit"); and up to \$0.00 or _____% (1.5% if left
79 blank) of the purchase price for wood-destroying organism treatment and repairs ("WDO Repair Limit"); and up
80* to \$0.00 or _____% (1.5% if left blank) of the purchase price for costs associated with closing out
81 open permits and obtaining required permits for unpermitted existing improvements ("Permit Limit").
82* Other: _____

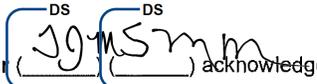
83 **(b) Buyer Costs:**
84 Taxes and recording fees on notes and mortgages
85 Recording fees on the deed and financing statements
86 Loan expenses
87 Lender's title policy
88 Inspections
89 Survey
90 Flood insurance, homeowner's insurance, hazard insurance
91* Other: _____

92 **(c) Title Evidence and Insurance:** If **Seller** has an owner's title policy covering the Property, **Seller** will provide a
93 copy to **Buyer** and title agent within 5 days after Effective Date. The charges for title evidence and any lender's
94 policy will be calculated and allocated in accordance with Florida law but may be reported differently on certain
95 federally-mandated closing disclosures and other closing documents.

96 **Check (1) or (2)**
97* **(1)** The title evidence will be a Paragraph **10(a)(1)** owner's title insurance commitment. **Seller** will select
98 the title agent and Closing Agent and will pay for the owner's title policy; title search, including tax and lien
99* search; and all other fees charged by title agent and Closing Agent or **Buyer** will select the title agent
100 and Closing Agent and pay for the owner's title policy; title search, including tax and lien search; and all
101* other fees charged by title agent and Closing Agent or **Buyer** will select the title agent and Closing Agent,

Buyer (_____) (_____) and Seller JG M S M M acknowledge receipt of a copy of this page, which is Page 2 of 9.

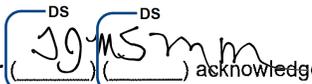
- 102 and **Seller** will pay for the owner's title policy; title search, including tax and lien search; and all other fees
 103 charged by title agent and Closing Agent.
- 104* (2) **Seller** will provide an abstract as specified in Paragraph 10(a)(2) as title evidence. **Seller** **Buyer** will
 105 pay for the owner's title policy and select the title agent and Closing Agent. **Seller** will pay fees for title
 106 searches, including tax and lien searches, before Closing, and **Buyer** will pay fees for title searches,
 107 including tax and lien searches, after Closing (if any) and all other fees charged by title agent and Closing
 108 Agent.
- 109 (d) **Prorations:** The following items will be made current (if applicable) and prorated as of the day before Closing:
 110 real estate taxes (including special benefit tax assessments imposed by a community development district
 111 ("CDD")), interest, bonds, assessments, association fees, insurance, rents, and other current expenses and
 112 revenues of the Property. If taxes and assessments for the current year cannot be determined, taxes will be
 113 prorated on the basis of taxes for the preceding year as of the day before Closing and will be computed and
 114 readjusted, at either party's request, when the current taxes are determined with adjustment for exemptions
 115 and improvements. If there are completed improvements on the Property by January 1 of the year of the
 116 Closing, which improvements were not in existence on January 1 of the prior year, taxes will be prorated based
 117 on the prior year's millage and at an equitable assessment to be agreed upon by the parties before Closing,
 118 failing which, request will be made to the County Property Appraiser for an informal assessment taking into
 119 consideration available exemptions. If the County Property Appraiser is unable or unwilling to perform an
 120 informal assessment before Closing, **Seller** and **Buyer** will split the cost of a private appraiser to perform an
 121 assessment before Closing. Nothing in this Paragraph will act to extend the Closing Date. This provision will
 122 survive Closing.
- 123 (e) **Special Assessment by Public Body:** Regarding special assessments imposed by a public body, **Seller** will
 124 pay (i) the full amount of liens that are certified, confirmed, and ratified before Closing and (ii) the amount of the
 125 last estimate of the assessment if an improvement is substantially completed as of Effective Date but has not
 126 resulted in a lien before Closing; and **Buyer** will pay all other amounts. If special assessments may be paid in
 127* installments **Seller** **Buyer** (**Buyer** if left blank) will pay installments due after Closing. If **Seller** is checked,
 128 **Seller** will pay the assessment in full before or at the time of Closing. Public body does not include a
 129 Homeowners' Association or Condominium Association. Paragraph 5(e) does not apply to a special benefit tax
 130 lien imposed by a CDD pursuant to Chapter 190, Florida Statutes, which lien will be prorated pursuant to
 131 Paragraph 5(d).
- 132 (f) **Tax Withholding:** **Seller** and **Buyer** will comply with the Foreign Investment in Real Property Tax Act, which
 133 may require **Seller** to provide additional cash at Closing if **Seller** is a "foreign person" as defined by federal law.
- 134* (g) **Home Warranty:** **Seller** **Buyer** N/A will pay for a home warranty plan issued by
 135* _____ at a cost not to exceed \$_____.
 136 A home warranty plan provides for repair or replacement of many of a home's mechanical systems and major
 137 built-in appliances in the event of breakdown due to normal wear and tear during the agreement period.
- 138 6. **Inspection Periods:** **Buyer** will complete all inspections referenced in Paragraphs 7(b), 8(a)(2), 8(b), and 8(c) by
 139* _____ (the earlier of 10 days after Effective Date or 10 days before Closing Date if left blank)
 140 ("Inspection Period").
- 141 7. **Real Property Disclosures:** **Seller** represents that **Seller** does not know of any facts that materially affect the
 142 value of the Property, including but not limited to violations of governmental laws, rules, and regulations, other than
 143 those that **Buyer** can readily observe or that are known by or have been disclosed to **Buyer**.
- 144 (a) **Energy Efficiency:** **Buyer** acknowledges receipt of the energy-efficiency information brochure required by
 145 Section 553.996, Florida Statutes.
- 146 (b) **Radon Gas:** Radon is a naturally occurring radioactive gas that, when it has accumulated in a building in
 147 sufficient quantities, may present health risks to persons who are exposed to it over time. Radon levels that
 148 exceed federal and state guidelines have been found in buildings in Florida. Additional information regarding
 149 radon and radon testing may be obtained from your county public health unit. **Buyer** may, within the Inspection
 150 Period, have an appropriately licensed person test the Property for radon. If the radon level exceeds acceptable
 151 EPA standards, **Seller** may choose to reduce the radon level to an acceptable EPA level, failing which either
 152 party may cancel this Contract.
- 153 (c) **Flood Zone:** **Buyer** is advised to verify by survey, with the lender, and with appropriate government agencies
 154 which flood zone the Property is in, whether flood insurance is required, and what restrictions apply to improving
 155 the Property and rebuilding in the event of casualty. If the Property is in a Special Flood Hazard Area or Coastal
 156 High Hazard Area and the buildings are built below the minimum flood elevation, **Buyer** may cancel this

Buyer (_____) (_____) and Seller  acknowledge receipt of a copy of this page, which is Page 3 of 9.

- 157 Contract by delivering written notice to **Seller** within 20 days after Effective Date, failing which **Buyer** accepts
 158 the existing elevation of the buildings and zone designation of the Property.
- 159 (d) **Homeowners' Association:** If membership in a homeowners' association is mandatory, an association
 160 disclosure summary is attached and incorporated into this Contract. **BUYER SHOULD NOT SIGN THIS**
 161 **CONTRACT UNTIL BUYER HAS RECEIVED AND READ THE DISCLOSURE SUMMARY.**
- 162 (e) **PROPERTY TAX DISCLOSURE SUMMARY:** BUYER SHOULD NOT RELY ON THE **SELLER'S** CURRENT
 163 **PROPERTY TAXES AS THE AMOUNT OF PROPERTY TAXES THAT BUYER MAY BE OBLIGATED TO PAY**
 164 **IN THE YEAR SUBSEQUENT TO PURCHASE. A CHANGE OF OWNERSHIP OR PROPERTY**
 165 **IMPROVEMENTS TRIGGERS REASSESSMENTS OF THE PROPERTY THAT COULD RESULT IN HIGHER**
 166 **PROPERTY TAXES. IF YOU HAVE ANY QUESTIONS CONCERNING VALUATION, CONTACT THE**
 167 **COUNTY PROPERTY APPRAISER'S OFFICE FOR FURTHER INFORMATION.**
- 168 (f) **Mold:** Mold is part of the natural environment that, when accumulated in sufficient quantities, may present
 169 health risks to susceptible persons. For more information, contact the county indoor air quality specialist or
 170 other appropriate professional.
- 171 (g) **Coastal Construction Control Line:** If any part of the Property lies seaward of the coastal construction control
 172 line ("CCCL") as defined in Section 161.053, Florida Statutes, **Seller** will provide **Buyer** with an affidavit or
 173 survey as required by law delineating the line's location on the Property, unless **Buyer** waives this requirement
 174 in writing. The Property being purchased may be subject to coastal erosion and to federal, state, or local
 175 regulations that govern coastal property, including delineation of the CCCL, rigid coastal protection structures,
 176 beach nourishment, and the protection of marine turtles. Additional information can be obtained from the Florida
 177 Department of Environmental Protection, including whether there are significant erosion conditions associated
 178 with the shoreline of the Property being purchased.
- 179* **Buyer** waives the right to receive a CCCL affidavit or survey.

180 **8. Maintenance, Inspections, and Repair:** Seller will keep the Property in the same condition from Effective Date
 181 until Closing, except for normal wear and tear ("Maintenance Requirement") and repairs required by this Contract.
 182 **Seller** will provide access and utilities for **Buyer's** inspections and appraisals. **Buyer** will repair all damages to the
 183 Property resulting from the inspections, return the Property to its pre-inspection condition, and provide **Seller** with
 184 paid receipts for all work done on the Property upon its completion. If **Seller** is unable to complete required repairs
 185 or treatments or meet the Maintenance Requirement before Closing, **Seller** will give **Buyer** a credit at Closing for
 186 the cost of the repairs and maintenance **Seller** was obligated to perform. At Closing, **Seller** will assign all assignable
 187 repair and treatment contracts to **Buyer** and provide **Buyer** with paid receipts for all work done on the Property
 188 pursuant to the terms of this Contract.

- 189 (a) **Warranty, Inspections, and Repair:**
- 190 (1) **Warranty:** Seller warrants that non-leased major appliances; heating, cooling, mechanical, electrical,
 191 security, sprinkler, septic, and plumbing systems; seawall; dock; and pool equipment, if any, are and will
 192 be maintained in working condition until Closing; that the structures (including roofs, doors, and windows)
 193 and pool, if any, are structurally sound and watertight; and that torn or missing screens, missing roof tiles,
 194 and fogged windows will be repaired or replaced. Limited remaining life of any warranted item will not be
 195 considered a defect that must be repaired or replaced by **Seller**. **Seller** does not warrant and is not required
 196 to repair cosmetic conditions, unless the cosmetic condition resulted from a defect in a warranted item.
 197 **Seller** is not obligated to bring any item into compliance with existing building code regulations unless
 198 necessary to repair a warranted item. "Working condition" means operating in the manner in which the item
 199 was designed to operate and "cosmetic conditions" means aesthetic imperfections that do not affect the
 200 working condition of the item, including pitted marcite; tears, worn spots, and discoloration of floor
 201 coverings/wallpapers/window treatments; caulking in bathroom; nail holes, scratches, dents, scrapes, and
 202 chips in ceilings/walls/flooring/tile/fixtures/mirrors; cracked roof tiles; curling or worn shingles; and minor
 203 cracks in floor tiles/windows/driveways/sidewalks/pool decks/garage and patio floors.
- 204 (2) **Professional Inspection:** Buyer may, at Buyer's expense, have warranted items inspected by a person
 205 who specializes in and holds a license (if required by law) to conduct home inspections or who holds a
 206 Florida license to repair and maintain the items inspected ("professional inspector"). **Buyer** must, within 5
 207 days after the end of Inspection Period, deliver written notice of any items that are not in the condition
 208 warranted and a copy of the portion of the inspector's written report dealing with such items to **Seller**. If
 209 **Buyer** fails to timely deliver written notice, **Buyer** waives **Seller's** warranty and accepts the items listed in
 210 Subparagraph (a) above in their "as is" conditions, except that **Seller** must meet the Maintenance
 211 Requirement.
- 212 (3) **Repair:** Seller will obtain repair estimates and is obligated only to make repairs necessary to bring
 213 warranted items into the condition warranted, up to the Repair Limit. **Seller** may, within 5 days after receipt
 214 of **Buyer's** notice of items that are not in the condition warranted, have a second inspection made by a

Buyer () () and Seller  acknowledge receipt of a copy of this page, which is Page 4 of 9.

215 professional inspector and will report repair estimates to **Buyer**. If the first and second inspection reports
216 differ and the parties cannot resolve the differences, **Seller** and **Buyer** together will choose, and equally
217 split the cost of, a third inspector, whose written report will be binding on the parties. If the cost to repair
218 warranted items equals or is less than the Repair Limit, **Seller** will have the repairs made in a workmanlike
219 manner by an appropriately licensed person. If the cost to repair warranted items exceeds the Repair Limit,
220 either party may cancel this Contract unless either party pays the excess or **Buyer** designates which repairs
221 to make at a total cost to **Seller** not exceeding the Repair Limit and accepts the balance of the Property in
222 its "as is" condition.

223 **(b) Wood-Destroying Organisms:** "Wood-destroying organism" means arthropod or plant life, including termites,
224 powder-post beetles, old house borers, and wood-decaying fungi, that damages or infests seasoned wood in a
225 structure, excluding fences. **Buyer** may, at **Buyer's** expense, have the Property inspected by a Florida-licensed
226 pest control business to determine the existence of past or present wood-destroying organism infestation and
227 damage caused by infestation. If the inspector finds evidence of infestation or damage, **Buyer** will deliver a
228 copy of the inspector's written report to **Seller** within 5 days after the date of the inspection. If **Seller** previously
229 treated the Property for the type of wood-destroying organisms found, **Seller** does not have to treat the Property
230 again if (i) there is no visible live infestation and (ii) **Seller** transfers to **Buyer** at Closing a current full treatment
231 warranty for the type of wood-destroying organisms found. **Seller** will have 5 days after receipt of the inspector's
232 report to have reported damage estimated by a licensed building or general contractor and corrective treatment,
233 if required, estimated by a licensed pest control business. **Seller** will have treatments and repairs made by an
234 appropriately licensed person at **Seller's** expense up to the WDO Repair Limit. If the cost to treat and repair
235 the Property exceeds the WDO Repair Limit, either party may pay the excess, failing which either party may
236 cancel this Contract by written notice to the other. If **Buyer** fails to timely deliver the inspector's written report,
237 **Buyer** accepts the Property "as is" with regard to wood-destroying organism infestation and damage, subject
238 to the Maintenance Requirement.

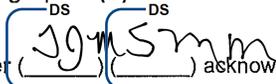
239 **(c) Permits:** **Buyer** may, at **Buyer's** expense, inspect and examine records and documents to determine whether
240 any open or expired building permits or unpermitted improvements to the Property exist. **Buyer** will, before the
241 end of the Inspection Period, deliver written notice to **Seller** of the existence of such; and **Seller** will remedy
242 the reported items up to the Permit Limit and have final inspections completed no later than 5 days before
243 Closing. If final inspections cannot be performed due to delays by the governmental entity, Closing will be
244 extended for up to 10 days to complete such final inspections, failing which either party may cancel this
245 Contract; and **Buyer's** deposit(s) will be refunded. At Closing, **Seller** will provide **Buyer** with written
246 documentation that all reported items have been remedied. If the cost to remedy reported items exceeds the
247 Permit Limit, either party may cancel this Contract unless either party pays the excess or **Buyer** accepts the
248 Property in its "as is" condition and **Seller** credits **Buyer** at Closing the amount of the Permit Limit.

249 **(d) Walk-Through Inspection; Reinspection:** On the day before Closing or at any other time agreeable to the
250 parties, **Buyer**, and/or **Buyer's** representative, may walk through the Property solely to verify that **Seller** has
251 made repairs required by this Contract, has met the Maintenance Requirement, and has met contractual
252 obligations. If **Buyer**, and/or **Buyer's** representative, fails to conduct this inspection, **Seller's** repair obligations
253 and Maintenance Requirement will be deemed fulfilled.

254 **9. Risk of Loss:** If any portion of the Property is damaged by fire or other casualty before Closing and can be restored
255 by Closing or within 45 days after Closing Date to substantially the same condition as it was on Effective Date,
256 **Seller** will, at **Seller's** expense, restore the Property and deliver written notice to **Buyer** that **Seller** has completed
257 the restoration; and the parties will close the transaction on the later of Closing Date or 10 days after **Buyer** receives
258 **Seller's** notice. **Seller** will not be obligated to replace trees. If restoration cannot be timely completed, **Buyer** may
259 cancel this Contract, and **Buyer's** deposit(s) will be refunded; or **Buyer** may accept the property "as is" and **Seller**
260 will credit the deductible and assign the insurance proceeds, if any, to **Buyer** at Closing in such amounts as are
261 attributable to the Property and not yet expended in restoring the Property to the same condition as it was on
262 Effective Date.

263 **10. Title:** **Seller** will convey marketable title to the Property by statutory warranty deed or trustee, personal
264 representative, or guardian deed as appropriate to **Seller's** status.

265 **(a) Title Evidence:** Title evidence will show legal access to the Property and marketable title of record in **Seller** in
266 accordance with current title standards adopted by the Florida Bar, subject only to the following title exceptions,
267 none of which prevent residential use of the Property: covenants, easements, and restrictions of record; matters
268 of plat; existing zoning and government regulations; oil, gas, and mineral rights of record if there is no right of
269 entry; current taxes; mortgages that **Buyer** will assume; and encumbrances that **Seller** will discharge before or
270* at Closing. The party paying for the owner's title policy will, at least _____ days (if Paragraph 3(a) is selected
271 then 5 days or if Paragraph 3(b) is selected then 10 days, if left blank) ("Title Evidence Deadline") before

Buyer (_____) (_____) and Seller () () acknowledged receipt of a copy of this page, which is Page 5 of 9.

272 Closing, deliver to **Buyer** one of the following types of title evidence (see Paragraph 5(c)), which must be
 273 generally accepted in the county where the Property is located. **Seller** will use option (2) in Miami-Dade County.
 274 (1) **A title insurance commitment** issued by a Florida-licensed title insurer in the amount of the purchase
 275 price and subject only to title exceptions set forth in this Contract.
 276 (2) **An existing abstract of title** from a reputable and existing abstract firm (if firm is not existing, then abstract
 277 must be certified as correct by an existing firm) purporting to be an accurate synopsis of the instruments
 278 affecting title to the Property recorded in the public records of the county where the Property is located and
 279 certified to Effective Date. However, if such an abstract is not available to **Seller**, then a **prior owner's title**
 280 **policy** acceptable to the proposed insurer as a base for reissuance of coverage. **Seller** will pay for copies
 281 of all policy exceptions and an update in a format acceptable to Closing Agent from the policy effective date
 282 and certified to **Buyer** or Closing Agent, together with copies of all documents recited in the prior policy and
 283 in the update. If a prior policy is not available to **Seller** then (1) above will be the title evidence.
 284 (b) **Title Examination: Buyer** will examine the title evidence and deliver written notice to **Seller**, within 5 days after
 285 receipt of title evidence but no later than Closing Date, of any defects that make the title unmarketable. **Seller**
 286 will have 30 days after receiving **Buyer's** notice of defects ("Curative Period") to cure the defects at **Seller's**
 287 expense. If **Seller** cures the defects within the Curative Period, **Seller** will deliver written notice to **Buyer** and
 288 the Closing will occur on Closing Date or within 10 days after **Buyer** receives **Seller's** notice if Closing Date
 289 has passed. If **Seller** is unable to cure the defects within the Curative Period, **Seller** will deliver written notice
 290 to **Buyer** and **Buyer** will, within 10 days after receiving **Seller's** notice, either cancel this Contract, extend
 291 Curative Period for a specified period not to exceed 120 days, or accept title with existing defects and close the
 292 transaction.
 293 (c) **Survey: On or before Title Evidence Deadline, Buyer** may, at **Buyer's** expense, have the Property surveyed
 294 and must deliver written notice to **Seller** within 5 days after receiving survey but no later than Closing, of any
 295 encroachments on the Property, encroachments by the Property's improvements on other lands, or deed
 296 restriction or zoning violations. If **Buyer** timely delivers such notice, any reported encroachment or violation will
 297 be treated in the same manner as a title defect, and **Seller's** and **Buyer's** obligations will be determined in
 298 accordance with Subparagraph (b) above.

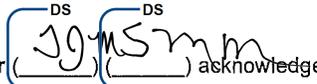
299 **11. Effective Date; Time; Force Majeure:**

300 (a) **Effective Date:** The "Effective Date" of this Contract is the date on which the last of the parties initials or signs
 301 and delivers the final offer or counter offer. **Time is of the essence for all provisions of this Contract.**
 302 (b) **Time:** All time periods will be computed in business days (a "business day" is every calendar day except
 303 Saturday, Sunday, and national legal holidays). If any deadline falls on a Saturday, Sunday, or national legal
 304 holiday, performance will be due the next business day. All time periods will end at 5:00 p.m. local time (meaning
 305 in the county where the Property is located) of the appropriate day.
 306 (c) **Force Majeure: Seller or Buyer** will not be required to perform any obligation under this Contract or be liable
 307 to each other for damages so long as the performance or non-performance of the obligation is delayed, caused,
 308 or prevented by an "act of God" or "force majeure." An act of God or force majeure is defined as hurricanes,
 309 earthquakes, floods, fire, unusual transportation delays, wars, insurrections, acts of terrorism, and any other
 310 such causes and which by the exercise of due diligence the non-performing party is unable in whole or in part
 311 to prevent or overcome. All time periods, including Closing Date, will be extended for the period that the act of
 312 God or force majeure is in place. However, if such act of God or force majeure event continues beyond 30 days,
 313 either party may cancel this Contract by delivering written notice to the other; and **Buyer's** deposit(s) will be
 314 refunded.

315 **12. Notices:** All notices will be in writing and will be delivered to the parties and Broker by mail, personal delivery, or
 316 electronic media. Except for the notices required by Paragraph 3 of this Contract, **Buyer's failure to timely deliver**
 317 **written notice to Seller, when such notice is required by this Contract, regarding any contingency will**
 318 **render that contingency null and void, and this Contract will be construed as if the contingency did not**
 319 **exist. Any notice, document, or item delivered to or received by an attorney or licensee (including a**
 320 **transaction broker) representing a party will be as effective as if delivered to or received by that party.**

321 **13. Complete Agreement:** This Contract is the entire agreement between **Seller** and **Buyer**. **Except for brokerage**
 322 **agreements, no prior or present agreements will bind Seller, Buyer, or Broker unless incorporated into this**
 323 **Contract.** Modifications of this Contract will not be binding unless in writing, signed or initialed, and delivered by
 324 the party to be bound. Electronic signatures will be acceptable and binding. Signatures, initials, documents
 325 referenced in this Contract, counterparts, and written modifications communicated electronically or on paper will be
 326 acceptable for all purposes, including delivery, and will be binding. Handwritten or typewritten terms inserted in or
 327 attached to this Contract prevail over preprinted terms. If any provision of this Contract is or becomes invalid or

Buyer () () and Seller () () acknowledged receipt of a copy of this page, which is Page 6 of 9.

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328 unenforceable, all remaining provisions will continue to be fully effective. **Seller** and **Buyer** will use diligence and
329 good faith in performing all obligations under this Contract. This Contract will not be recorded in any public records.

330 **14. Assignability; Persons Bound:** Buyer may not assign this Contract without **Seller's** written consent. The terms
331 "**Seller**," "**Buyer**," and "**Broker**" may be singular or plural. This Contract is binding on the heirs, administrators,
332 executors, personal representatives, and assigns (if permitted) of **Seller**, **Buyer**, and **Broker**.

333 **15. Default:**

334 (a) **Seller Default:** If for any reason other than failure of **Seller** to make **Seller's** title marketable after diligent effort,
335 **Seller** fails, refuses, or neglects to perform this Contract, **Buyer** may choose to receive a return of **Buyer's**
336 deposit(s) without waiving the right to seek damages or to seek specific performance as per Paragraph 16.
337 **Seller** will also be liable to **Broker** for the full amount of the brokerage fee.

338 (b) **Buyer Default:** If **Buyer** fails to perform this Contract within the time specified, including timely payment of all
339 deposits, **Seller** may choose to retain and collect all deposits paid and agreed to be paid as liquidated damages
340 or to seek specific performance as per Paragraph 16; and **Broker** will, upon demand, receive 50% of all deposits
341 paid and agreed to be paid (to be split equally between **Brokers**) up to the full amount of the brokerage fee.

342 **16. Dispute Resolution:** This Contract will be construed under Florida law. All controversies, claims, and other matters
343 in question arising out of or relating to this transaction or this Contract or its breach will be settled as follows:

344 (a) **Disputes concerning entitlement to deposits made and agreed to be made:** **Seller** and **Buyer** will have 30
345 days after the date conflicting demands are made to attempt to resolve the dispute through mediation. If that
346 fails, Escrow Agent will submit the dispute, if so required by Florida law, to Escrow Agent's choice of arbitration,
347 a Florida court, or the Florida Real Estate Commission ("FREC"). A broker's obligation under Chapter 475,
348 Florida Statutes, and the FREC rules to timely notify the FREC of an escrow dispute and timely resolve the
349 escrow dispute through mediation, arbitration, interpleader, or an escrow disbursement order applies only to
350 brokers and does not apply to title companies, attorneys, or other escrow holders.

351 (b) **All other disputes:** **Seller**, **Buyer**, and **Broker** will have 30 days after the date a dispute arises between them
352 to attempt to resolve the matter through mediation, failing which the parties, including **Broker**, will resolve the
353 dispute through neutral binding arbitration in the county where the Property is located. However, no arbitration
354 arising out of or relating to this transaction or this Contract or its breach will include **Broker**, unless **Broker**
355 consents in writing to become a party to the proceeding. A demand for arbitration is prohibited if a civil action
356 requesting the same relief would be barred by Florida statute of limitations. The arbitrator may not alter the
357 Contract terms or award any remedy not provided for in this Contract. The award will be based on the greater
358 weight of the evidence and will state findings of fact and the contractual authority on which it is based. If the
359 parties agree to use discovery, it will be in accordance with the Florida Rules of Civil Procedure, and the
360 arbitrator will resolve all discovery-related disputes. For purposes of this Paragraph, **Broker** will be treated as a
361 party to this Contract. This clause will survive Closing.

362 (c) **Mediation and Arbitration; Expenses:** "Mediation" is a process in which parties attempt to resolve a dispute
363 by submitting it to an impartial mediator who facilitates the resolution of the dispute but who is not empowered
364 to impose a settlement on the parties. Mediation will be in accordance with the rules of the American Arbitration
365 Association ("AAA") or other mediator agreed on by the parties. The parties will equally divide the mediation
366 fee, if any. "Arbitration" is a process in which the parties resolve a dispute by a hearing before a neutral person
367 who decides the matter and whose decision is binding on the parties. Arbitration will be in accordance with the
368 rules of the AAA or other arbitrator agreed on by the parties. Each party to any arbitration will pay its own fees,
369 costs, and expenses, including attorneys' fees, and will equally split the arbitrators' fees and administrative fees
370 of arbitration.

371 **17. Escrow Agent; Closing Agent:** **Seller** and **Buyer** authorize Escrow Agent and Closing Agent (collectively "**Agent**")
372 to receive, deposit, and hold funds and other items in escrow and, subject to Collection, disburse them upon proper
373 authorization and in accordance with Florida law and the terms of this Contract, including disbursing brokerage
374 fees. "Collection" or "Collected" mean any checks tendered or received have become actually and finally collected
375 and deposited in the account of **Agent**. The parties agree that **Agent** will not be liable to any person for misdelivery
376 of escrowed items to **Seller** or **Buyer**, unless the misdelivery is due to **Agent's** willful breach of this Contract or
377 gross negligence. If **Agent** interpleads the subject matter of the escrow, **Agent** will pay the filing fees and costs from
378 the deposit and will recover reasonable attorneys' fees and costs to be paid from the escrowed funds or equivalent
379 and charged and awarded as court costs in favor of the prevailing party. All claims against **Agent** will be arbitrated,
380 so long as **Agent** consents to arbitrate.

381 **18. Professional Advice; Broker Liability:** **Broker** advises **Seller** and **Buyer** to verify all facts and representations
382 that are important to them and to consult an appropriate professional for legal advice (for example, interpreting
383 contracts, determining the effect of laws on the Property and transaction, status of title, foreign investor reporting
384 requirements, the effect of property lying partially or totally seaward of the coastal construction control line, etc.)

Buyer (____) (____) and **Seller** (____) (____) acknowledge receipt of a copy of this page, which is Page 7 of 9.

420* 21. **Additional Terms:** Buyer plans to demolish the existing improvements, is aware that the property was previously
421 impacted by flooding, waives all property disclosures, has performed all necessary inspections, and will purchase
422 the property "as is".

423
424 Buyer to pay all closing costs.

425
426 Real Estate Commission of 5% of the purchase price will be paid by the Buyer at closing to SVN Southland
427 Commercial.

428
429 SVNCRE Group dba SVN Southland Commercial Real Estate, and it's associates, are acting as TRANSACTION
430 BROKER. Buyers and Sellers have been provided with a copy of the Transaction Broker Notice.
431

432 22. **Offer and Acceptance:** Buyer offers to purchase the Property on the above terms and conditions. Unless this
433* Contract is signed by Seller and a copy delivered to Buyer no later than 4:30 a.m. p.m. on
434* April 4, 2019, this offer will be revoked and Buyer's deposit(s) refunded subject to Collection of funds.

435* Buyer received a written real property disclosure statement from Seller before making this offer.

436 23. **Counter Offer; Rejection:**

437* Seller counters Buyer's offer. (To accept the counter offer, Buyer must sign or initial the counter offered terms
438 and deliver a copy of the acceptance to Seller.) Unless otherwise stated, the time for acceptance of any counter
439 offer will be 2 days after the date the counter offer is delivered.

440* Seller rejects Buyer's offer.

441 **This is intended to be a legally binding contract. If not fully understood, seek the advice of an attorney before**
442 **signing.**

443* **Buyer:** _____ Date: _____

444* Print name: Keith Wilkins, Assistant City Administrator, City of Pensacola

445* **Buyer:** _____ Date: _____

446* Print name: _____

447 **Buyer's address for purpose of notice:**

448* Address: 222 West Main Street, Pensacola, FL 32502

449* Phone: 850-436-5627 Fax: 850-435-1611 Email: kwilkins@cityofpensacola.com

450* **Seller:** _____ Date: 3/6/2019
DocuSigned by: Timothy J. McNicoll

451* Print name: Timothy J. McNicoll

452* **Seller:** _____ Date: 3/6/2019
DocuSigned by: Sarah M. McNicoll

453* Print name: Sarah M. McNicoll

454 **Seller's address for purpose of notice:**

455* Address: 2876 Sycamore Dr., Ste. 101, Simi Valley, CA 93065

456* Phone: 805-558-9171 Fax: _____ Email: timmcn@pacbell.net

457* **Effective Date:** _____ (The date on which the last party signed or initialed and delivered
458 **the final offer or counter offer.**)

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Buyer () () and Seller () () acknowledge receipt of a copy of this page, which is Page 9 of 9.

CRSP-15 Rev 6/17

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formsimplicity

Contract for Residential Sale and Purchase

1* **1. Sale and Purchase:** Justin M. Wickes ("Seller")
2* and The City of Pensacola ("Buyer")

3 (the "parties") agree to sell and buy on the terms and conditions specified below the property described as:
4* Street Address: 1106 E. Fisher Street
5* City: Pensacola Zip Code: 32503 County: Escambia
6* Legal Description: LT 17 BLK 349 New City Tract, City of Pensacola, according to the map of said City
7 Copyrighted by Thomas C. Watson in 1906, of the Public Records of Escambia County Florida

8* Tax ID No.: 000S009025170349 together with all existing improvements and attached
9 items, including fixtures; built-in furnishings; major appliances including but not limited to range(s), refrigerator(s), dishwasher(s),
10* washer(s), and dryer(s); (#) ceiling fans (all ceiling fans if left blank); light fixtures; attached wall-to-wall carpeting; and rods,
11 draperies, and other window treatments as of date of **Buyer's** initial offer. The only other items included in the purchase are:
12* _____
13 _____

14* The following attached items are excluded from the purchase: With the exception of exterior walls, doors,
15 windows, and hardware required to secure the building, the seller can remove any and all items, including
16 attached items, up to the day of closing.

17 The real and personal property described above as included in the purchase is referred to as the "Property."
18 Personal property listed in this Contract is included in the purchase price, has no contributory value, and is being
19 left for **Seller's** convenience.

20* **2. Purchase Price:** \$182,000.00 payable by **Buyer** in U.S. currency as follows:

21 All deposits will be made payable to "Escrow Agent" named below and held in escrow by:
22* Escrow Agent's Name: William H. Mitchem, Attorney at Law
23* Escrow Agent's Address: 501 Commendencia Street, Pensacola, FL 32502
24* Escrow Agent's Phone: (850) 469-3318

25* (a) \$ 0.00 "Initial Deposit" (\$0 if left blank) (**Check if applicable**)
26* accompanies offer
27* to be delivered to Escrow Agent within days (3 days if left blank) after
28 Effective Date

29* (b) \$ 0.00 Additional deposit to be delivered to Escrow Agent by or within
30* days (10 days if left blank) after Effective Date

31* (c) \$0.00 Total Financing (see Paragraph 3 below) (express as a dollar amount or percentage)

32* (d) \$ Other:

33* (e) \$ 182,000.00 Balance to close (not including **Buyer's** closing costs, prepaid items, and prorations)
34 All funds paid at Closing must be paid by wire transfer or other Collected funds.

35 **3. Financing: (Check as applicable)**
36* (a) **Buyer** will pay cash or obtain financing for the purchase of the Property. This Contract is not contingent on
37 financing or appraised value unless otherwise stated herein.
38* (b) **Buyer** will apply for new conventional FHA VA other (specify) _____
39 financing specified in Paragraph 2(c) at the prevailing interest rate and loan costs based on **Buyer's**
40* creditworthiness (the "Financing") within days (5 days if left blank) after Effective Date and provide
41 **Seller** with either a written Financing commitment or approval letter ("Commitment") or written notice that **Buyer**
42* is unable to obtain a Commitment within days (the earlier of 30 days after Effective Date or 10 days
43 before Closing Date if left blank) after Effective Date ("Commitment Period"). **Buyer** will keep **Seller** and Broker
44 fully informed about loan application status, progress, and Commitment issues and authorizes the mortgage
45 broker and lender to disclose all such information to **Seller** and Broker. If, after using diligence and good faith,
46 **Buyer** is unable to obtain a Commitment and provides **Seller** with written notice before expiration of the
47 Commitment Period that **Buyer** is unable to obtain a Commitment, either party may thereafter cancel this

Buyer (_____) (_____) and **Seller** () acknowledge receipt of a copy of this page, which is Page 1 of 9.

48 Contract; and Buyer's deposit(s) will be refunded. Buyer's failure to timely provide Seller with written notice
49 that Buyer is unable to obtain a Commitment will result in forfeiture of Buyer's deposit(s) if Buyer fails to close.
50 Once Buyer provides the Commitment to Seller, the financing contingency is waived and Seller will be entitled
51 to retain the deposit(s) if the transaction does not close by the Closing Date unless (i) the Property appraises
52 below the purchase price and either the parties cannot agree on a new purchase price or Buyer elects not to
53 proceed, or (ii) the property related conditions of the Commitment have not been met (except when such
54 conditions are waived by other provisions of this Contract), or (iii) the loan is not funded due to financial failure
55 of Buyer's lender, or (iv) another provision of this Contract provides for cancellation.

56 4. Closing Date; Occupancy: Unless the Closing Date is specifically extended by Seller and Buyer or by any other
57 provision in this Contract, the Closing Date will prevail over all other time periods including, but not limited to,
58* financing and inspection periods. Closing of this Contract (the "Closing") will occur on April 8, 2019
59 ("Closing Date") at the time established by the Closing Agent, by which time Seller will (i) have removed all personal
60 items and trash from the Property and swept the Property clean and (ii) deliver the deed, occupancy, and
61 possession, along with all keys, garage door openers, and access codes to Buyer. If on Closing Date insurance
62 underwriting is suspended, Buyer may postpone Closing for up to 5 days after the insurance suspension is lifted.
63 If Paragraph 3(b) is selected and closing funds from Buyer's lender(s) are not available on Closing Date due to
64 Consumer Financial Protection Bureau Closing Disclosure delivery requirements (CFPB Requirements), then
65 Closing Date will be extended for such period necessary to satisfy CFPB Requirements, provided such period does
66 not exceed 10 days. If this transaction does not close for any reason, Buyer will immediately return all Seller-
67 provided title evidence, surveys, association documents, and other items, failing which Buyer authorizes Closing
68* Agent to reimburse Seller \$0.00 (\$100 if left blank) from the deposit(s) for the cost of the documents.

69 5. Closing Procedure; Costs: Closing will take place in the county where the Property is located and may be
70 conducted by mail or electronic means. If title insurance insures Buyer for title defects arising between the title
71 binder effective date and recording of Buyer's deed, Closing Agent will disburse at Closing the net sale proceeds
72 to Seller and brokerage fees to Broker as per Paragraph 19. In addition to other expenses provided in this Contract,
73 Seller and Buyer will pay the costs indicated below.

74 (a) Seller Costs:
75 Taxes and surtaxes on the deed
76 Recording fees for documents needed to cure title
77* Repairs and Permits: Seller will pay up to \$0.00 or _____% (1.5% if left blank) of the purchase
78* price for repairs to warranted items ("Repair Limit"); and up to \$0.00 or _____% (1.5% if left
79 blank) of the purchase price for wood-destroying organism treatment and repairs ("WDO Repair Limit"); and up
80* to \$0.00 or _____% (1.5% if left blank) of the purchase price for costs associated with closing out
81 open permits and obtaining required permits for unpermitted existing improvements ("Permit Limit").
82* Other: _____

83 (b) Buyer Costs:
84 Taxes and recording fees on notes and mortgages
85 Recording fees on the deed and financing statements
86 Loan expenses
87 Lender's title policy
88 Inspections
89 Survey
90 Flood insurance, homeowner's insurance, hazard insurance
91* Other: _____

92 (c) Title Evidence and Insurance: If Seller has an owner's title policy covering the Property, Seller will provide a
93 copy to Buyer and title agent within 5 days after Effective Date. The charges for title evidence and any lender's
94 policy will be calculated and allocated in accordance with Florida law but may be reported differently on certain
95 federally-mandated closing disclosures and other closing documents.

96 Check (1) or (2)
97* (1) The title evidence will be a Paragraph 10(a)(1) owner's title insurance commitment. Seller will select
98 the title agent and Closing Agent and will pay for the owner's title policy; title search, including tax and lien
99* search; and all other fees charged by title agent and Closing Agent or Buyer will select the title agent
100 and Closing Agent and pay for the owner's title policy; title search, including tax and lien search; and all
101* other fees charged by title agent and Closing Agent or Buyer will select the title agent and Closing Agent,

Buyer (_____) (_____) and Seller (_____) acknowledge receipt of a copy of this page, which is Page 2 of 9.

102 and **Seller** will pay for the owner's title policy; title search, including tax and lien search; and all other fees
 103 charged by title agent and Closing Agent.

104* (2) **Seller** will provide an abstract as specified in Paragraph 10(a)(2) as title evidence. **Seller** **Buyer** will
 105 pay for the owner's title policy and select the title agent and Closing Agent. **Seller** will pay fees for title
 106 searches, including tax and lien searches, before Closing, and **Buyer** will pay fees for title searches,
 107 including tax and lien searches, after Closing (if any) and all other fees charged by title agent and Closing
 108 Agent.

109 (d) **Prorations:** The following items will be made current (if applicable) and prorated as of the day before Closing:
 110 real estate taxes (including special benefit tax assessments imposed by a community development district
 111 ("CDD")), interest, bonds, assessments, association fees, insurance, rents, and other current expenses and
 112 revenues of the Property. If taxes and assessments for the current year cannot be determined, taxes will be
 113 prorated on the basis of taxes for the preceding year as of the day before Closing and will be computed and
 114 readjusted, at either party's request, when the current taxes are determined with adjustment for exemptions
 115 and improvements. If there are completed improvements on the Property by January 1 of the year of the
 116 Closing, which improvements were not in existence on January 1 of the prior year, taxes will be prorated based
 117 on the prior year's millage and at an equitable assessment to be agreed upon by the parties before Closing,
 118 failing which, request will be made to the County Property Appraiser for an informal assessment taking into
 119 consideration available exemptions. If the County Property Appraiser is unable or unwilling to perform an
 120 informal assessment before Closing, **Seller** and **Buyer** will split the cost of a private appraiser to perform an
 121 assessment before Closing. Nothing in this Paragraph will act to extend the Closing Date. This provision will
 122 survive Closing.

123 (e) **Special Assessment by Public Body:** Regarding special assessments imposed by a public body, **Seller** will
 124 pay (i) the full amount of liens that are certified, confirmed, and ratified before Closing and (ii) the amount of the
 125 last estimate of the assessment if an improvement is substantially completed as of Effective Date but has not
 126 resulted in a lien before Closing; and **Buyer** will pay all other amounts. If special assessments may be paid in
 127* installments **Seller** **Buyer** (**Buyer** if left blank) will pay installments due after Closing. If **Seller** is checked,
 128 **Seller** will pay the assessment in full before or at the time of Closing. Public body does not include a
 129 Homeowners' Association or Condominium Association. Paragraph 5(e) does not apply to a special benefit tax
 130 lien imposed by a CDD pursuant to Chapter 190, Florida Statutes, which lien will be prorated pursuant to
 131 Paragraph 5(d).

132 (f) **Tax Withholding:** **Seller** and **Buyer** will comply with the Foreign Investment in Real Property Tax Act, which
 133 may require **Seller** to provide additional cash at Closing if **Seller** is a "foreign person" as defined by federal law.

134* (g) **Home Warranty:** **Seller** **Buyer** N/A will pay for a home warranty plan issued by
 135* _____ at a cost not to exceed \$ _____.
 136 A home warranty plan provides for repair or replacement of many of a home's mechanical systems and major
 137 built-in appliances in the event of breakdown due to normal wear and tear during the agreement period.

138 6. **Inspection Periods:** **Buyer** will complete all inspections referenced in Paragraphs 7(b), 8(a)(2), 8(b), and 8(c) by
 139* _____ (the earlier of 10 days after Effective Date or 10 days before Closing Date if left blank)
 140 ("Inspection Period").

141 7. **Real Property Disclosures:** **Seller** represents that **Seller** does not know of any facts that materially affect the
 142 value of the Property, including but not limited to violations of governmental laws, rules, and regulations, other than
 143 those that **Buyer** can readily observe or that are known by or have been disclosed to **Buyer**.

144 (a) **Energy Efficiency:** **Buyer** acknowledges receipt of the energy-efficiency information brochure required by
 145 Section 553.996, Florida Statutes.

146 (b) **Radon Gas:** Radon is a naturally occurring radioactive gas that, when it has accumulated in a building in
 147 sufficient quantities, may present health risks to persons who are exposed to it over time. Radon levels that
 148 exceed federal and state guidelines have been found in buildings in Florida. Additional information regarding
 149 radon and radon testing may be obtained from your county public health unit. **Buyer** may, within the Inspection
 150 Period, have an appropriately licensed person test the Property for radon. If the radon level exceeds acceptable
 151 EPA standards, **Seller** may choose to reduce the radon level to an acceptable EPA level, failing which either
 152 party may cancel this Contract.

153 (c) **Flood Zone:** **Buyer** is advised to verify by survey, with the lender, and with appropriate government agencies
 154 which flood zone the Property is in, whether flood insurance is required, and what restrictions apply to improving
 155 the Property and rebuilding in the event of casualty. If the Property is in a Special Flood Hazard Area or Coastal
 156 High Hazard Area and the buildings are built below the minimum flood elevation, **Buyer** may cancel this

Buyer (_____) (_____) and **Seller**  acknowledge receipt of a copy of this page, which is Page 3 of 9.

- 157 Contract by delivering written notice to **Seller** within 20 days after Effective Date, failing which **Buyer** accepts
- 158 the existing elevation of the buildings and zone designation of the Property.
- 159 (d) **Homeowners' Association:** If membership in a homeowners' association is mandatory, an association
- 160 disclosure summary is attached and incorporated into this Contract. **BUYER SHOULD NOT SIGN THIS**
- 161 **CONTRACT UNTIL BUYER HAS RECEIVED AND READ THE DISCLOSURE SUMMARY.**
- 162 (e) **PROPERTY TAX DISCLOSURE SUMMARY:** BUYER SHOULD NOT RELY ON THE SELLER'S CURRENT
- 163 PROPERTY TAXES AS THE AMOUNT OF PROPERTY TAXES THAT BUYER MAY BE OBLIGATED TO PAY
- 164 IN THE YEAR SUBSEQUENT TO PURCHASE. A CHANGE OF OWNERSHIP OR PROPERTY
- 165 IMPROVEMENTS TRIGGERS REASSESSMENTS OF THE PROPERTY THAT COULD RESULT IN HIGHER
- 166 PROPERTY TAXES. IF YOU HAVE ANY QUESTIONS CONCERNING VALUATION, CONTACT THE
- 167 COUNTY PROPERTY APPRAISER'S OFFICE FOR FURTHER INFORMATION.
- 168 (f) **Mold:** Mold is part of the natural environment that, when accumulated in sufficient quantities, may present
- 169 health risks to susceptible persons. For more information, contact the county indoor air quality specialist or
- 170 other appropriate professional.
- 171 (g) **Coastal Construction Control Line:** If any part of the Property lies seaward of the coastal construction control
- 172 line ("CCCL") as defined in Section 161.053, Florida Statutes, **Seller** will provide **Buyer** with an affidavit or
- 173 survey as required by law delineating the line's location on the Property, unless **Buyer** waives this requirement
- 174 in writing. The Property being purchased may be subject to coastal erosion and to federal, state, or local
- 175 regulations that govern coastal property, including delineation of the CCCL, rigid coastal protection structures,
- 176 beach nourishment, and the protection of marine turtles. Additional information can be obtained from the Florida
- 177 Department of Environmental Protection, including whether there are significant erosion conditions associated
- 178 with the shoreline of the Property being purchased.
- 179* **Buyer** waives the right to receive a CCCL affidavit or survey.

180 **8. Maintenance, Inspections, and Repair:** **Seller** will keep the Property in the same condition from Effective Date

181 until Closing, except for normal wear and tear ("Maintenance Requirement") and repairs required by this Contract.

182 **Seller** will provide access and utilities for **Buyer's** inspections and appraisals. **Buyer** will repair all damages to the

183 Property resulting from the inspections, return the Property to its pre-inspection condition, and provide **Seller** with

184 paid receipts for all work done on the Property upon its completion. If **Seller** is unable to complete required repairs

185 or treatments or meet the Maintenance Requirement before Closing, **Seller** will give **Buyer** a credit at Closing for

186 the cost of the repairs and maintenance **Seller** was obligated to perform. At Closing, **Seller** will assign all assignable

187 repair and treatment contracts to **Buyer** and provide **Buyer** with paid receipts for all work done on the Property

188 pursuant to the terms of this Contract.

- 189 (a) **Warranty, Inspections, and Repair:**
- 190 (1) **Warranty:** **Seller** warrants that non-leased major appliances; heating, cooling, mechanical, electrical,
- 191 security, sprinkler, septic, and plumbing systems; seawall; dock; and pool equipment, if any, are and will
- 192 be maintained in working condition until Closing; that the structures (including roofs, doors, and windows)
- 193 and pool, if any, are structurally sound and watertight; and that torn or missing screens, missing roof tiles,
- 194 and fogged windows will be repaired or replaced. Limited remaining life of any warranted item will not be
- 195 considered a defect that must be repaired or replaced by **Seller**. **Seller** does not warrant and is not required
- 196 to repair cosmetic conditions, unless the cosmetic condition resulted from a defect in a warranted item.
- 197 **Seller** is not obligated to bring any item into compliance with existing building code regulations unless
- 198 necessary to repair a warranted item. "Working condition" means operating in the manner in which the item
- 199 was designed to operate and "cosmetic conditions" means aesthetic imperfections that do not affect the
- 200 working condition of the item, including pitted marcite; tears, worn spots, and discoloration of floor
- 201 coverings/wallpapers/window treatments; caulking in bathroom; nail holes, scratches, dents, scrapes, and
- 202 chips in ceilings/walls/flooring/tile/fixtures/mirrors; cracked roof tiles; curling or worn shingles; and minor
- 203 cracks in floor tiles/windows/driveways/sidewalks/pool decks/garage and patio floors.
- 204 (2) **Professional Inspection:** **Buyer** may, at **Buyer's** expense, have warranted items inspected by a person
- 205 who specializes in and holds a license (if required by law) to conduct home inspections or who holds a
- 206 Florida license to repair and maintain the items inspected ("professional inspector"). **Buyer** must, within 5
- 207 days after the end of Inspection Period, deliver written notice of any items that are not in the condition
- 208 warranted and a copy of the portion of the inspector's written report dealing with such items to **Seller**. If
- 209 **Buyer** fails to timely deliver written notice, **Buyer** waives **Seller's** warranty and accepts the items listed in
- 210 Subparagraph (a) above in their "as is" conditions, except that **Seller** must meet the Maintenance
- 211 Requirement.
- 212 (3) **Repair:** **Seller** will obtain repair estimates and is obligated only to make repairs necessary to bring
- 213 warranted items into the condition warranted, up to the Repair Limit. **Seller** may, within 5 days after receipt
- 214 of **Buyer's** notice of items that are not in the condition warranted, have a second inspection made by a

Buyer (_____) (_____) and Seller  (_____) acknowledge receipt of a copy of this page, which is Page 4 of 9.

professional inspector and will report repair estimates to **Buyer**. If the first and second inspection reports differ and the parties cannot resolve the differences, **Seller** and **Buyer** together will choose, and equally split the cost of, a third inspector, whose written report will be binding on the parties. If the cost to repair warranted items equals or is less than the Repair Limit, **Seller** will have the repairs made in a workmanlike manner by an appropriately licensed person. If the cost to repair warranted items exceeds the Repair Limit, either party may cancel this Contract unless either party pays the excess or **Buyer** designates which repairs to make at a total cost to **Seller** not exceeding the Repair Limit and accepts the balance of the Property in its "as is" condition.

(b) Wood-Destroying Organisms: "Wood-destroying organism" means arthropod or plant life, including termites, powder-post beetles, old house borers, and wood-decaying fungi, that damages or infests seasoned wood in a structure, excluding fences. **Buyer** may, at **Buyer's** expense, have the Property inspected by a Florida-licensed pest control business to determine the existence of past or present wood-destroying organism infestation and damage caused by infestation. If the inspector finds evidence of infestation or damage, **Buyer** will deliver a copy of the inspector's written report to **Seller** within 5 days after the date of the inspection. If **Seller** previously treated the Property for the type of wood-destroying organisms found, **Seller** does not have to treat the Property again if (i) there is no visible live infestation and (ii) **Seller** transfers to **Buyer** at Closing a current full treatment warranty for the type of wood-destroying organisms found. **Seller** will have 5 days after receipt of the inspector's report to have reported damage estimated by a licensed building or general contractor and corrective treatment, if required, estimated by a licensed pest control business. **Seller** will have treatments and repairs made by an appropriately licensed person at **Seller's** expense up to the WDO Repair Limit. If the cost to treat and repair the Property exceeds the WDO Repair Limit, either party may pay the excess, failing which either party may cancel this Contract by written notice to the other. If **Buyer** fails to timely deliver the inspector's written report, **Buyer** accepts the Property "as is" with regard to wood-destroying organism infestation and damage, subject to the Maintenance Requirement.

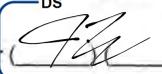
(c) Permits: **Buyer** may, at **Buyer's** expense, inspect and examine records and documents to determine whether any open or expired building permits or unpermitted improvements to the Property exist. **Buyer** will, before the end of the Inspection Period, deliver written notice to **Seller** of the existence of such; and **Seller** will remedy the reported items up to the Permit Limit and have final inspections completed no later than 5 days before Closing. If final inspections cannot be performed due to delays by the governmental entity, Closing will be extended for up to 10 days to complete such final inspections, failing which either party may cancel this Contract; and **Buyer's** deposit(s) will be refunded. At Closing, **Seller** will provide **Buyer** with written documentation that all reported items have been remedied. If the cost to remedy reported items exceeds the Permit Limit, either party may cancel this Contract unless either party pays the excess or **Buyer** accepts the Property in its "as is" condition and **Seller** credits **Buyer** at Closing the amount of the Permit Limit.

(d) Walk-Through Inspection; Reinspection: On the day before Closing or at any other time agreeable to the parties, **Buyer**, and/or **Buyer's** representative, may walk through the Property solely to verify that **Seller** has made repairs required by this Contract, has met the Maintenance Requirement, and has met contractual obligations. If **Buyer**, and/or **Buyer's** representative, fails to conduct this inspection, **Seller's** repair obligations and Maintenance Requirement will be deemed fulfilled.

9. Risk of Loss: If any portion of the Property is damaged by fire or other casualty before Closing and can be restored by Closing or within 45 days after Closing Date to substantially the same condition as it was on Effective Date, **Seller** will, at **Seller's** expense, restore the Property and deliver written notice to **Buyer** that **Seller** has completed the restoration; and the parties will close the transaction on the later of Closing Date or 10 days after **Buyer** receives **Seller's** notice. **Seller** will not be obligated to replace trees. If restoration cannot be timely completed, **Buyer** may cancel this Contract, and **Buyer's** deposit(s) will be refunded; or **Buyer** may accept the property "as is" and **Seller** will credit the deductible and assign the insurance proceeds, if any, to **Buyer** at Closing in such amounts as are attributable to the Property and not yet expended in restoring the Property to the same condition as it was on Effective Date.

10. Title: **Seller** will convey marketable title to the Property by statutory warranty deed or trustee, personal representative, or guardian deed as appropriate to **Seller's** status.

(a) Title Evidence: Title evidence will show legal access to the Property and marketable title of record in **Seller** in accordance with current title standards adopted by the Florida Bar, subject only to the following title exceptions, none of which prevent residential use of the Property: covenants, easements, and restrictions of record; matters of plat; existing zoning and government regulations; oil, gas, and mineral rights of record if there is no right of entry; current taxes; mortgages that **Buyer** will assume; and encumbrances that **Seller** will discharge before or at Closing. The party paying for the owner's title policy will, at least _____ days (if Paragraph 3(a) is selected then 5 days or if Paragraph 3(b) is selected then 10 days, if left blank) ("Title Evidence Deadline") before

Buyer (_____) (_____) and **Seller**  acknowledge receipt of a copy of this page, which is Page 5 of 9.

272 Closing, deliver to **Buyer** one of the following types of title evidence (see Paragraph 5(c)), which must be
 273 generally accepted in the county where the Property is located. **Seller** will use option (2) in Miami-Dade County.
 274 (1) **A title insurance commitment** issued by a Florida-licensed title insurer in the amount of the purchase
 275 price and subject only to title exceptions set forth in this Contract.
 276 (2) **An existing abstract of title** from a reputable and existing abstract firm (if firm is not existing, then abstract
 277 must be certified as correct by an existing firm) purporting to be an accurate synopsis of the instruments
 278 affecting title to the Property recorded in the public records of the county where the Property is located and
 279 certified to Effective Date. However, if such an abstract is not available to **Seller**, then a **prior owner's title**
 280 **policy** acceptable to the proposed insurer as a base for reissuance of coverage. **Seller** will pay for copies
 281 of all policy exceptions and an update in a format acceptable to Closing Agent from the policy effective date
 282 and certified to **Buyer** or Closing Agent, together with copies of all documents recited in the prior policy and
 283 in the update. If a prior policy is not available to **Seller** then (1) above will be the title evidence.
 284 (b) **Title Examination:** **Buyer** will examine the title evidence and deliver written notice to **Seller**, within 5 days after
 285 receipt of title evidence but no later than Closing Date, of any defects that make the title unmarketable. **Seller**
 286 will have 30 days after receiving **Buyer's** notice of defects ("Curative Period") to cure the defects at **Seller's**
 287 expense. If **Seller** cures the defects within the Curative Period, **Seller** will deliver written notice to **Buyer** and
 288 the Closing will occur on Closing Date or within 10 days after **Buyer** receives **Seller's** notice if Closing Date
 289 has passed. If **Seller** is unable to cure the defects within the Curative Period, **Seller** will deliver written notice
 290 to **Buyer** and **Buyer** will, within 10 days after receiving **Seller's** notice, either cancel this Contract, extend
 291 Curative Period for a specified period not to exceed 120 days, or accept title with existing defects and close the
 292 transaction.
 293 (c) **Survey:** On or before Title Evidence Deadline, **Buyer** may, at **Buyer's** expense, have the Property surveyed
 294 and must deliver written notice to **Seller** within 5 days after receiving survey but no later than Closing, of any
 295 encroachments on the Property, encroachments by the Property's improvements on other lands, or deed
 296 restriction or zoning violations. If **Buyer** timely delivers such notice, any reported encroachment or violation will
 297 be treated in the same manner as a title defect, and **Seller's** and **Buyer's** obligations will be determined in
 298 accordance with Subparagraph (b) above.

299 **11. Effective Date; Time; Force Majeure:**

300 (a) **Effective Date:** The "Effective Date" of this Contract is the date on which the last of the parties initials or signs
 301 and delivers the final offer or counter offer. **Time is of the essence for all provisions of this Contract.**
 302 (b) **Time:** All time periods will be computed in business days (a "business day" is every calendar day except
 303 Saturday, Sunday, and national legal holidays). If any deadline falls on a Saturday, Sunday, or national legal
 304 holiday, performance will be due the next business day. All time periods will end at 5:00 p.m. local time (meaning
 305 in the county where the Property is located) of the appropriate day.
 306 (c) **Force Majeure:** **Seller** or **Buyer** will not be required to perform any obligation under this Contract or be liable
 307 to each other for damages so long as the performance or non-performance of the obligation is delayed, caused,
 308 or prevented by an "act of God" or "force majeure." An act of God or force majeure is defined as hurricanes,
 309 earthquakes, floods, fire, unusual transportation delays, wars, insurrections, acts of terrorism, and any other
 310 such causes and which by the exercise of due diligence the non-performing party is unable in whole or in part
 311 to prevent or overcome. All time periods, including Closing Date, will be extended for the period that the act of
 312 God or force majeure is in place. However, if such act of God or force majeure event continues beyond 30 days,
 313 either party may cancel this Contract by delivering written notice to the other; and **Buyer's** deposit(s) will be
 314 refunded.

315 **12. Notices:** All notices will be in writing and will be delivered to the parties and Broker by mail, personal delivery, or
 316 electronic media. Except for the notices required by Paragraph 3 of this Contract, **Buyer's failure to timely deliver**
 317 **written notice to Seller, when such notice is required by this Contract, regarding any contingency will**
 318 **render that contingency null and void, and this Contract will be construed as if the contingency did not**
 319 **exist. Any notice, document, or item delivered to or received by an attorney or licensee (including a**
 320 **transaction broker) representing a party will be as effective as if delivered to or received by that party.**

321 **13. Complete Agreement:** This Contract is the entire agreement between **Seller** and **Buyer**. **Except for brokerage**
 322 **agreements, no prior or present agreements will bind Seller, Buyer, or Broker unless incorporated into this**
 323 **Contract.** Modifications of this Contract will not be binding unless in writing, signed or initialed, and delivered by
 324 the party to be bound. Electronic signatures will be acceptable and binding. Signatures, initials, documents
 325 referenced in this Contract, counterparts, and written modifications communicated electronically or on paper will be
 326 acceptable for all purposes, including delivery, and will be binding. Handwritten or typewritten terms inserted in or
 327 attached to this Contract prevail over preprinted terms. If any provision of this Contract is or becomes invalid or

Buyer (____) (____) and Seller  acknowledge receipt of a copy of this page, which is Page 6 of 9.

328 unenforceable, all remaining provisions will continue to be fully effective. **Seller** and **Buyer** will use diligence and
329 good faith in performing all obligations under this Contract. This Contract will not be recorded in any public records.

330 **14. Assignability; Persons Bound:** **Buyer** may not assign this Contract without **Seller's** written consent. The terms
331 "**Seller**," "**Buyer**," and "**Broker**" may be singular or plural. This Contract is binding on the heirs, administrators,
332 executors, personal representatives, and assigns (if permitted) of **Seller**, **Buyer**, and **Broker**.

333 **15. Default:**
334 (a) **Seller Default:** If for any reason other than failure of **Seller** to make **Seller's** title marketable after diligent effort,
335 **Seller** fails, refuses, or neglects to perform this Contract, **Buyer** may choose to receive a return of **Buyer's**
336 deposit(s) without waiving the right to seek damages or to seek specific performance as per Paragraph **16**.
337 **Seller** will also be liable to **Broker** for the full amount of the brokerage fee.
338 (b) **Buyer Default:** If **Buyer** fails to perform this Contract within the time specified, including timely payment of all
339 deposits, **Seller** may choose to retain and collect all deposits paid and agreed to be paid as liquidated damages
340 or to seek specific performance as per Paragraph **16**; and **Broker** will, upon demand, receive 50% of all deposits
341 paid and agreed to be paid (to be split equally between **Brokers**) up to the full amount of the brokerage fee.

342 **16. Dispute Resolution:** This Contract will be construed under Florida law. All controversies, claims, and other matters
343 in question arising out of or relating to this transaction or this Contract or its breach will be settled as follows:

344 (a) **Disputes concerning entitlement to deposits made and agreed to be made:** **Seller** and **Buyer** will have 30
345 days after the date conflicting demands are made to attempt to resolve the dispute through **mediation**. If that
346 fails, Escrow Agent will submit the dispute, if so required by Florida law, to Escrow Agent's choice of arbitration,
347 a Florida court, or the Florida Real Estate Commission ("**FREC**"). A broker's obligation under Chapter 475,
348 Florida Statutes, and the **FREC** rules to timely notify the **FREC** of an escrow dispute and timely resolve the
349 escrow dispute through mediation, arbitration, interpleader, or an escrow disbursement order applies only to
350 brokers and does not apply to title companies, attorneys, or other escrow holders.

351 (b) **All other disputes:** **Seller**, **Buyer**, and **Broker** will have 30 days after the date a dispute arises between them
352 to attempt to resolve the matter through mediation, failing which the parties, including **Broker**, will resolve the
353 dispute through neutral binding **arbitration** in the county where the Property is located. However, no arbitration
354 arising out of or relating to this transaction or this Contract or its breach will include **Broker**, unless **Broker**
355 consents in writing to become a party to the proceeding. A demand for arbitration is prohibited if a civil action
356 requesting the same relief would be barred by Florida statute of limitations. The arbitrator may not alter the
357 Contract terms or award any remedy not provided for in this Contract. The award will be based on the greater
358 weight of the evidence and will state findings of fact and the contractual authority on which it is based. If the
359 parties agree to use discovery, it will be in accordance with the Florida Rules of Civil Procedure, and the
360 arbitrator will resolve all discovery-related disputes. For purposes of this Paragraph, **Broker** will be treated as a
361 party to this Contract. This clause will survive Closing.

362 (c) **Mediation and Arbitration; Expenses:** "**Mediation**" is a process in which parties attempt to resolve a dispute
363 by submitting it to an impartial mediator who facilitates the resolution of the dispute but who is not empowered
364 to impose a settlement on the parties. Mediation will be in accordance with the rules of the American Arbitration
365 Association ("**AAA**") or other mediator agreed on by the parties. The parties will equally divide the mediation
366 fee, if any. "**Arbitration**" is a process in which the parties resolve a dispute by a hearing before a neutral person
367 who decides the matter and whose decision is binding on the parties. Arbitration will be in accordance with the
368 rules of the **AAA** or other arbitrator agreed on by the parties. Each party to any arbitration will pay its own fees,
369 costs, and expenses, including attorneys' fees, and will equally split the arbitrators' fees and administrative fees
370 of arbitration.

371 **17. Escrow Agent; Closing Agent:** **Seller** and **Buyer** authorize Escrow Agent and Closing Agent (collectively "**Agent**")
372 to receive, deposit, and hold funds and other items in escrow and, subject to Collection, disburse them upon proper
373 authorization and in accordance with Florida law and the terms of this Contract, including disbursing brokerage
374 fees. "**Collection**" or "**Collected**" mean any checks tendered or received have become actually and finally collected
375 and deposited in the account of **Agent**. The parties agree that **Agent** will not be liable to any person for misdelivery
376 of escrowed items to **Seller** or **Buyer**, unless the misdelivery is due to **Agent's** willful breach of this Contract or
377 gross negligence. If **Agent** interpleads the subject matter of the escrow, **Agent** will pay the filing fees and costs from
378 the deposit and will recover reasonable attorneys' fees and costs to be paid from the escrowed funds or equivalent
379 and charged and awarded as court costs in favor of the prevailing party. All claims against **Agent** will be arbitrated,
380 so long as **Agent** consents to arbitrate.

381 **18. Professional Advice; Broker Liability:** **Broker** advises **Seller** and **Buyer** to verify all facts and representations
382 that are important to them and to consult an appropriate professional for legal advice (for example, interpreting
383 contracts, determining the effect of laws on the Property and transaction, status of title, foreign investor reporting
384 requirements, the effect of property lying partially or totally seaward of the coastal construction control line, etc.)

Buyer () () and **Seller** () acknowledge receipt of a copy of this page, which is Page 7 of 9.

[Handwritten signature]

420* **21. Additional Terms:** Buyer plans to demolish the existing improvements, is aware that the property was previously
 421 impacted by flooding, waives all property disclosures, has performed all necessary inspections, and will purchase
 422 the property "as is".
 423 _____
 424 Buyer to pay all closing costs.
 425 _____
 426 Real Estate Commission of 5% of the purchase price will be paid by the Buyer at closing to SVN Southland
 427 Commercial.
 428 _____
 429 SVNCRE Group dba SVN Southland Commercial Real Estate, and it's associates, are acting as TRANSACTION
 430 BROKER. Buyers and Sellers have been provided with a copy of the Transaction Broker Notice.
 431 _____

432 **22. Offer and Acceptance:** Buyer offers to purchase the Property on the above terms and conditions. Unless this
 433* Contract is signed by Seller and a copy delivered to Buyer no later than 4:30 a.m. p.m. on
 434* March 8, 2019, this offer will be revoked and Buyer's deposit(s) refunded subject to Collection of funds.
 435* Buyer received a written real property disclosure statement from Seller before making this offer.

436 **23. Counter Offer; Rejection:**
 437* Seller counters Buyer's offer. (To accept the counter offer, Buyer must sign or initial the counter offered terms
 438 and deliver a copy of the acceptance to Seller.) Unless otherwise stated, the time for acceptance of any counter
 439 offer will be 2 days after the date the counter offer is delivered.
 440* Seller rejects Buyer's offer.

441 **This is intended to be a legally binding contract. If not fully understood, seek the advice of an attorney before**
 442 **signing.**

443* **Buyer:** _____ Date: _____

444* Print name: Keith Wilkins, Assistant City Administrator, City of Pensacola

445* **Buyer:** _____ Date: _____

446* Print name: _____

447 **Buyer's address for purpose of notice:**

448* Address: 222 West Main Street, Pensacola, FL 32502

449* Phone: 850-436-5627 Fax: 850-435-1611 Email: kwilkins@cityofpensacola.com

450* **Seller:** _____ Date: 2/24/2019

DocuSigned by:

 FF871B10-425A-4441

451* Print name: Justin W. Wickes

452* **Seller:** _____ Date: _____

453* Print name: _____

454 **Seller's address for purpose of notice:**

455* Address: 1106 E Fisher Street, Pensacola, FL 32503

456* Phone: 850-723-5965 Fax: _____ Email: jabogca06@gmail.com

457* **Effective Date:** _____ (The date on which the last party signed or initialed and delivered
 458 **the final offer or counter offer.)**

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Buyer (_____) (_____) and **Seller** () acknowledge receipt of a copy of this page, which is Page 9 of 9.

Contract for Residential Sale and Purchase

1* 1. Sale and Purchase: Chad D. Summerlin and Erica Uebelsteadt ("Seller")
2* and The City of Pensacola ("Buyer")

3 (the "parties") agree to sell and buy on the terms and conditions specified below the property described as:

4* Street Address: 1108 E. Fisher Street

5* City: Pensacola Zip Code: 32503 County: Escambia

6* Legal Description: LT 16 BLK 349 New City Tract, City of Pensacola, according to the map of said City
7 Copyrighted by Thomas C. Watson in 1906.

8* Tax ID No.: 000S009025160349 together with all existing improvements and attached
9 items, including fixtures; built-in furnishings; major appliances including but not limited to range(s), refrigerator(s), dishwasher(s),
10* washer(s), and dryer(s)); (#) ceiling fans (all ceiling fans if left blank); light fixtures; attached wall-to-wall carpeting; and rods,
11 draperies, and other window treatments as of date of Buyer's initial offer. The only other items included in the purchase are:
12* _____
13 _____

14* The following attached items are excluded from the purchase: With the exception of the exterior walls, doors,
15 windows, and hardware required to secure the building, sellers can remove any and all items, including attached
16 items, up to the day of closing.

17 The real and personal property described above as included in the purchase is referred to as the "Property."
18 Personal property listed in this Contract is included in the purchase price, has no contributory value, and is being
19 left for Seller's convenience.

20* 2. Purchase Price: \$182,000.00 payable by Buyer in U.S. currency as follows:

21 All deposits will be made payable to "Escrow Agent" named below and held in escrow by:
22* Escrow Agent's Name: William H. Mitchem, Attorney at Law
23* Escrow Agent's Address: 501 Commendencia Street, Pensacola, FL 32502
24* Escrow Agent's Phone: (850) 469-3318

25* (a) \$ 0.00 "Initial Deposit" (\$0 if left blank) (Check if applicable)
26* accompanies offer
27* to be delivered to Escrow Agent within _____ days (3 days if left blank) after
28 Effective Date

29* (b) \$ 0.00 Additional deposit to be delivered to Escrow Agent by _____ or within
30* _____ days (10 days if left blank) after Effective Date

31* (c) \$0.00 Total Financing (see Paragraph 3 below) (express as a dollar amount or percentage)

32* (d) \$ _____ Other: _____

33* (e) \$ 182,000.00 Balance to close (not including Buyer's closing costs, prepaid items, and prorations)
34 All funds paid at Closing must be paid by wire transfer or other Collected funds.

35 3. Financing: (Check as applicable)

36* (a) Buyer will pay cash or obtain financing for the purchase of the Property. This Contract is not contingent on
37 financing or appraised value unless otherwise stated herein.

38* (b) Buyer will apply for new conventional FHA VA other (specify) _____
39 financing specified in Paragraph 2(c) at the prevailing interest rate and loan costs based on Buyer's
40* creditworthiness (the "Financing") within _____ days (5 days if left blank) after Effective Date and provide
41 Seller with either a written Financing commitment or approval letter ("Commitment") or written notice that Buyer
42* is unable to obtain a Commitment within _____ days (the earlier of 30 days after Effective Date or 10 days
43 before Closing Date if left blank) after Effective Date ("Commitment Period"). Buyer will keep Seller and Broker
44 fully informed about loan application status, progress, and Commitment issues and authorizes the mortgage
45 broker and lender to disclose all such information to Seller and Broker. If, after using diligence and good faith,
46 Buyer is unable to obtain a Commitment and provides Seller with written notice before expiration of the
47 Commitment Period that Buyer is unable to obtain a Commitment, either party may thereafter cancel this

Buyer (_____) (_____) and Seller (DS) (DS) (CDS) (EU) acknowledge receipt of a copy of this page, which is Page 1 of 9.

48 Contract; and Buyer's deposit(s) will be refunded. Buyer's failure to timely provide Seller with written notice
49 that Buyer is unable to obtain a Commitment will result in forfeiture of Buyer's deposit(s) if Buyer fails to close.
50 Once Buyer provides the Commitment to Seller, the financing contingency is waived and Seller will be entitled
51 to retain the deposit(s) if the transaction does not close by the Closing Date unless (i) the Property appraises
52 below the purchase price and either the parties cannot agree on a new purchase price or Buyer elects not to
53 proceed, or (ii) the property related conditions of the Commitment have not been met (except when such
54 conditions are waived by other provisions of this Contract), or (iii) the loan is not funded due to financial failure
55 of Buyer's lender, or (iv) another provision of this Contract provides for cancellation.

56 4. Closing Date; Occupancy: Unless the Closing Date is specifically extended by Seller and Buyer or by any other
57 provision in this Contract, the Closing Date will prevail over all other time periods including, but not limited to,
58* financing and inspection periods. Closing of this Contract (the "Closing") will occur on May 6, 2019
59 ("Closing Date") at the time established by the Closing Agent, by which time Seller will (i) have removed all personal
60 items and trash from the Property and swept the Property clean and (ii) deliver the deed, occupancy, and
61 possession, along with all keys, garage door openers, and access codes to Buyer. If on Closing Date insurance
62 underwriting is suspended, Buyer may postpone Closing for up to 5 days after the insurance suspension is lifted.
63 If Paragraph 3(b) is selected and closing funds from Buyer's lender(s) are not available on Closing Date due to
64 Consumer Financial Protection Bureau Closing Disclosure delivery requirements (CFPB Requirements), then
65 Closing Date will be extended for such period necessary to satisfy CFPB Requirements, provided such period does
66 not exceed 10 days. If this transaction does not close for any reason, Buyer will immediately return all Seller-
67 provided title evidence, surveys, association documents, and other items, failing which Buyer authorizes Closing
68* Agent to reimburse Seller \$0.00 (\$100 if left blank) from the deposit(s) for the cost of the documents.

69 5. Closing Procedure; Costs: Closing will take place in the county where the Property is located and may be
70 conducted by mail or electronic means. If title insurance insures Buyer for title defects arising between the title
71 binder effective date and recording of Buyer's deed, Closing Agent will disburse at Closing the net sale proceeds
72 to Seller and brokerage fees to Broker as per Paragraph 19. In addition to other expenses provided in this Contract,
73 Seller and Buyer will pay the costs indicated below.

74 (a) Seller Costs:
75 Taxes and surtaxes on the deed
76 Recording fees for documents needed to cure title
77* Repairs and Permits: Seller will pay up to \$0.00 or _____% (1.5% if left blank) of the purchase
78* price for repairs to warranted items ("Repair Limit"); and up to \$0.00 or _____% (1.5% if left
79 blank) of the purchase price for wood-destroying organism treatment and repairs ("WDO Repair Limit"); and up
80* to \$0.00 or _____% (1.5% if left blank) of the purchase price for costs associated with closing out
81 open permits and obtaining required permits for unpermitted existing improvements ("Permit Limit").
82* Other: _____

83 (b) Buyer Costs:
84 Taxes and recording fees on notes and mortgages
85 Recording fees on the deed and financing statements
86 Loan expenses
87 Lender's title policy
88 Inspections
89 Survey
90 Flood insurance, homeowner's insurance, hazard insurance
91* Other: _____

92 (c) Title Evidence and Insurance: If Seller has an owner's title policy covering the Property, Seller will provide a
93 copy to Buyer and title agent within 5 days after Effective Date. The charges for title evidence and any lender's
94 policy will be calculated and allocated in accordance with Florida law but may be reported differently on certain
95 federally-mandated closing disclosures and other closing documents.

96 Check (1) or (2)

97* (1) The title evidence will be a Paragraph 10(a)(1) owner's title insurance commitment. Seller will select
98 the title agent and Closing Agent and will pay for the owner's title policy; title search, including tax and lien
99* search; and all other fees charged by title agent and Closing Agent or Buyer will select the title agent
100 and Closing Agent and pay for the owner's title policy; title search, including tax and lien search; and all
101* other fees charged by title agent and Closing Agent or Buyer will select the title agent and Closing Agent,

Buyer (_____) (_____) and Seller (DS) (EU) acknowledge receipt of a copy of this page, which is Page 2 of 9.

102 and **Seller** will pay for the owner's title policy; title search, including tax and lien search; and all other fees
103 charged by title agent and Closing Agent.

104* (2) **Seller** will provide an abstract as specified in Paragraph 10(a)(2) as title evidence. **Seller** **Buyer** will
105 pay for the owner's title policy and select the title agent and Closing Agent. **Seller** will pay fees for title
106 searches, including tax and lien searches, before Closing, and **Buyer** will pay fees for title searches,
107 including tax and lien searches, after Closing (if any) and all other fees charged by title agent and Closing
108 Agent.

109 (d) **Prorations:** The following items will be made current (if applicable) and prorated as of the day before Closing:
110 real estate taxes (including special benefit tax assessments imposed by a community development district
111 ("CDD")), interest, bonds, assessments, association fees, insurance, rents, and other current expenses and
112 revenues of the Property. If taxes and assessments for the current year cannot be determined, taxes will be
113 prorated on the basis of taxes for the preceding year as of the day before Closing and will be computed and
114 readjusted, at either party's request, when the current taxes are determined with adjustment for exemptions
115 and improvements. If there are completed improvements on the Property by January 1 of the year of the
116 Closing, which improvements were not in existence on January 1 of the prior year, taxes will be prorated based
117 on the prior year's millage and at an equitable assessment to be agreed upon by the parties before Closing,
118 failing which, request will be made to the County Property Appraiser for an informal assessment taking into
119 consideration available exemptions. If the County Property Appraiser is unable or unwilling to perform an
120 informal assessment before Closing, **Seller** and **Buyer** will split the cost of a private appraiser to perform an
121 assessment before Closing. Nothing in this Paragraph will act to extend the Closing Date. This provision will
122 survive Closing.

123 (e) **Special Assessment by Public Body:** Regarding special assessments imposed by a public body, **Seller** will
124 pay (i) the full amount of liens that are certified, confirmed, and ratified before Closing and (ii) the amount of the
125 last estimate of the assessment if an improvement is substantially completed as of Effective Date but has not
126 resulted in a lien before Closing; and **Buyer** will pay all other amounts. If special assessments may be paid in
127* installments **Seller** **Buyer** (**Buyer** if left blank) will pay installments due after Closing. If **Seller** is checked,
128 **Seller** will pay the assessment in full before or at the time of Closing. Public body does not include a
129 Homeowners' Association or Condominium Association. Paragraph 5(e) does not apply to a special benefit tax
130 lien imposed by a CDD pursuant to Chapter 190, Florida Statutes, which lien will be prorated pursuant to
131 Paragraph 5(d).

132 (f) **Tax Withholding:** **Seller** and **Buyer** will comply with the Foreign Investment in Real Property Tax Act, which
133 may require **Seller** to provide additional cash at Closing if **Seller** is a "foreign person" as defined by federal law.

134* (g) **Home Warranty:** **Seller** **Buyer** N/A will pay for a home warranty plan issued by
135* _____ at a cost not to exceed \$_____.
136 A home warranty plan provides for repair or replacement of many of a home's mechanical systems and major
137 built-in appliances in the event of breakdown due to normal wear and tear during the agreement period.

138 6. **Inspection Periods:** **Buyer** will complete all inspections referenced in Paragraphs 7(b), 8(a)(2), 8(b), and 8(c) by
139* _____ (the earlier of 10 days after Effective Date or 10 days before Closing Date if left blank)
140 ("Inspection Period").

141 7. **Real Property Disclosures:** **Seller** represents that **Seller** does not know of any facts that materially affect the
142 value of the Property, including but not limited to violations of governmental laws, rules, and regulations, other than
143 those that **Buyer** can readily observe or that are known by or have been disclosed to **Buyer**.

144 (a) **Energy Efficiency:** **Buyer** acknowledges receipt of the energy-efficiency information brochure required by
145 Section 553.996, Florida Statutes.

146 (b) **Radon Gas:** Radon is a naturally occurring radioactive gas that, when it has accumulated in a building in
147 sufficient quantities, may present health risks to persons who are exposed to it over time. Radon levels that
148 exceed federal and state guidelines have been found in buildings in Florida. Additional information regarding
149 radon and radon testing may be obtained from your county public health unit. **Buyer** may, within the Inspection
150 Period, have an appropriately licensed person test the Property for radon. If the radon level exceeds acceptable
151 EPA standards, **Seller** may choose to reduce the radon level to an acceptable EPA level, failing which either
152 party may cancel this Contract.

153 (c) **Flood Zone:** **Buyer** is advised to verify by survey, with the lender, and with appropriate government agencies
154 which flood zone the Property is in, whether flood insurance is required, and what restrictions apply to improving
155 the Property and rebuilding in the event of casualty. If the Property is in a Special Flood Hazard Area or Coastal
156 High Hazard Area and the buildings are built below the minimum flood elevation, **Buyer** may cancel this

Buyer (_____) (_____) and Seller (DS) (EU) acknowledge receipt of a copy of this page, which is Page 3 of 9.

- 157 Contract by delivering written notice to **Seller** within 20 days after Effective Date, failing which **Buyer** accepts
 158 the existing elevation of the buildings and zone designation of the Property.
 159 (d) **Homeowners' Association:** If membership in a homeowners' association is mandatory, an association
 160 disclosure summary is attached and incorporated into this Contract. **BUYER SHOULD NOT SIGN THIS**
 161 **CONTRACT UNTIL BUYER HAS RECEIVED AND READ THE DISCLOSURE SUMMARY.**
 162 (e) **PROPERTY TAX DISCLOSURE SUMMARY:** BUYER SHOULD NOT RELY ON THE **SELLER'S** CURRENT
 163 PROPERTY TAXES AS THE AMOUNT OF PROPERTY TAXES THAT **BUYER** MAY BE OBLIGATED TO PAY
 164 IN THE YEAR SUBSEQUENT TO PURCHASE. A CHANGE OF OWNERSHIP OR PROPERTY
 165 IMPROVEMENTS TRIGGERS REASSESSMENTS OF THE PROPERTY THAT COULD RESULT IN HIGHER
 166 PROPERTY TAXES. IF YOU HAVE ANY QUESTIONS CONCERNING VALUATION, CONTACT THE
 167 COUNTY PROPERTY APPRAISER'S OFFICE FOR FURTHER INFORMATION.
 168 (f) **Mold:** Mold is part of the natural environment that, when accumulated in sufficient quantities, may present
 169 health risks to susceptible persons. For more information, contact the county indoor air quality specialist or
 170 other appropriate professional.
 171 (g) **Coastal Construction Control Line:** If any part of the Property lies seaward of the coastal construction control
 172 line ("CCCL") as defined in Section 161.053, Florida Statutes, **Seller** will provide **Buyer** with an affidavit or
 173 survey as required by law delineating the line's location on the Property, unless **Buyer** waives this requirement
 174 in writing. The Property being purchased may be subject to coastal erosion and to federal, state, or local
 175 regulations that govern coastal property, including delineation of the CCCL, rigid coastal protection structures,
 176 beach nourishment, and the protection of marine turtles. Additional information can be obtained from the Florida
 177 Department of Environmental Protection, including whether there are significant erosion conditions associated
 178 with the shoreline of the Property being purchased.
 179* **Buyer** waives the right to receive a CCCL affidavit or survey.

180 **8. Maintenance, Inspections, and Repair:** **Seller** will keep the Property in the same condition from Effective Date
 181 until Closing, except for normal wear and tear ("Maintenance Requirement") and repairs required by this Contract.
 182 **Seller** will provide access and utilities for **Buyer's** inspections and appraisals. **Buyer** will repair all damages to the
 183 Property resulting from the inspections, return the Property to its pre-inspection condition, and provide **Seller** with
 184 paid receipts for all work done on the Property upon its completion. If **Seller** is unable to complete required repairs
 185 or treatments or meet the Maintenance Requirement before Closing, **Seller** will give **Buyer** a credit at Closing for
 186 the cost of the repairs and maintenance **Seller** was obligated to perform. At Closing, **Seller** will assign all assignable
 187 repair and treatment contracts to **Buyer** and provide **Buyer** with paid receipts for all work done on the Property
 188 pursuant to the terms of this Contract.

- 189 (a) **Warranty, Inspections, and Repair:**
 190 (1) **Warranty:** **Seller** warrants that non-leased major appliances; heating, cooling, mechanical, electrical,
 191 security, sprinkler, septic, and plumbing systems; seawall; dock; and pool equipment, if any, are and will
 192 be maintained in working condition until Closing; that the structures (including roofs, doors, and windows)
 193 and pool, if any, are structurally sound and watertight; and that torn or missing screens, missing roof tiles,
 194 and fogged windows will be repaired or replaced. Limited remaining life of any warranted item will not be
 195 considered a defect that must be repaired or replaced by **Seller**. **Seller** does not warrant and is not required
 196 to repair cosmetic conditions, unless the cosmetic condition resulted from a defect in a warranted item.
 197 **Seller** is not obligated to bring any item into compliance with existing building code regulations unless
 198 necessary to repair a warranted item. "Working condition" means operating in the manner in which the item
 199 was designed to operate and "cosmetic conditions" means aesthetic imperfections that do not affect the
 200 working condition of the item, including pitted marcite; tears, worn spots, and discoloration of floor
 201 coverings/wallpapers/window treatments; caulking in bathroom; nail holes, scratches, dents, scrapes, and
 202 chips in ceilings/walls/flooring/tile/fixtures/mirrors; cracked roof tiles; curling or worn shingles; and minor
 203 cracks in floor tiles/windows/driveways/sidewalks/pool decks/garage and patio floors.
 204 (2) **Professional Inspection:** **Buyer** may, at **Buyer's** expense, have warranted items inspected by a person
 205 who specializes in and holds a license (if required by law) to conduct home inspections or who holds a
 206 Florida license to repair and maintain the items inspected ("professional inspector"). **Buyer** must, within 5
 207 days after the end of Inspection Period, deliver written notice of any items that are not in the condition
 208 warranted and a copy of the portion of the inspector's written report dealing with such items to **Seller**. If
 209 **Buyer** fails to timely deliver written notice, **Buyer** waives **Seller's** warranty and accepts the items listed in
 210 Subparagraph (a) above in their "as is" conditions, except that **Seller** must meet the Maintenance
 211 Requirement.
 212 (3) **Repair:** **Seller** will obtain repair estimates and is obligated only to make repairs necessary to bring
 213 warranted items into the condition warranted, up to the Repair Limit. **Seller** may, within 5 days after receipt
 214 of **Buyer's** notice of items that are not in the condition warranted, have a second inspection made by a

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215 professional inspector and will report repair estimates to **Buyer**. If the first and second inspection reports
216 differ and the parties cannot resolve the differences, **Seller** and **Buyer** together will choose, and equally
217 split the cost of, a third inspector, whose written report will be binding on the parties. If the cost to repair
218 warranted items equals or is less than the Repair Limit, **Seller** will have the repairs made in a workmanlike
219 manner by an appropriately licensed person. If the cost to repair warranted items exceeds the Repair Limit,
220 either party may cancel this Contract unless either party pays the excess or **Buyer** designates which repairs
221 to make at a total cost to **Seller** not exceeding the Repair Limit and accepts the balance of the Property in
222 its "as is" condition.

223 (b) **Wood-Destroying Organisms:** "Wood-destroying organism" means arthropod or plant life, including termites,
224 powder-post beetles, old house borers, and wood-decaying fungi, that damages or infests seasoned wood in a
225 structure, excluding fences. **Buyer** may, at **Buyer's** expense, have the Property inspected by a Florida-licensed
226 pest control business to determine the existence of past or present wood-destroying organism infestation and
227 damage caused by infestation. If the inspector finds evidence of infestation or damage, **Buyer** will deliver a
228 copy of the inspector's written report to **Seller** within 5 days after the date of the inspection. If **Seller** previously
229 treated the Property for the type of wood-destroying organisms found, **Seller** does not have to treat the Property
230 again if (i) there is no visible live infestation and (ii) **Seller** transfers to **Buyer** at Closing a current full treatment
231 warranty for the type of wood-destroying organisms found. **Seller** will have 5 days after receipt of the inspector's
232 report to have reported damage estimated by a licensed building or general contractor and corrective treatment,
233 if required, estimated by a licensed pest control business. **Seller** will have treatments and repairs made by an
234 appropriately licensed person at **Seller's** expense up to the WDO Repair Limit. If the cost to treat and repair
235 the Property exceeds the WDO Repair Limit, either party may pay the excess, failing which either party may
236 cancel this Contract by written notice to the other. If **Buyer** fails to timely deliver the inspector's written report,
237 **Buyer** accepts the Property "as is" with regard to wood-destroying organism infestation and damage, subject
238 to the Maintenance Requirement.

239 (c) **Permits:** **Buyer** may, at **Buyer's** expense, inspect and examine records and documents to determine whether
240 any open or expired building permits or unpermitted improvements to the Property exist. **Buyer** will, before the
241 end of the Inspection Period, deliver written notice to **Seller** of the existence of such; and **Seller** will remedy
242 the reported items up to the Permit Limit and have final inspections completed no later than 5 days before
243 Closing. If final inspections cannot be performed due to delays by the governmental entity, Closing will be
244 extended for up to 10 days to complete such final inspections, failing which either party may cancel this
245 Contract; and **Buyer's** deposit(s) will be refunded. At Closing, **Seller** will provide **Buyer** with written
246 documentation that all reported items have been remedied. If the cost to remedy reported items exceeds the
247 Permit Limit, either party may cancel this Contract unless either party pays the excess or **Buyer** accepts the
248 Property in its "as is" condition and **Seller** credits **Buyer** at Closing the amount of the Permit Limit.

249 (d) **Walk-Through Inspection; Reinspection:** On the day before Closing or at any other time agreeable to the
250 parties, **Buyer**, and/or **Buyer's** representative, may walk through the Property solely to verify that **Seller** has
251 made repairs required by this Contract, has met the Maintenance Requirement, and has met contractual
252 obligations. If **Buyer**, and/or **Buyer's** representative, fails to conduct this inspection, **Seller's** repair obligations
253 and Maintenance Requirement will be deemed fulfilled.

254 9. **Risk of Loss:** If any portion of the Property is damaged by fire or other casualty before Closing and can be restored
255 by Closing or within 45 days after Closing Date to substantially the same condition as it was on Effective Date,
256 **Seller** will, at **Seller's** expense, restore the Property and deliver written notice to **Buyer** that **Seller** has completed
257 the restoration; and the parties will close the transaction on the later of Closing Date or 10 days after **Buyer** receives
258 **Seller's** notice. **Seller** will not be obligated to replace trees. If restoration cannot be timely completed, **Buyer** may
259 cancel this Contract, and **Buyer's** deposit(s) will be refunded; or **Buyer** may accept the property "as is" and **Seller**
260 will credit the deductible and assign the insurance proceeds, if any, to **Buyer** at Closing in such amounts as are
261 attributable to the Property and not yet expended in restoring the Property to the same condition as it was on
262 Effective Date.

263 10. **Title:** **Seller** will convey marketable title to the Property by statutory warranty deed or trustee, personal
264 representative, or guardian deed as appropriate to **Seller's** status.

265 (a) **Title Evidence:** Title evidence will show legal access to the Property and marketable title of record in **Seller** in
266 accordance with current title standards adopted by the Florida Bar, subject only to the following title exceptions,
267 none of which prevent residential use of the Property: covenants, easements, and restrictions of record; matters
268 of plat; existing zoning and government regulations; oil, gas, and mineral rights of record if there is no right of
269 entry; current taxes; mortgages that **Buyer** will assume; and encumbrances that **Seller** will discharge before or
270* at Closing. The party paying for the owner's title policy will, at least _____ days (if Paragraph 3(a) is selected
271 then 5 days or if Paragraph 3(b) is selected then 10 days, if left blank) ("Title Evidence Deadline") before

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272 Closing, deliver to **Buyer** one of the following types of title evidence (see Paragraph 5(c)), which must be
 273 generally accepted in the county where the Property is located. **Seller** will use option (2) in Miami-Dade County.
 274 (1) **A title insurance commitment** issued by a Florida-licensed title insurer in the amount of the purchase
 275 price and subject only to title exceptions set forth in this Contract.
 276 (2) **An existing abstract of title** from a reputable and existing abstract firm (if firm is not existing, then abstract
 277 must be certified as correct by an existing firm) purporting to be an accurate synopsis of the instruments
 278 affecting title to the Property recorded in the public records of the county where the Property is located and
 279 certified to Effective Date. However, if such an abstract is not available to **Seller**, then a **prior owner's title**
 280 **policy** acceptable to the proposed insurer as a base for reissuance of coverage. **Seller** will pay for copies
 281 of all policy exceptions and an update in a format acceptable to Closing Agent from the policy effective date
 282 and certified to **Buyer** or Closing Agent, together with copies of all documents recited in the prior policy and
 283 in the update. If a prior policy is not available to **Seller** then (1) above will be the title evidence.
 284 (b) **Title Examination:** **Buyer** will examine the title evidence and deliver written notice to **Seller**, within 5 days after
 285 receipt of title evidence but no later than Closing Date, of any defects that make the title unmarketable. **Seller**
 286 will have 30 days after receiving **Buyer's** notice of defects ("Curative Period") to cure the defects at **Seller's**
 287 expense. If **Seller** cures the defects within the Curative Period, **Seller** will deliver written notice to **Buyer** and
 288 the Closing will occur on Closing Date or within 10 days after **Buyer** receives **Seller's** notice if Closing Date
 289 has passed. If **Seller** is unable to cure the defects within the Curative Period, **Seller** will deliver written notice
 290 to **Buyer** and **Buyer** will, within 10 days after receiving **Seller's** notice, either cancel this Contract, extend
 291 Curative Period for a specified period not to exceed 120 days, or accept title with existing defects and close the
 292 transaction.
 293 (c) **Survey:** On or before Title Evidence Deadline, **Buyer** may, at **Buyer's** expense, have the Property surveyed
 294 and must deliver written notice to **Seller** within 5 days after receiving survey but no later than Closing, of any
 295 encroachments on the Property, encroachments by the Property's improvements on other lands, or deed
 296 restriction or zoning violations. If **Buyer** timely delivers such notice, any reported encroachment or violation will
 297 be treated in the same manner as a title defect, and **Seller's** and **Buyer's** obligations will be determined in
 298 accordance with Subparagraph (b) above.

299 **11. Effective Date; Time; Force Majeure:**

300 (a) **Effective Date:** The "Effective Date" of this Contract is the date on which the last of the parties initials or signs
 301 and delivers the final offer or counter offer. **Time is of the essence for all provisions of this Contract.**
 302 (b) **Time:** All time periods will be computed in business days (a "business day" is every calendar day except
 303 Saturday, Sunday, and national legal holidays). If any deadline falls on a Saturday, Sunday, or national legal
 304 holiday, performance will be due the next business day. All time periods will end at 5:00 p.m. local time (meaning
 305 in the county where the Property is located) of the appropriate day.
 306 (c) **Force Majeure:** **Seller** or **Buyer** will not be required to perform any obligation under this Contract or be liable
 307 to each other for damages so long as the performance or non-performance of the obligation is delayed, caused,
 308 or prevented by an "act of God" or "force majeure." An act of God or force majeure is defined as hurricanes,
 309 earthquakes, floods, fire, unusual transportation delays, wars, insurrections, acts of terrorism, and any other
 310 such causes and which by the exercise of due diligence the non-performing party is unable in whole or in part
 311 to prevent or overcome. All time periods, including Closing Date, will be extended for the period that the act of
 312 God or force majeure is in place. However, if such act of God or force majeure event continues beyond 30 days,
 313 either party may cancel this Contract by delivering written notice to the other; and **Buyer's** deposit(s) will be
 314 refunded.

315 **12. Notices:** All notices will be in writing and will be delivered to the parties and Broker by mail, personal delivery, or
 316 electronic media. Except for the notices required by Paragraph 3 of this Contract, **Buyer's failure to timely deliver**
 317 **written notice to Seller, when such notice is required by this Contract, regarding any contingency will**
 318 **render that contingency null and void, and this Contract will be construed as if the contingency did not**
 319 **exist. Any notice, document, or item delivered to or received by an attorney or licensee (including a**
 320 **transaction broker) representing a party will be as effective as if delivered to or received by that party.**

321 **13. Complete Agreement:** This Contract is the entire agreement between **Seller** and **Buyer**. **Except for brokerage**
 322 **agreements, no prior or present agreements will bind Seller, Buyer, or Broker unless incorporated into this**
 323 **Contract.** Modifications of this Contract will not be binding unless in writing, signed or initialed, and delivered by
 324 the party to be bound. Electronic signatures will be acceptable and binding. Signatures, initials, documents
 325 referenced in this Contract, counterparts, and written modifications communicated electronically or on paper will be
 326 acceptable for all purposes, including delivery, and will be binding. Handwritten or typewritten terms inserted in or
 327 attached to this Contract prevail over preprinted terms. If any provision of this Contract is or becomes invalid or

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328 unenforceable, all remaining provisions will continue to be fully effective. **Seller** and **Buyer** will use diligence and
329 good faith in performing all obligations under this Contract. This Contract will not be recorded in any public records.

330 **14. Assignability; Persons Bound:** **Buyer** may not assign this Contract without **Seller's** written consent. The terms
331 "**Seller**," "**Buyer**," and "**Broker**" may be singular or plural. This Contract is binding on the heirs, administrators,
332 executors, personal representatives, and assigns (if permitted) of **Seller**, **Buyer**, and **Broker**.

333 **15. Default:**
334 (a) **Seller Default:** If for any reason other than failure of **Seller** to make **Seller's** title marketable after diligent effort,
335 **Seller** fails, refuses, or neglects to perform this Contract, **Buyer** may choose to receive a return of **Buyer's**
336 deposit(s) without waiving the right to seek damages or to seek specific performance as per Paragraph 16.
337 **Seller** will also be liable to **Broker** for the full amount of the brokerage fee.
338 (b) **Buyer Default:** If **Buyer** fails to perform this Contract within the time specified, including timely payment of all
339 deposits, **Seller** may choose to retain and collect all deposits paid and agreed to be paid as liquidated damages
340 or to seek specific performance as per Paragraph 16; and **Broker** will, upon demand, receive 50% of all deposits
341 paid and agreed to be paid (to be split equally between **Brokers**) up to the full amount of the brokerage fee.

342 **16. Dispute Resolution:** This Contract will be construed under Florida law. All controversies, claims, and other matters
343 in question arising out of or relating to this transaction or this Contract or its breach will be settled as follows:

344 (a) **Disputes concerning entitlement to deposits made and agreed to be made:** **Seller** and **Buyer** will have 30
345 days after the date conflicting demands are made to attempt to resolve the dispute through mediation. If that
346 fails, Escrow Agent will submit the dispute, if so required by Florida law, to Escrow Agent's choice of arbitration,
347 a Florida court, or the Florida Real Estate Commission ("FREC"). A broker's obligation under Chapter 475,
348 Florida Statutes, and the FREC rules to timely notify the FREC of an escrow dispute and timely resolve the
349 escrow dispute through mediation, arbitration, interpleader, or an escrow disbursement order applies only to
350 brokers and does not apply to title companies, attorneys, or other escrow holders.
351 (b) **All other disputes:** **Seller**, **Buyer**, and **Broker** will have 30 days after the date a dispute arises between them
352 to attempt to resolve the matter through mediation, failing which the parties, including **Broker**, will resolve the
353 dispute through neutral binding arbitration in the county where the Property is located. However, no arbitration
354 arising out of or relating to this transaction or this Contract or its breach will include **Broker**, unless **Broker**
355 consents in writing to become a party to the proceeding. A demand for arbitration is prohibited if a civil action
356 requesting the same relief would be barred by Florida statute of limitations. The arbitrator may not alter the
357 Contract terms or award any remedy not provided for in this Contract. The award will be based on the greater
358 weight of the evidence and will state findings of fact and the contractual authority on which it is based. If the
359 parties agree to use discovery, it will be in accordance with the Florida Rules of Civil Procedure, and the
360 arbitrator will resolve all discovery-related disputes. For purposes of this Paragraph, **Broker** will be treated as a
361 party to this Contract. This clause will survive Closing.
362 (c) **Mediation and Arbitration; Expenses:** "Mediation" is a process in which parties attempt to resolve a dispute
363 by submitting it to an impartial mediator who facilitates the resolution of the dispute but who is not empowered
364 to impose a settlement on the parties. Mediation will be in accordance with the rules of the American Arbitration
365 Association ("AAA") or other mediator agreed on by the parties. The parties will equally divide the mediation
366 fee, if any. "Arbitration" is a process in which the parties resolve a dispute by a hearing before a neutral person
367 who decides the matter and whose decision is binding on the parties. Arbitration will be in accordance with the
368 rules of the AAA or other arbitrator agreed on by the parties. Each party to any arbitration will pay its own fees,
369 costs, and expenses, including attorneys' fees, and will equally split the arbitrators' fees and administrative fees
370 of arbitration.

371 **17. Escrow Agent; Closing Agent:** **Seller** and **Buyer** authorize Escrow Agent and Closing Agent (collectively "Agent")
372 to receive, deposit, and hold funds and other items in escrow and, subject to Collection, disburse them upon proper
373 authorization and in accordance with Florida law and the terms of this Contract, including disbursing brokerage
374 fees. "Collection" or "Collected" mean any checks tendered or received have become actually and finally collected
375 and deposited in the account of Agent. The parties agree that Agent will not be liable to any person for misdelivery
376 of escrowed items to **Seller** or **Buyer**, unless the misdelivery is due to Agent's willful breach of this Contract or
377 gross negligence. If Agent interpleads the subject matter of the escrow, Agent will pay the filing fees and costs from
378 the deposit and will recover reasonable attorneys' fees and costs to be paid from the escrowed funds or equivalent
379 and charged and awarded as court costs in favor of the prevailing party. All claims against Agent will be arbitrated,
380 so long as Agent consents to arbitrate.

381 **18. Professional Advice; Broker Liability:** **Broker** advises **Seller** and **Buyer** to verify all facts and representations
382 that are important to them and to consult an appropriate professional for legal advice (for example, interpreting
383 contracts, determining the effect of laws on the Property and transaction, status of title, foreign investor reporting
384 requirements, the effect of property lying partially or totally seaward of the coastal construction control line, etc.)

Buyer () () and **Seller** () () acknowledge receipt of a copy of this page, which is Page 7 of 9.

385 and for tax, property condition, environmental, and other specialized advice. Buyer acknowledges that Broker does
386 not reside in the Property and that all representations (oral, written, or otherwise) by Broker are based on Seller
387 representations or public records. Buyer agrees to rely solely on Seller, professional inspectors, and
388 governmental agencies for verification of the Property condition, square footage, and facts that materially
389 affect Property value. Seller and Buyer respectively will pay all costs and expenses, including reasonable
390 attorneys' fees at all levels, incurred by Broker and Broker's officers, directors, agents, and employees in connection
391 with or arising from Seller's or Buyer's misstatement or failure to perform contractual obligations. Seller and Buyer
392 hold harmless and release Broker and Broker's officers, directors, agents, and employees from all liability for loss
393 or damage based on (i) Seller's or Buyer's misstatement or failure to perform contractual obligations; (ii) the use
394 or display of listing data by third parties, including but not limited to photographs, images, graphics, video recordings,
395 virtual tours, drawings, written descriptions, and remarks related to the Property; (iii) Broker's performance, at
396 Seller's and/or Buyer's request, of any task beyond the scope of services regulated by Chapter 475, Florida
397 Statutes, as amended, including Broker's referral, recommendation, or retention of any vendor; (iv) products or
398 services provided by any vendor; and (v) expenses incurred by any vendor. Seller and Buyer each assume full
399 responsibility for selecting and compensating their respective vendors. This Paragraph will not relieve Broker of
400 statutory obligations. For purposes of this Paragraph, Broker will be treated as a party to this Contract. This
401 Paragraph will survive Closing.

402 19. Brokers: The licensee(s) and brokerage(s) named below are collectively referred to as "Broker." Instruction to
403 Closing Agent: Seller and Buyer direct Closing Agent to disburse at Closing the full amount of the brokerage fees
404 as specified in separate brokerage agreements with the parties and cooperative agreements between the brokers,
405 except to the extent Broker has retained such fees from the escrowed funds. In the absence of such brokerage
406 agreements, Closing Agent will disburse brokerage fees as indicated below. This Paragraph will not be used to
407 modify any MLS or other offer of compensation made by Seller or listing broker to cooperating brokers.

408* Lisa D. Bradley SL3113372
409 Seller's Sales Associate / License No.
410* lbradley@svn.com
411 Seller's Sales Associate Email Address
412* 850/712-2232 (Cell)
413 Seller's Sales Associate Phone Number
414*
415 Listing Firm / Brokerage Fee: (\$ or % of purchase price)
416*
417 Listing Firm / Brokerage Address

Lisa D. Bradley SL3113372
Buyer's Sales Associate / License No.
lbradley@svn.com
Buyer's Sales Associate Email Address
850/712-2232 (Cell)
Buyer's Sales Associate Phone Number
SVN Southland Comm. 5%
Buyer's Firm / Brokerage Fee: (\$ or % of purchase price)
120 E. Main Street, Ste. D, Pensacola, FL 32502
Buyer's Firm / Brokerage Address

418 20. Addenda: The following additional terms are included in the attached addenda and incorporated into this Contract
419 (Check if applicable and attach the addenda):

- | | | |
|--|---|--|
| <input type="checkbox"/> A. Additional Clauses | <input type="checkbox"/> N. Insurance | <input type="checkbox"/> W. Rentals |
| <input type="checkbox"/> B. Appraisal | <input type="checkbox"/> O. Interest-Bearing Escrow Account | <input type="checkbox"/> X. Rezoning |
| <input type="checkbox"/> C. As Is with Right to Inspect | <input type="checkbox"/> P. Lease Option; Lease Purchase | <input type="checkbox"/> Y. Sale/Lease of Buyer's Property |
| <input type="checkbox"/> D. Assignment | <input type="checkbox"/> Q. Licensee - Personal Interest in Property | <input type="checkbox"/> Z. Seller Financing |
| <input type="checkbox"/> E. Back-up Contract; Kick-out Clause | <input type="checkbox"/> R. Mold Inspection | <input type="checkbox"/> AA. Short Sale Approval |
| <input type="checkbox"/> F. Condominium Association | <input type="checkbox"/> S. Mortgage Assumption | <input type="checkbox"/> BB. VA Financing |
| <input type="checkbox"/> G. Defective Drywall | <input type="checkbox"/> T. New Mortgage Rates | <input type="checkbox"/> CC. 1031 Exchange |
| <input type="checkbox"/> H. FHA Financing | <input type="checkbox"/> U. Pre-1978 Housing Lead-Based Paint Warning Statement | <input type="checkbox"/> Other _____ |
| <input type="checkbox"/> I. FIRPTA | <input type="checkbox"/> V. Property Disclosure | <input type="checkbox"/> Other _____ |
| <input type="checkbox"/> J. Homeowners' Association | | <input type="checkbox"/> Other _____ |
| <input type="checkbox"/> K. Housing for Older Persons | | |
| <input type="checkbox"/> L. Inspections | | |
| <input type="checkbox"/> M. Insulation Disclosure (New Homes Only) | | |

Buyer (_____) (_____) and Seller (DS) (EU) acknowledge receipt of a copy of this page, which is Page 8 of 9.

420* **21. Additional Terms:** Buyer plans to demolish the existing improvements, is aware that the property was previously
421 impacted by flooding, waives all property disclosures, has performed all necessary inspections, and will purchase
422 the property "as is".

423
424 Buyer to pay all closing costs.

425
426 Real Estate Commission of 5% of the purchase price will be paid by the Buyer at closing to SVN Southland
427 Commercial.

428
429 SVNCRE Group dba SVN Southland Commercial Real Estate, and it's associates, are acting as TRANSACTION
430 BROKER. Buyers and Sellers have been provided with a copy of the Transaction Broker Notice.
431

432 **22. Offer and Acceptance:** Buyer offers to purchase the Property on the above terms and conditions. Unless this
433* Contract is signed by Seller and a copy delivered to Buyer no later than 4:30 a.m. p.m. on
434* April 4, 2019, this offer will be revoked and Buyer's deposit(s) refunded subject to Collection of funds.

435* Buyer received a written real property disclosure statement from Seller before making this offer.

436 **23. Counter Offer; Rejection:**

437* Seller counters Buyer's offer. (To accept the counter offer, Buyer must sign or initial the counter offered terms
438 and deliver a copy of the acceptance to Seller.) Unless otherwise stated, the time for acceptance of any counter
439 offer will be 2 days after the date the counter offer is delivered.

440* Seller rejects Buyer's offer.

441 **This is intended to be a legally binding contract. If not fully understood, seek the advice of an attorney before**
442 **signing.**

443* **Buyer:** _____ Date: _____

444* Print name: Keith Wilkins, Assistant City Administrator, City of Pensacola

445* **Buyer:** _____ Date: _____

446* Print name: _____

447 **Buyer's address for purpose of notice:**

448* Address: 222 West Main Street, Pensacola, FL 32502

449* Phone: 850-436-5627 Fax: 850-435-1611 Email: kwilkins@cityofpensacola.com

450* **Seller:** _____ Date: 3/6/2019
DocuSigned by:
Chad D. Summerlin

451* Print name: Chad D. Summerlin

452* **Seller:** _____ Date: 3/6/2019
Erica Uebelsteadt

453* Print name: Erica Uebelsteadt

454 **Seller's address for purpose of notice:**

455* Address: 1108 E Fisher Street, Pensacola, FL 32503

456* Phone: 850-207-9992 Fax: _____ Email: Cdsummerlin3@gmail.com

457* **Effective Date:** _____ (The date on which the last party signed or initialed and delivered
458 **the final offer or counter offer.)**

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Buyer (_____) (_____) and Seller (CDS) (EU) acknowledge receipt of a copy of this page, which is Page 9 of 9.

Contract for Residential Sale and Purchase

1. **Sale and Purchase:** Oliver Properties, LLC ("Seller")
and The City of Pensacola ("Buyer")

(the "parties") agree to sell and buy on the terms and conditions specified below the property described as:
Street Address: 1112 E. Fisher Street
City: Pensacola Zip Code: 32503 County: Escambia
Legal Description: LT 15 BLK 349 New City Tract, City of Pensacola, according to the map of said City
Copyrighted by Thomas C. Watson in 1906, of the Public Records of Escambia County Florida
Tax ID No.: 000S009025150349 together with all existing improvements and attached items, including fixtures; built-in furnishings; major appliances including but not limited to range(s), refrigerator(s), dishwasher(s), washer(s), and dryer(s)); (#) ceiling fans (all ceiling fans if left blank); light fixtures; attached wall-to-wall carpeting; and rods, draperies, and other window treatments as of date of Buyer's initial offer. The only other items included in the purchase are:

The following attached items are excluded from the purchase: With the exception of exterior walls, doors, windows, and hardware required to secure building, seller can remove any and all items, including attached items, up to the day of closing.

The real and personal property described above as included in the purchase is referred to as the "Property." Personal property listed in this Contract is included in the purchase price, has no contributory value, and is being left for Seller's convenience.

2. **Purchase Price:** \$104,000.00 payable by Buyer in U.S. currency as follows:
All deposits will be made payable to "Escrow Agent" named below and held in escrow by:
Escrow Agent's Name: William H. Mitchem, Attorney at Law
Escrow Agent's Address: 501 Commendancia Street, Pensacola, FL 32502
Escrow Agent's Phone: (850) 469-3318

- (a) \$ 0.00 Initial Deposit" (\$0 if left blank) (Check if applicable)
 accompanies offer
 to be delivered to Escrow Agent within days (3 days if left blank) after Effective Date
- (b) \$ 0.00 Additional deposit to be delivered to Escrow Agent by or within days (10 days if left blank) after Effective Date
- (c) \$0.00 Total Financing (see Paragraph 3 below) (express as a dollar amount or percentage)
- (d) \$ Other:
- (e) \$ 104,000.00 Balance to close (not including Buyer's closing costs, prepaid items, and prorations)
All funds paid at Closing must be paid by wire transfer or other Collected funds.

3. **Financing: (Check as applicable)**
(a) Buyer will pay cash or obtain financing for the purchase of the Property. This Contract is not contingent on financing or appraised value unless otherwise stated herein.
(b) Buyer will apply for new conventional FHA VA other (specify) financing specified in Paragraph 2(c) at the prevailing interest rate and loan costs based on Buyer's creditworthiness (the "Financing") within days (5 days if left blank) after Effective Date and provide Seller with either a written Financing commitment or approval letter ("Commitment") or written notice that Buyer is unable to obtain a Commitment within days (the earlier of 30 days after Effective Date or 10 days before Closing Date if left blank) after Effective Date ("Commitment Period"). Buyer will keep Seller and Broker fully informed about loan application status, progress, and Commitment issues and authorizes the mortgage broker and lender to disclose all such information to Seller and Broker. If, after using diligence and good faith, Buyer is unable to obtain a Commitment and provides Seller with written notice before expiration of the Commitment Period that Buyer is unable to obtain a Commitment, either party may thereafter cancel this

Buyer () () and Seller (TD) (RT) acknowledge receipt of a copy of this page, which is Page 1 of 9.

48 Contract; and Buyer's deposit(s) will be refunded. Buyer's failure to timely provide Seller with written notice
49 that Buyer is unable to obtain a Commitment will result in forfeiture of Buyer's deposit(s) if Buyer fails to close.
50 Once Buyer provides the Commitment to Seller, the financing contingency is waived and Seller will be entitled
51 to retain the deposit(s) if the transaction does not close by the Closing Date unless (i) the Property appraises
52 below the purchase price and either the parties cannot agree on a new purchase price or Buyer elects not to
53 proceed, or (ii) the property related conditions of the Commitment have not been met (except when such
54 conditions are waived by other provisions of this Contract), or (iii) the loan is not funded due to financial failure
55 of Buyer's lender, or (iv) another provision of this Contract provides for cancellation.

56 4. **Closing Date; Occupancy:** Unless the Closing Date is specifically extended by Seller and Buyer or by any other
57 provision in this Contract, the Closing Date will prevail over all other time periods including, but not limited to,
58* financing and inspection periods. Closing of this Contract (the "Closing") will occur on May 6, 2019
59 ("Closing Date") at the time established by the Closing Agent, by which time Seller will (i) have removed all personal
60 items and trash from the Property and swept the Property clean and (ii) deliver the deed, occupancy, and
61 possession, along with all keys, garage door openers, and access codes to Buyer. If on Closing Date insurance
62 underwriting is suspended, Buyer may postpone Closing for up to 5 days after the insurance suspension is lifted.
63 If Paragraph 3(b) is selected and closing funds from Buyer's lender(s) are not available on Closing Date due to
64 Consumer Financial Protection Bureau Closing Disclosure delivery requirements (CFPB Requirements), then
65 Closing Date will be extended for such period necessary to satisfy CFPB Requirements, provided such period does
66 not exceed 10 days. If this transaction does not close for any reason, Buyer will immediately return all Seller-
67 provided title evidence, surveys, association documents, and other items, failing which Buyer authorizes Closing
68* Agent to reimburse Seller \$0.00 (\$100 if left blank) from the deposit(s) for the cost of the documents.

69 5. **Closing Procedure; Costs:** Closing will take place in the county where the Property is located and may be
70 conducted by mail or electronic means. If title insurance insures Buyer for title defects arising between the title
71 binder effective date and recording of Buyer's deed, Closing Agent will disburse at Closing the net sale proceeds
72 to Seller and brokerage fees to Broker as per Paragraph 19. In addition to other expenses provided in this Contract,
73 Seller and Buyer will pay the costs indicated below.

74 (a) **Seller Costs:**

- 75 Taxes and surtaxes on the deed
- 76 Recording fees for documents needed to cure title
- 77* Repairs and Permits: Seller will pay up to \$0.00 or _____% (1.5% if left blank) of the purchase
78* price for repairs to warranted items ("Repair Limit"); and up to \$0.00 or _____% (1.5% if left
79 blank) of the purchase price for wood-destroying organism treatment and repairs ("WDO Repair Limit"); and up
80* to \$0.00 or _____% (1.5% if left blank) of the purchase price for costs associated with closing out
81 open permits and obtaining required permits for unpermitted existing improvements ("Permit Limit").
- 82* Other: _____

83 (b) **Buyer Costs:**

- 84 Taxes and recording fees on notes and mortgages
- 85 Recording fees on the deed and financing statements
- 86 Loan expenses
- 87 Lender's title policy
- 88 Inspections
- 89 Survey
- 90 Flood insurance, homeowner's insurance, hazard insurance
- 91* Other: _____

92 (c) **Title Evidence and Insurance:** If Seller has an owner's title policy covering the Property, Seller will provide a
93 copy to Buyer and title agent within 5 days after Effective Date. The charges for title evidence and any lender's
94 policy will be calculated and allocated in accordance with Florida law but may be reported differently on certain
95 federally-mandated closing disclosures and other closing documents.

96 **Check (1) or (2)**

97* (1) The title evidence will be a Paragraph 10(a)(1) owner's title insurance commitment. Seller will select
98 the title agent and Closing Agent and will pay for the owner's title policy; title search, including tax and lien
99* search; and all other fees charged by title agent and Closing Agent or Buyer will select the title agent
100 and Closing Agent and pay for the owner's title policy; title search, including tax and lien search; and all
101* other fees charged by title agent and Closing Agent or Buyer will select the title agent and Closing Agent,

Buyer (_____) (_____) and Seller (TD) (RT) acknowledge receipt of a copy of this page, which is Page 2 of 9.

102 and Seller will pay for the owner's title policy; title search, including tax and lien search; and all other fees
103 charged by title agent and Closing Agent.

104* (2) Seller will provide an abstract as specified in Paragraph 10(a)(2) as title evidence. Seller Buyer will
105 pay for the owner's title policy and select the title agent and Closing Agent. Seller will pay fees for title
106 searches, including tax and lien searches, before Closing, and Buyer will pay fees for title searches,
107 including tax and lien searches, after Closing (if any) and all other fees charged by title agent and Closing
108 Agent.

109 (d) **Prorations:** The following items will be made current (if applicable) and prorated as of the day before Closing:
110 real estate taxes (including special benefit tax assessments imposed by a community development district
111 ("CDD")), interest, bonds, assessments, association fees, insurance, rents, and other current expenses and
112 revenues of the Property. If taxes and assessments for the current year cannot be determined, taxes will be
113 prorated on the basis of taxes for the preceding year as of the day before Closing and will be computed and
114 readjusted, at either party's request, when the current taxes are determined with adjustment for exemptions
115 and improvements. If there are completed improvements on the Property by January 1 of the year of the
116 Closing, which improvements were not in existence on January 1 of the prior year, taxes will be prorated based
117 on the prior year's millage and at an equitable assessment to be agreed upon by the parties before Closing,
118 failing which, request will be made to the County Property Appraiser for an informal assessment taking into
119 consideration available exemptions. If the County Property Appraiser is unable or unwilling to perform an
120 informal assessment before Closing, Seller and Buyer will split the cost of a private appraiser to perform an
121 assessment before Closing. Nothing in this Paragraph will act to extend the Closing Date. This provision will
122 survive Closing.

123 (e) **Special Assessment by Public Body:** Regarding special assessments imposed by a public body, Seller will
124 pay (i) the full amount of liens that are certified, confirmed, and ratified before Closing and (ii) the amount of the
125 last estimate of the assessment if an improvement is substantially completed as of Effective Date but has not
126 resulted in a lien before Closing; and Buyer will pay all other amounts. If special assessments may be paid in
127* installments Seller Buyer (Buyer if left blank) will pay installments due after Closing. If Seller is checked,
128 Seller will pay the assessment in full before or at the time of Closing. Public body does not include a
129 Homeowners' Association or Condominium Association. Paragraph 5(e) does not apply to a special benefit tax
130 lien imposed by a CDD pursuant to Chapter 190, Florida Statutes, which lien will be prorated pursuant to
131 Paragraph 5(d).

132 (f) **Tax Withholding:** Seller and Buyer will comply with the Foreign Investment in Real Property Tax Act, which
133 may require Seller to provide additional cash at Closing if Seller is a "foreign person" as defined by federal law.

134* (g) **Home Warranty:** Seller Buyer N/A will pay for a home warranty plan issued by
135* _____ at a cost not to exceed \$_____.
136 A home warranty plan provides for repair or replacement of many of a home's mechanical systems and major
137 built-in appliances in the event of breakdown due to normal wear and tear during the agreement period.

138 6. **Inspection Periods:** Buyer will complete all inspections referenced in Paragraphs 7(b), 8(a)(2), 8(b), and 8(c) by
139* _____ (the earlier of 10 days after Effective Date or 10 days before Closing Date if left blank)
140 ("Inspection Period").

141 7. **Real Property Disclosures:** Seller represents that Seller does not know of any facts that materially affect the
142 value of the Property, including but not limited to violations of governmental laws, rules, and regulations, other than
143 those that Buyer can readily observe or that are known by or have been disclosed to Buyer.

144 (a) **Energy Efficiency:** Buyer acknowledges receipt of the energy-efficiency information brochure required by
145 Section 553.996, Florida Statutes.

146 (b) **Radon Gas:** Radon is a naturally occurring radioactive gas that, when it has accumulated in a building in
147 sufficient quantities, may present health risks to persons who are exposed to it over time. Radon levels that
148 exceed federal and state guidelines have been found in buildings in Florida. Additional information regarding
149 radon and radon testing may be obtained from your county public health unit. Buyer may, within the Inspection
150 Period, have an appropriately licensed person test the Property for radon. If the radon level exceeds acceptable
151 EPA standards, Seller may choose to reduce the radon level to an acceptable EPA level, failing which either
152 party may cancel this Contract.

153 (c) **Flood Zone:** Buyer is advised to verify by survey, with the lender, and with appropriate government agencies
154 which flood zone the Property is in, whether flood insurance is required, and what restrictions apply to improving
155 the Property and rebuilding in the event of casualty. If the Property is in a Special Flood Hazard Area or Coastal
156 High Hazard Area and the buildings are built below the minimum flood elevation, Buyer may cancel this

Buyer (_____) (_____) and Seller   acknowledge receipt of a copy of this page, which is Page 3 of 9.

- 157 Contract by delivering written notice to **Seller** within 20 days after Effective Date, failing which **Buyer** accepts
- 158 the existing elevation of the buildings and zone designation of the Property.
- 159 (d) **Homeowners' Association:** If membership in a homeowners' association is mandatory, an association
- 160 disclosure summary is attached and incorporated into this Contract. **BUYER SHOULD NOT SIGN THIS**
- 161 **CONTRACT UNTIL BUYER HAS RECEIVED AND READ THE DISCLOSURE SUMMARY.**
- 162 (e) **PROPERTY TAX DISCLOSURE SUMMARY:** **BUYER SHOULD NOT RELY ON THE SELLER'S CURRENT**
- 163 **PROPERTY TAXES AS THE AMOUNT OF PROPERTY TAXES THAT BUYER MAY BE OBLIGATED TO PAY**
- 164 **IN THE YEAR SUBSEQUENT TO PURCHASE. A CHANGE OF OWNERSHIP OR PROPERTY**
- 165 **IMPROVEMENTS TRIGGERS REASSESSMENTS OF THE PROPERTY THAT COULD RESULT IN HIGHER**
- 166 **PROPERTY TAXES. IF YOU HAVE ANY QUESTIONS CONCERNING VALUATION, CONTACT THE**
- 167 **COUNTY PROPERTY APPRAISER'S OFFICE FOR FURTHER INFORMATION.**
- 168 (f) **Mold:** Mold is part of the natural environment that, when accumulated in sufficient quantities, may present
- 169 health risks to susceptible persons. For more information, contact the county indoor air quality specialist or
- 170 other appropriate professional.
- 171 (g) **Coastal Construction Control Line:** If any part of the Property lies seaward of the coastal construction control
- 172 line ("CCCL") as defined in Section 161.053, Florida Statutes, **Seller** will provide **Buyer** with an affidavit or
- 173 survey as required by law delineating the line's location on the Property, unless **Buyer** waives this requirement
- 174 in writing. The Property being purchased may be subject to coastal erosion and to federal, state, or local
- 175 regulations that govern coastal property, including delineation of the CCCL, rigid coastal protection structures,
- 176 beach nourishment, and the protection of marine turtles. Additional information can be obtained from the Florida
- 177 Department of Environmental Protection, including whether there are significant erosion conditions associated
- 178 with the shoreline of the Property being purchased.
- 179* **Buyer** waives the right to receive a CCCL affidavit or survey.

180 **8. Maintenance, Inspections, and Repair:** **Seller** will keep the Property in the same condition from Effective Date

181 until Closing, except for normal wear and tear ("Maintenance Requirement") and repairs required by this Contract.

182 **Seller** will provide access and utilities for **Buyer's** inspections and appraisals. **Buyer** will repair all damages to the

183 Property resulting from the inspections, return the Property to its pre-inspection condition, and provide **Seller** with

184 paid receipts for all work done on the Property upon its completion. If **Seller** is unable to complete required repairs

185 or treatments or meet the Maintenance Requirement before Closing, **Seller** will give **Buyer** a credit at Closing for

186 the cost of the repairs and maintenance **Seller** was obligated to perform. At Closing, **Seller** will assign all assignable

187 repair and treatment contracts to **Buyer** and provide **Buyer** with paid receipts for all work done on the Property

188 pursuant to the terms of this Contract.

- 189 (a) **Warranty, Inspections, and Repair:**
- 190 (1) **Warranty:** **Seller** warrants that non-leased major appliances; heating, cooling, mechanical, electrical,
- 191 security, sprinkler, septic, and plumbing systems; seawall; dock; and pool equipment, if any, are and will
- 192 be maintained in working condition until Closing; that the structures (including roofs, doors, and windows)
- 193 and pool, if any, are structurally sound and watertight; and that torn or missing screens, missing roof tiles,
- 194 and fogged windows will be repaired or replaced. Limited remaining life of any warranted item will not be
- 195 considered a defect that must be repaired or replaced by **Seller**. **Seller** does not warrant and is not required
- 196 to repair cosmetic conditions, unless the cosmetic condition resulted from a defect in a warranted item.
- 197 **Seller** is not obligated to bring any item into compliance with existing building code regulations unless
- 198 necessary to repair a warranted item. "Working condition" means operating in the manner in which the item
- 199 was designed to operate and "cosmetic conditions" means aesthetic imperfections that do not affect the
- 200 working condition of the item, including pitted marcite; tears, worn spots, and discoloration of floor
- 201 coverings/wallpapers/window treatments; caulking in bathroom; nail holes, scratches, dents, scrapes, and
- 202 chips in ceilings/walls/flooring/tile/fixtures/mirrors; cracked roof tiles; curling or worn shingles; and minor
- 203 cracks in floor tiles/windows/driveways/sidewalks/pool decks/garage and patio floors.
- 204 (2) **Professional Inspection:** **Buyer** may, at **Buyer's** expense, have warranted items inspected by a person
- 205 who specializes in and holds a license (if required by law) to conduct home inspections or who holds a
- 206 Florida license to repair and maintain the items inspected ("professional inspector"). **Buyer** must, within 5
- 207 days after the end of Inspection Period, deliver written notice of any items that are not in the condition
- 208 warranted and a copy of the portion of the inspector's written report dealing with such items to **Seller**. If
- 209 **Buyer** fails to timely deliver written notice, **Buyer** waives **Seller's** warranty and accepts the items listed in
- 210 Subparagraph (a) above in their "as is" conditions, except that **Seller** must meet the Maintenance
- 211 Requirement.
- 212 (3) **Repair:** **Seller** will obtain repair estimates and is obligated only to make repairs necessary to bring
- 213 warranted items into the condition warranted, up to the Repair Limit. **Seller** may, within 5 days after receipt
- 214 of **Buyer's** notice of items that are not in the condition warranted, have a second inspection made by a

Buyer () () and Seller   acknowledge receipt of a copy of this page, which is Page 4 of 9.

215 professional inspector and will report repair estimates to Buyer. If the first and second inspection reports
216 differ and the parties cannot resolve the differences, Seller and Buyer together will choose, and equally
217 split the cost of, a third inspector, whose written report will be binding on the parties. If the cost to repair
218 warranted items equals or is less than the Repair Limit, Seller will have the repairs made in a workmanlike
219 manner by an appropriately licensed person. If the cost to repair warranted items exceeds the Repair Limit,
220 either party may cancel this Contract unless either party pays the excess or Buyer designates which repairs
221 to make at a total cost to Seller not exceeding the Repair Limit and accepts the balance of the Property in
222 its "as is" condition.

223 (b) **Wood-Destroying Organisms:** "Wood-destroying organism" means arthropod or plant life, including termites,
224 powder-post beetles, old house borers, and wood-decaying fungi, that damages or infests seasoned wood in a
225 structure, excluding fences. Buyer may, at Buyer's expense, have the Property inspected by a Florida-licensed
226 pest control business to determine the existence of past or present wood-destroying organism infestation and
227 damage caused by infestation. If the inspector finds evidence of infestation or damage, Buyer will deliver a
228 copy of the inspector's written report to Seller within 5 days after the date of the inspection. If Seller previously
229 treated the Property for the type of wood-destroying organisms found, Seller does not have to treat the Property
230 again if (i) there is no visible live infestation and (ii) Seller transfers to Buyer at Closing a current full treatment
231 warranty for the type of wood-destroying organisms found. Seller will have 5 days after receipt of the inspector's
232 report to have reported damage estimated by a licensed building or general contractor and corrective treatment,
233 if required, estimated by a licensed pest control business. Seller will have treatments and repairs made by an
234 appropriately licensed person at Seller's expense up to the WDO Repair Limit. If the cost to treat and repair
235 the Property exceeds the WDO Repair Limit, either party may pay the excess, failing which either party may
236 cancel this Contract by written notice to the other. If Buyer fails to timely deliver the inspector's written report,
237 Buyer accepts the Property "as is" with regard to wood-destroying organism infestation and damage, subject
238 to the Maintenance Requirement.

239 (c) **Permits:** Buyer may, at Buyer's expense, inspect and examine records and documents to determine whether
240 any open or expired building permits or unpermitted improvements to the Property exist. Buyer will, before the
241 end of the Inspection Period, deliver written notice to Seller of the existence of such; and Seller will remedy
242 the reported items up to the Permit Limit and have final inspections completed no later than 5 days before
243 Closing. If final inspections cannot be performed due to delays by the governmental entity, Closing will be
244 extended for up to 10 days to complete such final inspections, failing which either party may cancel this
245 Contract; and Buyer's deposit(s) will be refunded. At Closing, Seller will provide Buyer with written
246 documentation that all reported items have been remedied. If the cost to remedy reported items exceeds the
247 Permit Limit, either party may cancel this Contract unless either party pays the excess or Buyer accepts the
248 Property in its "as is" condition and Seller credits Buyer at Closing the amount of the Permit Limit.

249 (d) **Walk-Through Inspection; Reinspection:** On the day before Closing or at any other time agreeable to the
250 parties, Buyer, and/or Buyer's representative, may walk through the Property solely to verify that Seller has
251 made repairs required by this Contract, has met the Maintenance Requirement, and has met contractual
252 obligations. If Buyer, and/or Buyer's representative, fails to conduct this inspection, Seller's repair obligations
253 and Maintenance Requirement will be deemed fulfilled.

254 9. **Risk of Loss:** If any portion of the Property is damaged by fire or other casualty before Closing and can be restored
255 by Closing or within 45 days after Closing Date to substantially the same condition as it was on Effective Date,
256 Seller will, at Seller's expense, restore the Property and deliver written notice to Buyer that Seller has completed
257 the restoration; and the parties will close the transaction on the later of Closing Date or 10 days after Buyer receives
258 Seller's notice. Seller will not be obligated to replace trees. If restoration cannot be timely completed, Buyer may
259 cancel this Contract, and Buyer's deposit(s) will be refunded; or Buyer may accept the property "as is" and Seller
260 will credit the deductible and assign the insurance proceeds, if any, to Buyer at Closing in such amounts as are
261 attributable to the Property and not yet expended in restoring the Property to the same condition as it was on
262 Effective Date.

263 10. **Title:** Seller will convey marketable title to the Property by statutory warranty deed or trustee, personal
264 representative, or guardian deed as appropriate to Seller's status.

265 (a) **Title Evidence:** Title evidence will show legal access to the Property and marketable title of record in Seller in
266 accordance with current title standards adopted by the Florida Bar, subject only to the following title exceptions,
267 none of which prevent residential use of the Property: covenants, easements, and restrictions of record; matters
268 of plat; existing zoning and government regulations; oil, gas, and mineral rights of record if there is no right of
269 entry; current taxes; mortgages that Buyer will assume; and encumbrances that Seller will discharge before or
270 at Closing. The party paying for the owner's title policy will, at least _____ days (if Paragraph 3(a) is selected
271 then 5 days or if Paragraph 3(b) is selected then 10 days, if left blank) ("Title Evidence Deadline") before

Buyer (____) (____) and Seller (TD) (RT) acknowledge receipt of a copy of this page, which is Page 5 of 9.

272 Closing, deliver to Buyer one of the following types of title evidence (see Paragraph 5(c)), which must be
273 generally accepted in the county where the Property is located. Seller will use option (2) in Miami-Dade County.

274 (1) A title insurance commitment issued by a Florida-licensed title insurer in the amount of the purchase
275 price and subject only to title exceptions set forth in this Contract.

276 (2) An existing abstract of title from a reputable and existing abstract firm (if firm is not existing, then abstract
277 must be certified as correct by an existing firm) purporting to be an accurate synopsis of the instruments
278 affecting title to the Property recorded in the public records of the county where the Property is located and
279 certified to Effective Date. However, if such an abstract is not available to Seller, then a prior owner's title
280 policy acceptable to the proposed insurer as a base for reissuance of coverage. Seller will pay for copies
281 of all policy exceptions and an update in a format acceptable to Closing Agent from the policy effective date
282 and certified to Buyer or Closing Agent, together with copies of all documents recited in the prior policy and
283 in the update. If a prior policy is not available to Seller then (1) above will be the title evidence.

284 (b) Title Examination: Buyer will examine the title evidence and deliver written notice to Seller, within 5 days after
285 receipt of title evidence but no later than Closing Date, of any defects that make the title unmarketable. Seller
286 will have 30 days after receiving Buyer's notice of defects ("Curative Period") to cure the defects at Seller's
287 expense. If Seller cures the defects within the Curative Period, Seller will deliver written notice to Buyer and
288 the Closing will occur on Closing Date or within 10 days after Buyer receives Seller's notice if Closing Date
289 has passed. If Seller is unable to cure the defects within the Curative Period, Seller will deliver written notice
290 to Buyer and Buyer will, within 10 days after receiving Seller's notice, either cancel this Contract, extend
291 Curative Period for a specified period not to exceed 120 days, or accept title with existing defects and close the
292 transaction.

293 (c) Survey: On or before Title Evidence Deadline, Buyer may, at Buyer's expense, have the Property surveyed
294 and must deliver written notice to Seller within 5 days after receiving survey but no later than Closing, of any
295 encroachments on the Property, encroachments by the Property's improvements on other lands, or deed
296 restriction or zoning violations. If Buyer timely delivers such notice, any reported encroachment or violation will
297 be treated in the same manner as a title defect, and Seller's and Buyer's obligations will be determined in
298 accordance with Subparagraph (b) above.

299 11. Effective Date; Time; Force Majeure:

300 (a) Effective Date: The "Effective Date" of this Contract is the date on which the last of the parties initials or signs
301 and delivers the final offer or counter offer. Time is of the essence for all provisions of this Contract.

302 (b) Time: All time periods will be computed in business days (a "business day" is every calendar day except
303 Saturday, Sunday, and national legal holidays). If any deadline falls on a Saturday, Sunday, or national legal
304 holiday, performance will be due the next business day. All time periods will end at 5:00 p.m. local time (meaning
305 in the county where the Property is located) of the appropriate day.

306 (c) Force Majeure: Seller or Buyer will not be required to perform any obligation under this Contract or be liable
307 to each other for damages so long as the performance or non-performance of the obligation is delayed, caused,
308 or prevented by an "act of God" or "force majeure." An act of God or force majeure is defined as hurricanes,
309 earthquakes, floods, fire, unusual transportation delays, wars, insurrections, acts of terrorism, and any other
310 such causes and which by the exercise of due diligence the non-performing party is unable in whole or in part
311 to prevent or overcome. All time periods, including Closing Date, will be extended for the period that the act of
312 God or force majeure is in place. However, if such act of God or force majeure event continues beyond 30 days,
313 either party may cancel this Contract by delivering written notice to the other; and Buyer's deposit(s) will be
314 refunded.

315 12. Notices: All notices will be in writing and will be delivered to the parties and Broker by mail, personal delivery, or
316 electronic media. Except for the notices required by Paragraph 3 of this Contract, Buyer's failure to timely deliver
317 written notice to Seller, when such notice is required by this Contract, regarding any contingency will
318 render that contingency null and void, and this Contract will be construed as if the contingency did not
319 exist. Any notice, document, or item delivered to or received by an attorney or licensee (including a
320 transaction broker) representing a party will be as effective as if delivered to or received by that party.

321 13. Complete Agreement: This Contract is the entire agreement between Seller and Buyer. Except for brokerage
322 agreements, no prior or present agreements will bind Seller, Buyer, or Broker unless incorporated into this
323 Contract. Modifications of this Contract will not be binding unless in writing, signed or initialed, and delivered by
324 the party to be bound. Electronic signatures will be acceptable and binding. Signatures, initials, documents
325 referenced in this Contract, counterparts, and written modifications communicated electronically or on paper will be
326 acceptable for all purposes, including delivery, and will be binding. Handwritten or typewritten terms inserted in or
327 attached to this Contract prevail over preprinted terms. If any provision of this Contract is or becomes invalid or

Buyer () () and Seller (TD) (RT) acknowledge receipt of a copy of this page, which is Page 6 of 9.

unenforceable, all remaining provisions will continue to be fully effective. Seller and Buyer will use diligence and good faith in performing all obligations under this Contract. This Contract will not be recorded in any public records.

14. Assignability; Persons Bound: Buyer may not assign this Contract without Seller's written consent. The terms "Seller," "Buyer," and "Broker" may be singular or plural. This Contract is binding on the heirs, administrators, executors, personal representatives, and assigns (if permitted) of Seller, Buyer, and Broker.

15. Default:

(a) Seller Default: If for any reason other than failure of Seller to make Seller's title marketable after diligent effort, Seller fails, refuses, or neglects to perform this Contract, Buyer may choose to receive a return of Buyer's deposit(s) without waiving the right to seek damages or to seek specific performance as per Paragraph 16. Seller will also be liable to Broker for the full amount of the brokerage fee.

(b) Buyer Default: If Buyer fails to perform this Contract within the time specified, including timely payment of all deposits, Seller may choose to retain and collect all deposits paid and agreed to be paid as liquidated damages or to seek specific performance as per Paragraph 16; and Broker will, upon demand, receive 50% of all deposits paid and agreed to be paid (to be split equally between Brokers) up to the full amount of the brokerage fee.

16. Dispute Resolution: This Contract will be construed under Florida law. All controversies, claims, and other matters in question arising out of or relating to this transaction or this Contract or its breach will be settled as follows:

(a) Disputes concerning entitlement to deposits made and agreed to be made: Seller and Buyer will have 30 days after the date conflicting demands are made to attempt to resolve the dispute through mediation. If that fails, Escrow Agent will submit the dispute, if so required by Florida law, to Escrow Agent's choice of arbitration, a Florida court, or the Florida Real Estate Commission ("FREC"). A broker's obligation under Chapter 475, Florida Statutes, and the FREC rules to timely notify the FREC of an escrow dispute and timely resolve the escrow dispute through mediation, arbitration, interpleader, or an escrow disbursement order applies only to brokers and does not apply to title companies, attorneys, or other escrow holders.

(b) All other disputes: Seller, Buyer, and Broker will have 30 days after the date a dispute arises between them to attempt to resolve the matter through mediation, failing which the parties, including Broker, will resolve the dispute through neutral binding arbitration in the county where the Property is located. However, no arbitration arising out of or relating to this transaction or this Contract or its breach will include Broker, unless Broker consents in writing to become a party to the proceeding. A demand for arbitration is prohibited if a civil action requesting the same relief would be barred by Florida statute of limitations. The arbitrator may not alter the Contract terms or award any remedy not provided for in this Contract. The award will be based on the greater weight of the evidence and will state findings of fact and the contractual authority on which it is based. If the parties agree to use discovery, it will be in accordance with the Florida Rules of Civil Procedure, and the arbitrator will resolve all discovery-related disputes. For purposes of this Paragraph, Broker will be treated as a party to this Contract. This clause will survive Closing.

(c) Mediation and Arbitration; Expenses: "Mediation" is a process in which parties attempt to resolve a dispute by submitting it to an impartial mediator who facilitates the resolution of the dispute but who is not empowered to impose a settlement on the parties. Mediation will be in accordance with the rules of the American Arbitration Association ("AAA") or other mediator agreed on by the parties. The parties will equally divide the mediation fee, if any. "Arbitration" is a process in which the parties resolve a dispute by a hearing before a neutral person who decides the matter and whose decision is binding on the parties. Arbitration will be in accordance with the rules of the AAA or other arbitrator agreed on by the parties. Each party to any arbitration will pay its own fees, costs, and expenses, including attorneys' fees, and will equally split the arbitrators' fees and administrative fees of arbitration.

17. Escrow Agent; Closing Agent: Seller and Buyer authorize Escrow Agent and Closing Agent (collectively "Agent") to receive, deposit, and hold funds and other items in escrow and, subject to Collection, disburse them upon proper authorization and in accordance with Florida law and the terms of this Contract, including disbursing brokerage fees. "Collection" or "Collected" mean any checks tendered or received have become actually and finally collected and deposited in the account of Agent. The parties agree that Agent will not be liable to any person for misdelivery of escrowed items to Seller or Buyer, unless the misdelivery is due to Agent's willful breach of this Contract or gross negligence. If Agent interpleads the subject matter of the escrow, Agent will pay the filing fees and costs from the deposit and will recover reasonable attorneys' fees and costs to be paid from the escrowed funds or equivalent and charged and awarded as court costs in favor of the prevailing party. All claims against Agent will be arbitrated, so long as Agent consents to arbitrate.

18. Professional Advice; Broker Liability: Broker advises Seller and Buyer to verify all facts and representations that are important to them and to consult an appropriate professional for legal advice (for example, interpreting contracts, determining the effect of laws on the Property and transaction, status of title, foreign investor reporting requirements, the effect of property lying partially or totally seaward of the coastal construction control line, etc.)

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385 and for tax, property condition, environmental, and other specialized advice. Buyer acknowledges that Broker does
386 not reside in the Property and that all representations (oral, written, or otherwise) by Broker are based on Seller
387 representations or public records. Buyer agrees to rely solely on Seller, professional inspectors, and
388 governmental agencies for verification of the Property condition, square footage, and facts that materially
389 affect Property value. Seller and Buyer respectively will pay all costs and expenses, including reasonable
390 attorneys' fees at all levels, incurred by Broker and Broker's officers, directors, agents, and employees in connection
391 with or arising from Seller's or Buyer's misstatement or failure to perform contractual obligations. Seller and Buyer
392 hold harmless and release Broker and Broker's officers, directors, agents, and employees from all liability for loss
393 or damage based on (i) Seller's or Buyer's misstatement or failure to perform contractual obligations; (ii) the use
394 or display of listing data by third parties, including but not limited to photographs, images, graphics, video recordings,
395 virtual tours, drawings, written descriptions, and remarks related to the Property; (iii) Broker's performance, at
396 Seller's and/or Buyer's request, of any task beyond the scope of services regulated by Chapter 475, Florida
397 Statutes, as amended, including Broker's referral, recommendation, or retention of any vendor; (iv) products or
398 services provided by any vendor; and (v) expenses incurred by any vendor. Seller and Buyer each assume full
399 responsibility for selecting and compensating their respective vendors. This Paragraph will not relieve Broker of
400 statutory obligations. For purposes of this Paragraph, Broker will be treated as a party to this Contract. This
401 Paragraph will survive Closing.

402 19. Brokers: The licensee(s) and brokerage(s) named below are collectively referred to as "Broker." Instruction to
403 Closing Agent: Seller and Buyer direct Closing Agent to disburse at Closing the full amount of the brokerage fees
404 as specified in separate brokerage agreements with the parties and cooperative agreements between the brokers,
405 except to the extent Broker has retained such fees from the escrowed funds. In the absence of such brokerage
406 agreements, Closing Agent will disburse brokerage fees as indicated below. This Paragraph will not be used to
407 modify any MLS or other offer of compensation made by Seller or listing broker to cooperating brokers.

408* Lisa D. Bradley SL3113372
409 Seller's Sales Associate / License No.
410* lbradley@svn.com
411 Seller's Sales Associate Email Address
412* 850/712-2232 (Cell)
413 Seller's Sales Associate Phone Number
414*
415 Listing Firm / Brokerage Fee: (\$ or % of purchase price)
416*
417 Listing Firm / Brokerage Address

Lisa D. Bradley SL3113372
Buyer's Sales Associate / License No.
lbradley@svn.com
Buyer's Sales Associate Email Address
850/712-2232 (Cell)
Buyer's Sales Associate Phone Number
SVN Southland Comm. 5%
Buyer's Firm / Brokerage Fee: (\$ or % of purchase price)
120 E. Main Street, Ste. D, Pensacola, FL 32502
Buyer's Firm / Brokerage Address

418 20. Addenda: The following additional terms are included in the attached addenda and incorporated into this Contract
419 (Check if applicable and attach the addenda):

- A. Additional Clauses
- B. Appraisal
- C. As Is with Right to Inspect
- D. Assignment
- E. Back-up Contract; Kick-out Clause
- F. Condominium Association
- G. Defective Drywall
- H. FHA Financing
- I. FIRPTA
- J. Homeowners' Association
- K. Housing for Older Persons
- L. Inspections
- M. Insulation Disclosure (New Homes Only)
- N. Insurance
- O. Interest-Bearing Escrow Account
- P. Lease Option; Lease Purchase
- Q. Licensee - Personal Interest in Property
- R. Mold Inspection
- S. Mortgage Assumption
- T. New Mortgage Rates
- U. Pre-1978 Housing Lead-Based Paint Warning Statement
- V. Property Disclosure
- W. Rentals
- X. Rezoning
- Y. Sale/Lease of Buyer's Property
- Z. Seller Financing
- AA. Short Sale Approval
- BB. VA Financing
- CC. 1031 Exchange
- Other _____
- Other _____
- Other _____

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420* 21. **Additional Terms:** 1) Sellers inherited property, have not viewed or inspected interior, and do not warrant
 421 condition of property.
 422 2) Buyer plans to demolish the existing improvements, is aware that the property was previously impacted by
 423 flooding, waives any disclosures, has performed all necessary inspections, and will purchase the property "as is".
 424 3) Buyer to pay all closing costs.
 425 4) Real Estate Commission of 5% of the purchase price will be paid by the Buyer at closing to SVN Southland
 426 Commercial.
 427 5) SVNCRE Group dba SVN Southland Commercial Real Estate, and it's associates, are acting as
 428 TRANSACTION BROKER. Buyers and Sellers have been provided with a copy of the Transaction Broker Notice.
 429 6) Seller is a licensed real estate sales agent in the State of Florida.
 430
 431

432 22. **Offer and Acceptance:** Buyer offers to purchase the Property on the above terms and conditions. Unless this
 433* Contract is signed by Seller and a copy delivered to Buyer no later than 4:30 a.m. p.m. on
 434* April 4, 2019, this offer will be revoked and Buyer's deposit(s) refunded subject to Collection of funds.
 435* Buyer received a written real property disclosure statement from Seller before making this offer.

436 23. **Counter Offer; Rejection:**
 437* Seller counters Buyer's offer. (To accept the counter offer, Buyer must sign or initial the counter offered terms
 438 and deliver a copy of the acceptance to Seller.) Unless otherwise stated, the time for acceptance of any counter
 439 offer will be 2 days after the date the counter offer is delivered.
 440* Seller rejects Buyer's offer.

441 **This is intended to be a legally binding contract. If not fully understood, seek the advice of an attorney before**
 442 **signing.**

443* **Buyer:** _____ **Date:** _____

444* **Print name:** Keith Wilkins, Assistant City Administrator, City of Pensacola

445* **Buyer:** _____ **Date:** _____

446* **Print name:** _____

447 **Buyer's address for purpose of notice:**

448* **Address:** 222 West Main Street, Pensacola, FL 32502

449* **Phone:** 850-436-5627 **Fax:** 850-435-1611 **Email:** kwilkins@cityofpensacola.com

450* **Seller:** Terri Davidson **Date:** 3/7/2019

451* **Print name:** Terri Davidson

452* **Seller:** Randal Trachy **Date:** 3/7/2019

453* **Print name:** Randal Trachy

454 **Seller's address for purpose of notice:**

455* **Address:** 520 Fairpoint Drive, Gulf Breeze, FL 32561

456* **Phone:** 850-380-3379 **Fax:** _____ **Email:** terridavidson@remax.net

457* **Effective Date:** _____ **(The date on which the last party signed or initialed and delivered**
 458 **the final offer or counter offer.)**

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City of Pensacola

222 West Main Street
Pensacola, FL 32502

Memorandum

File #: 19-00106

City Council

3/28/2019

LEGISLATIVE ACTION ITEM

SPONSOR: Grover C. Robinson, IV, Mayor

SUBJECT:

APPROVAL OF THE PROJECT DEVELOPMENT AGREEMENT AND THE MASTER LEASE OF REAL PROPERTY WITH VT MOBILE AEROSPACE ENGINEERING, INC.

RECOMMENDATION:

That City Council approve the Project Development Agreement and the Master Lease of Real Property between VT Mobile Aerospace Engineering, Inc. and the City of Pensacola. Further, that City Council authorize the Mayor to execute the Project Development Agreement and the Master Lease of Real Property and to execute all documents necessary to complete the transaction.

HEARING REQUIRED: No Hearing Required

SUMMARY:

On December 17, 2013, the City executed a nonbinding Memorandum of Understanding with ST Aerospace allowing the City of Pensacola to begin contract negotiations with VT Mobile Aerospace Engineering, Inc. (VT MAE) for the construction and operation of a maintenance, repair, and overhaul (MRO) facility at the Pensacola International Airport. City Council approved the negotiated lease agreement on September 9, 2014. The 173,000 sq. ft. facility officially opened in June 2018 and is on the way to creating 400 new high-wage jobs for the area.

The Mayor and Staff have a longer term strategy to grow the MRO capacity, sometimes referred to as "Project Titan". A second hangar similar in size and configuration to the first hangar, a possible support services center, an aircraft apron and automobile parking would be constructed on 16 acres of Airport property directly south of the first hangar. The construction of this second hangar area was otherwise contemplated and accounted for during the development process for the first hangar, and is referenced in the current real property lease with VT MAE. Additional facilities consisting of two hangars, each approximately 191,000 sq. ft., a 100,000 sq. ft. support services center, a 120,000 sq. ft. administrative office building, aircraft aprons, and automobile parking would also be constructed on approximately 50 acres of Airport property adjacent to Tippin Avenue on the west side of the Airport. It is expected that the project will create a minimum of 1,325 full-time jobs with an annual average salary of \$44,461, excluding benefits. If VT MAE fails to achieve the minimum number of jobs within the first ten years of the completion of the last hangar, it shall reimburse the City in the clawback amount stated in the respective grant agreements. The total project cost of \$210,125,000 is funded by a combination of VT

MAE investment, state and federal grants, and local funds.

The Project Development Agreement outlines the rights and obligations of both VT MAE and the City with respect to the actual development and construction of the project itself. For the design and construction of the project, the City will use the same process successfully used during the development of the first hangar. The City will engage architects/engineers to design the project and provide other design professional services required, will engage a program manager for the overall management of the project, and will engage a construction manager at risk to first participate in the development of plans for cost estimating, construction scheduling, and value engineering, and then provide a guaranteed maximum price and construct the facility.

The ongoing rights and obligations with respect to VT MAE's actual use of the property after construction are outlined in the Master Lease of Real Property. The Master Lease of Real Property for the improvements to be constructed is substantially similar to the existing Real Property Lease between the City and VT MAE for Hangar 1. Changes include the fact that language related to the actual development is placed in a separate Project Development Agreement, and the job creation section has been modified to fit the job creation elements required by grants associated with this project. The lease term will be thirty years like the current lease. The rental rate will be determined via an appraisal to determine the fair market value of the land. Also like the existing lease, during each lease year other than years ten and twenty, the ground rent will increase by a CPI adjustment with an annual limit of 2% per year. At the end of the 10th and 20th years of the lease term, the rent will be re-determined based on an appraisal, with the new rent to go into effect the following year.

PRIOR ACTION:

June 13, 2013 - City Council adopted a resolution to support the acceptance of a grant offered by the Florida Department of Transportation as a Joint Participation Agreement # 43360229401 in the amount of \$11,090,000 for air commerce park phases I and IA - Infrastructure Development.

February 13, 2014 - City Council Discussion Item and Presentation on the ST Aerospace Economic Development Project at the Pensacola International Airport.

February 27, 2014 - City Council approved the Interlocal Agreement with Escambia County and the City of Pensacola for Funding of Economic Development Project - ST Aerospace of Mobile, Inc.

September 9, 2014 - City Council approved the lease with VT Mobile Aerospace Engineering.

July 16, 2015 - City Council approved the selection of Greenhut Construction and authorized the Mayor to execute the contract.

September 17, 2015 - City Council authorized the Mayor to execute acceptance of the Florida Department of Transportation Joint Participation Agreement # 43571729401 in the amount of \$1,531,546 for construction funding to expand the cargo apron and construct a taxiway connector at the Pensacola International Airport of which \$1,121,242 will be used towards taxiway connecting future VT MAE facility to runway 17-35.

March 17, 2016 - City Council authorized the Mayor to execute acceptance of the Florida Department of Transportation Joint Participation Agreements # 42030029401, # 42960929401, and # 42960939401 in the amount of \$2,975,305 for construction of a taxiway connector at the Pensacola International Airport.

April 14, 2016 - City Council authorized the Mayor to execute acceptance of the Florida Department of Transportation Joint Participation Agreement # 43571769401 in the amount of \$8,599,600 for construction of a hangar at the Pensacola International Airport.

September 22, 2016 - City Council authorized the Mayor to execute Amendment No. 1 to the lease the VT Mobile Aerospace Engineering.

September 22, 2016 - City Council authorized the Mayor to execute Amendment No. 1 to the contract with Atkins North America.

February 8, 2017 - City Council authorized the Mayor to execute Amendment No. 2 and Amendment No. 3 to the contract with Atkins North America.

March 8, 2018 - City Council authorized the Mayor to execute acceptance of the State of Florida Department of Economic Opportunity Grant Agreement G0009 in the amount of \$4,000,000 for construction of infrastructure related to MRO expansion.

September 13, 2018 - City Council authorized the Mayor to accept and execute the State of Florida Department of Transportation Public Transportation Grant Agreement Financial Project 441494-2-94-01 in the amount of \$3,000,000 for Pensacola International Airport Facilities Development related to MRO expansion.

September 13, 2018 - City Council committed funding in the amount of \$10 million from Local Option Sales Tax Series IV in support of the aerospace maintenance repair and overhaul (MRO) campus expansion.

February 6, 2019 - City Council approved the amended Interlocal Agreement between the Escambia County Board of County Commissioners and the City of Pensacola related to additional funding requirements for the aerospace maintenance, repair and overhaul (MRO) campus expansion at the Pensacola International Airport, and approved additional Local Option Sales Tax IV funding of \$5 million for the City's share of the aerospace maintenance, repair and overhaul (MRO) campus expansion at the Pensacola International Airport.

FUNDING:

| | | |
|---------|-----------------------|--|
| Budget: | \$ 35,000,000 | ST Aerospace Engineering |
| | 3,000,000 | State Legislature |
| | 14,000,000 | Governor's Job Growth |
| | 45,000,000 | FDOT Grant |
| | 15,000,000 | Escambia County |
| | 15,000,000 | City Local Option Sales Tax Series IV |
| | 12,250,000 | Federal - U.S. Economic Development Administration |
| | 66,000,000 | Triumph Gulf Coast |
| | <u>4,875,000</u> | Anticipated Additional Funding (City Responsibility) |
| | <u>\$ 210,125,000</u> | |

Actual: \$ 210,125,000 Estimated

FINANCIAL IMPACT:

The project will create 1,325 direct new jobs. It's estimated that another 216 industry jobs will be created as a result of the MRO campus complex. When combined with the 400 new jobs associated with Hangar 1, nearly 2,000 direct jobs in the targeted aviation/aerospace industry will be created. A further 3,400 indirect and induced jobs are also estimated per a study performed by the Haas Center. While the complex will have a direct financial impact to the Airport in terms of ground rent received, the financial impact to the State of Florida is a net annual increase of GDP of \$600 million per year and a net annual increase in personal net incomes of \$400 million per year, most of which will be experienced in NW Florida.

CITY ATTORNEY REVIEW: Yes

3/13/2019

STAFF CONTACT:

Christopher L. Holley, City Administrator
Daniel Flynn, Airport Director

ATTACHMENTS:

- 1) Project Development Agreement
- 2) Master Lease of Real Property

PRESENTATION: No

**PROJECT DEVELOPMENT AGREEMENT
BETWEEN
VT MOBILE AEROSPACE ENGINEERING, INC.
AND
CITY OF PENSACOLA, FLORIDA**

EFFECTIVE DATE: _____, 2019

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Exhibit B - Preliminary Project Drawings

Exhibit C - Preliminary Project Description

Exhibit D - Preliminary Space Program

Exhibit E - Preliminary Project Schedule

Exhibit F - Preliminary Project Budget

Exhibit G - Airport Layout Plan

Exhibit H - FAA Airspace Determination Letter

Exhibit I - Master Lease

Exhibit J - MRO Performance Agreement

PROJECT DEVELOPMENT AGREEMENT

THIS PROJECT DEVELOPMENT AGREEMENT ("Agreement") is hereby made and entered into as of the Effective Date (hereinafter defined), by and between **VT MOBILE AEROSPACE ENGINEERING, INC.**, a corporation organized in the State of Alabama and duly qualified to do business in the State of Florida ("the Company"), and the **CITY OF PENSACOLA, FLORIDA**, a Florida municipality ("the City"), in its capacity as owner and operator of **PENSACOLA INTERNATIONAL AIRPORT** ("the Airport"). The City and the Company may, from time to time, be referred to in this Agreement individually as "a Party" and collectively as "the Parties."

RECITALS

WHEREAS, the City is the owner and operator of the Airport (as hereinafter defined); and

WHEREAS, the City and the Company have agreed that the City will develop and construct the Project (as hereinafter defined) and the Company will lease the Project from the City, all upon the terms and subject to the conditions of this Agreement and the Master Lease (as hereinafter defined);

NOW, THEREFORE, in consideration of the promises, covenants, terms, and conditions herein set forth, the Parties hereby agree as follows:

ARTICLE 1. DEFINITIONS

Section 1.01 DEFINITIONS

The following words and phrases, wherever used in this Agreement, shall, for purposes of this Agreement, have the following meanings:

"Affiliate" means any corporation or other entity that directly, or indirectly through one or more intermediaries, controls or is controlled by or is under common control with, the Company.

"Aircraft MRO" means the maintenance, repair, overhaul, inspection, or modification of aircraft or aircraft components, and all ancillary activities.

"Airport" means Pensacola International Airport located in Pensacola, Florida, as it now exists, as shown on Exhibit G, and as it may exist in the future.

"Airport Director" means the person who from time to time holds the position of "Airport Director" of the Airport. Said term shall also include any person expressly designated by the City to exercise functions with respect to the rights and obligations of the Airport enterprise.

"City" means the City of Pensacola, Florida, and any successor to the City in ownership of the Airport.

"Company" means VT Mobile Aerospace Engineering, Inc., a corporation organized in the State of Alabama, and any assignee of its interest in this Agreement, in whole or in part, pursuant to an assignment permitted by this Agreement.

"Construction Manager at Risk" or "CMAR" means the construction manager(s) at risk contracted by the City to construct or manage the construction of the Facilities.

"Control" of an entity means the possession, directly or indirectly, of the power to direct or cause the direction of the management and policies of such entity, whether through the ownership of voting securities or by contract or otherwise.

"Date of Beneficial Occupancy" means each date that the Program Manager certifies that a building that is part of the Facilities (that is, Hangar 2, Hangar 3, Hangar 4, the Support Services Centers, and the administrative office building), and related taxiways, aprons, automobile roadways, automobile parking areas, and ancillary improvements been substantially completed in substantial compliance with the applicable Final Project Plans (as defined in Article 2 below) and a Certificate of Occupancy has been issued for such building.

"Design Professionals" means the architect(s) and engineer(s) hired by the City to design the Project and/or furnish other design professional services in connection with the Project.

"Effective Date" means the date upon which this Agreement is executed by the last Party to execute this Agreement, as shown by the respective dates set forth after the places provided herein below for the Parties' execution of this Agreement.

"FAA" means the Federal Aviation Administration of the United States government, or any federal agencies succeeding to its jurisdiction.

"Facilities" means the Aircraft MRO buildings (that is, Hangar 2, Hangar 3 and Hangar 4), Support Services Centers, administrative office building, and related taxiways, aprons, automobile roadways, automobile parking areas, and ancillary improvements to be constructed by the City upon the Land as part of the Project pursuant to plans and specifications approved by both the City and the Company in accordance with Article 2 below.

"Force Majeure" shall have the meaning assigned in Section 10.05 of this Agreement.

"Guaranteed Maximum Price" or "GMP" means the maximum all-inclusive price for which the Construction Manager at Risk agrees to construct the Facilities or any portion thereof.

"Land" means the land within the Airport depicted on Exhibit A attached hereto, upon which the Facilities will be constructed.

"Lease" means the Master Lease entered into between the Parties contemporaneously with the execution of this Agreement whereby the City leases the Leased Premises to the Company, as supplemented and amended from time to time, as more particularly described in Article 5 below.

"Leased Premises" means the Land and the Facilities constructed on the Land.

"Program Manager" means the program management firm contracted by the City to act as the City's representative with responsibility for Project delivery.

"Project" means the entire project described in Article 2 below, including but not limited to the Facilities, to be constructed on the Land and upon certain other areas of the Airport pursuant to plans and specifications approved by both the City and the Company in accordance with Article 2 below.

"Project Cost" means the actual total, all-inclusive cost of construction of the Project, including without limitation permitting fees, professional fees, and hard and soft costs of construction.

"Subsidiary" means any corporation or other entity more than fifty percent (50%) of whose outstanding stock (or other form of equity ownership) is, at the relevant time, owned by the Company or by another Subsidiary of the Company.

"Value Engineering" means an organized effort between the Parties, and including the CMAR, Project Manager, and Design Professionals, directed at analyzing function of facilities for the purpose of achieving the required function at the lowest cost consistent with requirements for performance, reliability, quality, and maintainability.

Section 1.02 CROSS-REFERENCES

All references in this Agreement to articles, sections, and exhibits pertain to articles, sections, and exhibits of this Agreement unless otherwise specified.

END OF ARTICLE

ARTICLE 2. PROJECT; PROJECT CONSTRUCTION; ENVIRONMENTAL ASSESSMENT

Section 2.01 GENERAL DESCRIPTION OF PROJECT

The Project consists of all aspects of the design and construction of the following elements, excluding tenant improvements, furniture, fixtures and equipment to be provided by the Company at its expense (collectively, "the Project") pursuant to this Agreement:

- Hangar 2 – approximately 173,000 square feet; and Support Services Center (East Side) – approximately 15,000 square feet - serving Hangars 1 and 2; budget allocation: \$49 million
- Hangar 3 – approximately 191,000 square feet; budget allocation: \$55 million
- Hangar 4 – approximately 191,000 square feet; budget allocation: \$55 million
- Support Services Center (West Side) – approximately 100,000 square feet; budget allocation: \$19 million
- Administrative Offices – approximately 120,000 square feet; budget allocation: \$32.128 million

The foregoing budget allocations include the cost of the following:

- Aircraft taxiways necessary for accessing the hangar aprons
- Aircraft aprons necessary for accessing and supporting the hangars
- Automobile ingress and egress roadways and auto parking for supporting the Facilities
- Smart MRO and Smart City features (see below)

Subject to the Project Budget and if and to the extent permissible under municipal procurement regulations and other applicable laws, rules and regulations, the Design Professionals shall be instructed to incorporate Smart MRO and Smart City features into the Project utilizing proven solutions and products from the Company and the group.

Hangar 2 and the associated Support Services Center (East Side), taxiways, aprons, roadways, auto parking and infrastructure are referred to collectively in this Agreement as "Element 1". Hangar 3, Hangar 4, Support Services Center (West Side), Administrative Offices, and the associated taxiways, aprons, roadways, auto parking and infrastructure are referred to collectively in this Agreement as "Element 2."

The Parties agree that the current state of design of the Project is depicted by, and the Project is further described and defined by, the following exhibits attached hereto

and incorporated herein by reference:

- Exhibit B Preliminary Project Drawings
- Exhibit C Preliminary Project Description
- Exhibit D Preliminary Space Program
- Exhibit E Preliminary Project Schedule
- Exhibit F Preliminary Project Budget

The Parties further agree that Hangar 2 shall be substantially similar in all material respects to Hangar 1 at the Airport which is the 173,000 square foot MRO hangar presently occupied by the Company pursuant to that certain Real Property Lease at Pensacola International Airport between the Company, as lessee, and the City, as lessor, dated September 9, 2014, subject to variations to interior layout and variations to accommodate different aircraft types, which variations will not adversely impact the Project Budget for Element 1, and that Hangars 3 and 4 shall be similar to Hangar 1, subject to variations required by the larger square footages of Hangars 3 and 4, variations to interior layout, and variations to accommodate different aircraft types, which variations will not adversely impact the Project Budget for Element 2.

The Parties further agree that Exhibits B through F, inclusive, and Hangar 1 are the bases and guidelines for further development of the design of and Guaranteed Maximum Price for the Project pursuant to this Article.

Section 2.02 PROJECT DELIVERY METHOD

The "Construction Manager at Risk" ("CMAR") project delivery method shall be utilized for the design and construction of the Project. Accordingly, the City shall establish one or more contracts with the CMAR to deliver the Project, or specific portions or components of the Project within a guaranteed maximum price ("GMP"). The GMP shall be based on construction documents and specifications, plus reasonably inferred items or tasks. The City may select more than one CMAR for various component facilities comprising the Project.

The CMAR method of project delivery is intended to provide the City a higher level of cost control from the outset of the Project. Further, the City and Company's respective risks will be limited by the CMAR process, and the GMP will provide the City and the Company with assurance that the Project Budget will be maintained.

Section 2.03 CITY TO CONTRACT WITH PROFESSIONAL FOR PROJECT DESIGN AND MANAGEMENT

The City shall enter into one or more contracts with the Design Professionals to design the Project and/or perform other design professional services related to the Project. The City shall also enter into a contract with the Program Manager for the

management of the Project. The City shall consult with the Company regarding the selection of the Design Professionals and Program Manager and shall give due consideration to the Company's comments concerning Design Professionals or Program Manager. The Company shall have an opportunity to review and comment on the terms and conditions of the contracts between the City and the Design Professionals and the City and the Program Manager. Subject to the Project Budget and if and to the extent permissible under municipal procurement regulations and other applicable laws, rules and regulations, the Design Professionals shall be instructed to incorporate Smart MRO and Smart City features into the Project utilizing proven solutions and products from the Company and the group. Further, an independent cost estimator shall be retained as a Project Cost to assist in estimating Project Cost after the project definition workshop at the beginning of the design process by and among the Parties, the Design Professionals and the Program Manager. The Parties shall jointly develop the scope of work for the independent cost estimator.

Section 2.04 CITY TO CONSTRUCT PROJECT

Subject to the terms and conditions of this Agreement, the City shall construct the Project, including the Facilities, upon the Land pursuant to the final plans and specifications for the Project (the "Final Project Plans"), the final project schedule (the "Final Project Schedule") and the final project budget (the "Final Project Budget") prepared in accordance with this Article and pursuant to one or more Construction Management Contracts entered into by the City with one or more Construction Managers at Risk as provided in this Article.

The Parties have jointly developed and agreed upon preliminary plans for the Project that consist of automobile and aircraft ingress and egress to and from the Land, aircraft hangars (including offices, storage, shops, and employee support areas), aircraft taxiways and apron areas, automobile roadways and parking, support services centers, and administrative offices, all as described on Exhibit B (Preliminary Project Drawings), Exhibit C (Preliminary Project Description), Exhibit D (Preliminary Space Program), Exhibit E (Preliminary Project Schedule) and Exhibit F (Preliminary Project Budget) attached hereto and incorporated herein by reference (collectively, the "Preliminary Project Plans"). Based on the Preliminary Project Plans, the Project Cost is estimated by the Parties to be Two Hundred Ten Million One Hundred Twenty-Five Thousand Dollars (\$210,125,000.00) (the "Estimated Project Cost").

The Company acknowledges and agrees that the Preliminary Project Plans are generally adequate and sufficient for the Company's use and purposes intended; provided, however, the parties acknowledge and agree that the Preliminary Project Plans are in their initial stage of development and are subject to future modification in accordance with the terms and conditions of this Article. The Parties contemplate that such future modifications to the Preliminary Project Plans shall include a Support Services Center (East Side) serving Hangars 1 and 2 as part of Element 1. The Company

shall continue participating in the development of the Final Project Plans, Final Project Schedule and Final Project Budget in accordance with this Article and understands the nature, cost, and funding of the Project to be constructed. Any change in the Project as described by the Preliminary Project Plans and, except as otherwise provided in this Article, any increase or decrease in the Estimated Project Cost, shall be subject to the prior written approval of both the City and the Company, such approval not to be unreasonably withheld, conditioned or delayed by either Party.

After consultation with the Company, the City shall select one or more Construction Managers at Risk (whether one or more, the "Construction Manager at Risk" or "CMAR", and the City shall enter into one or more contracts with the selected Construction Manager at Risk (whether one or more, the "Construction Management Contract") to construct the Project for a Guaranteed Maximum Price to be determined and agreed upon between the City and the Construction Manager at Risk. The Company shall have an opportunity to review and comment on the terms and conditions of the Construction Management Contract.

The Parties agree that the execution of this Agreement shall constitute notice and authorization to the City to immediately proceed with the design work for Element 1 and that a separate Guaranteed Maximum Price for Element 1 shall first be obtained and, subsequently, a Guaranteed Maximum Price for Element 2 shall be obtained. However, actual construction activities for Element 1, the environmental assessment for Element 2, and design work for Element 2 shall not commence unless and until both Parties have given their respective written consents to proceed with all of Project Titan, it being understood and agreed that each Party may give or withhold such consent in such Party's sole discretion.

The Design Professionals and City shall meet with the Company at appropriate stages of development of the design documents to discuss progress, content, format, options for architectural, structural, mechanical, electrical, and finish systems, and other options consistent with the Company's requirements for the Project. The Design Professionals, in collaboration with the selected Construction Manager at Risk, the Company, the City and the Program Manager, shall prepare the Final Project Plans suitable for permitting and construction of the Project and shall prepare the Final Project Schedule which, as agreed to by the City and the Construction Manager at Risk, shall become part of the Construction Management Contract. The City and the Company agree that the 100% complete Final Project Plans shall not include any change to the Project Plans upon which the Construction Manager at Risk's Guaranteed Maximum Price is based that causes or results in an increase or decrease in such Guaranteed Maximum Price, unless mutually agreed to by the City and the Company. Subject to the preceding sentence, the Final Project Plans shall be subject to the approval of both the City and the Company, such approval not to be unreasonably withheld, conditioned or delayed by either party. Further, each of the City and the Company

shall at all times act in good faith and in a commercially reasonable manner in exercising such party's rights under this Article.

The Company's review, comment and/or approval of any design document is solely for the purpose of establishing the general compliance of the document with the requirements of the Company at each stage in the development of the design documents. The Company's review and approval of the design documents, including the Final Project Plans, shall not relieve the Design Professionals of responsibility for full compliance of same with applicable laws, regulations or codes.

The City agrees that the design and construction of the Project will be in accordance with all applicable laws, building codes, ordinances, regulations and orders of any public authority bearing on the design and/or construction of the Project.

The City's agreement with the Design Professionals shall contractually obligate them to design the Project in accordance with all applicable laws, building codes, ordinances, regulations and orders of any public authority bearing on the design of the Project. The agreement with the Construction Manager at Risk for the construction of the Project shall contractually obligate the Construction Manager at Risk to cause the Project to be constructed in a good and workmanlike manner and in substantial compliance with the design documents.

The Parties acknowledge that the Preliminary Project Schedule will evolve during the design process and that the Final Project Schedule may vary materially from the Preliminary Project Schedule. The Parties estimate that between 60% and 95% completion of the Final Plans for Element 1, the Construction Manager at Risk will determine the Guaranteed Maximum Price for construction of Element 1 to which the Construction Manager at Risk is willing to commit. If the Guaranteed Maximum Price for Element 1 proposed by the Construction Manager at Risk does not exceed the amount budgeted therefor in the then-current Project Budget, then this Agreement shall continue in full force and effect.

In the event, however, that the Construction Manager at Risk is not willing to commit to constructing Element 1 for a Guaranteed Maximum Price not to exceed such Project Budget amount, either Party may terminate this Agreement by giving written notice of termination to the other Party *unless* within sixty (60) days after receipt of written notice of the Guaranteed Maximum Price for Element 1 proposed by the Construction Manager at Risk: (1) the good faith Value Engineering process required by this Agreement reduces such Guaranteed Maximum Price for Element 1 to an amount not exceeding the Project Budget amount; (2) the Company notifies the City in writing that it desires to continue with the Agreement and construction of the Element 1 at the Guaranteed Maximum Price proposed by the Construction Manager at Risk and, within such sixty-day period, pays into the Escrow Account the amount by which such

Guaranteed Maximum Price for Element 1 exceeds such Project Budget amount; (3) the City notifies the Company that additional funding has been obtained in the amount by which such Guaranteed Maximum Price for Element 1 exceeds such Project Budget amount and within such sixty-day period provides the Company reasonable confirmation of such additional funding; (4) the Parties mutually agree to undertake the process to obtain a Guaranteed Maximum Price proposal from another contractor or construction manager at risk; or (5) the Parties otherwise agree in writing. If this Agreement is terminated pursuant to this paragraph, the Parties' respective obligations to pay Project Cost under Article 3 shall nevertheless survive such termination with respect to all Project Cost obligations arising or incurred prior to or as a result of such termination.

If this Agreement is not terminated pursuant to the preceding paragraph, then this Agreement shall continue in full force and effect in accordance with its terms, and the City, in reliance thereon, will not terminate the Construction Management Contract but rather will, subject to the terms and conditions of this Article, proceed with construction of the Project pursuant to the Construction Management Contract.

Provided that this Agreement has not been sooner terminated pursuant to the foregoing provisions of this Article, the Parties estimate that between 60% and 95% completion of the Final Plans for Element 2, the Construction Manager at Risk will determine the Guaranteed Maximum Price for construction of Element 2 to which the Construction Manager at Risk is willing to commit. If the Guaranteed Maximum Price for Element 2 proposed by the Construction Manager at Risk does not exceed the amount budgeted therefor in the then-current Project Budget, then Construction of Element 2 shall promptly be commenced.

In the event, however, that the Construction Manager at Risk is not willing to commit to constructing Element 2 for a Guaranteed Maximum Price not to exceed such Project Budget amount, then the Parties shall undertake the good faith Value Engineering process required by this Agreement and shall reduce the cost of Element 2 to the extent necessary in order for the Guaranteed Maximum Price for Element 2 to not exceed such Project Budget amount.

Upon determination of the Guaranteed Maximum Price for Element 2 in accordance with the preceding paragraph, the City will, subject to the terms and conditions of this Article, proceed with construction of the Project pursuant to the Construction Management Contract.

Throughout the process of developing the plans and specifications for the Project and constructing the Project, the Parties shall collaborate in good faith with each other, the Design Professionals, the Construction Manager at Risk and the Program Manager in a Value-Engineering process with the mutual objective of reducing the Project Cost

such that the total of Element 1 Final Project Costs and Element 2 Final Project Costs do not exceed the sum of all funds available to pay such costs.

Further, to the extent that the final Project Cost is less than the sum of all funds available to pay the final Project Cost, then the amount by which the final Project Cost is less than such available funds shall be allocated to reduce Project loans and/or the amounts of the grants from funding sources other than the Company's \$35,000,000 commitment or the City's \$15,000,000 commitment, according to the terms of the respective loan agreements and grant agreements or as otherwise determined by the City in its sole discretion.

Promptly upon completion of the Final Project Plans for Element 1, the Parties shall amend this Agreement to:

Delete that portion of Exhibit A pertaining to Element 1 and replace it with the current survey and legal description of the Land for Element 1 that will be labeled "Exhibit A - Element 1 Final Land Description".

Delete that portion of Exhibit B pertaining to Element 1 and replace it with a listing of the final drawings and plans for Element 1 that will be labeled "Exhibit B - Element 1 Final Project Drawings".

Delete that portion of Exhibit C pertaining to Element 1 and replace it with a listing of the final specifications for Element 1 that will be labeled "Exhibit C - Element 1 Final Project Specifications".

Delete that portion of Exhibit D pertaining to Element 1 and replace it with the final space programs for Element 1 that will be labeled "Exhibit D - Element 1 Final Project Space Program".

Delete that portion of Exhibit E pertaining to Element 1 and replace it with the final Project Schedule for Element 1 that will be labeled "Exhibit E - Element 1 Final Project Schedule".

Delete that portion of Exhibit F pertaining to Element 1 and replace it with the final Project Budget for Element 1 that will be labeled "Exhibit F - Element 1 Final Project Budget".

Such documents pertaining to Element 1 shall constitute and be referred to collectively herein as the "Element 1 Final Project Plans".

Promptly upon completion of the Final Project Plans for Element 2, the Parties shall amend this Agreement to:

Delete that portion of Exhibit A pertaining to Element 2 and replace it with the current survey and legal description of the Land for Element 2 that will be labeled "Exhibit A - Element 2 Final Land Description".

Delete that portion of Exhibit B pertaining to Element 2 and replace it with a listing of the final drawings and plans for Element 2 that will be labeled "Exhibit B - Element 2 Final Project Drawings".

Delete that portion of Exhibit C pertaining to Element 2 and replace it with a listing of the final specifications for Element 2 that will be labeled "Exhibit C - Element 2 Final Project Specifications".

Delete that portion of Exhibit D pertaining to Element 2 and replace it with the final space programs for Element 2 that will be labeled "Exhibit D - Element 2 Final Project Space Program".

Delete that portion of Exhibit E pertaining to Element 2 and replace it with the final Project Schedule for Element 2 that will be labeled "Exhibit E - Element 2 Final Project Schedule".

Delete that portion of Exhibit F pertaining to Element 2 and replace it with the final Project Budget for Element 2 that will be labeled "Exhibit F - Element 2 Final Project Budget".

Such documents pertaining to Element 2 shall constitute and be referred to collectively herein as the "Element 2 Final Project Plans". The Element 1 Final Project Plans and the Element 2 Final Project Plans shall be collectively referred to in this Agreement as the "Final Project Plans."

The City shall either cause the Company to be a third-party beneficiary of the warranty provisions in the City's contracts with the Design Professionals and the Construction Manager at Risk or, upon completion of construction of the Project, shall assign all such warranties to the Company. Notwithstanding any contrary provision in this Agreement, it is expressly understood and agreed that the City makes, and shall make, no warranties, express or implied, to the Company with respect to the design or construction of the Facilities, any and all such warranties are hereby expressly disclaimed.

Without limitation of any other rights or remedies of Company, if, within one year after the respective Dates of Beneficial Occupancy for Hangar 2, Hangar 3, Hangar

4, the Support Services Centers and the administrative office building any of the work at that portion of the Project is found to be not in accordance with the requirements of the Final Project Plans or the Agreement, the Construction Manager at Risk's contract will provide that the Construction Manager at Risk will correct it promptly after receipt of written notice from the Company.

Section 2.05 ASSIGNMENT OF GUARANTEES AND WARRANTIES

On the respective Dates of Beneficial Occupancy for Hangar 2, Hangar 3, Hangar 4, the Support Services Centers, and the administrative office building, the City will assign any guarantees and warranties associated with such portion of the Facilities to the Company.

Section 2.06 ENVIRONMENTAL ASSESSMENT

The Project is subject to the National Environmental Policy Act (NEPA) requirement for an Environmental Assessment of the potential impacts that the Project may have on the environment, consisting of environmental, social, and economic aspects. The Element 1 was included with Hangar 1 in a previous Focused Environmental Assessment required by NEPA, pursuant to which a "*Finding of No Significant Impact*" was issued by the FAA; therefore, an additional Focused Environmental Assessment for Element 1 is not required.

In compliance with NEPA, the City will initiate the appropriate environmental process for Element 2, the cost of which shall be included in the final Project Cost, concurrently with commencement of construction of Element 1 or at such earlier time as the Parties shall mutually agree. The City's engineering consultant estimates that such environmental process could take approximately nine (9) to twelve (12) months to complete. The Parties recognize and agree that construction of the Element 2 cannot begin until such environmental process for Element 2 is completed and the FAA has issued a "*Finding of No Significant Impact*" or other appropriate approval.

The Parties acknowledge that such environmental process for Element 2 and its results may materially and adversely affect any or all of the Final Project Plans, the Final Project Schedule, or the Project Cost. Additionally, the Parties acknowledge that such environmental process for Element 2 and its results may be challenged by third-parties and any such challenge also may result in material adverse impacts on any or all of the Final Project Plans, the Final Project Schedule, or the Project Cost. In the event of any such material adverse impacts resulting from such environmental process for Element 2 or its results, the Parties shall use their respective best efforts and cooperate in good faith to mitigate such material adverse impacts as expeditiously as reasonably practicable. In the event that despite the Parties' respective best efforts and good faith cooperation, the Parties are unable to mitigate such material adverse impacts to the reasonable satisfaction of each Party, then either Party may elect to terminate this Agreement giving written notice of termination to the other Party within sixty (60) days

after the terminating Party obtained actual knowledge of such material adverse impacts.

Section 2.07 UPFITTING BY THE COMPANY

Subject to the consent of and coordination with the CMAR and provision of satisfactory liability insurance by the Company, the City shall grant the Company limited access to each building comprising the Project ninety (90) days prior to the anticipated Date of Beneficial Occupancy of such building for installing its tenant improvements, furniture, fixtures and equipment.

Section 2.08 APPROACH SURVEILLANCE RADAR AND AIRSPACE COMMUNICATIONS

The Company shall not undertake or permit to exist or continue any activities or improvements on the Leased Premises that interfere with the Airport's Approach Surveillance Radar or the Airport's airspace communications. Exhibit H to this Agreement is the FAA airspace determination letter and the FAA approved Airport Layout Plan that documents that the contemplated Facilities will not interfere with the FAA Approach Surveillance Radar or the Airport's airspace communications.¹

The parties' respective obligations under this Agreement are contingent upon a determination by the FAA that the proposed Facilities will not interfere with the Airport's Approach Surveillance Radar system, the Airport's airspace communications system or any other aspect of Airport operations within FAA jurisdiction. In the event that the such determination is not made prior to the Parties' decision to proceed with construction of the Project, or in the event that the FAA determines that the proposed Facilities may interfere with the Airport's Approach Surveillance Radar system, airspace communications system or other aspects of Airport operations within FAA jurisdiction and that modifications to the proposed Facilities, the Airport, the Approach Surveillance Radar system, the airspace communications system or such other aspect of Airport operations, as the case may be, reasonably satisfactory to both parties cannot be made to remediate such interference, then either party may terminate this Agreement within thirty (30) days thereafter by giving the other party written notice of termination, whereupon neither party shall have any further liability or obligation to the other under this Agreement; provide, however, that the parties' respective obligations to pay Project Cost under Article 3 shall survive such termination with respect to all Project Cost obligations arising or incurred prior to or as a result of such termination.

END OF ARTICLE

¹ If Exhibit H is not available at the time of execution of this Agreement, the parties agree to add the FAA airspace determination letter and the FAA approved Airport Layout Plan as Exhibit H when they become available.

ARTICLE 3. PAYMENT OF PROJECT FINANCIAL RESPONSIBILITIES

The Project Cost shall be funded and paid by a series of grants from the agencies listed below as well as by the Company Financial Commitment as set forth below.

Section 3.01 GRANT FUNDS

As of the Effective Date, One Hundred Seventy-Five Million One Hundred Twenty-Five Thousand Dollars (\$175,125,000.00) have been pledged (committed) from the following sources (the "Grant Funds") to be used to pay the Project Cost:

- (a) Sixty-Six Million Dollars (\$66,000,000.00) from Triumph Gulf Coast, Inc.;
- (b) Forty-Five Million Dollars (\$45,000,000.00) from the Florida Department of Transportation;
- (c) Fourteen Million Dollars (\$14,000,000.00) from the Florida Governor's Job Growth Fund (Department of Economic Opportunity);
- (d) Twelve Million Two Hundred Fifty Thousand Dollars (\$12,250,000.00) from the Federal Economic Development Administration;
- (e) Fifteen Million Dollars (\$15,000,000.00) from the City of Pensacola;
- (f) Fifteen Million Dollars (\$15,000,000.00) from Escambia County, Florida;
- (g) Four Million Eight Hundred Seventy-Five Thousand Dollars (\$4,875,000) City responsibility;
- (h) Three Million Dollars (\$3,000,000.00) allocation from the Florida legislature.

Section 3.02 COMPANY FINANCIAL COMMITMENT

The Company's share of the Project Cost (the "Company Financial Commitment") shall be Thirty-Five Million Dollars (\$35,000,000.00) or such greater amount as the Company may agree in writing pursuant to Article 2 above.

Section 3.03 COMPANY FINANCIAL COMMITMENT ESCROW

Concurrently with the execution of this Agreement, the Company shall place Thirty-Five Million Dollars (\$35,000,000.00) into an escrow account ("Escrow Account") held by a financial institution having offices in the State of Florida selected by the Company and approved by the Chief Financial Officer of the City, such approval not to be unreasonably withheld, conditioned or delayed ("Escrow Agent"). Concurrently with the execution of this Agreement, the City, the Escrow Agent and the Company shall enter into an escrow agreement substantially in the form and content of the Hangar 1 escrow agreement providing that the funds held in the Escrow Account are to be released to the City by the Escrow Agent in accordance with Section 3.04 below.

In the event that this Agreement is terminated at any time prior to the Date of Beneficial Occupancy of Hangar 2 (except by reason of an Event of Default), the funds remaining in the Escrow Account, after the payment of Project Costs pursuant to Section 3.04 below with respect to all Project Cost obligations arising or incurred prior to or as a result of such termination, shall be released to the Company by the Escrow Agent.

Section 3.04 APPLICATION OF FUNDS TO PAY PROJECT COST

- (a) Subject to the provisions of paragraphs (b) and (c) of this Section, Project Cost shall be paid equally from (1) the City and other funds available to the City and (2) the Escrow Account established and funded pursuant to Section 3.03 above until the Escrow Account is depleted.

- (b) Up until the point in time that the Guaranteed Maximum Price for Element 1 has been established within the Project Budget for Element 1, up to, but not exceeding, One Million Five Hundred Thousand Dollars (\$1,500,000.00) of the Project Cost for Element 1 shall be paid from the Escrow Account on behalf of the Company, and the City shall pay up to, but not exceeding, One Million Five Hundred Thousand Dollars (\$1,500,000.00) of the Project Cost for Element 1. In the event that the Guaranteed Maximum Price for Element 1 has not been established within the Project Budget for Element 1 within sixty (60) days after the point in time when the City and the Company have collectively paid Three Million Dollars (\$3,000,000.00) of the Project Cost for Element 1, then (i) either party may terminate this Agreement pursuant to and in accordance with the applicable provisions of Section 2.04, or (ii) the Mayor of the City or the Mayor's designee, on behalf of the City, and the Company may, if each party so desires in its discretion, mutually agree in writing to increase such spending caps in order to establish the Guaranteed Maximum Price for Element 1 within the Project Budget for Element 1.

- (c) Not more than Seven Million Two Hundred Thousand Dollars (\$7,200,000.00) shall be disbursed from the Escrow Account on behalf of the Company for the Project Cost for Element 1, inclusive of any amounts previously paid pursuant to paragraph (b) of this Section.

Section 3.05 COMPANY COOPERATION TO OBTAIN GRANTS

The Company shall cooperate with the City in good faith and shall use its best efforts to assist the City, to obtain commitments for and payment of the full amounts of the Grant Funds.

Section 3.06 USE OF GRANT FUNDS AND COMPANY FINANCIAL COMMITMENT

The City shall use the Grant Funds and the Company Financial Commitment to pay the Project Cost, construction financing, and for cash management in accordance with Section 3.04.

END OF ARTICLE

ARTICLE 4. JOB CREATION

There are three "clawback" provisions in this Agreement and the Master Lease:

- (a) Minimum Jobs Level Relating to Non-Triumph Grants (Section 4.01 below);
- (b) Minimum Jobs Level Relating to Triumph Grant (Section 4.02 below); and
- (c) Default by the Company Resulting in Clawback of any Grant (Section 4.03 below).

The provisions of this Article 4 shall survive the termination of this Agreement and the construction and completion of the Project.

Section 4.01 MINIMUM JOBS LEVEL RELATING TO NON-TRIUMPH GRANTS

The Company shall use its best efforts to create and maintain a minimum of 1,325 new full time equivalent "Jobs", as defined in Section 4.04, during the ten (10) year period that commences on the Date of Beneficial Occupancy of Hangar 4 or such other time period as specified in a "Non-Triumph Grant Agreement" (hereinafter defined). Such minimum jobs level is more specifically defined to be 9,275 Job man-years. A Job man-year is defined as 2,080 man-hours worked.

The Company acknowledges that in order to secure funding for the Project, the City has entered into, or will enter into, various grant agreements with grant providers other than Triumph Gulf Coast, Inc., including but not limited to Escambia County, the U. S. Economic Development Agency, the Florida Department of Economic Opportunity, the Florida Department of Transportation, and others (such grant agreements being hereinafter referred to as the "Non-Triumph Grant Agreements"). Further, the Company acknowledges that that some or all of the Non-Triumph Grant Agreements will require that the City repay some or all of the grant funds advanced thereunder in the event that the Company fails to create and maintain at least 1,325 new full time equivalent jobs within the time frames and upon the terms and conditions set out in the pertinent Non-Triumph Grant Agreement. In negotiating the Non-Triumph Agreements, the City will endeavor in good faith to obtain a jobs-related clawback provision that will allow the City to repay jobs-related clawback amounts over a period of three to five years if the jobs-related clawback amount is material. All such jobs-related repayment (i.e., clawback) provisions in the Non-Triumph Grant Agreements will be known when the GMP for Element 1 is finalized in accordance with the terms of this Agreement. Subject to the following provisions of this paragraph, the Company hereby assumes and agrees to pay, as and when due and payable under the applicable

Non-Triumph Grant Agreement, all jobs-related clawback obligations of the City now or hereafter created or arising under each Non-Triumph Grant Agreement, and, further, the Company shall indemnify, defend and hold harmless the City from and against any and all claims, causes of action, suits, proceedings, losses, liabilities, damages, costs and expenses, including without limitation reasonable attorneys' fees, suffered or incurred by the City by reason of the operation of any jobs-related clawback provision in any of the Non-Triumph Grant Agreements or the failure of the Company to create and/or maintain jobs in accordance with the terms and conditions of the Non-Triumph Grant Agreements. Notwithstanding the foregoing, should any such jobs-related clawback provision be unsatisfactory to the Company, then, notwithstanding any contrary provision in this Agreement, the Company may in its sole discretion terminate this Agreement by giving to the City written notice of termination prior to the City's acceptance of a GMP for Element 1. If this Agreement is terminated pursuant to this paragraph, the Parties' respective obligations to pay Project Cost under Article 3 shall nevertheless survive such termination with respect to all Project Cost obligations arising or incurred prior to or as a result of such termination. If the Agreement is not so terminated by the Company, this Agreement shall continue in full force and effect in accordance with its terms. Further, in the event that this Agreement is not so terminated by the Company, the terms of this paragraph shall be self-operative without the necessity of any further agreement between the Parties, but nevertheless, prior to the City's acceptance of the GMP for Element 1, either Party may require the Parties to enter into a supplement to this Agreement that confirms the Company's obligations hereunder, is consistent with the provisions of this paragraph, and is specific to the Non-Triumph Grant Agreements then in effect.

The Company must annually provide documentation to the City regarding its compliance with the minimum jobs requirements of the Non-Triumph Grant Agreements in a manner consistent with the requirements imposed upon the City by the Non-Triumph Grant Agreements and the City's grant agreement with Triumph Gulf Coast, Inc. Further, within thirty (30) days following the end of each calendar quarter, the Company shall provide the Airport Director a Jobs Report showing in detail the number of Jobs at the Leased Premises for the preceding three month period. The Jobs Report shall be in sufficient detail to evidence Job levels and the compensation associated with each Job. The Jobs Report shall list, by worker identification number assigned by the Company, the number of hours each worker worked during the reporting period and the total wages and other compensation paid each worker during such reporting period, exclusive of benefits, and shall include such additional Job reporting information as initially required by the Non-Triumph Grant Agreements or the City's grant agreement with Triumph Gulf Coast, Inc. The City shall have the right to audit Company records to validate the information presented in the Jobs Report.

Section 4.02 MINIMUM JOBS LEVEL RELATING TO THE TRIUMPH GULF COAST, INC. GRANT

(a) That certain MRO Performance Agreement by and between Triumph Gulf Coast, Inc. ("Triumph") and the Company is attached hereto as Exhibit "J" and is hereby incorporated herein by reference.

(b) The Company hereby agrees with the City that the Company shall observe and perform all obligations under the Performance Agreement to be observed and performed by the Company. The Company agrees that the City shall be entitled to enforce the Company's obligations to Triumph under the MRO Performance Agreement to the same extent as Triumph is or shall be entitled to enforce such obligations.

(c) All payments under the MRO Performance Agreement will be made by the Company directly to Triumph. The Parties expressly agree that Triumph is and shall be an intended third party beneficiary of the obligations of the Company under this Section 4.02 and shall be entitled to enforce the covenants and obligations of the Company under this Section 4.02 directly against the Company as if Triumph were a party to this Agreement.

(d) The Company will be solely liable to Triumph for all clawback payments arising under the MRO Performance Agreement or this Section 4.02.

(e) It is the Parties' intent that the document attached hereto as Exhibit "J" 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 the Company, as the same may be modified and amended from time to time. To that end, in the event of any conflict between Exhibit "J" hereto and the MRO Performance Agreement actually executed and entered into by and between Triumph and the Company, 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 the Company shall control, and the conflicting provisions of Exhibit "J" shall be deemed to be automatically modified and amended to the full extent necessary in order for the provisions of Exhibit "J" to be identical to the MRO Performance Agreement actually executed and entered into by and between Triumph and the Company, 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 the Company, as the same may be modified and amended from time to time shall be substituted for and in place of Exhibit "J" hereto, without the consent of the Company 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 the Company, as the same may be modified and amended from time to time, shall constitute Exhibit "J" 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, the Company, or any other person or entity.

Section 4.03 ACT OR FAILURE TO ACT BY THE COMPANY RESULTING IN CLAWBACK UNDER ANY GRANT

The Company acknowledges that the Non-Triumph Agreements and the Triumph Grant Agreement may require the City to repay all or portions of the grant funds disbursed thereunder in the event that (i) the Project is terminated or abandoned, in whole or in part, prior to full completion; (ii) the Company withdraws from the Project in whole or in part; (iii) the Company becomes unwilling or unable to satisfy its jobs creation obligations under this Agreement; or (iv) the commencement, prosecution, or timely completion of the Project is rendered improbable, infeasible, impossible, or illegal. The Company hereby agrees to indemnify, defend and hold harmless the City from and against any and all clawbacks, claims, suits, causes of action, liabilities, damages, costs and expenses, including without limitation reasonable attorneys' fees, suffered or incurred by the City by reason of or arising out of any act or failure to act by the Company that results in or gives rise to any obligation or liability by the City under all or any of the Non-Triumph Agreements and/or the Triumph Agreement. Notwithstanding the foregoing, the Company shall not be obligated to indemnify the City if and to the extent that such act or failure to act by the Company is due to (a) Force Majeure; (b) the action or inaction on behalf of the City; or (c) the material underfunding of the Grant Funds set forth in Section 3.01.

Section 4.04 JOB DEFINITIONS

Except as otherwise provided in Section 4.02 or in any Non-Triumph Agreement, as used in this Agreement, the term "Jobs" shall mean "jobs" as defined in Section 288.106(2)(i), Florida Statutes, as in effect on the Effective Date, which pay the average wages or equivalent compensation required by Section 4.02(a)(2).

Section 4.05 WAGES

The Company shall pay average high head of household wages or equivalent compensation for the 1,325 full time equivalent Jobs required under Section 4.01. "High head of household wages" shall mean an average annual wage of at least \$44,461.00, excluding benefits, for the Jobs. In no event will the Company pay less than the minimum wage for each Job, as required by federal and State of Florida statutes.

Section 4.06 TRAINING PROGRAMS

The Company will work with Pensacola educational institutions to develop aircraft maintenance training programs. The purpose of the programs is to train local Pensacola area residents for employment in the aircraft repair and support services industry. The

Parties shall collaborate in good faith to obtain grants to support such training programs.

END OF ARTICLE

ARTICLE 5. MASTER LEASE AND SUPPLEMENTS TO MASTER LEASE

Section 5.01 MASTER LEASE

Concurrently with the execution of this Agreement, the Parties shall execute a Master Lease of the Land in the form attached hereto as Exhibit I and incorporated herein by reference.

Section 5.02 SUPPLEMENTS TO MASTER LEASE

Not less than thirty (30) days prior to the anticipated Date of Beneficial Occupancy for Hangar 2, the Parties shall enter into Supplement No. 1 to Master Lease for Hangar 2, as contemplated by the Master Lease, which shall be effective as of such Date of Beneficial Occupancy.

Not less than thirty (30) days prior to the anticipated Date of Beneficial Occupancy for Hangar 3, the Parties shall enter into Supplement No. 2 to Master Lease for Hangar 3, as contemplated by the Master Lease, which shall be effective as of such Date of Beneficial Occupancy.

Not less than thirty (30) days prior to the anticipated Date of Beneficial Occupancy for Hangar 4, the Parties shall enter into Supplement No. 3 to Master Lease for Hangar 4, as contemplated by the Master Lease, which shall be effective as of such Date of Beneficial Occupancy.

Not less than thirty (30) days prior to the anticipated Date of Beneficial Occupancy for the Support Services Center (West Side), the Parties shall enter into Supplement No. 4 to Master Lease for the Support Services Center (West Side), as contemplated by the Master Lease, which shall be effective as of such Date of Beneficial Occupancy.

Not less than thirty (30) days prior to the anticipated Date of Beneficial Occupancy for the administrative office building, the Parties shall enter into Supplement No. 5 to Master Lease for the administrative office building, as contemplated by the Master Lease, which shall be effective as of such Date of Beneficial Occupancy.

END OF ARTICLE

ARTICLE 6. LIENS PROHIBITED

No person or entity performing or providing labor, work, services or materials to or upon the Leased Premises by, through or at the request of the Company shall be entitled to claim or assert any lien against the Leased Premises or any portion thereof. The Company shall not suffer or permit any mechanics' or other liens to be filed against the fee of the Leased Premises, or against the Company's leasehold interest in the land, buildings, or improvements thereon, by reason of any work, labor, services or materials supplied or claimed to have been supplied, to the Company or to anyone holding the Leased Premises, or any part thereof, through or under the Company.

If any such construction lien shall be recorded against the Leased Premises or any portion thereof, the Company shall immediately cause the same to be removed or bonded against in accordance with applicable law.

END OF ARTICLE

ARTICLE 7. TITLE TO FACILITIES AND OTHER IMPROVEMENTS

Section 7.01 TITLE TO FACILITIES

It is understood and agreed that the Facilities and all other Project improvements are and shall remain the property of the City during the Term of this Agreement and the Term of the Lease and all Supplements thereto, and upon the expiration or earlier termination of this Agreement and the Lease or any of the Supplements thereto.

END OF ARTICLE

ARTICLE 8. ENVIRONMENTAL BASELINE STUDIES PRIOR TO OCCUPANCY

Section 8.01 BASELINE ENVIRONMENTAL CONDITIONS STUDIES

Prior to each initial occupation of the Leased Premises or any portion thereof by the Company or any permitted successor or assignee of the Company, the City and the Company shall cause to be completed a baseline environmental conditions study of the Leased Premises or pertinent portion thereof by a licensed professional retained by the City. Each such initial baseline environmental study shall be part of the Project Cost.

The City, shall cause such baseline environmental conditions studies to be completed by a licensed professional agreed to by both parties at least thirty (30) days prior to the Date of Beneficial Occupancy of the pertinent portion of the Facilities. The Company shall have fifteen (15) days after receipt of the completed study to review and comment on the completed study. Completion of the study and final acceptance of the study by the City shall be a condition of precedent to the Company's occupying such Facilities.

END OF ARTICLE

ARTICLE 9. ASSIGNMENT

Section 9.01 ASSIGNMENT OF AGREEMENT

The Company shall not assign this Agreement or any part thereof or interest therein, without first having obtained the City's prior written consent which consent may be given or withheld in the City's sole and absolute discretion; provided, 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 the Company may merge (regardless of whether the Company is the surviving entity, so long as the surviving entity assumes and agrees to pay and perform all obligations of the Company under this Agreement) or to an Affiliate or Subsidiary. The Company shall promptly notify the City in writing of any merger by or with the Company and any assignment of this Agreement to an Affiliate or Subsidiary.

In the event that the Company requests permission to assign this Agreement in whole or in part, the request shall be submitted to the Airport Director not less than sixty (60) days prior to the proposed effective date of the assignment requested, and shall be accompanied by a copy of the proposed assignment agreement(s) and of all agreement(s) collateral thereto, together with the following information and any other information requested by the Airport Director: the identity and contact information of the assignee, whether the requested assignment is a full or partial assignment of this Agreement, a statement of the entire consideration to be received by the Company by reason of such assignment, the type of business to be conducted on the Leased Premises by the assignee, and reasonable financial history and financial information of the Assignee.

Section 9.02 CONSUMMATION OF ASSIGNMENT

The City's consent for the assignment for which the City's consent is required and for which such consent has been given shall be by written instrument, in a form reasonably satisfactory to the Airport Director and the City Attorney, and shall be executed by the assignee who shall agree, in writing, for the benefit of the City, to be bound by and to perform all the terms, covenants, and conditions of this Agreement. Four (4) executed copies of such written instrument shall be delivered to the City. Failure either to obtain the City's prior written consent or to comply with the provisions of this Agreement shall serve to prevent any such assignment from becoming effective.

The Company agrees and acknowledges that it shall remain fully and primarily liable for all obligations of lessee under this Agreement, notwithstanding any full or partial assignment of this Agreement.

By applying for consent to an assignment of this Agreement, the Company agrees to reimburse the City for its out-of-pocket costs for consultants, attorneys, and

experts to evaluate the request, to advise the City with respect thereto and to prepare appropriate documents.

END OF ARTICLE

ARTICLE 10. GENERAL PROVISIONS

Section 10.01 ACKNOWLEDGMENT

The Parties hereto acknowledge that they have thoroughly read this Agreement, including any exhibits or attachments hereto, and have sought and received whatever competent advice and counsel necessary for them to form a full and complete understanding of their rights and obligations hereunder. The Parties further acknowledge that this Agreement is the result of extensive negotiations between the Parties and shall not be interpreted against the City by reason of the preparation of this Agreement by the City.

Section 10.02 CAPACITY TO EXECUTE

The individuals executing this Agreement personally warrant that they have full authority to execute this Agreement on behalf of the entity for whom they are acting hereunder.

Section 10.03 DELIVERY OF NOTICES

Any notices required in this Agreement shall be in writing and served personally or sent by registered or certified mail, postage prepaid, or by courier service, such as FedEx or UPS. Any notices mailed pursuant to this section shall be presumed to have been received by the addressee five (5) business days after deposit of said notice in the mail, unless sent by courier service.

Notices to the City shall be addressed to:

Airport Director
City of Pensacola
Pensacola International Airport
2430 Airport Boulevard, Suite 225
Pensacola, Florida 32504

and

City Administrator
City of Pensacola
222 W. Main Street
Pensacola, Florida 32502

Notices to the Company shall be addressed to:

President, VT Mobile Aerospace Engineering, Inc.
Bill Hafner, President
2100 Aerospace Drive
Brookley Aeroplex
Mobile, AL 36615
Telephone: 251-438-8888
Telecopier: 251-438-8892

Section 10.04 ENTIRE AGREEMENT

This Agreement constitutes the entire agreement between the Parties on the subject matter hereof and may not be changed, modified, discharged, or extended except by written instrument duly executed by the City and the Company. The Company agrees that no representations or grants of rights or privileges shall be binding upon the City unless expressed in writing in this Agreement.

Section 10.05 FORCE MAJEURE

Neither the City nor the Company shall be deemed to be in violation of this Agreement if it is prevented from performing any of its obligations hereunder by reason of strikes, boycotts, labor disputes, embargoes, shortages of material, acts of God, acts of the public enemy, acts of superior governmental authority, weather conditions, tides, riots, rebellion, sabotage, or any other circumstances for which it is not responsible or which is not in its control (collectively, "Force Majeure"); provided, however, that Force Majeure shall not excuse the Company from making, as and when due, any monetary payment required under this Agreement.

Section 10.06 GENDER

Words of either gender used in this Agreement shall be held and construed to include the other gender, and words in the singular number shall be held to include the plural, unless the context otherwise requires.

Section 10.07 GENERAL INTERPRETATION

Insofar as this Agreement grants, permits, or contemplates the use of space or facilities or the doing of any other act or thing at the Airport by the Company, such use or the doing of such act or thing by the Company is to be in connection with the operation of its Aircraft MRO business. Each of the Parties, however, has entered into this Agreement solely for its own benefit; and (without limiting the right of either Party to maintain suits, actions, or other proceedings because of breaches of this Agreement) this Agreement does not grant to any third person (excepting a successor party to the City or the Company and excepting Triumph Gulf Coast, Inc., as provided in Article 4)

a right to claim damages or bring any suit, action, or other proceeding against either the City or the Company because of any breach hereof.

Section 10.08 GOVERNING LAW

The laws of the State of Florida shall govern this Agreement and all disputes arising hereunder, with venue in Escambia County, Florida.

Section 10.09 HEADINGS

The headings of the articles and sections of this Agreement are inserted only as a matter of convenience and for reference and do not define or limit the scope or intent of any provisions of this Agreement and shall not be construed to affect in any manner the terms and provisions of this Agreement or its interpretation.

Section 10.10 INCORPORATION OF EXHIBITS

All exhibits referred to in this Agreement are intended to be and hereby are specifically incorporated and made a part of this Agreement.

Section 10.11 INCORPORATION OF REQUIRED PROVISIONS

The Parties hereto incorporate herein by this reference all applicable provisions lawfully required to be contained herein by any governmental body or agency.

Section 10.12 INVALID PROVISIONS

In the event that any covenant, condition, or provision herein contained is held to be invalid by a court of competent jurisdiction, the invalidity of any such covenant, condition, or provision shall in no way affect any other covenant, condition, or provision herein contained, provided that the invalidity of any such covenant, condition, or provision does not materially prejudice either the City or the Company in its respective rights and obligations contained in the valid covenants, conditions, and provisions of this Agreement.

Section 10.13 NON-LIABILITY OF INDIVIDUALS

No director, officer, agent, elected official, or employee of either Party shall be charged personally or held contractually liable by or to the other Party under any term or provision of this Agreement or because of any breach hereof or because of its or their execution or attempted execution.

Section 10.14 NO PARTNERSHIP

Nothing in this Agreement constitutes a partnership between the Parties. It is the express intention of the Parties to deny any such relationship.

Section 10.15 NOTICE OR CONSENT

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 the Company shall be entitled to rely thereon.

Section 10.16 OTHER LAND AND BUILDINGS EXCLUDED

It is agreed and understood that this Agreement and any exhibit hereto is not intended to provide for the lease of any building, land, space, or area or to set any rental rates for any building, land, space, or area other than that specifically described herein.

Section 10.17 PUBLIC RECORDS LAWS

The Florida Public Records Law, as contained in Chapter 119, Florida Statutes, is very broad. As a result, this Agreement any electronic or written communication or document created or received by the City (including but not limited to electronic mail) will be made available to the public and media, upon request, unless a statutory exemption from such disclosure exists. The Company shall comply with the Florida Public Records Law in effect from time to time if and to the extent that the Florida Public Records Law is applicable to the Company. Notwithstanding any contrary provision in this Agreement, any failure by the Company to comply with the Florida Public Records Law, if and to the extent that it is applicable to the Company, that continues for seven (7) days after written notice from City may constitute a default by the Company under this Agreement.

IF THE COMPANY HAS QUESTIONS REGARDING THE APPLICATION OF CHAPTER 119, FLORIDA STATUTES, TO THE COMPANY'S DUTY TO PROVIDE PUBLIC RECORDS RELATING TO THIS AGREEMENT, CONTACT THE CUSTODIAN OF PUBLIC RECORDS AT: THE OFFICE OF THE CITY ATTORNEY, 222 WEST MAIN STREET, PENSACOLA, FLORIDA 32502; PUBLICRECORDS@CITYOFPENSACOLA.COM; (850) 435-1715.

Section 10.18 RIGHTS RESERVED TO THE CITY

Nothing contained herein shall unlawfully impair the right of the City to exercise its governmental or legislative functions. This Agreement is made subject to the Constitution and laws of the State of Florida and to the provisions of the Airport Improvement Program grants and other federal and state grants applicable to the Airport and its operation, and the provisions of such grant agreements, insofar as they are applicable to the terms and provisions of this Agreement, shall be considered a part hereof to the same extent as though copied herein at length to the extent and shall control any contrary provision of this Agreement. To the best of the City's knowledge, nothing contained in such laws or grant agreements conflicts with the express provisions of this Agreement.

Section 10.19 SUCCESSORS AND ASSIGNS

The provisions of this Agreement shall be binding upon and inure to the benefit of the successors and assigns of the Parties hereto; provided, however, that this provision shall in no way whatsoever alter the restriction herein regarding assignment by the Company.

Section 10.20 TERM

The Parties' respective rights and obligations under this Agreement shall commence on the Effective Date and shall continue until such time as neither party has any present, future or conditional obligation to the other under this Agreement. Without limiting the generality of the foregoing, in no event shall this Agreement terminate, except in accordance with Article 2, until the Company has fulfilled all of its obligations under Articles 3 and 4. Accordingly, this Agreement shall survive the completion of the Project.

Section 10.21 TRIAL BY JURY

The parties to this Agreement desire to avoid the additional time and expense related to a jury trial of any disputes arising hereunder. Therefore, it is mutually agreed by and between the parties hereto, and for their successors, heirs and permitted assigns, that they shall and hereby do waive trial by jury of any claim, counterclaim, or third-party claim, including any and all claims of injury or damages, brought by either party against the other arising out of or in any way connected with this Agreement and/or the relationship which arises hereunder. The parties acknowledge and agree that this waiver is knowingly, freely, and voluntarily given, is desired by all parties, and is in the best interest of all parties.

END OF ARTICLE

IN WITNESS WHEREOF, the undersigned have duly executed this Agreement as of the dates set forth below.

CITY:

COMPANY:

CITY OF PENSACOLA

**VT MOBILE AEROSPACE
ENGINEERING, INC.;**
an Alabama corporation

By: _____
Grover C. Robinson, IV, Mayor

By: _____
_____, Chairman

Date: _____

Date: _____

Attest:

Attest:

Ericka L. Burnett, City Clerk

Print Name: _____
Title: _____

Approved As To Content:

By: _____
Daniel E. Flynn,
Airport Director

Approved As To Form

By: _____
Susan A. Woolf,
City Attorney

Exhibit A Land

Exhibit A-1
 Hangar 2 Option Site
 Pensacola International Airport



Preliminary Draft Plan
 For Review and Revision
 Not for Publication

Exhibit A-2
Project Titan Westside Site
Pensacola International Airport



Preliminary Draft Plan
For Review and Revision
Not for Publication

Exhibit B Preliminary Project Drawings

Exhibit B-1
Element 2 Project Titan – MRO Facilities to be Constructed
Pensacola International Airport



Preliminary Discussion Draft Plan
 Not for Publication

**Exhibit B-2
 Element 2 Project Titan – MRO Facilities to be Constructed
 Pensacola International Airport**



**Preliminary Discussion Draft Plan
 Not for Publication**

Exhibit C Preliminary Project Description

Project Titan consists of the expansion of the Aircraft MRO Campus at the Airport for the use of ST Engineering to operate their aircraft maintenance business and to create jobs. Project Titan is projected to create capacity for MRO activity that will result in an addition 1,325 high paying aerospace jobs in Pensacola and its environs area.

The expansion necessary to produce the additional jobs consists of the creation of the following facilities:

- Project Titan Element 1
 - Facilities
 - Hangar 2 - 173,000 square feet
 - Support Services Center - 15,000 square feet
 - Aircraft taxiways accessing the hangar aprons
 - Aircraft aprons at the hangars
 - Automobile ingress and egress roadways and auto parking
 - Not to Exceed Budget for Element 1- \$49,000,000

- Project Titan Element 2
 - Facilities
 - Hangar 3 - 191,000 square feet
 - Hangar 4 - 191,000 square feet
 - Support Services Center - 100,000 square feet
 - Administrative Offices - 120,000 square feet (three stories)
 - Aircraft taxiways accessing the hangar aprons
 - Aircraft aprons at the hangars
 - Automobile ingress and egress roadways and auto parking
 - Not to Exceed Budget for Element 1- \$161,125,000

The City and the ST Engineering agree that the total cost of facilities listed above cannot exceed \$210,125,000.

Project Titan will be situated on land located at the Pensacola International Airport. The City of Pensacola owns the Pensacola International Airport and it is operated as an enterprise department of the City. The land and buildings will be leased to a ST Engineering, subject to a long-term Real Property lease. The entire MRO development, including all roadways, taxiways, aprons, hangars and buildings; and all related infrastructure necessary to support this proposed project will be City owned assets of Pensacola International Airport. No part of this Proposed Project will be owned by a private business or enterprise.

Exhibit D Preliminary Space Program

| Category | Land | Building |
|-------------------------|------------------|----------------|
| | Sq. Ft. | Sq. Ft. |
| Element 1 | | |
| Land | 696,524 | |
| Hangar 2 | | 173,000 |
| Support Services Center | | 15,000 |
| | | |
| Element 2 | | |
| Land | 2,002,453 | |
| Hangar 3 | | 191,000 |
| Hangar 4 | | 191,000 |
| Support Services Center | | 100,000 |
| Headquarters Offices | | 120,000 |
| | | |
| Total | 2,698,978 | 790,000 |

Exhibit E Preliminary Project Schedule

Exhibit F Preliminary Project Budget

| Funding Sources | Amount |
|--|-----------------------|
| Triumph | \$ 66,000,000 |
| VT MAE | 35,000,000 |
| FDOT - Grant | 25,000,000 |
| FDOT - Grant | 20,000,000 |
| City | 15,000,000 |
| County | 15,000,000 |
| Governors Job Growth | 14,000,000 |
| Federal EDA | 12,250,000 |
| Legislature | 3,000,000 |
| City funding-bridge loan-additional grants | 4,875,000 |
| Total | \$ 210,125,000 |

Exhibit G Airport Layout Plan

Exhibit H FAA Airspace Determination Letter

TO BE ADDED UPON RECEIPT FROM FAA

City of Pensacola, Florida

VT Mobile Aerospace Engineering, Inc.

Exhibit I Master Lease

Exhibit J 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 term is 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 32317
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:

TRIUMPH:

VT Mobile Aerospace Engineering, Inc., an Alabama corporation

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

By: _____
Print Name: Bill Hafner
Title: President

By: _____
Print Name: _____
Title: Chairman

By: _____
Print Name: _____
Title: Treasurer

ATTEST:

By: _____
Print Name: _____
Title: Secretary

**MASTER LEASE
OF REAL PROPERTY**

AT

PENSACOLA INTERNATIONAL AIRPORT

BETWEEN

VT MOBILE AEROSPACE ENGINEERING, INC.

AND

CITY OF PENSACOLA

EFFECTIVE DATE: _____, 2019

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**MASTER LEASE OF REAL PROPERTY AT
PENSACOLA INTERNATIONAL AIRPORT**

THIS MASTER LEASE is hereby made and entered into as of the Effective Date (hereinafter defined), by and between **VT MOBILE AEROSPACE ENGINEERING, INC.**, a corporation organized in the State of Alabama and duly qualified to do business in the State of Florida ("the Company"), as lessee, and the **CITY OF PENSACOLA, FLORIDA**, a Florida municipal corporation ("the City"), as lessor, in its capacity as owner and operator of **PENSACOLA INTERNATIONAL AIRPORT** ("the Airport"). The City and the Company may, from time to time, be referred to in this Lease individually as "a Party" and collectively as "the Parties."

RECITALS

WHEREAS, the City is the owner and operator of the Airport (as hereinafter defined); and

WHEREAS, the City, as lessor, desires to lease to the Company, as lessee, certain Leased Premises (as hereinafter defined) located within the Airport, and the Company, as lessee, desires to lease the Leased Premises from the City, all upon the terms and subject to the conditions hereinafter set forth; and

NOW, THEREFORE, in consideration of the promises, covenants, terms, and conditions herein set forth, the Parties hereby agree as follows:

ARTICLE 1. DEFINITIONS

Section 1.01 DEFINITIONS

The following words and phrases, wherever used in this Lease, shall, for purposes of this Lease, have the following meanings:

"Additional Land" means that portion of the Airport land designated on Exhibit A attached hereto and incorporated herein by reference as the Additional Land.

"Affiliate" means any corporation or other entity that directly, or indirectly through one or more intermediaries, controls or is controlled by or is under common control with, the Company.

"Aircraft MRO" means the maintenance, repair, overhaul, inspection, or modification of aircraft or aircraft components, and all ancillary activities.

"Airport" means Pensacola International Airport located in Pensacola, Florida, as it now exists, as shown on Exhibit B, and as it may exist in the future.

"Airport Director" means the person who from time to time holds the position of "Airport Director" of the Airport. Said term shall also include any person expressly designated by the City to exercise functions with respect to the rights and obligations of the Airport enterprise.

"Airport Master Plan" means the assembly of appropriate documents and drawings addressing development of the Airport from physical, economic, social, and political jurisdictional perspectives as designated from time to time by the City and the Airport Director as the Airport Master Plan. The Airport Master Plan includes, without limitation, forecasts of aviation demand, an Airport land use plan, an Airport layout plan set, an Airport approach and runway protection zone plan, a terminal area plan, an Airport access and parking plan, a staging plan, a capital improvement plan, and a financial plan.

"Baseline Environmental Conditions Study" means, with respect to each Parcel, a study or studies prepared pursuant to Article 14 to document environmental conditions existing with respect to such Parcel at the time of the study. The Baseline Environmental Conditions Study for a Parcel shall be attached to and made a part of the Lease Supplement for such Parcel.

"Bond Resolution" means Resolution No. 59-88, adopted as of September 8, 1988, as it may be amended or supplemented from time to time, and any other Resolution of the City regulating or authorizing the issuance of Bonds, as amended or supplemented from time to time, other than Special Purpose Facility Bonds (as defined in Resolution No. 59-88), payable from Airport revenue.

"City" means the City of Pensacola, Florida, and any successor to the City in ownership of the Airport.

"Common Use Space" means space and areas within the Leased Premises which the Company is granted the non-exclusive right to use in common with others, in accordance with this Lease and the Rules and Regulations, which Common Use Space may include taxiways, aircraft maneuvering areas and other portions of the Airport as designated in this Lease or in the Rules and Regulations. The Common Use Space is shown or described in the Lease Supplement for such Parcel.

"Company" means VT Mobile Aerospace Engineering, Inc., a corporation organized in the State of Alabama, and any assignee of the lessee's leasehold estate in the Leased Premises pursuant to an assignment permitted by this Lease.

"Control" of an entity means the possession, directly or indirectly, of the power to direct or cause the direction of the management and policies of such entity, whether through the ownership of voting securities or by contract or otherwise.

"Date of Beneficial Occupancy" means, with respect to a Parcel, the date that the Program Manager certifies that the Facilities constructed on such Parcel have been substantially completed in substantial compliance with the "Final Project Plans" for such Facilities (as defined in the Development Agreement) and a Certificate of Occupancy has been issued for such Facilities. The Date of Beneficial Occupancy with respect to each Parcel shall be specified in the Lease Supplement for such Parcel.

"Development Agreement" means the Development Agreement between City and Owner dated the same date as this Lease which provides, inter alia, for the construction of the Facilities.

"Effective Date" means the date upon which this Lease is executed by the last Party to execute this Lease, as shown by the respective dates set forth after the places provided herein below for the Parties' execution of this Lease.

"Environmental Laws" means, collectively, all federal, state, water management district, and local environmental, land use, safety, and health laws, rules, regulations, and ordinances, and common law, applicable to the Airport, the Company or the Leased Premises, including, but not limited to, the Occupational Safety and Health Act of 1970 (29 U.S.C. § 651 et seq.); the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (42 U.S.C. § 9601 et seq.); the Hazardous Materials Transportation Act (49 U.S.C. § 5101 et seq.); the Resource Conservation and Recovery Act (42 U.S.C. § 6901 et seq.); the Toxic Substances Control Act of 1976 (15 U.S.C. § 2601 et seq.); the Clean Air Act (42 U.S.C. § 7401 et seq.)("CAA"); the Safe

Drinking Water Act (42 U.S.C. §§ 300f-300j), the Federal Water Pollution Control Act (commonly known as the Clean Water Act) (33 U.S.C. §§ 1251-1387), and Sections 253, 373, 376 and 403, Florida Statutes, as any of the foregoing may hereafter be amended, any rule or regulation pursuant thereto, and any other present or future law, ordinance, rule, regulation, code, permit or permit condition, order, notice of violation, decree, consent agreement, or directive addressing any environmental, safety, or health issue of or by the federal government, or of or by any state or other political subdivision thereof, or any agency, court, or body of the federal government or any state or other political subdivision thereof, exercising executive, legislative, judicial, regulatory, or administrative functions. The term Environmental Laws shall also mean and include the Airport's Spill Prevention, Control, and Countermeasure Plan ("SPCC") and all future amendments thereto and the Airport's Storm Water Pollution Prevention Plan ("SWPPP") and all future amendments thereto.

"Event of Default" shall have the meaning assigned in Article 17 below.

"Exclusive Use Space" means space and areas within the Leased Premises which the Company is granted the exclusive right to use to the exclusion of all others. The Exclusive Use Space included within a Parcel is shown or described in the Lease Supplement for such Parcel.

"FAA" means the Federal Aviation Administration of the United States government, or any federal agencies succeeding to its jurisdiction.

"Facilities" means the buildings and improvements to be constructed by the City upon the Land pursuant to the Development Agreement.

"Fair Market Rent" means the fair market rent of the Leased Premises as determined in accordance with Article 2 and Article 5.

"Ground Rent" means the annual rent for the Leased Premises as specified or determined in this Lease and the Lease Supplements.

"Hazardous Substances" means any hazardous, toxic, or harmful substances, wastes, materials, pollutants, or contaminants (including, without limitation, asbestos, polychlorinated biphenyls, petroleum products, flammable explosives, radioactive materials, paint containing more than 0.5% lead by dry weight ("Lead Based Paint"), infectious substances, or raw materials which include hazardous constituents), or any other substances or materials that are included under or regulated by Environmental Laws.

"Land" means the land within the Airport depicted on Exhibit A attached hereto upon which the Facilities will be constructed.

"Lease" means this Master Lease of Real Property as amended and supplemented from time to time.

"Leased Premises" means the Land and the Facilities at any time constructed or existing on the Land.

"Lease Supplement" means a supplement or amendment to this Lease, executed by both City and Company, which by its terms is made a material part of this Lease and which supplements or amends this Lease. Each Lease Supplement shall be sequentially numbered.

"Lease Term" shall have the meaning assigned in Section 3.01 below and in each Lease Supplement.

"Lease Year" means each period of twelve consecutive calendar months that begins on an anniversary of the Effective Date or, if the Effective Date is not the first day of a month, each period of twelve consecutive calendar months that begins on the first day of the next month after each such anniversary of the Effective Date; provided, however, that the first Lease Year shall commence on the Effective Date and continue to, but not including, the first day of the next Lease Year.

"MAI Appraiser" means a Member of the Appraisal Institute.

"Minority Business Enterprise" means a Minority Business Enterprise as defined in and subject to Title 49, CFR, Part 23, "Participation by Minority Business Enterprise in Department of Transportation Programs" as Part 23 may be amended from time to time.

"Parcel" means a parcel of Land identified in Exhibit A hereto and all Facilities at any time constructed or existing thereon.

"Project" means the entire project, including but not limited to the Facilities, to be constructed on the Land and upon certain other areas of the Airport pursuant to plans and specifications approved by both the City and the Company in accordance with the Development Agreement.

"Rent Commencement Date" with respect to each Parcel means the Date of Beneficial Occupancy of the portion of the Facilities constructed on such Parcel.

"Rules and Regulations" means those rules and regulations promulgated from time to time by the City or the Airport Director governing conduct on, and operations at, the Airport and use of any of the land and/or facilities of the Airport.

"Subsidiary" means any corporation or other entity more than fifty percent (50%) of whose outstanding stock (or other form of equity ownership) is, at the relevant time, owned by the Company or by another Subsidiary of the Company.

"TSA" means the Transportation Security Administration under the Department of Homeland Security of the United States government, or any federal agencies succeeding to its jurisdiction.

Section 1.02 **CROSS-REFERENCES**

All references in this Lease to articles, sections, and exhibits pertain to articles, sections, and exhibits of this Lease unless otherwise specified.

END OF ARTICLE

ARTICLE 2. LEASED PREMISES; RIGHT OF FIRST REFUSAL TO LEASE ADDITIONAL LAND; AND OPTION TO LEASE ADDITIONAL LAND

Section 2.01 LEASED PREMISES

The City does hereby lease to the Company, and the Company does hereby lease from the City, the Land and the Facilities to be constructed upon the Land pursuant to the Development Agreement (collectively, the "Leased Premises") for the rent, upon the terms, and subject to the conditions set forth in this Lease.

Section 2.02 RIGHT OF FIRST REFUSAL TO LEASE ADDITIONAL LAND

During the first fifteen (15) Lease Years, the Company shall have, and is hereby granted, a right of first refusal to lease the Additional Land upon the terms and subject to the conditions hereinafter set forth in this Section 2.02 and in Section 2.04. The parties agree that upon completion of Project design pursuant to the Development Agreement, the City shall cause a current survey and legal description of the Additional Land to be prepared by a Florida-licensed land surveyor as part of the Project, and that the parties shall amend this Lease to delete the reference to the Additional Land in Exhibit A and replace it with such survey and legal description. If, as, and when the City receives a bona fide arm's length written offer to lease the Additional Land for rent and upon terms and conditions that the City desires to accept (the "Third Party Lease Offer"), and if, but only if, at the time the City receives the Third Party Lease Offer there then exist no Event of Default and no state of facts which with the giving of notice or the lapse of time, or both, would constitute an Event of Default, the City shall provide the Company with the salient details of the Third Party Lease Offer in the form of a written notice to the Company. The Company shall have thirty (30) days from the date of delivery of the notice within which to exercise its right of first refusal by entering into a binding written lease for the Additional Land for the same rent and upon the same terms and conditions as set forth in the Third Party Lease Offer. If the Company does not so exercise its right of first refusal within such thirty (30) day period, both the right of first refusal hereby granted in this Section 2.02 and the option to lease granted in Section 2.03 shall automatically terminate without further notice to the Company, and thereupon the City shall be free to accept such Third Party Lease Offer and lease the Additional Land to the offeror in accordance with the material terms of such Third Party Lease Offer

The Company may waive in writing the right of first refusal granted by this Section 2.02 at any time during the Lease Term, and such right of first refusal shall terminate upon the City's receipt of such written waiver.

If not sooner terminated pursuant to this Article 2, the right of first refusal granted by this Section 2.02 shall automatically terminate, without notice to the Company, at the end of the fifteenth (15th) Lease Year.

Section 2.03 OPTION TO LEASE ADDITIONAL LAND

During the first fifteen (15) Lease Years, the Company shall have, and is hereby granted, an option to lease the Additional Land upon the terms and subject to the conditions hereinafter set forth in this Section 2.03 and in Section 2.04. This option to lease shall be exercised by Company, if at all, by written notice (the "Notice to Exercise") delivered to City as provided in Section 23.05 hereof, which Notice to Exercise shall state that the Company thereby exercises its option to lease granted by this Section 2.03. Upon the City's receipt of the Notice to Exercise, the following rights and obligations shall arise:

(a) Within forty-five (45) days after receiving the Notice to Exercise, the City shall engage an MAI Appraiser to determine the Fair Market Rent for the Additional Land, such Fair Market Rent to be determined in accordance with sound appraisal practices on the basis of, to the extent possible, the terms and conditions of leases and leased premises comparable to the terms of the Additional Land Lease (as defined in subsection (c) below) and the Additional Land in size, and in other material respects then being entered into in the relevant market area as determined by the MAI Appraiser, with appropriate adjustments to account for relevant and material differences. Upon receiving the MAI Appraiser's report, the City shall deliver the same to the Company and the Company shall have a period of twenty (20) days to send the City written notice of its (a) acceptance of the MAI Appraiser's report and agreement to pay Ground Rent for the Additional Land in the amount set forth in such report, (b) objection to the MAI Appraiser's report and notice of its desire to obtain its own appraisal pursuant to the provisions of the following paragraph, or (c) objection to the MAI Appraiser's report and notice that it terminates the Notice to Exercise. If the Company fails to deliver to the City written notice under option (a) or (b) above within the twenty (20) day period, the Company shall be deemed to terminate the Notice to Exercise. If the Notice to Exercise is terminated as hereinabove provided, the option to lease granted by this Section 2.03 and the right of first refusal granted by Section 2.02 shall nevertheless remain in full force and effect unless previously terminated or unless the City has been or is notified otherwise in writing by the Company.

Should the Company choose option (b) above, the Company shall then select, at its own cost and expense, an MAI Appraiser to perform an appraisal to determine the Fair Market Rent for the Additional Land based on the same criteria used by the City's MAI Appraiser. Such appraisal by the Company's MAI Appraiser shall be completed within sixty (60) days after the expiration of the 20-day period provided in the preceding paragraph. Following the completion of the appraisal by the Company's MAI Appraiser, the two appraisers shall jointly select a third MAI Appraiser who shall review the work of each appraiser. In the event the two MAI Appraisers cannot agree upon the selection of the third qualified MAI Appraiser, then the parties shall petition an arbitrator for the appointment of a third qualified MAI Appraiser. The review appraiser shall evaluate each report in all respects, with the validity and reasonableness of the final valuation conclusion being the principal focal point. The review appraiser should attempt to reconcile any variances between the different appraisals. However,

the review appraiser is not the appraiser and should not substitute his or her judgment for that of an appraiser. The review appraiser should secure necessary corrective material from an appraiser prior to the final recommendation of the Fair Market Rent rate for the Additional Land. The review appraiser shall make a recommendation of a single value and not a range of values. The review appraiser shall not derive a value different from the appraisals by using separate parts of the individual appraisals, nor shall the review appraiser average the appraisal conclusions. The review appraiser must approve the Fair Market Rent for the Additional Land from one of the appraisals only. The review appraiser's determination of the Fair Market Rent for the Additional Land shall be final, binding and non-appealable upon the parties. Upon the determination of the Fair Market Rent for the Additional Land by the third appraiser, the Company shall have a period of twenty (20) days to notify the City of its (a) acceptance of the third MAI Appraiser's determination and agreement to pay Ground Rent for the Additional Land in the amount determined by such third MAI Appraiser, or (b) objection to the third MAI Appraiser's determination and notice that it terminates the Notice to Exercise. If the Company fails to give written notice to the City pursuant to option (a) above within the twenty (20) day period, the Company shall be deemed to terminate the Notice to Exercise. If the Notice to Exercise is terminated as hereinabove provided, the option to lease granted by this Section 2.03 and the right of first refusal granted by Section 2.02 shall nevertheless remain in full force and effect unless previously terminated or unless the City has been or is notified otherwise in writing by the Company.

Each party shall bear the costs incurred by its own appraisers, and each shall bear one-half (1/2) the fees of the third party appraiser, and one-half (1/2) the arbitrator's fees incurred if an arbitrator is engaged.

(b) The City shall in good faith seek to enlist the assistance of the State of Florida, Escambia County, Florida and others in an initiative to generate financial grants to fund, in whole or in part, the construction of the Additional Facilities (as defined in subsection (c) below) and the recruitment of other incentives. The Company acknowledges and agrees that funding from these sources will be based upon a number of factors beyond the City's control, including but not limited to the number and quality of jobs to be created, the scope of the facilities to be constructed and the status and availability of economic development incentive programs at that time. The Company further acknowledges and agrees that the City makes no representation or warranty with respect to the availability or extent of any such financial grants or incentives, and that the City shall not be obligated to make any financial grant or contribution to the construction of the Additional Facilities. In the event that the financial grants and incentives available from the State of Florida, Escambia County, Florida, and others are insufficient, as determined by the Company in its sole and absolute discretion, the Company may terminate the Notice to Exercise by giving written notice of such termination to the City at any time within one hundred eighty (180) days after the City's receipt of the Notice to Exercise. If the Company fails to give written notice to the City pursuant to the preceding sentence within the one hundred eighty (180) day period, the

Company shall be deemed to terminate the Notice to Exercise. If the Notice to Exercise is terminated as hereinabove provided, the option to lease granted by this Section 2.03 and the right of first refusal granted by Section 2.02 shall nevertheless remain in full force and effect unless previously terminated or unless the City has been or is notified otherwise in writing by the Company.

(c) If the Notice to Exercise is not terminated pursuant to the provisions of subsections (a) or (b) of this Section 2.03, then within thirty (30) days after the later of (i) the determination of the Ground Rent pursuant to subsection (a) above or (ii) the expiration of the six-month period provided in subsection (b) above, the Company and the City shall execute, deliver and enter into a lease for the Additional Land (the "Additional Land Lease") whereby the Company, as lessee, leases the Additional Land from the City, as lessor, upon the following terms and conditions:

(1) The Additional Land Lease shall be a triple net lease as defined in this agreement and shall be for a term of thirty (30) years.

(2) The Additional Land Lease shall require the Company, at its sole cost and expense, to construct upon the Additional Land an Aircraft MRO hangar and improvements (the "Additional Facilities") pursuant to plans and specifications approved in advance by the City in writing, such approval not to be unreasonably withheld, conditioned or delayed. Such Additional Facilities shall be substantially the same as an Aircraft MRO hangar and improvements constructed upon the Land pursuant to the Development Agreement. The Additional Land Lease shall obligate the Company to substantially commence actual construction of the Additional Facilities within six (6) months after the effective date of the Additional Land Lease, to thereafter continuously and diligently prosecute such construction to completion, and to complete the Additional Facilities in substantial compliance with the City-approved plans and specifications, and to obtain a Certificate of Occupancy for the Additional Facilities, within eighteen (18) months after the effective date of the Additional Land Lease. The Company shall cause the Additional Facilities to be designed and constructed in a good and workmanlike manner in accordance with all applicable laws, building codes, ordinances, regulations and orders of any public authority bearing on the design and/or construction of the Additional Facilities. The City shall become the sole and absolute owner of the Additional Facilities upon the expiration or earlier termination of the Additional Land Lease. Notwithstanding the foregoing, in the event that sufficient grant funds are available from the State of Florida, Escambia County, Florida, and others to pay a majority of the costs of constructing the Additional Facilities, the City may elect, in its sole discretion, to construct the Additional Facilities and to retain ownership thereof.

(3) The Additional Land Lease shall provide that the Company shall pay Ground Rent (as determined pursuant to subsection (b) above) to the City commencing upon the earlier of (i) the date of substantial completion of the Additional Facilities and the issuance of a Certificate of Occupancy therefor, or (ii) the date that the Company actually occupies and begins doing business on or from the Additional Facilities, and continuing during the term of the Additional Land Lease. The Ground Rent shall be adjusted during the term of the Additional Land Lease in the same manner and upon the same terms and conditions as provided in Article 5 of this Lease with respect to Ground Rent payable under this Lease.

(4) The Additional Land Lease shall contain all other terms and condition of this Lease, unless any such term or condition is contrary to or inconsistent with any provision of this Section 2.03 or unless such term or condition is manifestly not applicable to or appropriate for the Additional Land Lease.

The Company may waive in writing the option to lease granted by this Section 2.03 at any time during the Lease Term, and such option to lease shall irrevocably terminate upon the City's receipt of such written waiver.

If not sooner terminated pursuant to this Article 2, the option to lease granted by this Section 2.03 shall automatically terminate, without notice, at the end of the fifteenth (15th) Lease Year.

Notwithstanding any contrary or conflicting provision in this Section 2.03, in the event that the Company gives a Notice to Exercise and such Notice to Exercise is thereafter terminated, the Company shall be solely responsible and obligated to pay all reasonable out-of-pocket costs and expenses of the City related to any subsequent Notice to Exercise, including without limitation the entire cost of all appraisals obtained pursuant to paragraph (a) above and all reasonable out-of-pocket costs and expenses of the City related to seeking and obtaining any financial grants and incentives pursuant to paragraph (b) above.

Section 2.04 RIGHT OF FIRST REFUSAL AND OPTION FEE

In consideration of the right of first refusal and option granted in this Article 2, the Company shall pay the City the following amounts each year, payable in advance on or before first day of the applicable Lease Year:

(a) For each of the initial five (5) Lease Years: \$0

(b) For each of the next five (5) Lease Years: an amount equal to twenty five percent (25.0%) of the average annual Ground Rents per square foot of the Land in effect for each such Lease Year multiplied by the square footage of the Additional Land.

(c) For each of the next five (5) Lease Years: an amount equal to fifty percent (50.0%) of the average annual Ground Rents per square foot of the Land in effect for each such Lease Year multiplied by the square footage of the Additional Land.

In the event that the Company fails to pay any of the foregoing amounts, as and when due, both the right of first refusal granted by Section 2.02 and the option to lease granted by Section 2.03 shall automatically terminate without notice.

Upon the termination of both the right of first refusal granted by Section 2.02 and the option to lease granted by Section 2.03, the Company's obligation to make any future payments under this Section 2.04 shall terminate.

END OF ARTICLE

ARTICLE 3. TERM

Section 3.01 LEASE TERM

The Company shall have the right to occupy, possess and use each Parcel for a term beginning on the Date of Beneficial Occupancy of such Parcel and continuing for a period of thirty (30) full Lease Years after such Date of Beneficial Occupancy, or, if such Date of Beneficial Occupancy is not the first day of a month, after the first day of the next month after such Date of Beneficial Occupancy (the "Lease Term"). For the avoidance of doubt, the Company shall not have the right to occupy, possess, use or control any Parcel prior to the Date of Beneficial Occupancy of such Parcel except as otherwise expressly provided in the Development Agreement, notwithstanding any contrary provision in this Lease. Rather, prior to the Date of Beneficial Occupancy of a Parcel, the City shall have the exclusive right to occupy, possess, use and control such Parcel for the construction of the Facilities in accordance with the Development Agreement. The Date of Beneficial Occupancy of each Parcel and the corresponding Lease Term for such Parcel shall be set forth in the Lease Supplement for such Parcel.

Section 3.02 COMPANY'S RIGHTS UPON EXPIRATION OR EARLIER TERMINATION OF LEASE

Upon expiration of the Lease Term for a Parcel or earlier termination of this Lease with respect to a Parcel, all of the Company's rights, authority, and privileges to use such Parcel, services, facilities and property of the Airport as granted herein shall cease with respect to such Parcel (but not as to any other Parcels or any other property leased by the Company from the City) without notice to the Company except as expressly required by this Lease.

Section 3.03 SURRENDER OF LEASED PREMISES

Upon expiration of the Lease Term for a Parcel or earlier termination of this Lease with respect to a Parcel, the Company shall surrender such Parcel to the City in the same condition as on the Date of Beneficial Occupancy of such Parcel, except for reasonable wear and tear that could not have been prevented through routine or preventive maintenance and except for an event of a casualty or a condemnation as set forth in Article 20.

Except as otherwise provided in this Article 3, all equipment, trade fixtures, and other personal property installed or placed by the Company, at its sole expense, in the Leased Premises that can be removed without structural damage to the Leased Premises or any other City-owned property shall remain the property of the Company unless otherwise provided in subsequent agreements between the Company and the City. The Company shall have the right at any time during the Lease Term for a Parcel and prior to its expiration or earlier termination of this Lease with respect to such Parcel to remove any and all of said property from such Parcel provided that at the time of removal there exists no Event of Default hereunder or any event or state of facts which with the giving of notice or lapse of time, or both, would constitute an Event of Default.

The Company agrees to repair or pay for all damages, if any, resulting from such removal. All City property damaged by or as a result of removal of the Company's property by the Company shall be restored at the Company's expense to substantially the same condition as, or better condition than, it was prior to such damage.

Any and all property not removed by the Company within thirty (30) days after expiration of the Lease Term for a Parcel or, if this Lease ends by early termination with respect to a Parcel, within 30 days following receipt by the Company of a written notice from the Airport Director to remove such property, shall thereupon become a part of the Land upon which it is located and title thereto shall vest with the City. The City reserves the right to remove and dispose of any or all of such property not so removed by the Company, without any liability or obligation to the Company, and if such removal is accomplished by the City within the 60-day period following expiration of the Lease Term for such Parcel or the 60-day period following receipt by the Company of written notice to remove such property after such earlier termination of this Lease with respect to such Parcel, as the case may be, such removal by the City shall be at the Company's expense, and the Company shall reimburse the City for such expenses promptly upon demand. During the time that any such property of the Company remains on the Leased Premises and until the expiration of such 60-day period or the removal of such property, whichever first occurs, the Company shall continue to pay rent on such Parcel at the rental rate in effect on the expiration of the Lease Term for such Parcel or earlier termination of this Lease with respect to such Parcel, as the case may be.

The provisions of this Section 3.03 shall survive the expiration of the Lease Term or earlier termination of this Lease, as the case may be, and shall be fully enforceable by the City against the Company notwithstanding the termination of this Lease.

END OF ARTICLE

ARTICLE 4. USE OF LEASED PREMISES

Section 4.01 USE OF LEASED PREMISES ONLY FOR AIRCRAFT MRO SERVICES

The Company shall use and suffer or permit the use of each Parcel only for the specific purpose and use for such Parcel stated in the following paragraph and for no other use or purpose whatsoever except with the City's prior written consent, which consent may be given or withheld in the City's sole and absolute discretion.

The respective permitted purposes for each Parcel are:

- (a) Parcel 1 - Aircraft MRO services, support services center, and related ancillary services
- (b) Parcel 2 - Aircraft MRO services and related ancillary services
- (c) Parcel 3 - Aircraft MRO services and related ancillary services
- (d) Parcel 4 - Support services center and related ancillary services
- (e) Parcel 5 - General offices

Without limiting the generality of the foregoing, the Company shall not use or suffer or permit the use of the Leased Premises for the storage or sale of fuel. The Company acknowledges and agrees that in the event that the City, in its sole and absolute discretion, should hereafter consent to the sale and/or storage of fuel on or from the Leased Premises, the Company must fully satisfy and comply with all of the conditions for such use set forth in the Airport's Minimum Standards for Fixed Base Operators, in addition to all other applicable laws, rules, regulations and Airport Rules and Regulations.

Section 4.02 INGRESS AND EGRESS

Subject to the other provisions of this Lease and Airport Rules and Regulations, the following privileges of ingress and egress are hereby granted:

- (a) For the Company, its agents, employees, and contractors: access to the Leased Premises on and over the public areas of the Airport. This right extends to the Company's vehicles, machinery, and equipment used in its Aircraft MRO business.
- (b) For the Company's guests and invitees: access to areas leased to the Company and to areas provided for the use of the public. This privilege shall extend to vehicles of employees, guests, and invitees.

(c) For Company's suppliers of material and furnishers of service, access to public areas of the Airport into areas and facilities leased exclusively to the Company and areas and facilities provided for common use. This privilege extends the vehicles, machinery, or equipment of such suppliers and furnishers of services used in their business of furnishing supplies and services to the Company

The privileges of ingress and egress provided for above shall not be used by, enjoyed by, or extended to any person or vehicle engaging in any activity or performing any act or furnishing any service to, for or on behalf of the Company that the Company is not authorized to engage in or perform under the provisions hereof unless expressly authorized in writing by the Airport Director.

Section 4.03 RESTRICTIONS

In connection with the exercise of Company's rights under this Lease, Company or any of its agents, employees, directors, officers, contractors, invitees, licensees, or representatives shall not:

(a) Do anything that may interfere with the effectiveness or accessibility of the drainage and sewage system, electrical system, air conditioning system, fire protection system, sprinkler system, alarm system, fire hydrants and hoses, if any, installed or located on or within the premises of the Airport.

(b) Knowingly do anything that may invalidate or conflict with any fire or other casualty insurance policies covering the Airport or any part thereof.

(c) Keep or store, at any time, flammable or combustible liquids except in storage facilities especially constructed for such purposes in accordance with federal, State, and City laws, including the Uniform Fire Code and the Uniform Building Code. For purposes of this Lease, flammable or combustible liquids shall have the same definitions as set forth in the Uniform Fire Code, as that Code may be amended from time to time.

(d) Do anything that may be in conflict with 14 CFR Part 139 Airport Certification as that regulation may be amended from time to time, or jeopardize the operating certificate of the Airport.

(e) Do anything that may be in conflict with 49 CFR Part 1542 Airport Security or the TSA-approved security plan for the Airport.

(f) Engage in non-aircraft MRO business activities not specifically permitted in this Lease.

Section 4.04 REMOVAL OF DISABLED AIRCRAFT

Except as otherwise agreed to by the Airport Director, the Company shall promptly remove any disabled aircraft that is in the care, custody, or control of the Company from any part of the Airport (other than the Leased Premises), including, without limitation, runways, taxiways, aprons, and gate positions, and place any such disabled aircraft in the Leased Premises or, in the sole discretion of the Airport Director, in such storage areas as may be designated by the Airport Director. Except aircraft subject to bailment or for which the Company is owed money from a customer, the Company may store such disabled aircraft only for such length of time and on such terms and conditions as may be established by the Airport Director.

If the Company fails to remove any disabled aircraft promptly, as required hereunder, the Airport Director may, but shall not be obligated to, cause the removal of such disabled aircraft, provided, however, that the removal or store of such disabled aircraft shall not be inconsistent with federal laws and regulations and the Company agrees to reimburse the City for all reasonable costs of such removal, and the Company further hereby releases the City from any and all reasonable claims for damage to the disabled aircraft or otherwise arising from or in any way connected with such removal or storage by the City.

Section 4.05 APPROACH SURVEILLANCE RADAR AND AIRSPACE COMMUNICATIONS

The Company shall not undertake or permit to exist or continue any activities or improvements on the Leased Premises that interfere with the Airport's Approach Surveillance Radar or the Airport's airspace communications. Exhibit C¹ to this Lease is the FAA airspace determination letter and the FAA approved Airport Layout Plan that documents that the contemplated Facilities will not interfere with the FAA Approach Surveillance Radar or the Airport's airspace communications.

END OF ARTICLE

¹ If Exhibit C is not available at the time of execution of this Lease, the parties agree to add the FAA airspace determination letter as Exhibit C when it becomes available.

ARTICLE 5. RENTS, FEES, & CHARGES

In consideration for use of the Leased Premises, facilities, rights, and privileges granted hereunder and for the undertakings of City, except as specifically provided for herein, the Company agrees to pay the City, without notice, deduction or set-off, certain rents, fees, and other charges as set forth herein, as from time to time recalculated according to the procedures described below.

Section 5.01 GROUND RENT

The initial annual Ground Rent payable by the Company to the City with respect to each Parcel shall be an amount equal to the "Initial Ground Rent Rate" (as hereinafter determined) multiplied by the number of square feet of land in such Parcel, calculated to the nearest one-hundredth of a square foot; provided, however, that the initial Ground Rent Rate applicable to a Parcel as of the Rent Commencement Date for such Parcel shall be such Initial Ground Rent Rate increased in direct proportion to the increase, if any, in the CPI (defined in Section 5.03 below) for the most recent month that is more than thirty (30) days prior to such Rent Commencement Date for which the CPI has been published over the CPI for the month of the Effective Date, such increase, if any, to be calculated in accordance with the formula provided in Section 5.03 below. In no event, however, shall such increase in the Initial Ground Rent Rate applicable to a Parcel exceed two percent (2.0%) of the Initial Ground Rent Rate compounded annually from the Effective Date to and including the Rent Commencement Date for such Parcel. The estimated land area of each Parcel is shown on Exhibit "A" hereto. The actual initial Ground Rent for each Parcel shall be calculated at the Initial Ground Rent Rate (adjusted as provided hereinabove) multiplied by the square footage of such Parcel as shown on the current survey of such Parcel to be attached to the Lease Supplement for such Parcel. The "Initial Ground Rent Rate" shall be determined as follows: Within sixty (60) days after the Effective Date, the City shall engage an MAI Appraiser to determine the Fair Market Rent rate per square foot for the Land (exclusive of improvements) as of the Effective Date, such Fair Market Rent rate to be determined in accordance with sound appraisal practices on the basis of, to the extent possible, the terms and conditions of leases and leased premises comparable to this Lease and the Land in size, length of term, other terms and conditions (including without limitation apportionment of property taxes, insurance and other expenses between lessor and lessee) and in other material respects then being entered into in the relevant market area as determined by the MAI Appraiser, with appropriate adjustments to account for relevant and material differences. The Fair Market Rent rate as so determined shall be the "Initial Ground Rent Rate" for purposes of this Section. If the Company disagrees with such Fair Market Rent Rate, then the provisions of Section 5.04 below shall be applied to resolve the disagreement. In any event, if the Initial Ground Rent Rate exceeds \$0.40 per square foot, the Company may terminate this Lease and the Development Agreement by giving written notice of termination within the later of (i) thirty (30) days after the City gives the Company written notice of the Initial Ground Rent Rate established by the

MAI appraiser under this Section or (ii) thirty (30) days after completion of the process provided in Section 5.04 if the Company elects to pursue such process. In the event that the Company terminates this Lease and the Development Agreement as hereinabove provided, the Parties' respective obligations to pay Project Cost under Article 3 of the Development Agreement shall nevertheless survive such termination with respect to all Project Cost obligations arising or incurred prior to or as a result of such termination.

Section 5.02 **GROUND RENT PAYMENT**

Except as specifically provided for herein, the annual Ground Rent for each Parcel shall be paid by the Company to the City without invoicing, notice, demand or set-off, in equal monthly installments payable in advance on or before the first day of each calendar month, beginning on the Rent Commencement Date for such Parcel and continuing through the remainder of the Lease Term for such Parcel. In the event that such Rent Commencement Date is a day other than the first day of a calendar month, then, and in such event, the Ground Rent payable for the month in which such Rent Commencement Date occurs shall be prorated based on the actual number of days elapsing between and including such Rent Commencement Date and the last day of such month.

Section 5.03 **GROUND RENT RECALCULATION**

The annual Ground Rent payable with respect to each Parcel shall be adjusted from time to time in accordance with this Section 5.03 and Section 5.04, as follows: The annual Ground Rent for each Lease Year shall be increased over the annual Ground Rent for the immediately preceding Lease Year in direct proportion to the percentage increase, if any, in the "CPI" (as hereinafter defined) for the most recent month that is more than thirty (30) days prior to the commencement of such new Lease Year for which the CPI has been published (the "New CPI") over the CPI for the same month one year earlier (the "Base CPI"). The Ground Rent for the immediately preceding Lease Year shall be multiplied by a fraction, the numerator of which shall be the New CPI and the denominator of which shall be the Base CPI. The product of such multiplication shall be the new annual Ground Rent for the new Lease Year and the City shall notify the Company of the revised annual Ground Rent at least fifteen (15) days prior to the commencement of the new Lease Year. In no event, however, shall the annual Ground Rent for any Lease Year be less than the annual Ground Rent for the immediately preceding Lease Year, nor shall the annual Ground Rent for any Lease Year be more than two percent (2%) greater than the annual Ground Rent for the immediately preceding Lease Year. As used herein, "CPI" shall mean the Consumer Price Index for All Urban Consumers (CPI-U), U.S. City Average, All Items, not seasonally adjusted, 1982-84 = 100 reference base, published by the Bureau of Labor Statistics of the United States Department of Labor. If the Bureau of Labor Statistics of the United States Department of Labor ceases publishing the CPI or materially changes the method of its computation, components, base year, consumers whose experiences are included therein or other features thereof, a comparable index published by a governmental

agency, responsible financial periodical, trade association or educational institution selected by the City, in its sole discretion, shall be substituted for the CPI and used in making the computations required herein.

Notwithstanding the foregoing, however, the Ground Rent payable for the eleventh (11th) Lease Year shall be determined as follows: Within sixty (60) days prior to the end of the tenth (10th) Lease Year, the City shall engage an MAI Appraiser to determine the Fair Market Rent for the Land (exclusive of improvements) as of the end of the tenth (10th) Lease Year, such Fair Market Rent to be determined in accordance with sound appraisal practices on the basis of, to the extent possible, the terms and conditions of leases and leased premises comparable to this Lease and the Land in size, length of term, other terms and conditions (including without limitation apportionment of property taxes, insurance and other expenses between lessor and lessee) and in other material respects then being entered into in the relevant market area as determined by the MAI Appraiser, with appropriate adjustments to account for relevant and material differences. The Fair Market Rent as so determined shall be the new annual Ground Rent commencing on the first day of the eleventh (11th) Lease Year and continuing until further adjustment in accordance with this Article; provided, however, that the rent adjustment as the result of such determination shall not exceed two percent (2.0%) of the initial Ground Rent under this Lease compounded annually from the Rent Commencement Date through the tenth (10th) Lease Year. The City shall notify the Company of such revised Ground Rent at least fifteen (15) days prior to the first day of the eleventh (11th) Lease Year.

Notwithstanding the foregoing however, the Ground Rent payable for the twenty first (21st) Lease Year shall be determined as follows: Within sixty (60) days prior to the end of the twentieth (20th) Lease Year, the City shall engage an MAI Appraiser to determine the Fair Market Rent for the Land (exclusive of improvements) as of the end of the twentieth (20th) Lease Year, such Fair Market Rent to be determined in accordance with sound appraisal practices on the basis of, to the extent possible, the terms and conditions of leases and leased premises comparable to this Lease and the Land in size, length of term, other terms and conditions (including without limitation apportionment of property taxes, insurance and other expenses between lessor and lessee) and in other material respects then being entered into in the relevant market area as determined by the MAI Appraiser, with appropriate adjustments to account for relevant and material differences. The Fair Market Rent as so determined shall be the new annual Ground Rent commencing on the first day of the twenty first (21st) Lease Year and continuing until further adjustment in accordance with this Article; provided, however, that the rent adjustment as the result of such determination shall not exceed two percent (2.0%) of the initial Ground Rent under this Lease compounded annually from the Rent Commencement Date through the twentieth (20th) Lease Year. The City shall notify the Company of such revised Ground Rent at least fifteen (15) days prior to the first day of the twenty first (21st) Lease Year.

Section 5.04 REVIEW APPRAISAL

Should the Company disagree with the City's appraisal, the Company may select, at its own cost and expense, a MAI Appraiser to perform an appraisal to determine the Fair Market Rent. The two appraisers shall jointly select a third MAI Appraiser who shall review the work of each appraiser. In the event the two MAI Appraisers cannot agree upon the selection of the third qualified MAI Appraiser, then the parties shall petition an arbitrator for the appointment of a third qualified MAI Appraiser.

The review appraiser shall evaluate each report in all respects, with the validity and reasonableness of the final valuation conclusion being the principal focal point.

The review appraiser should attempt to reconcile any variances between different appraisals. However, the review appraiser is not the appraiser and should not substitute his or her judgment for that of an appraiser. The review appraiser should secure necessary corrective material from an appraiser prior to the final recommendation of the Fair Market Rent rate.

The review appraiser shall make a recommendation of a single value and not a range of values. The review appraiser shall not derive a value different from the appraisals by using separate parts of the individual appraisals, nor shall the review appraiser average the appraisal conclusions. The review appraiser must approve the Fair Market Rent from one of the appraisals only.

The review appraiser's determination of the Fair Market Rent shall be final, binding and non-appealable upon the parties. Each party shall bear the costs incurred by their own appraisers, and each shall bear one-half (1/2) the fees of the third party appraiser, and one-half (1/2) the arbitrator's fees incurred if an arbitrator is engaged.

Section 5.05 LATE FEE.

If any payment of Ground Rent and applicable sales tax is not received by the City in good funds on or before its due date, the Company shall pay the City a late charge of five percent (5%) of the amount due.

Section 5.06 FEES AND CHARGES

Fees and charges for miscellaneous items and services, including, but not limited to current and future taxes, fees, assessments, employee badges, landing fees and other airfield uses for the Company's customers not having an airfield use permit or agreement with the City, parking charges for areas other than the Leased Premises, and airfield drivers' licenses and security classes, will be assessed by the City in connection with the ordinary use of Airport facilities, provided that such fees and charges shall be equally applicable to all similarly situated parties.

Section 5.07 PAYMENTS

The payment of all rental, fees, and charges that become due and payable by the Company shall be made to the City of Pensacola without the City invoicing the Company. Payments shall be mailed or delivered to Office of the Airport Director, Pensacola International Airport, 2430 Airport Boulevard, Suite 225, Pensacola, Florida 32504 unless the Company is notified otherwise in writing. The City reserves the right to require that payment be made by wire transfer. All rentals, fees, and other charges unpaid for ten (10) days after their due date shall bear interest at the rate of eighteen percent (18%) per annum, or the maximum rate allowed by law, whichever is less, from the date the payment was originally due until paid.

Notwithstanding the foregoing, in the event that the Company objects, in good faith, to a portion of any invoice presented by the City, the Company shall within ten (10) days of its due date notify the City of its objection to a portion of the amount due (disputed amount). The Company must pay the undisputed portion of the invoice in a timely manner or interest shall accrue on the late payment of the undisputed amount.

With regard to the disputed amount of any invoice, the parties shall have period of thirty (30) days to work together, in good faith, to resolve issues or concerns for the disputed amount of invoice. If the parties are not able to resolve any disagreement within said period of time, the matter shall be subject to the provisions of Section 23.34 hereof. If the Company has objected, in good faith, within ten (10) days of the due date as outlined above, no interest shall accrue on the late payment.

END OF ARTICLE

ARTICLE 6. LETTER OF CREDIT

The Company shall deliver to the Airport Director, on or before the date of execution of this Lease by the City, and shall keep in force throughout the Lease Term, an irrevocable standby letter of credit in favor of the City issued by a bank or financial institution satisfactory to the City in its sole and absolute discretion. The beneficiary of such letter of credit shall be the City of Pensacola, Pensacola International Airport, and such letter of credit shall be in a form and content satisfactory to the City in its sole and absolute discretion.

Without limiting the generality of the foregoing, the initial term of such letter of credit shall be for three (3) years and such letter of credit shall contain an "evergreen" provision whereby such letter of credit automatically renews for an additional one-year term upon the expiration of the prior term unless the issuer gives the City written notice of its intent not to renew such letter of credit at least ninety (90) days prior to its expiration date. Further, such letter of credit shall be payable in full upon the issuer's receipt of written certification by the City that there exists an uncured Event of Default under this Lease by the Company or that the issuer has given the City notice of non-renewal of the letter of credit and the Company has failed to deliver to the City a replacement letter of credit complying with the requirements of the Lease within thirty (30) days after the date of such non-renewal notice.

The amount of such letter of credit shall at times during the Lease Term be the total annual Ground Rent in effect from time to time. The Company shall cause such letter of credit to be amended from time to time as necessary, so that such letter of credit shall, at all times, comply with the preceding sentence. Without limiting the generality of the foregoing, the letter of credit shall be amended within thirty (30) days after the Date of Beneficial Occupancy of each building in the Project to include the annual Ground Rent for such building.

END OF ARTICLE

ARTICLE 7. JOB CREATION

There are three "clawback" provisions in this Master Lease:

- (a) Minimum Jobs Level Relating to Non-Triumph Grants (Section 7.01 below);
- (b) Minimum Jobs Level Relating to Triumph Grant (Section 7.02 below); and
- (c) Default by the Company Resulting in Clawback of any Grant (Section 7.03 below).

The amounts, if any, that become due and payable by the Company under this Article shall be paid to the City as Additional Rent in accordance with the terms of this Article 7. The provisions of this Article 7 shall survive the construction and completion of the Project and the expiration or earlier termination of this Lease.

Section 7.01 MINIMUM JOBS LEVEL RELATING TO NON-TRIUMPH GRANTS

The Company shall use its best efforts to create and maintain a minimum of 1,325 new full time equivalent "Jobs", as defined in Section 7.04, during the ten (10) year period that commences on the Date of Beneficial Occupancy of Parcel 3 and the Facilities constructed thereon (also being sometimes referred to as Hangar 4) or such other time period as specified in a "Non-Triumph Grant Agreement" (hereinafter defined). Such minimum jobs level is more specifically defined to be 9,275 Job man-years (1,325 Jobs X 7 years). A Job man-year is defined as 2,080 man-hours worked.

The Company acknowledges that in order to secure funding for the Project, the City has entered into, or will enter into, various grant agreements with grant providers other than Triumph Gulf Coast, Inc., including but not limited to Escambia County, the U. S. Economic Development Agency, the Florida Department of Economic Opportunity, the Florida Department of Transportation, and others (such grant agreements being hereinafter referred to as the "Non-Triumph Grant Agreements"). Further, the Company acknowledges that that some or all of the Non-Triumph Grant Agreements will require that the City repay some or all of the grant funds advanced thereunder in the event that the Company fails to create and maintain at least 1,325 new full time equivalent jobs within the time frames and upon the terms and conditions set out in the pertinent Non-Triumph Grant Agreement. The Company hereby assumes and agrees to pay, as and when due and payable by the City under the applicable Non-Triumph Grant Agreement, all jobs-related clawback obligations of the City now or hereafter created or arising under each Non-Triumph Grant Agreement, and, further, the Company shall indemnify, defend and hold harmless the City from and against any

and all claims, causes of action, suits, proceedings, losses, liabilities, damages, costs and expenses, including without limitation reasonable attorneys' fees, suffered or incurred by the City by reason of the operation of any jobs-related clawback provision in any of the Non-Triumph Grant Agreements or the failure of the Company to create and/or maintain jobs in accordance with the terms and conditions of the Non-Triumph Grant Agreements.

The Company must annually provide documentation to the City regarding its compliance with the minimum jobs requirements of the Non-Triumph Grant Agreements in a manner consistent with the requirements imposed upon the City by the Non-Triumph Grant Agreements and the City's grant agreement with Triumph Gulf Coast, Inc. Further, within thirty (30) days following the end of each calendar quarter, the Company shall provide the Airport Director a Jobs Report showing in detail the number of Jobs at the Leased Premises for the preceding three month period. The Jobs Report shall be in sufficient detail to evidence Job levels and the compensation associated with each Job. The Jobs Report shall list, by worker identification number assigned by the Company, the number of hours each worker worked during the reporting period and the total wages and other compensation paid each worker during such reporting period, exclusive of benefits, and shall include such additional Job reporting information as initially required by the Non-Triumph Grant Agreements or the City's grant agreement with Triumph Gulf Coast, Inc. The City shall have the right to audit Company records to validate the information presented in the Jobs Report.

Section 7.02 MINIMUM JOBS LEVEL RELATING TO THE TRIUMPH GULF COAST, INC. GRANT

(a) That certain MRO Performance Agreement by and between Triumph Gulf Coast, Inc. ("Triumph") and the Company is attached hereto as Exhibit "D" and is hereby incorporated herein by reference.

(b) The Company hereby agrees with the City that the Company shall observe and perform all obligations under the Performance Agreement to be observed and performed by the Company. The Company agrees that the City shall be entitled to enforce the Company's obligations to Triumph under the MRO Performance Agreement to the same extent as Triumph is or shall be entitled to enforce such obligations.

(c) All payments under the MRO Performance Agreement will be made by the Company directly to Triumph. The Parties expressly agree that Triumph is and shall be an intended third party beneficiary of the obligations of the Company under this Section 7.02 and shall be entitled to enforce the covenants and obligations of the Company under this Section 7.02 directly against the Company as if Triumph were a party to this Lease.

(d) The Company will be solely liable to Triumph for all clawback payments arising under the MRO Performance Agreement or this Section 7.02.

(e) It is the Parties' intent that the document attached hereto as Exhibit "D" 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 the Company, as the same may be modified and amended from time to time. To that end, in the event of any conflict between Exhibit "D" hereto and the MRO Performance Agreement actually executed and entered into by and between Triumph and the Company, 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 the Company shall control, and the conflicting provisions of Exhibit "D" shall be deemed to be automatically modified and amended to the full extent necessary in order for the provisions of Exhibit "D" to be identical to the MRO Performance Agreement actually executed and entered into by and between Triumph and the Company, 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 the Company, as the same may be modified and amended from time to time shall be substituted for and in place of Exhibit "D" hereto, without the consent of the Company 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 the Company, as the same may be modified and amended from time to time, shall constitute Exhibit "D" 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, the Company, or any other person or entity.

Section 7.03 ACT OR FAILURE TO ACT BY THE COMPANY RESULTING IN CLAWBACK UNDER ANY GRANT

The Company acknowledges that the Non-Triumph Agreements and the Triumph Grant Agreement may require the City to repay all or portions of the grant funds disbursed thereunder in the event that (i) the Project is terminated or abandoned, in whole or in part, prior to full completion; (ii) the Company withdraws from the Project in whole or in part; (iii) the Company becomes unwilling or unable to satisfy its jobs creation obligations under this Lease or the Development Agreement; or (iv) the commencement, prosecution, or timely completion of the Project is rendered improbable, infeasible, impossible, or illegal. The Company hereby agrees to indemnify, defend and hold harmless the City from and against any and all clawbacks, claims, suits, causes of action, liabilities, damages, costs and expenses, including without limitation reasonable attorneys' fees, suffered or incurred by the City by reason of or arising out of any act or failure to act by the Company that results in or gives rise to any obligation or liability by the City under all or any of the Non-Triumph Agreements and/or the Triumph Agreement. Notwithstanding the foregoing, the

Company shall not be obligated to indemnify the City if and to the extent that such act or failure to act by the Company is due to Force Majeure.

Section 7.04 JOB DEFINITIONS

Except as otherwise provided in Section 7.02 or in any Non-Triumph Agreement, as used in this Agreement, the term "Jobs" shall mean "jobs" as defined in Section 288.106(2)(i), Florida Statutes, as in effect on the Effective Date, which pay the average wages or equivalent compensation required by Section 7.02(a)(2).

Section 7.05 WAGES

The Company shall pay average high head of household wages or equivalent compensation for the 1,325 full time equivalent Jobs required under Section 7.01. "High head of household wages" shall mean an average annual wage of at least \$44,461.00, excluding benefits, for the Jobs. In no event will the Company pay less than the minimum wage for each Job, as required by federal and State of Florida statutes.

END OF ARTICLE

ARTICLE 8. INSURANCE AND INDEMNIFICATION

Section 8.01 **REQUIRED INSURANCE**

Prior to taking possession of any portion of the Leased Premises, the Company shall procure and maintain insurance of the types and to the limits specified herein.

As used in this Article of the Lease, "the City" is defined to mean the City of Pensacola itself, any subsidiaries or affiliates, elected and appointed officials, employees, volunteers, representatives, and agents.

The Company and the City understand and agree that the minimum limits of insurance herein required may become inadequate during the term of this Lease. The Company agrees that it will increase such coverage to commercially reasonable levels required by the City within ninety (90) days following the receipt of written notice from the Airport Director.

Insurance shall be procured from an insurer whose business reputation, financial stability, and claims payment reputation are satisfactory to the City in its good faith discretion, for the City's protection only. Unless otherwise agreed, the amounts, form, and type of insurance shall conform to the following minimum requirements:

| Insurance Requirements | | |
|------------------------|--|--|
| Type | | Amount |
| (1) | Worker's Compensation and Employer's Liability | Statutory \$1,000,000/\$1,000,000/\$1,000,000 |
| (2) | Broad Form Commercial General Liability Policy to include coverage for the following: | Combined Single Limit for Bodily Injury and Property Damage of \$5,000,000 per occurrence or its equivalent with an aggregate of not less than \$5,000,000 per location (i.e., hangar, warehouse, or office building) |
| | (A) Premises Operations | |
| | (B) Independent Contractors | |
| | (C) Products/Completed Operations | |
| | (D) Personal Injury | |
| | (E) Contractual Liability | |
| | (F) Damage to Leased Premises | |
| (3) | Automobile Liability (any automobile) | Combined Single Limit for Bodily Injury and Property Damage of \$1,000,000 per occurrence or its equivalent in excess of umbrella coverage, \$5,000,000 per occurrence or its equivalent in excess of umbrella coverage for vehicle(s) with access to the Air Operations Area. |
| (4) | Umbrella Coverage written on an occurrence basis that is no more restrictive than the underlying insurance policy coverages. | \$10,000,000 |
| (5) | Property Insurance including flood insurance for physical damage to the property of the Company, including improvements and betterments to the Leased Premises | Coverage for replacement value of property for each location. City to be named as loss payee. |
| (6) | Property Insurance for physical damage to the Facilities, including improvements and betterments to the Leased Premises, resulting from fire, theft, vandalism, windstorm, flood (if and to the extent any of the Facilities are located in a federally-designated special flood hazard area), and other risks commonly insured against for similar airport improvements | Coverage for replacement value of Facilities for each location. City to be named as loss payee. |
| (7) | Above Ground and/or Underground Storage Tank Liability (but only if such tanks exist at the Leased Premises) | \$10,000,000 per claim |
| (8) | Airport Liability including coverage for premises, operations, products and completed operations and independent contractors, and including Hangar Keeper's Liability (including Aircraft Liability) Endorsement. | \$10,000,000 per occurrence and in the aggregate, Combined single limit, per location written on an occurrence form, with \$30,000,000 umbrella |

| | | |
|-----|---|--|
| (9) | Pollution Legal Liability for transporting or handling hazardous materials or regulated substances / Environmental Impairment Liability | \$2,000,000 per occurrence, with an annual aggregate not less than \$4,000,000 |
|-----|---|--|

In addition, the Company will acquire and maintain Terrorism coverage (TRIA) to the extent it maintains TRIA coverage at its Mobile Aeroplex at Brookley, Mobile, Alabama operation.

Section 8.02 CERTIFICATES OF INSURANCE

Required insurance shall be documented in the Certificates of Insurance, which provide that the City of Pensacola shall be notified at least thirty (30) days in advance of cancellation, nonrenewal, or adverse change or restriction in coverage. The City shall be named on each Certificate as an Additional Insured and this Lease shall be listed. Certificates of Insurance shall be provided promptly upon the City's request from time to time, but in no event less than annually. Each such Certificate of Insurance shall be on the appropriate ACORD form or its equivalent as determined by the City. Any wording on a Certificate that would make notification to the City of cancellation, adverse change, or restriction in coverage an option shall be deleted or crossed out by the insurance carrier or the insurance carrier's agent or employee. In addition, upon any change in any insurance policy coverage or endorsement, the Company shall also deliver to the City revised Certificates of Insurance.

The Company shall replace any cancelled, adversely changed, restricted, or non-renewed policies with new policies that comply with Section 10.1 above and shall file with the City Certificates of Insurance and a copy of each new or modified endorsement regarding the new policies prior to the effective date of such cancellation, adverse change, or restriction. If any policy is not timely replaced, the Company shall, upon instructions from the City, cease all operations under the Lease until directed by the City, in writing, to resume operations. The "Certificate Holder" address should read: City of Pensacola, Department of Risk Management, Post Office Box 12910, Pensacola, FL 32521. An additional copy of the Certificate shall be sent to Pensacola International Airport, Attn: Manager of Properties, 2430 Airport Boulevard, Suite 225, Pensacola, FL 32504.

Section 8.03 INSURANCE OF THE COMPANY PRIMARY

The Company's required coverage shall be considered primary, and all other insurance shall be considered as excess, over and above the Company's coverage. The Company's policies of coverage will be considered primary as relates to all provisions of the Lease. Notwithstanding the primary coverage responsibility of the Company, the Company shall protect the indirect and direct interests of the City by at all times promptly complying with all terms and conditions of its insurance policies, including without limitation timely and complete notification of claims. All written notices of

property claims made to carriers that relate to the damage, impairment, or condition of the Leased Premises shall be copied to the City's Department of Risk Management at the following address: City of Pensacola, Department of Risk Management, Post Office Box 12910, Pensacola, FL 32521. An additional copy shall be sent to Pensacola International Airport, Attn: Manager of Properties, 2430 Airport Boulevard, Suite 225, Pensacola, FL 32504.

Section 8.04 LOSS CONTROL AND SAFETY

The Company shall retain control over its employees, agents, servants, subcontractors, and invitees, as well as its and their activities on and about the Leased Premises and the manner in which such activities shall be undertaken; to that end, the Company shall not be deemed to be an agent of the City. Precaution shall be exercised by the Company at all times regarding the protection of all persons, including employees, and property. The Company shall make special effort to detect hazards and shall take prompt action where loss control/safety measures should reasonably be expected.

Section 8.05 ACCEPTABILITY OF INSURERS

Insurance is to be placed with insurers that have a current A.M. Best rating of no less than A.

Section 8.06 HOLD HARMLESS

The Company shall hold indemnify, defend and harmless the City, its divisions, subsidiaries and affiliates, elected and appointed officials, employees, volunteers, representatives and agents from any and all claims, suits, actions, damages, liability and expenses in connection with loss of life, bodily or personal injury, or property damage, including loss or use thereof, directly or indirectly caused by, resulting from, arising out of or occurring in connection with the performance of this Lease or on or about the Leased Premises, provided any such claim, suit, action, damage, liability or expense is caused in whole or in part by an act or omission of the Company, or the Company's subtenants, contractors, subcontractors, representatives, guests, invitees, agents or employees or the employees of any of the aforementioned individuals or entities. The Company's obligations shall not be limited by, or in any way to, any insurance coverage or by any provision in or exclusion or omission from any policy of insurance. Nothing contained herein shall obligate the Company to hold harmless the City for the intentional or negligent acts or omissions of the City or any of its employees, representatives or agents. Subject to the last paragraph of this Section and to Section 10.08 below, nothing in this Lease shall limit or prohibit Company from pursuing any claim or cause of action under Section 768.28, Florida Statutes, or as otherwise available at law, common law or in equity against the City for all claims, suits, actions, damages, liability and expenses in connection with the loss of life, bodily or personal injury, or property damage, including loss of use thereof, directly or indirectly caused by, resulting from, arising out of, or occurring in connection with the City's performance of this Lease, or on or about the Leased Premises, but only if and to the extent that such claim, suit, action, damage, liability or expense is caused by any negligent or intentional act or omission of the City or any of its employees, representatives or agents. Further, nothing in this Lease shall limit or prohibit Company from pursuing any

claim or cause of action against the City for breach of this Lease or against any contractor or subcontractor of the City doing any work on or about the Leased Premises at the request of or under the direction of the City.

Nothing in this Section shall be deemed a change or modification in any manner whatsoever of the method or conditions of preserving, asserting, or enforcing any claim or legal liability against the City. This Section shall in no way be construed as a waiver, in whole or in part, of the City's sovereign immunity under the Constitution, statutes and case law of the State of Florida.

Section 8.07 NON-LIABILITY OF THE CITY

The City shall not, in any event, be liable to the Company or to any other person or entity for any acts or omissions of the Company, its successors, assigns or sublessees or for any condition resulting from the operations or activities of any such person or entity.

Without limiting the generality of the foregoing, the City shall not be liable for the Company's failure to perform any of the Company's obligations under this Lease or for any delay in the performance thereof, nor shall any such delay or failure be deemed a default by the City.

Section 8.08 MUTUAL WAIVER OF CONSEQUENTIAL DAMAGES.

Any other provision of this Lease to the contrary notwithstanding, in no event shall the City or the Company be liable to the other or to any other person for any special or consequential damages by reason of any breach or default by the City or the Company, as the case may be, under this Lease, including without limitation any loss of income or other loss or damages suffered by the City or the Company arising from the interruption or cessation of the business conducted by the City at the Airport or conducted by the Company under this Lease; provided, however, that the damages set forth in Section 20.02 shall not be considered special or consequential damages.

Section 8.09 PAYMENT ON BEHALF OF THE CITY

The Company agrees to pay on behalf of the City, and to provide a legal defense for the City, both of which will be done only if and when requested by the City, for all claims or other actions or items which are the Company's responsibility under Section 10.06, "Hold Harmless. Such payment on behalf of the City shall be in addition to any and all other legal remedies available to the City and shall not be considered to be the City's exclusive remedy.

END OF ARTICLE

ARTICLE 9. COMMON AIRCRAFT FACILITIES; INSPECTION OF FACILITIES

Section 9.01 USE OF COMMON AIRCRAFT FACILITIES

The City hereby grants to the Company, and, if and to the extent necessary in the ordinary course of the Company's business, to the Company's employees, customers, supplier and invitees, the following general, nonexclusive privileges, uses, and rights, subject to the Rules and Regulations and the terms, conditions, and covenants herein set forth:

(a) The general use by the Company of all common aircraft facilities and improvements, which are now, or may hereafter be, connected with or appurtenant to the Airport, except as hereinafter provided, subject to all applicable fees for these areas (provided that such fees are applicable to all tenants at the Airport). "Common Airport facilities" shall include all necessary landing area appurtenances, including, but not limited to, approach areas, runways, public taxiways, public ramps/public aprons, public roadways, public sidewalks, navigational and aviation aids, lighting facilities, terminal facilities, or other common or public facilities appurtenant to the Airport.

(b) The right of ingress to and egress from the Leased Premises, over and across public roadways serving the Airport for the Company, its agents, servants, patrons, invitees, suppliers of services, furnishers of materials, and permitted sublessees/sublicensees. Said right shall be subject to all laws, ordinances, Rules and Regulations, and Airport policies, as now or may hereafter apply at the Airport, provided that such laws, ordinances, Rules and Regulations, and Airport policies shall be applicable in a nondiscriminatory manner to all similarly situated parties.

Section 9.02 COMPLIANCE

The right to use said common Airport facilities, in common with others so authorized, shall be exercised subject to and in accordance with all laws (including without limitation all Environmental Laws), ordinances, Rules and Regulations, and Airport policies of the United States, the State of Florida, Escambia County, the City of Pensacola and the Airport. The rules and regulations promulgated by their authority with reference to aviation, navigation, security, and all reasonable and applicable rules, regulations, and ordinances of the City, now in force or hereafter prescribed or promulgated by charter authority or by law, provided that such laws Rules and Regulations, and ordinances, and Airport policies shall be applicable in a nondiscriminatory manner to all similarly situated parties.

Section 9.03 INSPECTION OF FACILITIES AND IMPROVEMENTS

The City reserves the right to enter the Leased Premises during normal business hours with prior notice to the Company, unless in the event of an emergency, for the purpose of inspecting same or verifying that Environmental Laws, Airport Rules and Regulations, fire, safety, and sanitation regulations, and other provisions contained in this Lease are being adhered to by the Company. During its presence in the Leased Premises, the City shall comply with all federal security requirements imposed on the Company unless in the case of an emergency, such as, but not limited to, flood, fire, or chemical spill, where human life or health may be threatened or endangered. During its presence in the Leased Premises, including in the event of an emergency, the City shall comply with all government security requirements and, to the extent reasonable and feasible, the published rules and regulations the Company concerning safety and security, and shall make reasonable efforts to avoid undue interference with the Company's operations. Provided that the Company receives prior notice of the City's entry into the Leased Premises, the Company shall use its best efforts to guide, direct, and inform the City's representative of conditions, situations, or actions that could or might result in loss, injury or damages.

END OF ARTICLE

ARTICLE 10. ACCEPTANCE AND CONDITION OF LEASED PREMISES

The parties agree that this Lease is granted by the City, at the Company's request, and that on the Date of Beneficial Occupancy of each Parcel, the Facilities constructed on such Parcel pursuant to the Development Agreement shall be new and in pristine condition at the time of occupancy by the Company.

Prior to the Date of Beneficial Occupancy of each Parcel, the Company shall have an opportunity to inspect such Parcel and the Facilities constructed thereon. As between the City and the Company for the purposes of the parties' respective rights and obligations under this Lease, the Company's taking possession of a Parcel shall be considered the Company's acceptance thereof in new condition and the Company's agreement that such Parcel is suitable for the purposes for which it is being leased, subject to latent defects not reasonably discoverable by an inspection of such Parcel. It is expressly understood and agreed that nothing in the preceding sentence or elsewhere in this Article 9 shall be construed as a waiver of any claim by the Company or the City against any third party (including without limitation design professionals and the Construction Manager at Risk) related to the design or construction of the Facilities.

On the Date of Beneficial Occupancy of a Parcel, the Company will take possession and occupy such Parcel in accordance with the terms and subject to the conditions of this Lease.

The Company agrees that no representations regarding the condition of the Leased Premises and no promises to improve same, either before or after the execution hereof, have been made by the City or its agents to the Company, unless contained herein or made a part hereof by specific reference.

END OF ARTICLE

ARTICLE 11. CONSTRUCTION BY THE COMPANY

The Company shall not erect, alter, remodel, or renovate any building or other improvements on the Leased Premises without the prior written approval of the City, which approval may be given or withheld in the City's reasonable discretion.

In the event that the Company desires to alter, remodel or renovate the Facilities, or construct improvements on the Leased Premises, it shall submit to the Airport Director plans and specifications prepared by registered architects and engineers setting forth the renovations, construction, alterations, or improvements that the Company desires to implement in sufficient detail for the City to determine whether or not the proposed improvements are in the best interest of the Airport, and such other detail as may be required by the Airport Director. The Company shall reimburse the City upon demand for its reasonable out of pocket expenses incurred by the City to review and act upon the Company's request, which expenses may include without limitation the fees and expenses of architects, engineers, attorneys and other professionals

The City agrees to examine and approve or disapprove plans and specifications submitted in accordance with the provisions above within thirty (30) days after receipt thereof and to give the Company written notification of same. The City, by giving its approval, assumes no liability or responsibility therefor or for any defects in such plans and specifications or for any defects in any work performed according to such plans and specifications. The Company shall not initiate any renovations, construction, alterations, or improvements until the City, through the Airport Director, has given written approval of the Company's plans and specifications.

Further, prior to the initiation of construction, the Company shall procure any and all additional approvals of the plans and specifications for its buildings and improvements required by any federal, State of Florida, water management district, county or municipal authorities, agencies, officers, and departments having jurisdiction thereof, and shall obtain any and all requisite building and construction licenses, permits, or approvals. The Company shall be solely responsible for paying the costs of obtaining all approvals for its improvements.

The Company shall insure that all construction shall be performed by appropriately licensed contractors and shall comply with applicable building code requirements and with applicable regulations promulgated by any federal, State of Florida, water management district, county, or municipal agency or department having jurisdiction thereof. Further, all work and improvements shall be performed and constructed in a good and workmanlike manner with high quality, new materials.

The Company specifically agrees that it shall release, indemnify, defend, and hold the City harmless from and against any and all claims, causes of action and

liabilities, whether actual or potential, associated with any construction undertaken by the Company.

The cost of all such renovations, construction, alterations, or improvements upon the Leased Premises shall be borne and paid for solely by the Company unless otherwise provided for herein. Except as may be otherwise set forth herein, the City shall have no financial or other obligation of any kind under this Lease, other than the renting to the Company of the Leased Premises that are the subject hereof for the term and consideration hereinbefore set forth.

Upon completion of all renovations, construction, alterations, or improvements, a conformed set of "as built" plans and specifications, certified by the appropriate design professional(s) and a Certificate of Occupancy, if required, shall be provided by the Company to the Airport Director.

Unless otherwise agreed to in a written instrument signed by the Parties at the time that plans for any renovations, construction, alterations, or improvements are approved by the City, such renovations, construction, alterations, or improvements constructed by the Company at the Leased Premises (except the installation of removable trade fixtures by the Company) shall, immediately upon such construction thereof, become and remain the property of the City and part of the Leased Premises and shall remain at the Leased Premises upon the expiration of the Lease Term or early termination of this Lease.

END OF ARTICLE

ARTICLE 12. LIENS PROHIBITED

No person or entity performing or providing labor, work, services or materials to or upon the Leased Premises by, through or at the request of the Company shall be entitled to claim or assert any lien against the Leased Premises or any portion thereof. The Company shall not suffer or permit any mechanics' or other liens to be filed against the fee of the Leased Premises, or against the Company's leasehold interest in the land, buildings, or improvements thereon, by reason of any work, labor, services or materials supplied or claimed to have been supplied, to the Company or to anyone holding the Leased Premises, or any part thereof, through or under the Company.

If any such construction lien shall be recorded against the Leased Premises or any portion thereof, the Company shall immediately cause the same to be removed or bonded against in accordance with applicable law.

END OF ARTICLE

ARTICLE 13. MAINTENANCE AND REPAIR

Section 13.01 TRIPLE NET LEASE

This Lease constitutes a triple net lease of the Leased Premises and, notwithstanding any language herein to the contrary, it is intended and the Company expressly covenants and agrees that all rent and other payments herein required to be paid by the Company to the City shall be absolutely net payments to the City, meaning that, during the Lease Term, the City is not and shall not be required to expend any money or do any acts or take any steps affecting or with respect to the use, occupancy, operation, maintenance, preservation, repair, restoration, protection or insuring of the Leased Premises, or any part thereof, except as otherwise expressly provided in this Lease or the Development Agreement.

Section 13.02 COMPANY RESPONSIBILITIES

From the Date of Beneficial Occupancy of each Parcel, the Company shall, throughout the term of this Lease, be solely and entirely responsible for all costs and expenses for, related to or arising out of the use, operation, repair, maintenance and replacement of such Parcel, all buildings and improvements thereon and all components thereof, whether such repair, maintenance or replacement be ordinary, extraordinary, structural, or otherwise. The Company shall also:

- (a) At all times perform commercially reasonably routine maintenance and preventive maintenance of such Parcel, all buildings and improvements thereon and all components thereof and maintain all of the foregoing in a good and clean condition, repair and preservation, excepting ordinary wear and tear;
- (b) Replace or substitute any fixtures, equipment and components that have become worn out with replacement or substitute fixtures, equipment and components, free of all liens and encumbrances, that shall automatically become a part of the buildings and improvements;
- (c) At all times keep such Parcel's grounds and exterior of such Parcel, its buildings and improvements, fixtures, landscaping, equipment, and personal property in a maintained, clean, and orderly condition and appearance, excepting ordinary wear and tear;
- (d) Provide, and maintain in good working order, all obstruction lights and similar devices, fire protection and safety equipment, and all other equipment of every kind and nature required by applicable laws, rules, orders, ordinances, resolutions, or regulations of any competent authority, including the City and the Airport Director, provided that such rules, regulations, and ordinances shall be applicable in a non-discriminatory manner to all similarly situated parties;

(e) Observe all insurance regulations and requirements concerning the use and condition of such Parcel for the purpose of reducing fire hazards and increasing the safety of the Company's operations on the Airport;

(f) Repair any damage to paving or other surfaces of such Parcel or the Airport caused by the Company, in connection with the scope of the Lease, as the result of any oil, gasoline, grease, lubricants, flammable liquids, or substances having a corrosive or detrimental effect thereon, or for any other reason whatsoever;

(g) At all times comply with the Airport's Storm Water Pollution Prevention Plan and Spill Prevention, Control, and Countermeasure plan and take measures to prevent erosion, including, but not limited to, the planting and replanting of grass on all unpaved or undeveloped portions of such Parcel; the planting, maintaining, and replanting of any landscaped areas; the designing and constructing of improvements on such Parcel; and the preservation of as many trees as possible, consistent with the Company's construction and operations;

(h) Be responsible for the maintenance and repair of all utility services lines upon and serving such Parcel, including, but not limited to, water and gas lines, electrical power and telephone conduits and lines, sanitary sewers, and storm sewers;

(i) Keep and maintain all vehicles and equipment operated on the Airport by the Company in safe condition, good repair, and insured, as required by this Lease;

(j) Replace broken or cracked plate glass, paint/repaint structures upon such Parcel, and, where applicable, mow the grass, and keep landscaped areas weeded; and

(k) Provide and use suitable covered metal receptacles for all garbage, trash, and other refuse; assure that boxes, cartons, barrels, or similar items are not piled in an unsightly, unsafe manner on or about such Parcel; provide a complete and proper arrangement, satisfactory to the Airport Director, for the adequate sanitary handling and disposal away from the Airport, of all trash, garbage, and refuse resulting from operation of the Company's business.

Section 13.03 QUARTERLY CONDITION SURVEYS

The City's Airport Properties Manager, together with a representative of the Company may, at the City's option, inspect the Leased Premises quarterly to observe and note its condition, cleanliness, and existing damage and to determine repairs and maintenance required pursuant to the terms of this Lease, provided that such inspections do not materially interfere with the Company's use of the Leased Premises. Neither the City's inspection of the Leased Premises nor the City's failure to inspect the Leased Premises shall relieve the Company of any of its obligations under this Lease or applicable law.

Section 13.04 ADEQUACY OF COMPANY'S MAINTENANCE PERFORMANCE

Should the Company refuse or neglect to undertake any maintenance, repair or replacements required pursuant to the terms of this Lease following written notice and no less than a thirty (30) day cure period, or if the City is required to perform any maintenance or repair necessitated by the negligent acts or omissions of the Company, its employees, agents, assignees, sublessees, subtenants, or licensees following written notice and no less than a 30 day cure period, and provided that the Company has not commenced to cure and is not diligently and continuously pursuing same, then the City shall have the right, but not the obligation, to perform such maintenance, repair or replacement on behalf of and for the Company. The costs of such maintenance, repair or replacement, plus fifteen (15.0%) percent for administration, shall be reimbursed by the Company to the City no later than 30 days following receipt by the Company of written demand from the City for same. In cases not involving maintenance, repair or replacement requiring exigent action, the City shall provide the Company a written request that the Company perform such maintenance or repair, at least 30 days before the City effects such maintenance or repair on behalf of the Company.

Section 13.05 ANNUAL MAINTENANCE AND REPAIR REPORT

Each January 15th during the term of this Lease, the Company shall provide a report on the prior year's maintenance and repair of the Leased Premises. The report shall include a breakdown of the costs incurred by the Company in maintaining and repairing the Facilities. Each year, the Airport Director, or other designated employee, may, at the City's option, present the Company with a suggested maintenance and repair program for the next twelve (12) months, but in such case the Company shall only be required to provide such maintenance and repairs as required hereunder.

Section 13.06 UTILITIES CONSUMPTION

Effective as of the Date of Beneficial Occupancy of a Parcel and during the Lease Term for such Parcel, the Company shall, at no cost to the City, arrange for all utilities necessary to serve such Parcel and promptly pay when due all the utilities costs incurred with respect to such Parcel. The Company shall pay or cause to be paid any and all charges for water, heat, gas, electricity, sewer, and any and all other utilities

used on such Parcel throughout the Lease Term applicable to such Parcel, including, but not limited to, any connection fees and any and all additional third party costs related to utility connection, metering, maintenance, repair, and usage.

Section 13.07 UTILITIES SUPPLY OR CHARACTER

The City shall not be liable in any way to the Company for any failure or defect in the supply or character of electrical energy, gas, water, sewer, or other utility service furnished to the Leased Premises by reason of any requirement, act, or omission of the public utility providing such service or for any other reason. The City shall have the right to shut down electrical or other utility services to the Leased Premises when necessitated by safety, repairs, alterations, connections, upgrades, relocations, or reconnections or for any other reason with respect to any such utility system regardless of whether the need for such utility work arises with respect to the Leased Premises or any other facility at the Airport. Whenever possible, the City shall give the Company not less than two (2) days prior notice of any such utility shutdown. The City shall not be liable to the Company for any losses, including the loss of income or business interruption, resulting from any interruptions or failure in the supply of any utility to the Leased Premises.

END OF ARTICLE

ARTICLE 14. TITLE TO IMPROVEMENTS AND PERSONAL PROPERTY

Section 14.01 TITLE TO FACILITIES

It is understood and agreed that the Facilities constructed upon each Parcel are and shall remain the property of the City during the Lease Term for such Parcel and upon the expiration of the Lease Term for such Parcel or earlier termination of this Lease with respect to such Parcel.

Section 14.02 TITLE TO PERSONAL PROPERTY

Except as otherwise provided in Section 3.03 above, it is expressly understood and agreed that any and all items of personal property owned, placed, or maintained by the Company on a Parcel during the Lease Term for such Parcel shall be and remain the Company's property.

Section 14.03 IMPROVEMENTS

Unless otherwise provided in this Lease, all foundations, buildings, alterations, additions, or improvements, except removable trade fixtures (hereinafter referred to as "Improvements") made upon the Leased Premises by the Company shall be the property of the City during the Lease Term for the Parcel upon which such Improvements were made and upon the expiration of the Lease Term for such Parcel or earlier termination of this Lease with respect to such Parcel. Any attempted conveyance, transfer, or assignment of Improvements by the Company to any person or entity, whether voluntary, by operation of law, or otherwise, shall be void and of no effect.

Notwithstanding the foregoing, the City may, in its discretion, require the Company to remove any or all of such Improvements upon expiration of the Lease Term for the Parcel upon which such Improvements were made or earlier termination of this Lease with respect to such Parcel, in which event within in thirty (30) days after written notice from the City, the Company shall remove such Improvements at the Company's sole cost and risk, in compliance with all applicable laws and regulations and, to the degree reasonably possible, shall restore the Leased Premises to the condition that existed prior to the construction of same. Further, and in any event, should the Company fail to undertake such removal within ninety (90) days following the Company's unequivocal surrender of occupancy of such Parcel, the City may undertake such removal and dispose of such Improvements, all at the Company's expense, and the Company shall promptly reimburse the City upon demand for all removal and disposal costs incurred by the City.

END OF ARTICLE

ARTICLE 15. ENVIRONMENTAL COMPLIANCE

Section 15.01 ENVIRONMENTAL LAWS

The Company shall, at all times, abide by all Environmental Laws applicable to, concerning, or arising from the Company's actions or inactions resulting directly or indirectly from its occupancy, use, or lease of the Leased Premises, including, without limitation, state and federal laws regulating storm water runoff contamination and pollution prevention, numeric nutrient criteria requirements, state and federal laws regulating soil, water, and groundwater quality, and state and federal laws regulating air quality. Thirty (30) days prior to the Date of Beneficial Occupancy of a Parcel, the Company shall identify in writing to the Airport Director and its Fire Department all Hazardous Substances that are or may be used in the course of its occupation of such Parcel. This list shall be updated by Company in March of each year and include quantities of materials stored on the Leased Premises. The City shall have the right to inspect the Leased Premises at any reasonable time to ensure compliance with Environmental Laws and the provisions of this Article 15.

The Company shall comply with the Airport's Spill Prevention, Control, and Countermeasure plan and Storm Water Pollution Prevention Plan and all amendments thereto irrespective of whether it has its own Spill Prevention, Control, and Countermeasure plan or Storm Water Pollution Prevention Plan.

The Company shall not, directly or indirectly, allow the disposal or discharge of Hazardous Substances on the Leased Premises or other Airport Complex property.

Section 15.02 BASELINE ENVIRONMENTAL CONDITIONS STUDIES

Prior to each initial occupation of a Parcel or any other portion of the Leased Premises by the Company or any assignee of this Lease (in whole or in part) or any sublessee of all or any portion of the Leased Premises, and immediately following each vacating, abandonment or surrender of a Parcel or any other portion of the Leased Premises by the Company or any such assignee or sublessee, the City and the Company, at the Company's sole cost and expense, shall cause to be completed a baseline environmental conditions study of the Leased Premises or pertinent portion thereof by a licensed professional retained by the City. The Company shall pay or reimburse to the City the cost of each such baseline environmental conditions study promptly upon demand and shall release, indemnify, defend, and hold the City harmless with respect thereto in accordance with Article 8 of this Lease. The pre- and post- baseline environmental conditions studies shall be prepared as follows:

(a) OCCUPANCY BY THE COMPANY

The City, at the Company's sole cost and expense, shall cause a baseline environmental conditions study of each Parcel to be completed by a licensed professional agreed to by both parties at least thirty (30) days prior to the Date of Beneficial Occupancy for such Parcel. The Company shall have fifteen (15) days after receipt of the completed study to review and comment on the completed study. Completion of the study and final acceptance of the study by the City shall be a condition of precedent to the Company's occupying such Parcel.

(b) ASSIGNMENT

At least sixty (60) days prior to any assignment of this Lease or any portion thereof pursuant to the provisions of Article 20, the Company shall notify the City of its intent to assign. The City, at the Company's sole cost and expense, shall cause a baseline environmental conditions study of the Leased Premises (or that portion to be assigned, if it is a partial assignment) to be completed at least thirty (30) days prior to assignment of the Lease. The Company shall have fifteen (15) days after receipt of the completed study to review and comment on the completed study. Completion of the study and final acceptance of the study by the City shall be a condition of approval of any assignment. All assignments must contain all of the Environmental Compliance requirements of this Article 15, shall not permit any further assignment or sublease of this Lease, and shall include a provision stating that the provisions of this Article shall survive the termination of any assignment.

(c) SUBLEASE

At least sixty (60) days prior to any sublease of the Leased Premises or any portion thereof pursuant to the provisions of Article 20, the Company shall notify the City of its intent to sublet. The City, at the Company's sole cost and expense, shall cause a baseline environmental conditions study of the Leased Premises (or that portion to be subleased, if it is a partial sublease) to be completed at least thirty (30) days prior to any sublease. The Company shall have fifteen (15) days to review and comment on the completed study. Completion of the study and final acceptance of the study by the City shall be a condition of approval of any sublease. All subleases must contain all of the Environmental Compliance requirements of this Article 15, shall not permit any further assignment or sublease of this Lease, and shall include a provision stating that the provisions of this Article shall survive the termination of any sublease.

(d) VACATING, ABANDONMENT OR SURRENDER

Within thirty (30) days after notice that the Company, an assignee or a sublessee has vacated, abandoned or surrendered the Leased Premises or any portion thereof, the City, at the Company's sole cost and expense, shall cause to be completed a baseline environmental conditions study of the Leased Premises, or that portion of the Leased Premises which has been vacated, abandoned or surrendered. The Company or its

sublessee or assignee shall have fifteen (15) days to review and comment on the completed study.

Section 15.03 REMEDIATION OF ENVIRONMENTAL CONDITIONS

In the event any baseline environmental conditions study that is conducted following the vacating, abandonment or surrender of the Leased Premises or any portion thereof by the Company, an assignee or a sublessee identifies an environmental condition that was not identified by a prior baseline environmental conditions study and that requires assessment or remediation, the City shall perform such assessment or remediation at the Company's sole cost and expense, and the Company shall pay or reimburse to the City the reasonable cost of such assessment or remediation promptly upon demand and shall release, indemnify, defend, and hold the City harmless in accordance with Article 8 and shall comply with all other terms of this Lease.

Section 15.04 ENVIRONMENTAL REPORTS

The Company promptly shall provide to the Airport Director, on an ongoing basis and as updates are required, copies of all Company environmental permits and reports related to the Leased Premises, as well as any notices, orders, decrees, citations, or inspection reports issued by environmental regulatory authorities.

Section 15.05 SURVIVAL OF OBLIGATIONS

The obligations of this Article 15 shall survive the expiration, termination, sublease, or assignment of this Lease or any portion thereof.

END OF ARTICLE

ARTICLE 16. SUBORDINATION OF LEASE AND RIGHT OF RECAPTURE

Section 16.01 SUBORDINATION TO AGREEMENTS WITH THE UNITED STATES

This Lease shall be subordinate to the provisions of any existing or future agreement between the City and the United States of America regarding operation or maintenance of the Airport, the execution of which has been or may be required as a condition precedent to the receipt and expenditure of federal funds for development of the Airport. Should the effect of such agreement with the United States be the taking of a material portion of a Parcel, or a substantial alteration or destruction of the commercial value of the leasehold interest in a Parcel granted herein, the City shall not be held liable therefor but, in such event, the Company may cancel this Lease with respect to such Parcel upon one-hundred twenty (120) days' written notice to the City. Notwithstanding the foregoing, the City agrees that, in the event it becomes aware of any such proposed or pending agreement or taking, the City shall endeavor in good faith to give the reasonable notice thereof to the Company and make reasonable efforts to minimize the adverse consequences to the Company.

Section 16.02 SUBORDINATION TO THE CITY'S BOND RESOLUTION

This Lease shall be subject and subordinate to the provisions of the City's Airport Revenue Bond Resolution Number 59-88 (as amended and supplemented) as it is today and as it may be amended from time to time in the future.

Section 16.03 RECAPTURE FOR AIRPORT DEVELOPMENT

The City shall have the right to recapture any or all of the Leased Premises to the extent that such are necessary for the City's development, improvement, or maintenance of the Airport's runways and taxiways, for protection or enhancement of flight operations, or for other development in compliance with any current or future Airport Master Plan. In the event of any such recapture, the Company and the City shall execute a document reflecting a corresponding adjustment to the Leased Premises and Ground Rent.

END OF ARTICLE

ARTICLE 17. SECURITY

Section 17.01 GENERAL

The Company shall comply with all rules, regulations, statutes, orders, directives or other mandates of the United States, the State of Florida, Escambia County and the City of Pensacola as they relate to Airport security requirements. The Company understands that the Airport is required to maintain an Airport Security Plan in compliance with Title 49 CFR Part 1542 and the Company shall comply with the Airport's security plan as it now exists or as it may be amended in the future and as it applies to the Company, its leased premises or its operations or activities on the Airport, and shall take such steps as may be necessary or as directed by the City to ensure that employees, invitees, agents and guests observe these requirements.

Section 17.02 AIRPORT ACCESS LICENSE/PERMIT

The City reserves the right to establish a licensing or permit procedure for vehicles requiring access to the AOA and to levy directly against the Company or its suppliers a reasonable regulatory or administrative charge (to recover the cost of any such program) for issuance of such Airport access license or permit.

Section 17.03 INDEMNITY FOR FINES AND PENALTIES

The Company understands and agrees that it shall fully indemnify, defend, and hold harmless the City, its elected representatives, officers, agents, volunteers, and employees from and against all penalties, fines, or demands of any kind (including, but not limited to, costs of investigation, attorney fees, court costs, and expert fees) arising out of the Company's acts or omissions resulting in alleged violations of any rule, regulation, statute, order, directive or other mandate of the United States, the State of Florida, Escambia County or the City of Pensacola, and also Title 49 CFR Part 1542, "Airport Security," or any successor regulations related to Airport security.

END OF ARTICLE

ARTICLE 18. EVENTS OF DEFAULT; REMEDIES; TERMINATION

Section 18.01 COMPANY EVENTS OF DEFAULT

The occurrence of any one or more of the following events (each such event being referred to in this Lease as an "Event of Default") shall constitute a material default and breach of this Lease by the Company:

(a) The Company fails to make any payment of Ground Rent, Additional Rent under Article 7 above, or any other monetary payment required to be made by the Company hereunder, as and when due;

(b) The Company fails to observe or perform any covenant, condition or provision of this Lease to be observed or performed by the Company, other than as described in subparagraph (a) above or subparagraphs (e), (f), or (g) below, and such failure shall continue for a period of thirty (30) days after written notice thereof by the City to the Company; provided, however, that if the nature of such failure is such that more than thirty (30) days are reasonably required for its remedy or cure, then such 30-day period shall be extended for up to ninety (90) additional days provided that the Company begins such remedy or cure within such 30-day period and thereafter diligently and continuously prosecutes such remedy or cure to completion within such additional 90-day period; or

(c) The Company files a voluntary petition in bankruptcy or any petition or answer seeking or acquiescing in any reorganization, rehabilitation, arrangement, composition, readjustment, liquidation, dissolution or other relief under any present or future federal, state or other statute, law or regulation relating to bankruptcy, insolvency or other relief for debtors; or an order for relief is entered in an involuntary bankruptcy case filed against the Company; or the Company seeks or consents to or acquiesces in the appointment of any trustee, custodian, receiver or liquidator of itself or of all or any part of its assets or any interest therein; or the Company shall make a general assignment for the benefit of its creditors; or the Company commits any act providing grounds for the entry of an order for relief under any chapter of the federal bankruptcy code; or

(d) A petition or case is filed against the Company seeking any reorganization, rehabilitation, arrangement, composition, readjustment, liquidation, dissolution or other relief under any present or future federal, state or other statute, law or regulation relating to bankruptcy, insolvency or other relief for debtors, or the appointment of any trustee, custodian, receiver or liquidator of the Company or of all or any part of its assets or any interest therein, and such petition, case or appointment is not dismissed within sixty (60) days after such filing or appointment; or

(e) The Company fails to comply with the Airport's Spill Prevention, Control, and Countermeasure Plan or Storm Water Pollution Prevention Plan and all amendments thereto; or

(f) The Company abandons or ceases the conduct of all or substantially all of its Aircraft MRO business at the Airport, it being agreed that suspension or discontinuance of all or substantially all of Aircraft MRO operations on the Leased Premises for a period of one hundred eighty (180) days shall conclusively be deemed abandonment of the Company's Aircraft MRO business at the Airport; or

(g) The Company, its assignees, sublessees, contractors or subcontractors, employs or contracts with, for work or services performed on or from the Leased Premises, any unauthorized alien as described by Section 274(e) of the federal Immigration and Nationalization Act.

Section 18.02 REMEDIES.

Upon the occurrence of any Event of Default, the City may at any time thereafter, with or without notice or demand (except as expressly specified in Section 18.01 above or elsewhere in this Lease):

(a) Terminate the Company's right to possession of the Leased Premises by any lawful means, in which case this Lease shall terminate and the Company shall immediately surrender possession of the Leased Premises to the City. In such event the City shall be entitled to recover from the Company all direct damages incurred by the City by reason of the Company's default, including but not limited to the cost of recovering possession of the Leased Premises; reasonable expenses of re-letting, including necessary repairs, renovation and/or alteration of the Leased Premises that are part of the Company's obligations set forth in Section 12.02 above, reasonable attorney's fees and any real estate commission actually paid; and the worth at the time of award by the court having jurisdiction thereof of (i) the amount of unpaid rent (including without limitation Ground Rent and any Additional Rent due under Article 7) and other amounts which were due and payable by the Company under the terms of this Lease at the time of termination, (ii) (A) if the Event of Default occurs prior to the end of the eighth full Lease Year of a Parcel, the amount by which the unpaid rent (including without limitation Ground Rent and increases in the annual Ground Rent at the rate of two percent (2%) per Lease Year) for such Parcel and other amounts which would have been due and payable with respect to such Parcel by the Company under the terms of this Lease after the time of termination during the balance of the first ten (10) full Lease Years of such Parcel exceeds the amount of such rental and other loss for the same period that the Company proves could be reasonably avoided, and (B) if the Event of Default occurs on or after the commencement of the eighth full Lease Year of a Parcel, the amount by which the unpaid rent (including without limitation increases in the annual Ground Rent at the rate of two percent (2%) per Lease Year) for such Parcel

and other amounts which would have become due and payable with respect to such Parcel by the Company under the terms of this Lease after the time of termination during the balance of the time period from the occurrence of the Event of Default through the last day of the second full Lease Year thereafter, exceeds the amount of such rental and other loss for the same period that the Company proves could be reasonably avoided; and (iii), if and to the extent not recovered by the City under the preceding clauses, the amount, if any, that would be due and owing by the Company under Article 7 above based solely on the Jobs created and maintained by the Company up to the time of termination, without regard to an time period otherwise allowed under the Non-Triumph Grant Agreements , the Triumph Grant Agreement or Article 7 after the time of termination for the creation or maintenance of Jobs. The worth at the time of award of the sums referred to hereinabove shall be computed by discounting such amount at a reasonable discount rate based on all relevant circumstances existing at the time of the Event of Default. In the event of termination or repossession of the Leased Premises for an Event of Default, the City shall use reasonable efforts to relet the Leased Premises and mitigate its damages.

(b) Without terminating this Lease, enter and repossess the Leased Premises, remove the Company's property and signs therefrom, and re-let the same for such rent and upon such terms as shall be satisfactory to the City without such re-entry and repossession working a forfeiture of the Ground Rent, Additional Rent and other charges to be paid and the covenants to be performed by the Company during the remaining Lease Term. For the purpose of such re-letting, the City shall be entitled to make any repairs, changes, alterations or additions in or to the Leased Premises that may be necessary or convenient, and the City shall be entitled to recover from the Company the cost of such repairs, changes, alterations and additions; the expenses of such re-letting; and the difference in value between the rent which would be payable by Lessee hereunder for the remainder of the Lease Term and the value of the rent to be realized from such re-letting.

As used in this Section 18.02 and Section 18.03 below, "rent" shall include Ground Rent, Additional Rent under Article 7, ad valorem property taxes on the Leased Premises and any other amounts under this Lease that are required to be paid by the Company to the City.

Section 18.03 RIGHTS AND REMEDIES OF THE CITY CUMULATIVE

The rights and remedies set forth in Section 18.02 shall be the City's sole rights and remedies for the recovery of rent due and to become due and owing by the Company by reason of an Event of Default, but otherwise shall not be deemed to limit or exclude any other rights or remedies granted by the express terms of this Lease or any equitable rights or remedies, including without limitation injunctive relief, otherwise existing or arising by reason of any Event of Default. Subject to the foregoing, all rights and remedies of the City herein created or otherwise existing or

arising under this Lease, at law or in equity by reason of any Event of Default are cumulative, and the exercise of one or more rights or remedies shall not operate to exclude or waive the right to the exercise of any other. All such rights and remedies may be exercised and enforced concurrently, whenever and as often as deemed desirable. Further, failure by the City to take any authorized action upon the occurrence of an Event of Default shall not be construed to be or act as a waiver of said Event of Default or of any subsequent Event of Default. The City's acceptance of Ground Rent or other charges or payments by the Company for any period or periods after the occurrence of an Event of Default shall not be deemed a waiver of such Event of Default or a waiver of or estoppel to enforce any right or remedy on the part of the City arising or existing by reason of such Event of Default.

Section 18.04 TERMINATION BY THE COMPANY WITHOUT CAUSE

In addition to any other termination rights hereunder and so long as there then exists no Event of Default and no event or state of facts which with the giving of notice or the lapse of time, or both, would constitute an Event of Default, the Company may terminate this Lease with respect to any Parcel without cause and thereby terminate all of its rights and unaccrued obligations (other than the Company's obligations under Article 7 above which shall remain in full force and effect notwithstanding any termination under this Section) under this Lease with respect to such Parcel by giving the City written notice of termination at any time during or after the eighth (8th) full Lease Year for such Parcel. Upon the giving of such written notice of termination, this Lease shall terminate with respect to such Parcel as of the termination date specified in such written notice; provided that such termination date shall be not less than two (2) full Lease Years after the date such notice is given and provided further that on or before such termination date the Company shall pay and perform all obligations to be paid or performed by the Company under this Lease up to and including such termination date and all obligations that have accrued under Article 7 or will accrue or become due and payable under Article 7 as a result of such termination. In addition, in the event that the Company terminates this Lease with respect to all Parcels pursuant to this Section, the Company shall pay to the City, at or before such termination as to the final Parcel remaining subject to this Lease, the amount, if any, that would be due and owing by the Company under Article 7 above based solely on the Jobs created and maintained by the Company up to the time of such termination, without regard to an time period otherwise allowed under the Non-Triumph Grant Agreements, the Triumph Grant Agreement or Article 7 after the time of termination for the creation or maintenance of Jobs.

SECTION 18.05 TERMINATION BY THE CITY WITHOUT CAUSE

In addition to any other termination rights hereunder, the City may terminate this Lease with respect to any Parcel without cause by giving the Company written notice of termination at any time during or after the eighteenth (18th) Lease Year for such Parcel. Upon the giving of such written notice of termination, this Lease shall terminate with

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respect to such Parcel as of the termination date specified in such written notice;
provided that such termination date shall be not less than two (2) full Lease Years after
the date such notice is given.

END OF ARTICLE

ARTICLE 19. HOLDING OVER

It is agreed and understood that any holding over by the Company, with the City's consent, after the termination of this Lease with respect to any Parcel, shall not serve to renew and extend same, but shall operate and be construed as a tenancy from month-to-month, subject to all terms and conditions of this Lease, except that monthly rent during such holdover period shall be equal to the sum of the Ground Rent for such Parcel paid for the last month of the Lease Term plus building rent for the building and improvements on such Parcel owned by the City as reasonably determined by the Airport Director.

Should the Company hold over against the City's will, the Company agrees to pay to the City, as monthly rent during such period of holding over, for such Parcel for each month until the Company completely vacates such Parcel, one hundred and fifty percent (150%) of the Ground Rent for such Parcel paid for the last month of the Lease term plus building rent for the building and improvements on such Parcel owned by the City calculated on the rental rate per square foot then being paid by the airlines for terminal building space in the Airport, plus all applicable fees, including, but not limited to, any other fees authorized by this Lease or authorized by ordinance.

The Company shall be liable to the City for all loss or damage resulting from such holding over against the City's will after the termination of this Lease with respect to any Parcel, whether such loss or damage may be contemplated at this time or not. It is expressly agreed that acceptance of the foregoing rental by the City, in the event that the Company fails or refuses to surrender possession, shall not serve to grant the Company any right to remain in possession beyond the period for which such amount has been paid nor shall it constitute a waiver by the City of its right to immediate possession thereafter.

END OF ARTICLE

ARTICLE 20. ASSIGNMENT AND SUBLEASE

Section 20.01 LEASE ASSIGNMENT

The Company shall not assign this Lease, in whole or in part, or the Company's interest in or to the Leased Premises, or any part thereof, without first having obtained the City's prior written consent which consent may be given or withheld in the City's sole and absolute discretion; provided, however, that this section is not intended to apply to or prevent the assignment of this Lease, in its entirety, to any corporation or other entity with which the Company may merge (regardless of whether the Company is the surviving entity, so long as the surviving entity assumes and agrees to pay and perform all obligations of the Company under this Lease) or to an Affiliate or Subsidiary. The Company shall promptly notify the City in writing of any merger by or with the Company and any assignment of this Lease to an Affiliate or Subsidiary. Without limiting the foregoing, it is a precondition to City review and approval of a requested assignment of this Lease that there shall then exist no uncured Event of Default nor any event or state of facts which with notice or the lapse of time, or both, would constitute an Event of Default. Further, the City may, in its sole and absolute discretion, condition its consent to any such assignment upon changes in any terms or conditions of this Lease, including but not limited to changes in the employment requirements under Article 7 and changes in the Ground Rent and other charges payable by the lessee hereunder and may also condition its consent to any such assignment upon the Company's payment to the City of an assignment approval fee acceptable to the City in its sole and absolute discretion, determined on the basis of such factors as the City deems relevant in its sole and absolute discretion, which factors may include, without limitation, the City's estimate of the consideration payable to the Company in respect of such assignment.

In the event that the Company requests permission to assign this Lease in whole or in part, the request shall be submitted to the Airport Director not less than sixty (60) days prior to the proposed effective date of the assignment requested, and shall be accompanied by a copy of the proposed assignment agreement(s) and of all agreement(s) collateral thereto, together with the following information and any other information requested by the Airport Director: the identity and contact information of the assignee, whether the requested assignment is a full or partial assignment of this Lease, a statement of the entire consideration to be received by the Company by reason of such assignment, the type of business to be conducted on the Leased Premises by the assignee, and reasonable financial history and financial information of the Assignee.

Section 20.02 LEASED PREMISES SUBLEASE

The Company shall not sublet the Leased Premises or any part thereof without having first obtained the City's prior written consent, which consent may be given or withheld in the City's sole and absolute discretion. Without limiting the generality of the foregoing, it is a precondition to City review and approval of a proposed sublease of the Leased Premises that there shall then exist no uncured Event of Default nor any event or state of facts that with notice or the lapse of time, or both, would constitute an Event of Default. Further, the City may, in its sole and absolute discretion, condition its consent to any such sublease upon changes in any terms or conditions of this Lease, including but not limited to changes in the employment requirements under Article 9 and changes in the Ground Rent and other charges payable by the lessee hereunder and may also condition its consent to any such sublease upon the Company's payment to the City of (i) a portion, acceptable to the City, of the amount of the excess of the rent payable from time to time by the sublessee to the Company over the rent payable from time to time by the Company to the City under this Lease, as determined by the City in its sole and absolute discretion, and (ii) a sublease approval fee acceptable to the City in its sole and absolute discretion, determined on the basis of such factors as the City deems relevant in its sole and absolute discretion, which factors may include, without limitation, the City's estimate of the consideration payable to the Company in respect of such sublease.

In the event that the Company requests permission to sublet the Leased Premises in whole or in part, the request shall be submitted to the Airport Director not less than sixty (60) days prior to the proposed effective date of the sublease requested, and shall be accompanied by a copy of the proposed sublease agreement(s) and of all agreement(s) collateral thereto, together with the following information and any other information requested by the Airport Director: the identity and contact information of the sublessee, a description of the part of the Leased Premises to be subleased, a statement of the entire consideration to be received by the Company by reason of such sublease (including but not limited to sublease rent and other charges payable by the sublessee), the type of business to be conducted on subleased premises by the sublessee, and reasonable financial history and financial information of the sublessee.

Section 20.03 CONSUMMATION OF ASSIGNMENT OR SUBLEASE

The City's consent for the assignment or sublease for which the City's consent is required and for which such consent has been given shall be by written instrument, in a form reasonably satisfactory to the Airport Director and the City Attorney, and shall be executed by the assignee or sublessee who shall agree, in writing, for the benefit of the City, to be bound by and to perform all the terms, covenants, and conditions of this Lease. Four (4) executed copies of such written instrument shall be delivered to the City. Failure either to obtain the City's prior written consent or to comply with the

provisions of this Lease shall serve to prevent any such transfer, assignment, or sublease from becoming effective.

The Company agrees and acknowledges that it shall remain fully and primarily liable for all obligations of lessee under this Lease, notwithstanding any full or partial assignment of this Lease or any sublease of all or any portion of the Leased Premises.

Receipt by the City of Ground Rent or any other payment from an assignee, sublessee, or occupant of the Leased Premises shall not be deemed a waiver of any covenant in this Lease against assignment and subletting or as acceptance of the assignee, sublessee, or occupant as a tenant or a release of the Company from further observance or performance of the covenants contained in this Lease. No provision of this Lease shall be deemed to have been waived by the City, unless such waiver is in writing, signed by the Airport Director.

By applying for consent to an assignment or sublease, the Company agrees to reimburse the City for its out-of-pocket costs for consultants, attorneys, and experts to evaluate the request, to advise the City with respect thereto and to prepare appropriate documents.

END OF ARTICLE

ARTICLE 21. DAMAGE OR DESTRUCTION OF LEASED PREMISES; TAKING BY EMINENT DOMAIN

Section 21.01 LEASED PREMISES -- DAMAGE OR DESTRUCTION

If at any time during the continuance of this Lease, any Parcel shall be so destroyed or so injured by fire or other casualty as to be unfit for full occupancy and use by the Company, and such destruction or injury could reasonably be repaired within one hundred eighty (180) days from the date of such destruction or injury, then the Company shall not be entitled to surrender possession of such Parcel; provided, however, that the Company's obligation to pay rent (other than Ground Rent) shall be equitably reduced to the extent of the diminution in use to the Company resulting from such destruction or injury until full use and occupancy is restored to the Company. In case of any such destruction or injury which occurs prior to the Date of Beneficial Occupancy for such Parcel, the City shall repair the damage with all reasonable speed and shall complete the construction of the Facilities on such Parcel in accordance with the Development Agreement. In case of any such destruction or injury which occurs after completion of such Facilities, the Company shall repair the damage with all reasonable speed at least to the extent of the value and as nearly as possible to the character and quality of the building and improvements existing immediately prior to such occurrence.

If any Parcel shall be so destroyed or injured by fire or other casualty that such destruction or injury could not reasonably be repaired within one hundred eighty (180) days from the date of such destruction or injury, either Party shall have the option, upon written notice given to the other Party within thirty (30) days from the date of such destruction or injury, to terminate this Lease with respect to such Parcel, and upon giving of such notice this Lease shall be terminated with respect to such Parcel as of the date of such destruction or injury. In the event neither Party elects to terminate this Lease in accordance with the foregoing options, the Company shall repair the damage and restore or rebuild the building and improvements as promptly as reasonably possible.

Notwithstanding the foregoing provisions of this Article, in the event of damage or destruction, as aforesaid, such that fifty percent (50%) or more of the total floor area of the Facilities on such Parcel is rendered unfit for occupancy and use by the Company during the last three (3) years of the Lease Term for such Parcel, then either Party shall have the option, upon written notice given to the other Party within thirty (30) days from the date of such destruction or injury, to terminate this Lease with respect to such Parcel, and upon the giving of such notice this Lease shall be terminated with respect to such Parcel as of the date of such destruction or injury.

Section 21.02 TAKING BY EMINENT DOMAIN

In the event that the Leased Premises or any portion thereof shall be taken for public or quasi-public use or condemned under eminent domain, the Company shall not be entitled to claim or have paid to the Company any compensation or damages whatsoever for or on account of any loss, injury, damage or taking of any right, interest or estate of the Company, and the Company hereby relinquishes and assigns to Lessor any rights to such damages; provided, however, that nothing herein contained shall be construed to prevent the Company from asserting against the condemnor any separate claim for damages to the Company occurring by reason of said condemnation, including without limitation loss or damage to leasehold improvements, personal property, business, fixtures, goodwill, cost of removing fixtures or equipment or loss of future profits.

In the event of any such taking or condemnation referred to in the preceding paragraph, then if and when there is an actual taking, in whole or in part, of physical possession of any Parcel which shall render such Parcel unfit for the use and occupancy by the Company substantially as used and occupied prior to such taking, the Company may terminate this Lease with respect to such Parcel. Such Parcel shall be deemed to be unfit for use by the Company if the area of the portion thereof remaining after such taking is less than sufficient to accommodate the operations carried on by the Company just prior to such taking. If the Company elects to terminate this Lease with respect to such Parcel as provided above, it shall give written notice to the City within thirty (30) days after the later of (a) the entry of the final order of court authorizing the taking or appropriation or the date of settlement, as the case may be, or (b) the taking of physical possession by the condemnor. In the event there is a partial taking of any Parcel, but this Lease is not terminated as herein provided, then this Lease shall continue in full force and effect with respect to such Parcel without abatement or reduction in rent.

END OF ARTICLE

ARTICLE 22. FEDERAL, STATE, AND LOCAL REGULATIONS

Section 22.01 RULES AND REGULATIONS

Except as otherwise provided, the Airport Director is charged with administering the provisions of this Lease, and will be authorized from time to time to promulgate and enforce such reasonable Rules and Regulations and policies consistent with the purposes, intent, and express terms of this Lease as the Airport Director deems necessary to implement such purposes, intent, and express terms. All such Rules and Regulations and policies so promulgated shall not be inconsistent with this Lease or any legally authorized rule or regulation of the FAA, or any other federal or State of Florida agency, which is binding in law on the Company, as the same now are or may from time to time be amended or supplemented, nor inconsistent with the reasonable exercise by the Company of any right or privilege granted under this Lease.

It shall be a violation of this section of the Lease for the Company, or any of its officers, representatives, agents, employees, guests, patrons, contractors, subcontractors, licensees, subtenants, invitees, or suppliers, to violate or to cause another person to violate any rule, regulation or policies promulgated by the Airport Director regarding operation of the Airport.

Section 22.02 COMPLIANCE WITH LAW

The Company shall not use the Airport or any part thereof, or knowingly permit the same to be used by any of its employees, officers, agents, subtenants, contractors, invitees, or licensees for any illegal purposes and shall, at all times during the term of this Lease, comply with all applicable regulations, ordinances, and laws of the City, the State of Florida and the federal government, and of any governmental agencies that have jurisdiction over the Airport. Without limiting the generality of the foregoing, the Company shall comply with the United States of America, United States Department of Homeland Security, United States Citizenship and Immigration Services E-Verify in order to implement the legal requirements of the Illegal Immigration Reform and Immigrant Responsibility Act of 1996, as amended.

Section 22.03 COMPLIANCE WITH STATUTES, ORDINANCES, AND REGULATIONS

At all times during the Lease Term, the Company shall, in connection with its activities and operations at the Airport:

Comply with and conform to all applicable current and future statutes and ordinances, and regulations promulgated thereunder, of all federal and State of Florida agencies of competent jurisdiction that apply to or affect, either directly or indirectly, the Company or the Company's operations and activities under this Lease. The Company shall comply with all applicable provisions of the Americans with Disabilities

Act of 1990 (42 U.S.C. Section 12101), as may be amended from time to time, and federal regulations promulgated thereunder that may be applicable as a result of activities conducted by the Company.

Subject to the prior written approval of the Airport Director, make, at its own expense, all nonstructural improvements, repairs, and alterations to its Exclusive Use Space, equipment, and personal property that are required to comply with or conform to any of such statutes, ordinances, or regulations.

Regarding the City, be and remain an independent contractor with respect to all installations, construction, and services performed by or on behalf of the Company hereunder.

Section 22.04 COMPLIANCE WITH ENVIRONMENTAL LAWS

At all times during the Lease Term, the Company shall not cause, permit or allow any Hazardous Substances to be placed, stored, dumped, dispensed, released, discharged deposited, used, transported or located on any portion of the Premises; provided, however, that quantities of such Hazardous Substances may be used or stored by Company on the Leased Premises in the ordinary course of business on the condition that such quantities and the use thereof are:

- (a) Identified in the Hazardous Substances listing described in Section 15.01,
- (b) Permitted by or are exempt from applicable governmental regulations, and
- (c) Are transported, stored and utilized in accordance with applicable governmental regulations and the best practices of the Company's industry.

To the extent caused by or resulting from the acts of the Company, its agents, servants, employees, or contractors, Company agrees that it shall, to the extent necessary to bring the Leased Premises into compliance with any and all applicable Environmental Laws regarding Hazardous Substances and clean-up thereof, investigate and promptly (but in any event within the time period permitted by applicable Environmental Laws) clean up Hazardous Substances found in, on, under, around, or within any portion of the Leased Premises and, with respect to such matters as described herein for which Company is responsible, to remediate the Leased Premises, and to pay for all reasonable clean-up and remediation costs at no cost to the City. All clean-up and remediation shall be performed to meet pre-existing conditions, and in no instance shall clean-up or remediation or related agreements with state or federal regulators include restrictions placed on the use of the Leased Premises or any part thereof.

Company shall perform Environmental Reporting required under this Section as described in Section 15.03.

Section 22.05 NONDISCRIMINATION

As a condition of the use and occupancy of the Airport and its facilities, the Company shall be subject to the following:

(a) In the event that facilities are constructed, maintained, or otherwise operated in or on the space assigned to the Company for a purpose for which a U.S. Department of Transportation (DOT) program or activity is extended or for another purpose involving the provision of similar services or benefits, the Company shall maintain and operate such facilities and services in compliance with all other requirements imposed pursuant to Title 49, CFR, U.S. DOT, Subtitle A, Office of the Secretary, Part 21, "Nondiscrimination in Federally Assisted Programs of the Department of Transportation-Effectuation of Title VI of the Civil Rights Act of 1964," and as such regulations may be amended from time to time.

(b) No person on the grounds of race, color, national origin, sex, or physical handicap, religion, or ancestry shall be excluded by the Company from participating in, denied the benefits of, or be otherwise subjected to discrimination in the use of the facilities assigned to the Company.

(c) In the construction of any improvements on, over, or under the space assigned to the Company, and the furnishing of services thereon, no person on the grounds of race, color, national origin, sex, or physical handicap shall be excluded by the Company from participating in, denied the benefits of, or otherwise be subject to discrimination.

(d) The Company shall use the Leased Premises in compliance with all other requirements imposed by or pursuant to Title 49, CFR, U.S. DOT, Subtitle A, Office of the Secretary, Part 21, "Nondiscrimination in Federally Assisted Programs of the Department of Transportation-Effectuation of Title VI of the Civil Rights Act of 1964," and as such regulations may be amended.

(e) The Company shall insert the substance of the provisions of this Section 22.05 in any lease, agreement, or contract by which the Company grants a right or privilege to any person, firm, or corporation to render accommodations or services to the public on the Company's Leased Premises.

Section 22.06 BREACH OF NONDISCRIMINATION

In the event of a breach of any of the nondiscrimination covenants set forth above, the City will have the right to terminate this Lease and the Company's right to use Airport services and facilities and to re-enter and repossess the space and the Facilities thereon that had been assigned to the Company, and hold the same as if such assignment had never been made. This provision regarding termination of the Company's rights to use Airport services and facilities shall not become effective until the procedures of Title 49, CFR, Part 21 are followed and completed, including the expiration of appeal rights, by either the Company or the City.

Section 22.07 FAIR AND EQUAL FURNISHING OF SERVICES

As a condition of the use of Airport services and facilities, the Company shall furnish its accommodations or services on a fair, equal, and not unjustly discriminatory basis to all users thereof, and it shall charge fair, reasonable, and not unjustly discriminatory prices for each unit or service. In the event of noncompliance with this section, the City may terminate this Lease and the Company's right to use Airport services and facilities.

Section 22.08 AFFIRMATIVE ACTION PROGRAM

As a condition of the use of Airport services and facilities, the Company shall implement an affirmative action program as required by FAA regulations, Title 14, CFR, Part 152, Subpart E, "Nondiscrimination in Airport Aid Program," or as otherwise approved by the FAA, to ensure that no person shall, on the grounds of race, creed, color, national origin, sex, or physical handicap, be excluded from participating in any employment activities covered in such Subpart E. The Company shall not exclude any person on such grounds from participating in or receiving the services or benefits of any program or activity covered by Subpart E. The Company shall require that its covered suborganizations provide assurances to the Company that they similarly will implement affirmative action programs and that they will require assurances from their suborganizations, as required by Title 14, CFR, Part 152, Subpart E to the same effect.

Section 22.09 MINORITY BUSINESS ENTERPRISE

As a condition of its use of Airport services and facilities, the Company shall comply with the requirements of Title 49, CFR, Part 23, "Participation by Minority Business Enterprise in Department of Transportation Programs" as this Part 23 may be amended from time to time.

Section 22.10 RIGHTS OF THE FEDERAL GOVERNMENT

Any use of Airport services and facilities by the Company shall be subject to whatever right the U.S. government now has or in the future may have or acquire affecting the control, operation, regulation, and taking over of the Airport or the exclusive or nonexclusive use of the Airport by the United States during the time of war or national emergency.

Section 22.11 SUBORDINATION OF LEASE

This Lease and the use of Airport services and facilities by the Company, pursuant to this Lease, are subordinated to the City's existing and future obligations or agreements with or to the federal government, provided that the City agrees to attempt in good faith to minimize, to the extent reasonable, the adverse consequences to the Company under said future obligations and agreements.

Section 22.12 LOCAL BUSINESS LICENSES AND PERMITS

The Company shall obtain in a timely manner and thereafter maintain during the Lease Term all business licenses, permits and other approvals required by the City or Escambia County, Florida, in order to engage in the Aircraft MRO business on the Leased Premises.

Section 22.13 NONEXCLUSIVE RIGHTS

It is understood and agreed that nothing herein contained shall be construed to grant the Company any exclusive right or privilege within the meaning of Section 308 of the Federal Aviation Act for the conduct of any activity on the Airport, except that, subject to the terms and provisions hereof, the Company shall have the right to exclusive possession of the Exclusive Use Space leased to the Company under the provisions of this Lease.

END OF ARTICLE

ARTICLE 23. TAXES

Section 23.01 PAYMENT OF TAXES

The Company shall pay all taxes that may be levied upon, assessed, or charged the Company or its property located on the Airport by the State of Florida or any of its political subdivisions or municipal corporations, and shall obtain and pay for all licenses and permits required by law.

Section 23.02 REAL PROPERTY TAXES

The Company shall be responsible for all real property taxes applicable each Parcel during the Lease Term for such Parcel. If any such taxes paid by the Company shall cover any period of time prior to or after the expiration of the Lease Term with respect to such Parcel, the Company's share of such taxes shall be equitably prorated to cover only the period of time within the tax year during which this Lease shall be in effect with respect to such Parcel, and the City shall reimburse the Company to the extent required. If the Company shall fail to pay any such taxes, the City shall have the right, but not the obligation, to pay the same, in which case the Company shall repay such amount to the City with the Company's next Ground Rent installment, together with interest at the highest rate allowed by law.

Section 23.03 DEFINITION

As used herein the term "real property tax" shall mean all ad valorem and non-ad valorem taxes and assessments (including interest and penalties thereon) which are imposed against any legal or equitable interest of the City in the Leased Premises or any portion thereof by the City, Escambia County or the State of Florida or by any school, agricultural, lighting, fire, mosquito control, water, drainage or other improvement, benefits or tax district thereof, and which are collected by the Escambia County, Florida, Tax Collector, together with any tax imposed in substitution, partially or totally, of any tax previously included within the definition of "real property tax" and any additional tax the nature of which was previously included within the definition of "real property tax".

Section 23.04 CONTEST

The Company may contest the legal validity or amount of any taxes, assessment, or charges for which the Company is responsible under this Lease, and may institute such proceedings as the Company considers necessary. If the Company protests any such tax, assessment or charge, the Company may withhold or defer payment or pay under protest but shall indemnify and hold the City and the Leased Premises harmless from and against any claim or lien against the City or the Leased Premises arising out of the Company's failure to pay the contested taxes, assessments or charges.

Section 23.05 PERSONAL PROPERTY TAXES

The Company shall pay prior to delinquency all taxes assessed against and levied upon trade fixtures, furnishings, equipment and all other personal property of the Company contained in the Leased Premises. When possible, the Company shall cause said trade fixtures, furnishings, equipment and all other personal property to be assessed and billed separately from the Land and Leased Premises. If any of the Company's said personal property shall be assessed with the Land or Leased Premises, the Company shall pay the taxes attributable to the Company within ten (10) days prior to the delinquency date for payment of such taxes.

Section 23.06 SALES TAX

The Company shall pay or reimburse to City all sales and use tax imposed by Florida Statutes Section 212.031 and any future amendments thereto, or other applicable Florida law in effect from time to time, on the Ground Rent due under this Lease and on any other payments required by this Lease to be made by the Company to or for the benefit of the City which is taxable as rent under applicable Florida law. Such sales or use tax shall be due and payable concurrently with the payment of the Ground Rent or other payment with respect to which such tax is required to be paid.

END OF ARTICLE

ARTICLE 24. GENERAL PROVISIONS

Section 24.01 ACKNOWLEDGMENT

The Parties hereto acknowledge that they have thoroughly read this Lease, including any exhibits or attachments hereto, and have sought and received whatever competent advice and counsel necessary for them to form a full and complete understanding of their rights and obligations hereunder. The Parties further acknowledge that this Lease is the result of extensive negotiations between the Parties and shall not be interpreted against the City by reason of the preparation of this Lease by the City.

Section 24.02 AUTHORITY OF THE AIRPORT DIRECTOR

The Airport Director or his designee may exercise all rights and obligations of the City under this Lease, unless specifically provided otherwise or required by law.

Section 24.03 CAPACITY TO EXECUTE

The individuals executing this Lease personally warrant that they have full authority to execute this Lease on behalf of the entity for whom they are acting hereunder.

Section 24.04 COMPLIANCE WITH TITLE 14, CFR PART 77.

The Company agrees to comply with the notification and review requirements covered in Title 14, CFR, Part 77, "Objects Affecting Navigable Airspace," in the event that future construction of a building is planned for the Leased Premises, or in the event of any planned modification or alteration of any existing or future building or structure situated on the Leased Premises. Further, the Company shall conduct its operations within the Leased Premises in compliance with Title 14, CFR, Part 77.

Section 24.05 DELIVERY OF NOTICES

Any notices required in this Lease shall be in writing and served personally or sent by registered or certified mail, postage prepaid, or by courier service, such as FedEx or UPS. Any notices mailed pursuant to this section shall be presumed to have been received by the addressee five (5) business days after deposit of said notice in the mail, unless sent by courier service.

Notices to the City shall be addressed to:

Airport Director
City of Pensacola
Pensacola International Airport
2430 Airport Boulevard, Suite 225
Pensacola, Florida 32504

and

City Administrator
City of Pensacola
222 W. Main Street
Pensacola, Florida 32502

Notices to the Company shall be addressed to:

Mr. Bill Hafner
President, VT Mobile Aerospace Engineering, Inc.
2100 Aerospace Drive
Brookley Aeroplex
Mobile, AL 36615
Telephone: 251-438-8888
Telecopier: 251-438-8892

Section 24.06 EMPLOYEES OF THE COMPANY

The Company shall require all of its employees, subcontractors, and independent contractors hired by the Company and working in view of the public to wear clean and neat attire and to display appropriate identification. Company employees shall obtain identification badges from the City. The Company shall be responsible for paying the cost of TSA-required employee background checks and badging.

Section 24.07 ENTIRE LEASE

This Lease constitutes the entire agreement between the Parties on the subject matter hereof and may not be changed, modified, discharged, or extended except by written instrument duly executed by the City and the Company. The Company agrees that no representations or grants of rights or privileges shall be binding upon the City unless expressed in writing in this Lease.

Section 24.08 FAVORED NATIONS

City agrees not to enter into any lease with any other Aircraft MRO business conducting similar operations at the Airport after the date of this Lease that contain more favorable rents, fees or charges than those provided in this Lease.

Section 24.09 FORCE MAJEURE

Neither the City nor the Company shall be deemed to be in violation of this Lease if it is prevented from performing any of its obligations hereunder by reason of strikes, boycotts, labor disputes, embargoes, shortages of material, acts of God, acts of the public enemy, acts of superior governmental authority, weather conditions, tides, riots, rebellion, sabotage, or any other circumstances for which it is not responsible or which is not in its control (collectively, "Force Majeure"); provided, however, that Force Majeure shall not excuse the Company from making, as and when due, any monetary payment required under this Lease or by the Rules and Regulations, including but not limited to Ground Rent, Additional Rent, Airport rentals, fees, and charges, Taxes under Article 25 and insurance premiums.

Section 24.10 GENDER

Words of either gender used in this Lease shall be held and construed to include the other gender, and words in the singular number shall be held to include the plural, unless the context otherwise requires.

Section 24.11 GENERAL INTERPRETATION

Insofar as this Lease grants, permits, or contemplates the use of space or facilities or the doing of any other act or thing at the Airport by the Company, such use or the doing of such act or thing by the Company is to be in connection with the operation of its Aircraft MRO business. Each of the Parties, however, has entered into this Lease solely for its own benefit; and (without limiting the right of either Party to maintain suits, actions, or other proceedings because of breaches of this Lease) this Lease does not grant to any third person (excepting a successor party to the City or the Company) a right to claim damages or bring any suit, action, or other proceeding against either the City or the Company because of any breach hereof, except as otherwise provided in Section 7.02 above.

Section 24.12 GOVERNING LAW

The laws of the State of Florida shall govern this Lease and all disputes arising hereunder, with venue in Escambia County, Florida.

Section 24.13 HEADINGS

The headings of the articles and sections of this Lease are inserted only as a matter of convenience and for reference and do not define or limit the scope or intent of any provisions of this Lease and shall not be construed to affect in any manner the terms and provisions of this Lease or its interpretation.

Section 24.14 INCORPORATION OF EXHIBITS

All exhibits referred to in this Lease are intended to be and hereby are specifically incorporated and made a part of this Lease.

Section 24.15 INCORPORATION OF REQUIRED PROVISIONS

The Parties hereto incorporate herein by this reference all applicable provisions lawfully required to be contained herein by any governmental body or agency.

Section 24.16 INVALID PROVISIONS

In the event that any covenant, condition, or provision herein contained is held to be invalid by a court of competent jurisdiction, the invalidity of any such covenant, condition, or provision shall in no way affect any other covenant, condition, or provision herein contained, provided that the invalidity of any such covenant, condition, or provision does not materially prejudice either the City or the Company in its respective rights and obligations contained in the valid covenants, conditions, and provisions of this Lease.

Section 24.17 LAWS AND ORDINANCES

The Company agrees to comply promptly with all laws, ordinances, orders, and regulations affecting the Leased Premises, including, but not limited to, those related to its cleanliness, safety, operation, use, and business operations. The Company shall comply with all federal and State of Florida regulations concerning its operation on the Airport and shall indemnify and hold harmless the City, its officers, and employees from any charges, fines, or penalties that may be assessed or levied by any department or agency of the United States or the State of Florida, by reason of the Company's failure to comply with the terms of this section or with any other terms set forth in this Lease.

Section 24.18 MUNICIPAL SERVICES

The City, acting in its general governmental capacity, will provide law enforcement, fire protection, and emergency medical services to the Facilities and the Company's employees equal to that of other businesses similarly situated.

Section 24.19 NONLIABILITY OF INDIVIDUALS

No director, officer, agent, elected official, or employee of either Party shall be charged personally or held contractually liable by or to the other Party under any term or provision of this Lease or because of any breach hereof or because of its or their execution or attempted execution.

Section 24.20 NONINTERFERENCE WITH AIRPORT OPERATIONS

The Company, by executing this Lease, expressly agrees for itself, its successors, and assigns that it will not make use of its Leased Premises in any manner that might interfere with the landing and taking off of aircraft at the Airport or otherwise constitute a hazard. In the event that the aforesaid covenant is breached, on reasonable notice to the Company and opportunity to cure, the City reserves the right to enter the Company's Leased Premises and cause the abatement of such interference at the expense of the Company.

Section 24.21 NOTICE OR CONSENT

Any notice or consent required or permitted by this Lease 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 Lease 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 Lease 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 Lease 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 the Company shall be entitled to rely thereon.

Section 24.22 NONWAIVER

The acceptance of rentals, fees, and charges by the City for any period or periods after a default of any of the terms, covenants, and conditions contained herein to be performed, kept, and observed by the Company shall not be deemed a waiver of any right on the part of the City to terminate this Lease.

Section 24.23 OPERATION OF THE AIRPORT

The City agrees to maintain and operate the Airport in accordance with all applicable standards, rules, and regulations of the Federal Aviation Administration or its successor. The City shall exercise its rights hereunder and otherwise operate the Airport with due regard for the operational requirements and long-term interests of the Company, aircraft operators, and the interests of the traveling public, in a manner that is consistent with applicable laws, Federal Aviation Regulations, federal grant assurances, and the City's Bond Resolution.

Section 24.24 OTHER LAND AND BUILDINGS EXCLUDED

It is agreed and understood that this Lease and any exhibit hereto is not intended to provide for the lease of any building, land, space, or area or to set any rental rates for any building, land, space, or area other than that specifically described herein.

Section 24.25 PUBLIC RECORDS LAWS

The Parties shall each comply with Florida Public Records laws. The Parties hereby contractually agree that each Party shall allow public access to all documents, papers, letters, or other public records as defined in Chapter 119, Florida Statutes, made or received by either Party in conjunction with this Lease, or related thereto, unless a statutory exemption from disclosure exists. Notwithstanding any provision to the contrary, it is expressly agreed that Company's failure to comply with this provision, within seven (7) days of notice from the City, shall constitute an immediate and material breach of this Lease for which the City may, in the City's sole discretion, unilaterally terminate this Lease without prejudice to any right or remedy.

Section 24.26 RESERVATIONS RE: AIRSPACE AND NOISE

There is hereby reserved to the City, its successors, and assigns, for the use and benefit of the public, a right of flight for the passage of aircraft in the airspace above the surface of the Leased Premises.

The City reserves the right to establish permissible noise levels for the Airport environs area and hours of material noise generating activities.

Section 24.27 RIGHT TO AUDIT BOOKS AND RECORDS

The Company agrees to keep true and accurate books and records on its operations at the Airport, and the Airport Director and any other authorized City representative, upon reasonable advance written notice to the Company, shall have the right to inspect and audit such books and records to ensure compliance with the prevailing municipal bond disclosure requirements and to determine that the City has received from the Company and its customers all moneys due the City under the terms

hereof. Likewise, the Company shall have the right to inspect Airport books and records relating to the provisions hereof.

Section 24.28 RIGHTS RESERVED TO THE CITY

Nothing contained herein shall unlawfully impair the right of the City to exercise its governmental or legislative functions. This Lease is made subject to the Constitution and laws of the State of Florida and to the provisions of the Airport Improvement Program grants applicable to the Airport and its operation, and the provisions of such Lease, insofar as they are applicable to the terms and provisions of this Lease, shall be considered a part hereof to the same extent as though copied herein at length to the extent, but only to the extent, that the provisions of any such agreements are required generally by the United States at other civil airports receiving federal funds. To the best of the City's knowledge, nothing contained in such laws or agreements conflicts with the express provisions of this Lease.

Section 24.29 SIGNS

The installation and operation of identifying signs, posters, and graphics on the Company's Leased Premises are subject to the prior written approval of the Airport Director. Such signs shall be substantially uniform in size, type, and location with those of other tenants, and consistent with the City's graphics standards and the Airport Rules and Regulations, and in compliance with all applicable laws and ordinances.

Section 24.30 SUCCESSORS AND ASSIGNS

The provisions of this Lease shall be binding upon and inure to the benefit of the successors and assigns of the Parties hereto; provided, however, that this provision shall in no way whatsoever alter the restriction herein regarding assignment and sublease by the Company.

Section 24.31 NO AUTOMATIC RENEWALS

This Lease contains no automatic renewals of the Term.

Section 24.32 TRIAL BY JURY

The parties to this Lease desire to avoid the additional time and expense related to a jury trial of any disputes arising hereunder. Therefore, it is mutually agreed by and between the parties hereto, and for their successors, heirs and permitted assigns, that they shall and hereby do waive trial by jury of any claim, counterclaim, or third-party claim, including any and all claims of injury or damages, brought by either party against the other arising out of or in any way connected with this Lease and/or the relationship which arises hereunder. The parties acknowledge and agree that this waiver is knowingly, freely, and voluntarily given, is desired by all parties, and is in the best interest of all parties.

Section 24.33 NO PARTNERSHIP

Nothing in this agreement constitutes a partnership between the Parties. It is the express intention of the Parties to deny any such relationship.

Section 24.34 THIRD PARTIES

Nothing in this Lease, express or implied, is intended to or shall confer upon any other person any right, benefit or remedy of any nature whatsoever under or by reason of this Lease.

Section 24.35 TIME IS OF THE ESSENCE

Time is of the essence in this Lease.

Section 24.36 MEMORANDUM OF LEASE.

Concurrently with the execution of this Lease, the Parties have executed a short-form memorandum of this Lease in form suitable for recording and in substance sufficient to provide constructive notice to third parties of the material terms and provisions of this Lease. The City shall cause such memorandum to be recorded in the public records of Escambia County, Florida.

Section 24.37 REPRESENTATIONS AND WARRANTIES OF CITY.

City hereby represents and warrants to the Company that as of the Effective Date:

- a. The City is the fee simple owner and record title holder of the Leased Premises;
- b. The City has the full right and authority to make and execute this Lease;
- c. To the knowledge of the City, there are no pending or threatened condemnation proceedings or other governmental, municipal, administrative or judicial proceedings affecting the Leased Premises; and
- d. This Lease and the consummation of the transaction contemplated in this Lease are the valid and binding obligations of the City and do not constitute a default (or an event which, with the giving of notice or the passage of time, or both, would constitute a default) under, any contract to which the City is a party or by which it is bound.

Section 24.38 CITY BREACH.

(a) The occurrence of the following event (such event being referred to in this Lease as a "City Event of Default") shall constitute a material default and breach of this Lease by the City: The City fails to observe or perform any covenant, condition, or provision of this Lease to be observed or performed by the City and such failure shall continue for a period of thirty (30) days after written notice thereof by the Company to the City; provided, however, if the nature of such failure is such that more than thirty (30) days are reasonably required for its remedy or cure, then such 30-day period shall be extended for up to ninety (90) additional days provided that the City begins such remedy or cure within such 30-day period and thereafter diligently and continuously prosecutes such remedy or cure to completion within such additional 90-day period.

(b) Upon the occurrence of a City Event of Default and the expiration of any applicable cure period, and for so long as such City Event of Default remains uncured, the Company may at its option cure such Event of Default, provided that the Company shall give the City fifteen (15) days prior written notice of its intent to cure such City Event of Default, which notice shall specify the manner in which the Company intends to cure such City Event of Default and the estimated cost of such cure. If the City fails to reimburse the Company, within ten (10) days after written demand, for the reasonable costs and expenses incurred by the Company to cure such City Event of Default, the Company shall be entitled to recover such reasonable costs and expenses from the City in an action at law for damages, but in no event shall the Ground Rent or any other amounts payable by the Company hereunder be abated, nor shall the Company be entitled to deduct or set off any such costs or expenses from or against any payment of Ground Rent or other payments then due or thereafter coming due from the Company pursuant to this Lease.

(c) If, but only if, a City Event of Default constitutes a constructive eviction of the Company from a Parcel under Florida law, the Company shall be entitled to terminate this Lease with respect to such Parcel in accordance with this paragraph. If the Company intends to claim a constructive eviction by reason of a City Event of Default, then after the occurrence of such Event of Default and the expiration of any applicable cure periods, Company shall give the City not less than ninety (90) days prior written notice of the Company's intent to terminate this Lease with respect to a Parcel pursuant to this paragraph. If the City cures the Event of Default during such 90-day period, the Company shall not be entitled to terminate this Lease with respect to such Parcel. Further, if the Company intends to claim a constructive eviction by reason of a City Event of Default, the Company shall abandon such Parcel within a reasonable time after the occurrence of the event giving rise to the City Event of Default, but in any event within thirty (30) days after the expiration of the cure period provided in paragraph (a) above.

(d) The rights and remedies provided to the Company in this Section shall be the sole and exclusive rights and remedies available to the Company upon the occurrence of a City Event of Default.

(e) Upon the occurrence of a City Event of Default, the Company shall use reasonable efforts to mitigate its damages.

END OF ARTICLE

IN WITNESS WHEREOF, the undersigned have duly executed this Lease as of the dates set forth below.

CITY:

COMPANY:

CITY OF PENSACOLA

**VT MOBILE AEROSPACE
ENGINEERING, INC.,
an Alabama corporation**

By: _____
Grover C. Robinson, IV, Mayor

By: _____
_____, Chairman

Date: _____

Date: _____

Attest:

Ericka L. Burnett, City Clerk

Approved As To Content:

By: _____
Daniel E. Flynn,
Interim Airport Director

Approved As To Form

By: _____
Susan A. Woolf,
City Attorney

Exhibit A

Land

Exhibit A-1
Hangar 2 Option Site
Pensacola International Airport



Preliminary Draft Plan
For Review and Revision
Not for Publication

Parcel 1

Exhibit A-2
Project Titan Westside Site
Pensacola International Airport



Preliminary Draft Plan
For Review and Revision
Not for Publication

Parcels 2-5

A-3

Exhibit ~~A-2~~
Element 2 Project Titan – MRO Facilities to be Constructed
Pensacola International Airport



Preliminary Discussion Draft Plan
Not for Publication

Parcel 1

A-4

Exhibit
Element 2 Project Titan – MRO Facilities to be Constructed
Pensacola International Airport



FENSACOLA
International Support

FENSACOLA

ATKINS
Atkins Real Estate Group, Inc.
1400 West 10th Street
Pensacola, FL 32504
2008 02 10 04

Scale: 1" = 100'

WEST SIDE DEVELOPMENT
PROJECT DRAWINGS

EXHIBIT B

Preliminary Discussion Draft Plan
Not for Publication

Additional
Land

Parcel 3

Parcel 2

Parcel 4

Parcel 5

Exhibit B

FAA APPROVED AIRPORT LAYOUT PLAN

Exhibit C

FAA AIRSPACE DETERMINATION LETTER

[TO BE ATTACHED WHEN RECEIVED FROM FAA BY CITY]

Exhibit D

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://fltreasury.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 term is 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 32317
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:

TRIUMPH:

VT Mobile Aerospace Engineering, Inc., an Alabama corporation

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

By: _____
Print Name: Bill Hafner
Title: President

By: _____
Print Name: _____
Title: Chairman

By: _____
Print Name: _____
Title: Treasurer

ATTEST:

By: _____
Print Name: _____
Title: Secretary



City of Pensacola

222 West Main Street
Pensacola, FL 32502

Memorandum

File #: 19-00127

City Council

3/28/2019

LEGISLATIVE ACTION ITEM

SPONSOR: Grover C. Robinson, IV, Mayor

SUBJECT:

PENSACOLA ENERGY - AWARD OF CONTRACT FOR PHASE 2 WAREHOUSE UPGRADE

RECOMMENDATION:

That City Council award a contract in the amount of \$164,210.90 to CMAC Technology Solutions, Inc. of Alpharetta,, Georgia to provide project management support for the maintenance tool room, meter room, and meter paint room and for the installation of racks, warehouse fixtures, and equipment to complete the upgrade in the Pensacola Energy warehouse. Further, that Council authorize the Mayor to execute the contract and take all actions necessary to complete the work.

HEARING REQUIRED: No Hearing Required

SUMMARY:

In August 2018, the City issued ITB# 18-032 RF / Barcode Solution for Pensacola Energy Warehouse (Phase 1). The purpose of bid # 18-032 was to solicit for a bar coding system for issuing, receiving and tracking minimum stock amounts for the warehouse. This effort was designed to improve inventory management and establish the foundation for compliance with pending federal regulations. The City received no responses to ITB# 18-032.

Subsequently, Pensacola Energy sent a request for quote to four companies suggested by Pensacola Energy's consultant for this project. The companies solicited were Heartland Technology Group, Inc., Avisent Technologies, Diversified Data Systems, Inc. and CMAC Technology Solutions, Inc. CMAC was the sole respondent to the quote.

CMAC is a logistics and system integration firm and has been instrumental in coordinating the warehouse improvements. Pensacola Energy would like to continue the relationship and request assistance for a Phase 2 which would include the purchase of workbenches, work tables, fire cabinets, industrial desks for field personnel, and the installation of new racking in the tool room, meter shop area, and meter paint room.

PRIOR ACTION:

None

FUNDING:

Budget: \$165,000.00

Actual: \$164,210.90

FINANCIAL IMPACT:

Funds have been appropriated in Gas Utility Fund Fiscal Year 2019 Budget.

CITY ATTORNEY REVIEW: Yes

3/13/2019

STAFF CONTACT:

Christopher L. Holley, City Administrator
Don J. Suarez, Pensacola Energy Director

ATTACHMENTS:

- 1) CMAC Technology Solutions, Inc. Contract

PRESENTATION: No

**CONTRACT FOR QUOTE REQUEST
BETWEEN CITY OF PENSACOLA AND
CMAC TECHNOLOGY SOLUTIONS, INC.**

THIS CONTRACT (“Contract”) made in response to a quote request is made this ____ day of _____, 2019, by and between the City of Pensacola (“City”), a Florida municipal corporation created and existing under the laws of the State of Florida, and CMAC Technology Solutions, Inc., (“Contractor”), a corporation authorized to do business in Florida, located at 11625 Rainwater Drive, Suite 250, Alpharetta, GA 30009 (the City and Contractor collectively referred to hereinafter as the “Parties”).

WITNESSETH:

WHEREAS, the City requested quotes for work or services on or about February 8, 2019, as may be described in a project manual, scope of work, statement of work, or other request information document, and any applicable addenda, all such documents collectively referred to as the “Quote Documents” and attached hereto as Exhibit A and incorporated herein by this reference; and

WHEREAS, in response to the Quote Documents, the Contractor submitted to the City a Proposal, dated February 22, 2019, (“Proposal”) attached hereto as Exhibit B and incorporated herein by this reference; and

WHEREAS, the City has selected the Proposal; and

WHEREAS, the Parties desire the Contractor perform as described in the Quote Documents and the Proposal and pursuant to the terms and conditions of this Contract (the Quote Documents, Proposal and this Contract collectively referred to hereinafter as the “Contracting Documents”); and

WHEREAS, the Parties desire to enter into this Contract;

NOW, THEREFORE, in consideration of the work to be performed and the payment for the performance of the work, and of the mutual covenants contained herein and the mutual benefits to flow each unto the other, and for other good and valuable consideration, the Parties agree as follows:

Section 1. Recitals.

The recitals contained above are declared by the Parties to be true and correct and are incorporated into this Contract.

Section 2. Contractor’s Obligations.

The Contractor shall perform all work and services described in, and in accordance with, the Contracting Documents. The Contractor warrants that all equipment, materials and workmanship furnished whether furnished by Contractor or its sub-suppliers, will comply with the Contracting Documents and any City specifications, drawings and other descriptions supplied or adopted, and will be new, fit and sufficient for the purpose for which they are intended, of good materials, design and workmanship and free from defects or failure. The City, or its duly authorized representative, shall at all times have full opportunity to inspect the materials to be furnished and the work to be done under this Contract. The Contractor shall comply with all applicable federal, state and local laws, ordinances, rules and regulations pertaining to the performance

of this Contract. The Contractor is responsible for and shall indemnify City against all damage or loss caused by fire, theft or otherwise, to materials, tools, equipment, and consumables left on City property by the Contractor.

Section 3. Payment.

The Contractor agrees to perform all work and services in Section 2 and to furnish all necessary labor, materials, equipment, machinery, tools, apparatus, and means of transportation related to such work and services at Contractor's sole cost and expense, in consideration of the total amount of **One Hundred Sixty-four Thousand Two Hundred Ten dollars and 90 cents (\$164,210.90)** to be paid by the City in accordance with the Contracting Documents upon the complete performance by Contract, or based on unit prices if applicable, or based on partial payments approved by the City, only after written acceptance by the City pursuant to the Contracting Documents, and such payment in accordance with the Florida Prompt Payment Act. The Contractor agrees to pay to the City any difference between the sum to which the Contractor would be entitled herein upon the completion of the work and services in the Contracting Documents, and the sum to which the City may be obliged to pay for the completion of performance by the Contractor or other party, and any damage, direct or indirect, or consequential, which may be sustained on account of Contractor's acts or omissions in the performance of this Contract.

Section 4. Bond.

Contractor shall provide any bond as required in the Contracting Documents. Should the City, in the City's sole discretion, at any time deem any of the sureties upon such bond to be unsatisfactory or if for any reason such bond shall cease to be adequate security for the City, the Contractor shall within five (5) days of written notice from the City furnish a new or additional bond in full sum and satisfactory to the City. No payment shall be deemed to be due or to be made to the Contractor unless and until such new or additional bond shall be furnished and approved in writing by the City. The premium and all expenses associated with such new or additional bond shall be paid by, and the sole responsibility of, the Contractor.

Section 5. Performance Schedule.

The Contractor shall commence and complete all work and services pursuant to the Contracting Documents.

Section 6. Necessary Approvals.

Contractor shall procure all permits, licenses, and certificates, or any approvals in performance and completion of this Contract as may be required by federal, state, and local laws, ordinances, rules, and regulations, and in accordance with the Contracting Documents.

Section 7. No Waiver.

No waiver, alterations, consent or modification of any of the provisions of the Contracting Documents shall be binding unless in writing and signed by the Mayor.

Section 8. Governing Law.

This Contract is governed and construed in accordance with the laws of the State of Florida. The law of the State of Florida shall be the law applied in the resolution of any claim, actions or proceedings arising out of this Contract.

Section 9. Venue.

Venue for any claim, actions or proceedings arising out of this Contract shall be Escambia County, Florida.

Section 10. No Discrimination.

Contractor shall not discriminate on the basis of race, creed, color, national origin, sex, age, or disability, in the performance of this Contract.

Section 11. No Other Agreements.

The Parties agree the Contracting Documents contain all the terms and conditions agreed upon by the Parties. No other agreements, oral or otherwise, regarding the subject matter of this Contract shall be deemed to exist or to bind either Party.

Section 12. Attorney's Fees.

The prevailing Party in any action, claim or proceeding arising out of this Contract shall be entitled to attorney's fees and costs from the losing Party.

Section 13. Termination for Convenience.

The City may terminate this Contract without cause upon thirty (30) days prior written notice.

Section 14. Public Records Act.

The parties acknowledge and agree to fulfill all obligations respecting required contract provisions in any contract entered into or amended after July 1, 2016, in full compliance pursuant to Section 119.0701, *Florida Statutes*, and obligations respecting termination of a contract for failure to provide public access to public records. The parties expressly agree specifically that the contracting parties hereto shall comply with the requirements within Attachment "A" attached hereto and incorporated by reference.

IN WITNESS WHEREOF, the parties hereto have caused this Contract to be executed in triplicate and sealed the day and year first above written.

CONTRACTOR

CITY OF PENSACOLA, FLORIDA

CMAC Technology Solutions, Inc.
(Contractor's Name)

Mayor, Grover C. Robinson, IV

By _____
Member

City Clerk, Ericka L. Burnett

(Printed Member's Name)

Approved As To Substance:

By: _____
Member

Department Director/Division Head

(Printed Member's Name)

Legal in form and valid as drawn:

(SEAL)

City Attorney

Attachment "A"

PUBLIC RECORDS: Consultant/Contractor/Vendor shall comply with Chapter 119, Florida Statutes. Specifically, Consultant/ Contractor/Vendor shall:

- A. Keep and maintain public records required by the City to perform the service.
- B. Upon request from the City's custodian of public records, provide the City with a copy of the requested records or allow the records to be inspected or copied within a reasonable time at a cost that does not exceed the cost provided in Chapter 119, Florida Statutes, or as otherwise provided by law.
- C. Ensure that public records that are exempt or confidential and exempt from public records disclosure requirements are not disclosed except as authorized by law for the duration of the Agreement term and following the completion of the Agreement if Consultant/ Contractor/Vendor does not transfer the records to the City.
- D. Upon completion of the Agreement, transfer, at no cost, to City, all public records in possession of Consultant/Contractor/Vendor or keep and maintain public records required by the City to perform the service. If Consultant/Contractor/Vendor transfers all public records to City upon completion of the Agreement, Consultant/ Contractor/Vendor shall destroy any duplicate public records that are exempt or confidential and exempt from public records disclosure requirements. If Consultant/Contractor/Vendor keeps and maintains public records upon completion of the Agreement, Consultant/Contractor/Vendor shall meet all applicable requirements for retaining public records. All records stored electronically must be provided to the City, upon request of the City's custodian of public records, in a format that is compatible with the information technology systems of the City.

Failure by Consultant/Contractor/Vendor to comply with Chapter 119, Florida Statutes, shall be grounds for immediate unilateral cancellation of this Agreement by City.

IF CONSULTANT/CONTRACTOR/VENDOR HAS QUESTIONS REGARDING THE APPLICATION OF CHAPTER 119, FLORIDA STATUTES, TO THE CONTRACTOR'S DUTY TO PROVIDE PUBLIC RECORDS RELATING TO THIS AGREEMENT, CONTACT THE CUSTODIAN OF PUBLIC RECORDS AT: THE OFFICE OF THE CITY ATTORNEY, (850) 435-1715, PUBLICRECORDS@CITYOFPENSACOLA.COM, 222 WEST MAIN STREET, PENSACOLA, FL 32502.

EXHIBIT A
QUOTE DOCUMENTS

Based on the experience between CMAC and Pensacola Energy coordinating the warehouse racking, equipment purchases and software for the inventory bar coding, Pensacola Energy is requesting an estimate for the remaining warehouse areas including the tool room, the meter paint room, and the meter shop. We would like for the district managers to be interviewed for input. Pensacola Energy would like a proposal that cleans up these areas, organizes them with updated shelving and safety equipment, and a general modernization for flow and efficiency.

EXHIBIT B
PROPOSAL

CMAC, Inc.

11625 Rainwater Drive - Suite 250 - Alpharetta, Georgia 30009
Phone: 770-753-8890 - Fax: 678-578-6360 - Email: www.cmacinc.com



Customer: Pensacola Energy
Dena Faessel

QUOTE

| Date | Sales Rep |
|----------|-------------|
| 02/22/19 | Mitch Allen |

| |
|-----------------|
| Terms NET 30 |
|-----------------|

| Qty | Description | Unit Price | Ext. Price |
|-----|---|-------------|-------------|
| 1 | Maintenance Tool Room Refresh (Estimated 240 hrs) | \$47,601.60 | \$47,601.60 |
| 1 | Meter Room Refresh (Estimated 160 hrs) | \$31,734.40 | \$31,734.40 |
| 1 | Paint Room Refresh (Estimated 160 hrs) | \$31,734.40 | \$31,734.40 |

Budgetary Proposal Subject to Change

Assumptions / Requirements:
This quote expires on 4/1/2019.
CMAC to provide Project Management and Consultative support to Pensacola Energy for all items above.
The proposed effort is based in FTE hours and does not represent any estimate of timeline.
The proposed hours are estimates only. Any hours above the proposed amounts will be billed at the standard rate of \$198.34 per hour.
All applicable data is expected to be compiled and provided by PE.
Resource availability is subject to change without notice.

| | |
|--------------|---------------------|
| Total | \$111,070.40 |
|--------------|---------------------|

CMAC, Inc.

11625 Rainwater Drive - Suite 250 - Alpharetta, Georgia 30009
 Phone: 770-753-8890 - Fax: 678-578-6360 - Email: www.cmacinc.com



Customer: Pensacola Energy
 Dena Faessel

PROPOSAL

AAAQ11647-01

| | |
|----------|-------------|
| Date | Sales Rep |
| 02/21/19 | Mitch Allen |

| |
|--------|
| Terms |
| NET 30 |

| Ln # | Qty | Description | Unit Price | Ext. Price |
|------|-----|---|------------|------------|
| 1 | | Tool Room Refresh | | |
| 2 | 1 | Work Bench 2 steel top 72 x 36 workbenches supports 4K lbs | \$1,300.00 | \$1,300.00 |
| 3 | 1 | Pneumatic Lift Bench Portable Vestil 1000 lbs mobile lift table 19-3/4" x 32" | \$1,430.00 | \$1,430.00 |
| 4 | 1 | Stool/Chair Diesel Industrial stool with back (multiple heights) | \$234.00 | \$234.00 |
| 5 | 1 | Pegboards (or similar) Portable / hangable peg boards for hose / tool storage | \$1,170.00 | \$1,170.00 |
| 6 | 1 | Racking (2 bays, 3 level, 12ft high) Husky Uprights 42x144xu24 (3) - Husky Beams 3.92x96 5000lbs (8 units) | \$2,600.00 | \$2,600.00 |
| 7 | 1 | Other Racking (decks, spacers, foot plat) Decks 42x46 3 chan (8 units), Footplates (6 units), Freight, bolts and spacers | \$2,216.50 | \$2,216.50 |
| 8 | 1 | Other Misc. Materials Peg boards , hooks , hose roles etc | \$2,000.00 | \$2,000.00 |
| 9 | 1 | Installation 2.5 days 2 installers | \$3,600.00 | \$3,600.00 |
| 10 | 1 | Installation Team T&E Installation Team T&E | \$2,000.00 | \$2,000.00 |
| 11 | | Meter Room Refresh | | |
| 12 | 1 | Industrial Desk 18 desks - 2 rows / 9 back to back | \$7,020.00 | \$7,020.00 |
| 13 | 1 | Desk Divider(s) Estimate only -- final solution TBD | \$5,200.00 | \$5,200.00 |
| 14 | 1 | Stool/Chair 18 Diesel Industrial stool with back (multiple heights) | \$4,680.00 | \$4,680.00 |
| 15 | 1 | Industrial work table 2 steel top 72 x 36 workbenches supports 4K lbs | \$2,600.00 | \$2,600.00 |
| 16 | 1 | Shelving Shelving configurable (including 2 48 x 24 x 87") | \$2,600.00 | \$2,600.00 |
| 17 | 1 | Installation 2 day x 2 installers | \$2,880.00 | \$2,880.00 |
| 18 | 1 | Installation Team T&E Installation Team T&E | \$1,500.00 | \$1,500.00 |
| 19 | | Paint Room Refresh | | |
| 20 | 1 | 3 large fire cabinets for chemicals 3 Cabinets - 45 Gallon - Manual Close - 43"W x 18"D x 65"H | \$5,070.00 | \$5,070.00 |
| 21 | 1 | Shelving Shelving configurable (including 2 48 x 24 x 87") | \$2,600.00 | \$2,600.00 |

02/21/19 16:46:28

Page 1

1 of 2

| Ln # | Qty | Description | Unit Price | Ext. Price | |
|--------------|-----|---|--|--------------------|------------|
| 22 | 1 | Installation | Shelving configurable (including 2 48 x 24 x 87") 2 day x 2 installers | \$1,440.00 | \$1,440.00 |
| 23 | 1 | Misc. Other | Additional Storage Devices | \$1,000.00 | \$1,000.00 |
| 24 | 1 | Installation Team T&E | Installation Team T&E | \$1,000.00 | \$1,000.00 |
| 25 | | Assumptions / Requirements: Does not include Shipping & Handling Budgetary Estimate only - actual totals may differ based on PE options selected | | | |
| Total | | | | \$54,140.50 | |

Please contact me if I can be of further assistance.

- Prices subject to change - Prices based upon total purchase - all delivery, training or consulting services to be billed at published rates for each activity involved - CMAC shall not be liable for any loss of profits, business, goodwill, data, interruption of business, nor for incidental or consequential merchant ability or fitness of purpose, damages related to this agreement.
- Prices do not include shipping/handling or taxes.
- Travel and expenses are not included and will be billed as a direct pass through cost.

Payment Terms & Conditions:

Payment Terms are noted above. If payment in full is not received within 5 days of the due date, the unpaid balance will accrue interest at 1.25% per month and the customer will be liable for all collection costs including attorney's fees. Actual transfer of the title and ownership of the property/equipment associated with this quote and correlated invoices do not occur until full and complete payment has been made. CMAC reserves the right to retrieve any and all property/equipment if full financial restitution within the terms specified has not occurred. Purchaser assumes financial responsibility for damages, deterioration or depreciation of property/equipment whether intentional or



City of Pensacola

222 West Main Street
Pensacola, FL 32502

Memorandum

File #: 19-00149

City Council

3/28/2019

LEGISLATIVE ACTION ITEM

SPONSOR: City Council President Andy Terhaar

SUBJECT:

RESCHEDULE THE STARTING TIME OF THE APRIL 11, 2019 MEETING OF THE CITY COUNCIL.

RECOMMENDATION:

That City Council reschedule the starting time of the April 11, 2019 City Council Meeting, to begin at 4:30 p.m.

HEARING REQUIRED: No Hearing Required

SUMMARY:

In accordance with Section 1.01, Council Rules and Procedures which states in part:

“...No scheduled meeting shall be rescheduled without a majority vote of council, except in cases of emergency or extreme hardship.”

On this date, the Consultants for the West Main Master Plan will be giving a presentation regarding this; the change in time is the hope that City Council Members will be able to attend this presentation.

This change in time must be approved by City Council.

PRIOR ACTION:

None

FUNDING:

N/A

FINANCIAL IMPACT:

None

STAFF CONTACT:

Don Kraher, Council Executive

ATTACHMENTS:

1) None

PRESENTATION: No



City of Pensacola

222 West Main Street
Pensacola, FL 32502

Memorandum

File #: 19-00112

City Council

3/28/2019

LEGISLATIVE ACTION ITEM

SPONSOR: Grover C. Robinson, IV, Mayor

SUBJECT:

APPOINTMENT TO THE POLICE OFFICERS' RETIREMENT FUND

RECOMMENDATION:

That City Council ratify the appointment of Rodney Randle as the fifth member trustee of the Police Officers' Retirement Fund.

HEARING REQUIRED: No Hearing Required

SUMMARY:

At the meeting on February 13, 2019, the Police Officers' Retirement Fund Board of Trustees elected Rodney Randle as the fifth member of the board. His term is for two years and will expire on December 31, 2020.

PRIOR ACTION:

March 28, 2013 - City Council ratified the appointment of Rodney Randle as the fifth member trustee of the Police Officers' Retirement Fund.

FUNDING:

N/A

FINANCIAL IMPACT:

None

CITY ATTORNEY REVIEW: Yes

3/10/2019

STAFF CONTACT:

Christopher L. Holley, City Administrator

Richard Barker, Jr., Chief Financial Officer

ATTACHMENTS:

None

PRESENTATION: No



City of Pensacola

222 West Main Street
Pensacola, FL 32502

Memorandum

File #: 19-00140

City Council

3/28/2019

LEGISLATIVE ACTION ITEM

SPONSOR: City Council President Andy Terhaar

SUBJECT:

APPOINTMENTS - CONSTRUCTION BOARD OF ADJUSTMENT AND APPEALS

RECOMMENDATION:

That City Council appoint a general contractor and an at-large member from the public for a term of three (3) years, expiring March 31, 2022.

HEARING REQUIRED: No Hearing Required

SUMMARY:

The Construction Board of Adjustment and Appeals reviews and grants or denies applications for variances and waivers of all technical codes, including the building code, the plumbing code, the gas code, the mechanical code, the electrical code, the minimum housing code, the unsafe building abatement code and the swimming pool code but not the life safety and fire prevention codes. The Board serves as the regulation and discipline board for holders of City plumbing and gas certificates of competency, and reviews the appeals of the interpretation of the Building Official in regards to technical codes. Members of this Board are not required to be residents of the City. This Board meets on an as needed basis.

The Board is composed of seven members and two alternates. All members are appointed by City Council for a term of three years. Alternates are appointed by City Council for a term of two years. The Board is composed of a registered architect, a registered engineer, a general or building contractor, an electrical contractor, a plumbing and gas contractor, a mechanical contractor and an at-large member from the public. The two alternates shall be a member at large from the construction industry and one member at large from the public.

The following are incumbents that wish to be considered for reappointment:

Nominee

General Contractor

Donald Hanto

At-Large from Public

Clay Whittaker

Nominated by

Incumbent

Incumbent

PRIOR ACTION:

City Council appoints members to this board on an annual basis.

FUNDING:

Budget: N/A

Actual: N/A

FINANCIAL IMPACT:

None.

STAFF CONTACT:

Ericka L. Burnett, City Clerk

ATTACHMENTS:

- 1) Member List
- 2) Application of Interest - Donald Hanto
- 3) Application of Interest - Clay Whittaker
- 4) Ballots

PRESENTATION: No

Construction Board of Adjustment & Appeals

| Name | Profession | Appointed By | No. of Terms | Year | Exp Date | First Appointed | Term Length | Comments |
|-----------------|---------------------------|---------------------|---------------------|-------------|-----------------|------------------------|--------------------|-----------------|
| 2018 | | | | | | | | |
| Boyd, Don C. | Plumbing and Gas Contract | Council | 3 | 2018 | 3/31/2017 | 3/24/2005 | 3 | |
| Fooladi, Amir | Alt. At-large/Public | Council | 1 | 2018 | 3/31/2020 | 9/15/2016 | 2 | |
| Gordon, Hal B. | Alt. At Large Constructio | Council | 9 | 2018 | 3/31/2018 | 3/23/2000 | 2 | |
| Hanto, Donald | General Contractor | Council | 0 | 2018 | 3/31/2019 | 9/5/2016 | 3 | |
| McLemore, Sean | Electrical Contractor | Council | 0 | 2018 | 3/31/2020 | 1/17/2019 | 3 | |
| Ramos, Yuri | Architect | Council | 0 | 2018 | 3/31/2020 | 1/17/2019 | 3 | |
| Ritz, Stephen | Mechanical Contractor | Council | 9 | 2018 | 3/31/2021 | 3/10/1994 | 3 | |
| VACANT, VACANT | Engineer | Council | 0 | 2018 | 3/31/2018 | 3/10/1994 | 3 | |
| Whittaker, Clay | at-large public | Council | 1 | 2018 | 3/31/2019 | 9/15/2016 | 3 | |

Term Length: THREE (3) YEARS FOR MEMBERS
TWO (2) YEARS FOR ALTERNATES

ALTERNATE MEMBERS ARE APPOINTED FOR A TERM OF TWO YEARS. COMPOSED OF SEVEN (7) MEMBERS AND TWO (2) ALTERNATES APPOINTED BY CITY COUNCIL; ONE REGISTERED ARCHITECT, ONE REGISTERED PROFESSIONAL ENGINEER, ONE GENERAL OR BUILDING CONTRACTOR, ONE ELECTRICAL CONTRACTOR, ONE PLUMBING AND GAS CONTRACTOR, ONE MECHANICAL CONTRACTOR, AND ONE MEMBER AT LARGE FROM THE PUBLIC. ALTERNATES SHALL BE ONE MEMBER AT LARGE FROM THE CONSTRUCTION INDUSTRY AND ONE MEMBER AT LARGE FROM THE PUBLIC.

Ericka Burnett

From: noreply@civicplus.com
Sent: Thursday, February 28, 2019 3:28 PM
To: Ericka Burnett; Robyn Tice
Subject: Online Form Submittal: Application for Boards, Authorities, and Commissions - City Council Appointment

Application for Boards, Authorities, and Commissions - City Council Appointment

This application will be utilized in considering you for appointment to a City Council board, authority, or commission. Pursuant to Florida Statutes, Chapter 119, all information provided on or with this form becomes a public record and is subject to disclosure, unless otherwise exempted by law.

Completed applications will be kept on file for a period of one (1) year from the date received in the Office of the City Clerk.

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(Section Break)

Personal Information

Name Donald Hanto

Home Address 3040 Windermere Drive Pensacola, FL 32503

Business Address 1403 East Belmont Street Pensacola, FL 32501

To which address do you prefer we send correspondence regarding this application? Home

Preferred Contact Phone Number(s) (850) 393-6003

Email Address dhanto@hantoclarke.com

Upload Resume (optional) *Field not completed.*

(Section Break)

Details

Are you a City resident? Yes

If yes, which district? 3

If yes, how long have you been a City resident? 2004

Do you own property within the City limits? Yes

Are you a registered voter in the city? Yes

Board(s) of interest: Construction Board of Adjustment & Appeals

Please list the reasons for your interest in this position: Returning Board Member applying for reappointment

Do you currently serve on a board? Yes

If yes, which board(s)? Construction Board of Adjustment & Appeals

Do you currently hold a public office? No

If so, what office? *Field not completed.*

Would you be willing to resign your current office for the appointment you now seek? N/A

(Section Break)

Diversity

In order to encourage diversity in selections of members of government committees, the following information is required by Florida Statute 760.80 for some committees.

Gender Male

Race Caucasian

Physically Disabled No

(Section Break)

Acknowledgement of Terms I accept these terms.

Email not displaying correctly? [View it in your browser.](#)

Ericka Burnett

From: noreply@civicplus.com
Sent: Friday, March 1, 2019 1:32 PM
To: Ericka Burnett; Robyn Tice
Subject: Online Form Submittal: Application for Boards, Authorities, and Commissions - City Council Appointment

Application for Boards, Authorities, and Commissions - City Council Appointment

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(Section Break)

Personal Information

Name Clay Whittaker

Home Address 3681 Maule Road Pensacola, FL 32503

Business Address *Field not completed.*

To which address do you prefer we send correspondence regarding this application? Home

Preferred Contact Phone Number(s) 407-456-4054

Email Address clayw23@yahoo.com

Upload Resume (optional) *Field not completed.*

(Section Break)

Details

| | |
|--|--|
| Are you a City resident? | Yes |
| If yes, which district? | <i>Field not completed.</i> |
| If yes, how long have you been a City resident? | <i>Field not completed.</i> |
| Do you own property within the City limits? | Yes |
| Are you a registered voter in the city? | Yes |
| Board(s) of interest: | Construction Board of Adjustment & Appeals |
| Please list the reasons for your interest in this position: | I am a current Board member and would like to continue in this position. I'm a Board Certified attorney in Construction Law and would like to use my skill and interest to assist the Board. |
| Do you currently serve on a board? | Yes |
| If yes, which board(s)? | Construction Board of Adjustment & Appeals |
| Do you currently hold a public office? | No |
| If so, what office? | <i>Field not completed.</i> |
| Would you be willing to resign your current office for the appointment you now seek? | N/A |

(Section Break)

Diversity

In order to encourage diversity in selections of members of government committees, the following information is required by Florida Statute 760.80 for some committees.

| | |
|---------------------|-----------|
| Gender | Male |
| Race | Caucasian |
| Physically Disabled | No |

(Section Break)

Acknowledgement of Terms I accept these terms.

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Ballot – Environmental Advisory Board

March 28, 2019

Three (3) year term expiring March 31, 2022

Ballot

*General Contractor
Term Expiring 03/31/2022*

_____ Donald Hanto

Vote for One

Signed: _____
Council Member

Ballot – Environmental Advisory Board

March 28, 2019

Three (3) year term expiring March 31, 2022

Ballot

*At-Large from Public
Term Expiring 03/31/2022*

_____ Clay Whittaker

Vote for One

Signed: _____
Council Member



City of Pensacola

222 West Main Street
Pensacola, FL 32502

Memorandum

File #: 19-00142

City Council

3/28/2019

LEGISLATIVE ACTION ITEM

SPONSOR: City Council President Andy Terhaar

SUBJECT:

APPOINTMENT - ESCAMBIA COUNTY MASS TRANSIT ADVISORY COMMITTEE (MTAC)

RECOMMENDATION:

That City Council appoint a citizen to the Escambia County Mass Transit Advisory Committee as its representative filling an unexpired term ending May 1, 2021, subject to confirmation by a majority vote of the Board of County Commissioners.

HEARING REQUIRED: No Hearing Required

SUMMARY:

The Escambia County Mass Transit Advisory Committee (MTAC) was created to advise the Board of County Commissioners on mass transit issues in Escambia County and help to facilitate a community vision for mass transit in Escambia County.

The Committee has the following duties and responsibilities:

1. Establish a set of benchmarks to periodically evaluate the service and management of existing public mass transit systems operating in Escambia County.
2. Set short range and long range goals for increasing ridership, expanding routes, and instituting new mass transit services.
3. Assist the Board of County Commissioners, the County Administrator, and ECAT Management in developing partnerships with industry groups and employers to foster economic development.
4. Identify opportunities for inter-governmental or regional transportation alliances with entities both within Escambia County and outside of Escambia County.

The Committee consists of fourteen (14) members. Each County Commissioner appoints two members, one member appointed by the Escambia County Administrator, one member appointed by the Mayor of the City of Pensacola, one member appointed by the Mayor of the Town of Century, and one member appointed by the

City Council. All appointments are subject to confirmation by a majority vote of the Board of County Commissioners. All Committee members shall be electors of Escambia County. The City Council appointee will serve for a term of four years.

The following has been nominated:

Nominee

Dr. Charletha Powell

Nominated By

Cannada-Wynn, Hill

PRIOR ACTION:

Council's last appointment to this board was on July 13, 2017.

FUNDING:

Budget: N/A

Actual: N/A

FINANCIAL IMPACT:

None.

STAFF CONTACT:

Ericka L. Burnett, City Clerk

ATTACHMENTS:

- 1) Nomination Forms - Dr. Charletha Powell
- 2) Application of Interest - Dr. Charletha Powell
- 3) Resume - Dr. Charletha Powell
- 4) Ballot

PRESENTATION: No

CITY OF PENSACOLA, FLORIDA

NOMINATION FORM

I, Jewel CANNADA-WYNN, do nominate DR. Charletha Powell
(Nominee)

5910 OAKER POINT RD of 850-529-6778
(Home Address) (Phone)

(Business Address) (Phone)

Charletha L Powell City Resident: YES NO
(Email Address) Property Owner within the City: YES NO

for appointment by the City Council for the position of:

MEMBER
ESCAMBIA COUNTY MASS TRANSIT ADVISORY COMMITTEE (MTAC)
(Unexpired term ending 05/01/2021)

Provide a brief description of nominee's qualifications:

DR Powell will be a great addition to the mass transit committee.

Jewel Canada-Wynn
City Council Member

I hereby certify that the above nomination was submitted to my office within the time limitations prescribed by the Rules and Procedures of Council.

Ericka L. Burnett
Ericka L. Burnett, City Clerk

CITY OF PENSACOLA, FLORIDA

NOMINATION FORM

I, Ann Hill, do nominate Dr. Charletha Powell
32504 (Nominee)
5910 Otter Point Rd 850-529-6778
(Home Address) (Phone)

Same (Business Address) (Phone)

charletha.d.powell@gmail.com City Resident: YES NO
(Email Address) Property Owner within the City: YES NO

for appointment by the City Council for the position of:

MEMBER
ESCAMBIA COUNTY MASS TRANSIT ADVISORY COMMITTEE (MTAC)
(Unexpired term ending 05/01/2021)

Provide a brief description of nominee's qualifications:

With a doctorate in Diversity Studies from UWF and as an education specialist, DR. Powell will contribute to the consideration of diversity (e.g. race, culture, ethnicity, religion, etc.) in the revitalization and redevelopment of the targeted areas of the city.

Ann Hill
City Council Member

I hereby certify that the above nomination was submitted to my office within the time limitations prescribed by the Rules and Procedures of Council.

Erica L. Burnett
Erica L. Burnett, City Clerk

Ericka Burnett

From: noreply@civicplus.com
Sent: Friday, January 25, 2019 1:53 AM
To: Ericka Burnett; Robyn Tice
Subject: Online Form Submittal: Application for Boards, Authorities, and Commissions - City Council Appointment

Application for Boards, Authorities, and Commissions - City Council Appointment

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(Section Break)

Personal Information

Name Dr. Charletha D. Powell

Home Address 5910 Otter Point Rd. Pensacola, FL 32504

Business Address 5910 Otter Point Road

To which address do you prefer we send correspondence regarding this application? Home

Preferred Contact Phone Number(s) 8505296778

Email Address charletha.d.powell@gmail.com

Upload Resume (optional) [Backup of CDPowell Resume_CRA App.docx](#)

(Section Break)

Details

Are you a City resident? Yes

If yes, which district? 2

If yes, how long have you been a City resident? 5 years

Do you own property within the City limits? Yes

Are you a registered voter in the city? Yes

Board(s) of interest: Escambia County Mass Transit Advisory Committee

Please list the reasons for your interest in this position: My experience and education in diversity studies will allow me to contribute to the consideration of diversity (e.g., race, culture, ethnicity, religion, etc.) in the revitalization and redevelopment of the targeted areas of the city.

Do you currently serve on a board? No

If yes, which board(s)? NA

Do you currently hold a public office? No

If so, what office? NA

Would you be willing to resign your current office for the appointment you now seek? N/A

(Section Break)

Diversity

In order to encourage diversity in selections of members of government committees, the following information is required by Florida Statute 760.80 for some committees.

Gender Female

Race African-American

Physically Disabled No

(Section Break)

Acknowledgement of Terms I accept these terms.

Email not displaying correctly? [View it in your browser.](#)

CHARLETHA POWELL

5910 Otter Point Rd. | Pensacola, FL 32504-7947 | 850.529.6778 | Charletha.d.powell@gmail.com

OBJECTIVE

To obtain an appointment with the CRA so that I may utilize my education and skills to enhance the productivity and efficiency of the organization.

EMPLOYMENT HISTORY

Assistant School Administrator

8/2016-Present

Iron Sharpens Iron Academy

- Responsible for researching rules and regulations for contracts and scholarships for private schools.
- Compilation of correspondence.
- Implementation of software and digital technologies.
- Scoring of Terra Nova 3 standardized tests.

Graduate Assistant/Graduate Teaching Assistant

1/1/2012 – Present

University of West Florida, Pensacola, FL

- Research assistant responsible for literature reviews and data collection for various publications.
- Assist in the facilitation of online courses, which include but is not limited to providing communications, assisting with APA compliance, resolving technical issues with course modules, and preparing courses for online publication.
- Administrative assistance with course documentation.
- Assist with various task requested by the professor.

Administration and Operations

7/1/2012 – Present

C.O.R.E. Ministries, Warrington, FL

- Responsible for all administrative duties of the ministry that includes but is not limited to verbal/electronic communications, development of ministry programs, logistics, membership database maintenance, outreach programs, facility management, finances, and marketing.
- Developed sound and video presentation format including equipment purchase and installation as well as continued maintenance and improvement of same.

Vice President

9/1/2012 – Present

Future Leaders of Warrington (FLOW), Warrington, FL

- Facility management of Lexington Terrace Community Center, which includes working with the county commissioner to provide community activities and outreach opportunities, property management, and maintaining the facility calendar of events.
- Leader of the FLOW board of directors.
- Public relations liaison for the organization.

Intern

Summer 2012

Greater Pensacola Chamber of Commerce

- Assisted the head of the economic development department with research, database creation, correspondence, communications, small business incubator, and attended small business meetings and events.

North Florida Region Casualty Litigation Manager

1997 – 12/1/2010

Progressive Casualty Insurance Company, Jacksonville, FL

- Managed and directed over 250 claims representatives and 5 litigation managers in the settlement of statutory litigation, as it relates to automobile casualty insurance in Florida.

EDUCATION

- 2018 Ph.D. Diversity Studies
University of West Florida, Pensacola, FL
- 2016 Education Specialist
University of West Florida, Pensacola, FL
- 2003 M.B.A.
Webster University, Jacksonville, FL
- 1994 B.A. - English, Minor in Education
McNeese State University, Lake Charles, LA

ORGANIZATIONS

- Delta Sigma Theta Sorority, Inc.
- NAACP
- Pensacola Civitan
- Delta Sigma Pi
- National Black MBA Association, Inc.
- Sigma Tau Delta
- Ciclovía Pensacola
- Chappie James Museum Board

Ballot – Escambia County Mass Transit Advisory Committee (MTAC)

March 28, 2019

Unexpired term ending May 1, 2021

Ballot

_____ Dr. Charletha Powell

Vote for One

Signed: _____
Council Member



City of Pensacola

222 West Main Street
Pensacola, FL 32502

Memorandum

File #: 19-00146

City Council

3/28/2019

LEGISLATIVE ACTION ITEM

SPONSOR: City Council President Andy Terhaar

SUBJECT:

APPOINTMENT - WESTSIDE COMMUNITY REDEVELOPMENT BOARD

RECOMMENDATION:

That City Council appoint a citizen that is either a redevelopment area resident, member of an area neighborhood association or owner or operator of a business located in the redevelopment area, to serve on the Westside Community Redevelopment Board to fill an unexpired term ending January 31, 2021.

HEARING REQUIRED: No Hearing Required

SUMMARY:

The Westside Community Redevelopment Board was established pursuant to the requirements of Florida Statute 163.2517(2)(a) and (b) regarding a neighborhood participation process that provides for the ongoing involvement of stakeholder groups in urban infill and redevelopment area.

The Westside Community Redevelopment Board shall have the following authority and duties:

- (a) To prepare and recommend to the City Council five-year implementation plans for the implementation of the Westside Community Redevelopment Action Plan.
- (b) To prepare and recommend to the City Council an annual list of projects for funding from the Westside Community Redevelopment Trust Fund.
- (c) To monitor progress in the implementation of the Westside Community Redevelopment Plan and to make an annual report to the City Council on such progress.

The Board shall consist of seven (7) members appointed by the City Council. One member shall be a member of City Council, and six (6) members shall be redevelopment area residents, members of area neighborhood associations or owners or operators of business located in the redevelopment area. No member shall be a paid employee of the City. Members of the board shall serve for terms of three (3) years or thereafter until their successors are appointed.

The following has been nominated:

Nominee:
Jimmie Perkins

Nominated by:
Cannada-Wynn

PRIOR ACTION:

City Council makes appointments to this board every three years.

FUNDING:

Budget: N/A

Actual: N/A

FINANCIAL IMPACT:

None.

STAFF CONTACT:

Ericka L. Burnett, City Clerk

ATTACHMENTS:

- 1) Member List
- 2) Nomination Form - Jimmie Perkins
- 3) Application of Interest - Jimmie Perkins
- 4) Ballot

PRESENTATION: No

Westside Community Redevelopment Board

| Name | Profession | Appointed By | No. of Terms | Year | Exp Date | First Appointed | Term Length | Comments |
|---------------------------|---------------------|---------------------|---------------------|-------------|-----------------|------------------------|--------------------|-----------------|
| Baldwin, Sr., Doug | Area Business Owner | Council | 0 | 2018 | 1/31/2021 | 7/13/2017 | 3 | |
| Cannada-Wynn, Jewel | Council Member Rep | Council | 3 | 2018 | 11/30/2021 | 1/15/2015 | 2 | |
| Davis (Pastor), C. Marcel | Area Pastor | Council | 1 | 2018 | 1/31/2021 | 1/15/2015 | 3 | |
| Gulley, James L. | Area Resident | Council | 1 | 2018 | 1/31/2021 | 1/15/2015 | 3 | |
| Puryear, Tederria | Area Resident | Council | 0 | 2018 | 1/31/2021 | 4/12/2018 | 3 | |
| Robinson, Dianne | Area Resident | Council | 1 | 2018 | 1/31/2021 | 1/15/2015 | 3 | |
| VACANT, VACANT | | | 1 | 2018 | 1/31/2021 | 1/15/2015 | 3 | |

Term Length: Three (3) Years

The Westside Community Redevelopment Board was established pursuant to the requirements of F.S. 163.2517(2)(a) and (b) regarding a neighborhood participation process that provides for the ongoing involvement of stakeholder groups in urban infill and redevelopment area. (Ordinance No. 33-14 adopted by Council on 9/11/14)

CITY OF PENSACOLA, FLORIDA

NOMINATION FORM

I, Jewel Cannada-Wynn, do nominate Jimmie Perkins

(Nominee)

1720 W. Intendencia ST

(Home Address)

(82) 375-4713

(Phone)

NONE

(Business Address)

(Phone)

Not Listed

(Email Address)

City Resident YES NO

Property Owner within the City: YES NO

for appointment by the City Council for the position of:

**REDEVELOPMENT AREA RESIDENT, MEMBER OF AREA NEIGHBORHOOD ASSOCIATION, OR OWNERS OR OPERATORS OF BUSINESS LOCATED IN THE REDEVELOPMENT AREA
WESTSIDE COMMUNITY REDEVELOPMENT BOARD
(Unexpired term ending 01/31/2021)**

Provide a brief description of nominee's qualifications:

As a former City Council member and a life long resident of the

Westside he will be of great value to the board

Jewel Cannada-Wynn
City Council Member

I hereby certify that the above nomination was submitted to my office within the time limitations prescribed by the Rules and Procedures of Council.

Ericka L. Burnett
Ericka L. Burnett, City Clerk



Application for City Council Appointments to Boards, Authorities, and Commissions

Office of the City Clerk, P.O. Box 12910, Pensacola, FL 32521, 850- 435-1606

This application will be utilized in considering you for appointment by City Council to a board, authority or commission. Pursuant to Florida Statutes, Chapter 119, all information provided on or with this form becomes a public record and is subject to disclosure, unless otherwise exempted by law.

- Complete each blank on the application
- Completed applications will be kept on file for a period of one (1) year from the date received in the Office of the City Clerk
- **It is necessary to contact a member of Council to obtain a nomination in order to be placed on the ballot for consideration. Please go to www.cityofpensacola.com for Council Member contact information.** If you have any questions, contact the City Clerk's Office at the number listed above.
- Please type or print legibly.

Name: Jimmie Perkins Email Address: NO

Home Address: 1720 W. Intendencia Work Address: _____

Preferred Contact Phone Number(s): 850 375 4713

To which address do you prefer correspondence regarding this application be sent: Residence Business

Are you a resident of the City? Yes No If yes, which district: **1 2 3 4 5 6 7** How long? All my Life
Circle one

Do you own property within the City limits? yes Are you a registered voter in the City of Pensacola? Yes No

Board (s) of interest: Westside community Redevelopment Board

Please list the reasons for your interest in this position (if necessary, continue on reverse side or on an attached sheet).
I Live in the community, and I like to see positive things develop

Are you currently on a City board, authority, or commission? NO If yes, which board? _____

Do you now hold public office: NO If so, what is the office? _____

The Florida Constitution, in section 5 (a) of Article II, prohibits simultaneous "dual office holding". If you were already serving on a board, authority, or commission for the City of Pensacola or for another governmental agency, would you be willing to resign in order to accept the appointment you now seek? Yes No

In order to encourage diversity in selections of members of government committees, the following information is required by Florida Statute 760.80 for some committees. Describe yourself within the categories below.

| | | |
|--|---------------------------------|------------------------------|
| RACE: | GENDER: | PHYSICALLY DISABLED: |
| <input checked="" type="checkbox"/> African-American | <input type="checkbox"/> Male | <input type="checkbox"/> Yes |
| <input type="checkbox"/> Asian-American | <input type="checkbox"/> Female | <input type="checkbox"/> No |
| <input type="checkbox"/> Hispanic-American | <input type="checkbox"/> Other | |

I hereby certify that the statements and answers provided are true and accurate. I understand that any false statements may be cause for removal from a board or committee if appointed.

Signature Jimmie Perkins Date 3-13-19
THANK YOU FOR YOUR WILLINGNESS TO SERVE

Ballot – Westside Community Redevelopment Board

March 28, 2019

Unexpired term ending January 31, 2021

Redevelopment Area Resident, Member of an Area Neighborhood Association or Owner or Operator of a Business Located in the Redevelopment Area

_____ Jimmie Perkins

Vote for One

Signed: _____
Council Member



City of Pensacola

222 West Main Street
Pensacola, FL 32502

Memorandum

File #: 19-00159

City Council

3/28/2019

LEGISLATIVE ACTION ITEM

SPONSOR: City Council Member Jewel Cannada-Wynn

SUBJECT:

ESCAMBIA - PENSACOLA HUMAN RELATIONS COMMISSION (HRC)

RECOMMENDATION:

That City Council terminate the Interlocal Agreement regarding the HRC effective April 1, 2019 with the operation of the HRC to be suspended for a period of thirty (30) days in order to allow for the restructuring of the organization.

HEARING REQUIRED: No Hearing Required

SUMMARY:

Pursuant to the authority granted in §163.01, Florida Statutes, Escambia County, Florida, and the City of Pensacola previously entered into an Interlocal Agreement creating the Escambia-Pensacola Human Relations Commission to serve both the incorporated and unincorporated areas of Escambia County, including the City of Pensacola. The last Interlocal Agreement approved was 2005.

It has been determined that it is in the best interest of the citizens of Pensacola and Escambia County to terminate the Interlocal Agreement that has been in effect and reestablish the HRC for the purpose of continuing to provide the community with local assistance to review and resolve employment and fair housing discrimination complaints and improve community relations within Pensacola and Escambia County.

Once reestablished, a new Interlocal Agreement will be presented to the City Council for consideration.

On March 7, 2019, the Escambia Board of County Commissioners passed, an Ordinance reestablishing the HRC.

PRIOR ACTION:

1974 - Escambia - Pensacola Human Relations Commission Established

September 15, 2005 - The current Interlocal Agreement between the City and County regarding the HRC was signed

March 7, 2019 - Escambia Board of County Commissioners passed an Ordinance at a public hearing reestablishing the HRC.

FUNDING:

N/A

FINANCIAL IMPACT:

This item contains no financial impact. Any impact will be related upon presentation of a new Interlocal Agreement.

STAFF CONTACT:

Don Kraher, Council Executive

ATTACHMENTS:

- 1) None

PRESENTATION: No



City of Pensacola

222 West Main Street
Pensacola, FL 32502

Memorandum

File #: 19-00151

City Council

3/28/2019

LEGISLATIVE ACTION ITEM

SPONSOR: City Council Member Sherri Myers

SUBJECT:

RECOMMENDATION FROM THE ENVIRONMENTAL ADVISORY BOARD - CITY JOIN THE INTERNATIONAL COUNCIL FOR LOCAL ENVIRONMENTAL INITIATIVE - LOCAL GOVERNMENTS FOR SUSTAINABILITY USA

RECOMMENDATION:

That the City Council follow the recommendation of the Environmental Advisory Board (EAB), recommending that the City (Mayor & City Council) become a member of the International Council for Local Environmental Initiatives (ICLEI) - Local Governments for Sustainability USA.

HEARING REQUIRED: No Hearing Required

SUMMARY:

Within its 2018 Report and Recommendations, the Climate Mitigation and Adaptation Task Force recommended that the City join ICLEI (p. 4 of Task Force Report).

The EAB in acting on the Task Force report is making that recommendation to the Mayor and City Council.

PRIOR ACTION:

March 7, 2019 - EAB Meeting

November 8, 2018 - Climate Mitigation and Adaption Task Force Report delivered to City Council

FUNDING:

Budget: \$ 0

Actual: \$ 1200

FINANCIAL IMPACT:

Cost of membership approximately \$1200

STAFF CONTACT:

Don Kraher, Council Executive

ATTACHMENTS:

- 1) None

PRESENTATION: No



City of Pensacola

222 West Main Street
Pensacola, FL 32502

Memorandum

File #: 19-00154

City Council

3/28/2019

LEGISLATIVE ACTION ITEM

SPONSOR: City Council Member Sherri Myers

SUBJECT:

RECOMMENDATION FROM THE ENVIRONMENTAL ADVISORY BOARD (EAB) - THE CITY CONDUCT A GREENHOUSE GAS (GHG) EMISSIONS INVENTORY TO SERVE AS THE BASELINE FOR MEASURING PROGRESS ON CLIMATE CHANGE.

RECOMMENDATION:

That the City Council adopt and recommend to the Mayor that the City conduct a Greenhouse Gas (GHG) emissions inventory to serve as the baseline for measuring progress on climate change.

HEARING REQUIRED: No Hearing Required

SUMMARY:

Both the Climate Mitigation and Adaptation Task Force Report (p.15) as well as the Mayor's Transition Team Report - Environment Recommendations (p.32) support this recommendation.

Climate Mitigation and Adaptation Task Force Report (p.15): "Complete an inventory of city-wide GHG emissions to begin the mitigation plan. The establishment of a baseline measurement of GHG emissions is a fundamental step in addressing climate change and the community's resilience."

Mayor's Transition Team Report (p.32): "An inventory of the city government's emissions of greenhouse gases creates a baseline that is vital to addressing climate change...."

This recommendation from the EAB pushes forward the recommendations from both reports.

PRIOR ACTION:

November 8, 2018 - Climate Mitigation and Adaptation Task Force delivers report to City Council
March 4, 2019 - Mayor's Transition Team delivers its report

FUNDING:

Budget: \$ 0

Actual: \$ TBD

FINANCIAL IMPACT:

Cost of doing the inventory is yet to be determined.

STAFF CONTACT:

Don Kraher, Council Executive

ATTACHMENTS:

- 1) None

PRESENTATION: No



City of Pensacola

222 West Main Street
Pensacola, FL 32502

Memorandum

File #: 19-00156

City Council

3/28/2019

LEGISLATIVE ACTION ITEM

SPONSOR: City Council Member Sherri Myers

SUBJECT:

RECOMMENDATION FROM THE ENVIRONMENTAL ADVISORY BOARD FOR THE CITY TO ESTABLISH AN OFFICE OF SUSTAINABILITY.

RECOMMENDATION:

That a recommendation is made to the Mayor, within FY2020 and no later than FY 2021, establish an Office of Sustainability in accordance with the Climate Mitigation and Adaptation Task Force Report and Recommendations. Further, that City Council fund such Office of Sustainability at the time presented.

HEARING REQUIRED: No Hearing Required

SUMMARY:

The Climate Mitigation and Adaptation Task Force Report and Recommendations (p.15) states: "Reestablish and fund the City of Pensacola Office of Sustainability (or similar program) to implement the Climate Action Plan and to provide an annual review and assessment of climate adaptation and mitigation of policies and strategies.

This item forwards that recommendation.

PRIOR ACTION:

November 8, 2018 - Climate Mitigation and Adaptation report delivered to City Council

March 4, 2018 - Mayor's Transition Team delivers its report

FUNDING:

Budget: \$ 0

Actual: \$ TBD

FINANCIAL IMPACT:

Cost of hiring a sustainability coordinator and/or establishing the Office of Sustainability.

STAFF CONTACT:

Don Kraher, Council Executive

ATTACHMENTS:

- 1) None

PRESENTATION: No



City of Pensacola

222 West Main Street
Pensacola, FL 32502

Memorandum

File #: 19-00111

City Council

3/28/2019

LEGISLATIVE ACTION ITEM

SPONSOR: Grover C. Robinson, IV, Mayor

SUBJECT:

TRIUMPH GULF COAST, INC. GRANT AWARD AGREEMENT

RECOMMENDATION:

That City Council authorize the Mayor to accept and execute the Triumph Gulf Coast, Inc. Grant Award Agreement in the amount of \$66,000,000 related to Pensacola MRO Expansion/Project #120. Further, that City Council approve the grant resolution and authorize the Mayor or his designee to take all actions necessary related to the finalization of the grant. Finally, that City Council approve a supplemental budget resolution appropriating the funds for the project.

HEARING REQUIRED: No Hearing Required

SUMMARY:

On December 17, 2013, the City executed a nonbinding Memorandum of Understanding with ST Aerospace allowing the City of Pensacola to begin contract negotiations with VT Mobile Aerospace Engineering, Inc. (VT MAE) for the construction and operation of a maintenance, repair, and overhaul (MRO) facility at the Pensacola International Airport. City Council approved the negotiated lease agreement on September 9, 2014. The 173,000 sq. ft. facility officially opened in June 2018 and is on the way to creating 400 new high-wage jobs for the area.

The Mayor and Staff have a longer term strategy to grow the MRO capacity, sometimes referred to as "Project Titan". A second hangar similar in size and configuration to the first hangar, a possible support services center, an aircraft apron and automobile parking would be constructed on 16 acres of Airport property directly south of the first hangar. The construction of this second hangar area was otherwise contemplated and accounted for during the development process for the first hangar, and is referenced in the current real property lease with VT MAE. Additional facilities consisting of two hangars, each approximately 191,000 sq. ft., a 100,000 sq. ft. support services center, a 120,000 sq. ft. administrative office building, aircraft aprons, and automobile parking would also be constructed on approximately 50 acres of Airport property adjacent to Tippin Avenue on the west side of the Airport. It is expected that the project will create a minimum of 1,325 full-time jobs with an annual average salary of \$44,461, excluding benefits. The total project cost of \$210,125,000 is funded by a combination of VT MAE investment, state and federal grants, and local funds.

As part of the funding strategy for Project Titan, the City submitted an application to Triumph Gulf Coast, Inc. in March 2018. Triumph Gulf Coast funding is intended to support programs that generate maximum economic activity. Based on their review of the information submitted, the Triumph Board has offered a Grant Award Agreement in the amount of sixty-six million dollars towards the planning and construction of the MRO expansion. The grant is predicated on the creation of 1,325 net new private sector, full-time equivalent jobs within a certain period of time after project completion, and at a certain average salary level. The failure of the MRO lessee to create and maintain the required jobs will activate payback provisions. The clawback/payback provisions are the sole obligation of VT MAE however, not the City. The City has no liability to Triumph should VT fail to create and maintain the required jobs.

PRIOR ACTION:

June 13, 2013 - City Council adopted a resolution to support the acceptance of a grant offered by the Florida Department of Transportation as a Joint Participation Agreement # 43360229401 in the amount of \$11,090,000 for air commerce park phases I and IA - Infrastructure Development.

February 13, 2014 - City Council Discussion Item and Presentation on the ST Aerospace Economic Development Project at the Pensacola International Airport.

February 27, 2014 - City Council approved the Interlocal Agreement with Escambia County and the City of Pensacola for Funding of Economic Development Project - ST Aerospace of Mobile, Inc.

September 9, 2014 - City Council approved the lease with VT Mobile Aerospace Engineering.

July 16, 2015 - City Council approved the selection of Greenhut Construction and authorized the Mayor to execute the contract.

September 17, 2015 - City Council authorized the Mayor to execute acceptance of the Florida Department of Transportation Joint Participation Agreement # 43571729401 in the amount of \$1,531,546 for construction funding to expand the cargo apron and construct a taxiway connector at the Pensacola International Airport of which \$1,121,242 will be used towards taxiway connecting future VT MAE facility to runway 17-35.

March 17, 2016 - City Council authorized the Mayor to execute acceptance of the Florida Department of Transportation Joint Participation Agreements # 42030029401, # 42960929401, and # 42960939401 in the amount of \$2,975,305 for construction of a taxiway connector at the Pensacola International Airport.

April 14, 2016 - City Council authorized the Mayor to execute acceptance of the Florida Department of Transportation Joint Participation Agreement # 43571769401 in the amount of \$8,599,600 for construction of a hangar at the Pensacola International Airport.

September 22, 2016 - City Council authorized the Mayor to execute Amendment No. 1 to the lease the VT Mobile Aerospace Engineering.

September 22, 2016 - City Council authorized the Mayor to execute Amendment No. 1 to the contract with Atkins North America.

February 8, 2017 - City Council authorized the Mayor to execute Amendment No. 2 and Amendment No. 3 to the contract with Atkins North America.

March 8, 2018 - City Council authorized the Mayor to execute acceptance of the State of Florida Department of Economic Opportunity Grant Agreement G0009 in the amount of \$4,000,000 for construction of infrastructure related to MRO expansion.

September 13, 2018 - City Council authorized the Mayor to accept and execute the State of Florida Department of Transportation Public Transportation Grant Agreement Financial Project 441494-2-94-01 in the amount of \$3,000,000 for Pensacola International Airport Facilities Development related to MRO expansion.

September 13, 2018 - City Council committed funding in the amount of \$10 million from Local Option Sales Tax Series IV in support of the aerospace maintenance repair and overhaul (MRO) campus expansion.

February 6, 2019 - City Council approved the amended Interlocal Agreement between the Escambia County Board of County Commissioners and the City of Pensacola related to additional funding requirements for the aerospace maintenance, repair and overhaul (MRO) campus expansion at the Pensacola International Airport, and approved additional Local Option Sales Tax IV funding of \$5 million for the City's share of the aerospace maintenance, repair and overhaul (MRO) campus expansion at the Pensacola International Airport.

FUNDING:

| | | |
|---------|-----------------------|--|
| Budget: | \$ 35,000,000 | ST Aerospace Engineering |
| | 3,000,000 | State Legislature |
| | 14,000,000 | Governor's Job Growth |
| | 45,000,000 | FDOT Grant |
| | 15,000,000 | Escambia County |
| | 15,000,000 | City Local Option Sales Tax Series IV |
| | 12,250,000 | Federal - U.S. Economic Development Administration |
| | 66,000,000 | Triumph Gulf Coast |
| | 4,875,000 | Anticipated Additional Funding (City Responsibility) |
| | <u>\$ 210,125,000</u> | |

Actual: \$ 210,125,000 Estimated

FINANCIAL IMPACT:

Approval of the supplemental budget resolution will appropriate the funds for the project.

CITY ATTORNEY REVIEW: Yes

3/13/2019

STAFF CONTACT:

Christopher L. Holley, City Administrator

Daniel Flynn, Airport Director

ATTACHMENTS:

- 1) Triumph Grant Agreement
- 2) Resolution for Grant
- 3) Supplemental Budget Resolution
- 4) Supplemental Budget Explanation

PRESENTATION: No

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 s. 11.062, F.S., and s. 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 term is 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 32317
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: \$ _____

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 _____ 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: _____

RESOLUTION
NO. 2019-11

A RESOLUTION
TO BE ENTITLED

A RESOLUTION AUTHORIZING AND DIRECTING THE MAYOR OF THE CITY OF PENSACOLA TO EXECUTE GRANT AWARD AGREEMENT PENSACOLA AIRPORT MRO/PROJECT #120 WITH TRIUMPH GULF COAST, INC. FOR AN AIRCRAFT MAINTENANCE, REPAIR, OVERHAUL AVIATION CAMPUS AT PENSACOLA INTERNATIONAL AIRPORT; PROVIDING AN EFFECTIVE DATE.

WHEREAS, The City of Pensacola uses the Airport Management as a tool for scheduling and planning projects at the Pensacola International Airport; and

WHEREAS, Triumph Gulf Coast, Inc. has approved the project and offered a Grant Award Agreement in the amount of \$66,000,000;

NOW, THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF PENSACOLA, FLORIDA AS FOLLOWS:

SECTION 1. That the City of Pensacola shall enter into the Grant Award Agreement for the purpose of obtaining aid for the planning and construction of an Aircraft Maintenance, Repair, and Overhaul Aviation Campus.

SECTION 2. The Mayor is hereby empowered to take all actions necessary relating to this Resolution, the duties hereunder, and any agreements or documents related hereto.

SECTION 3. This Resolution shall become effective on the fifth business day after adoption, unless otherwise provided pursuant to Section 4.03(d) of the City Charter of the City of Pensacola.

Adopted: _____

Approved: _____
President of City Council

Attest:

City Clerk

**RESOLUTION
NO. 2019-XX**

A RESOLUTION
TO BE ENTITLED:

A RESOLUTION AUTHORIZING AND MAKING REVISIONS AND APPROPRIATIONS FOR THE
FISCAL YEAR ENDING SEPTEMBER 30, 2019; PROVIDING FOR AN EFFECTIVE DATE.

BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF PENSACOLA, FLORIDA

SECTION 1. The following appropriations from funds on hand in the fund accounts stated below, not heretofore appropriated, and transfer from funds on hand in the various accounts and funds stated below, heretofore appropriated, be, and the same are hereby made, directed and approved to-wit:

A. LOCAL OPTION SALES TAX FUND

| | | |
|----------------------------------|---|------------|
| | Fund Balance | 9,000,000 |
| To: | Transfer To Airport Fund | 15,000,000 |
| As Reads: Amended To Read: | Capital Outlay - Economic Development Initiatives | 7,000,000 |
| | Capital Outlay - Economic Development Initiatives | 1,000,000 |

B. AIRPORT FUND

| | | |
|----------------------------------|--|-------------|
| To: | Triumph Gulf Coast | 66,000,000 |
| To: | ST Engineering | 35,000,000 |
| To: | Escambia County | 15,000,000 |
| To: | Transfer In From Local Option Sales Tax Fund | 15,000,000 |
| As Reads: Amended To Read: | State Grants | 11,329,217 |
| | State Grants | 71,204,217 |
| As Reads: Amended To Read: | Federal Grants | 5,505,143 |
| | Federal Grants | 17,755,143 |
| As Reads: Amended To Read: | Capital Outlay | 22,596,013 |
| | Capital Outlay | 225,721,013 |

SECTION 2. All resolutions or parts of resolutions in conflict herewith are hereby repealed to the extent of such conflict.

SECTION 3. This resolution shall become effective on the fifth business day after adoption, unless otherwise provided pursuant to Section 4.03(d) of the City Charter of the City of Pensacola.

Adopted: _____

Approved: _____
President of City Council

Attest:

City Clerk

THE CITY OF PENSACOLA

MARCH 2019 - SUPPLEMENTAL BUDGET RESOLUTION - PENSACOLA MRO EXPANSION - RES NO. 2019-13

| FUND | AMOUNT | DESCRIPTION |
|--|--------------------|---|
| A. LOCAL OPTION SALES TAX | | |
| Estimated Revenues | | |
| Fund Balance | <u>9,000,000</u> | Increase appropriated fund balance |
| Appropriations | | |
| Capital Outlay | (6,000,000) | Decrease appropriation for Capital Outlay (Economic Development Initiatives) |
| Transfer to Airport Fund | <u>15,000,000</u> | Appropriate funding for Transfer to Airport Fund |
| Total Appropriations | <u>9,000,000</u> | |
| B. AIRPORT FUND | | |
| Estimated Revenues | | |
| Triumph Gulf Coast | 66,000,000 | Appropriate estimated revenue from Triumph Gulf Coast |
| ST Engineering | 35,000,000 | Appropriate estimated revenue from ST. Engineering |
| Escambia County | 15,000,000 | Appropriate estimated revenue from Escambia County |
| Transfer In From Local Option Sales Tax Fund | 15,000,000 | Appropriate estimated revenue from Transfer In From Local Option Sales Tax Fund |
| State Grants - FDOT | 45,000,000 | Increase estimated revenue from State Grants |
| State Grants - Governor's Job Growth fund | 10,000,000 | Increase estimated revenue from State Grants |
| State Grants - Anticipated Additional Funding | 4,875,000 | Increase estimated revenue from State Grants |
| Federal Grants - US Economic Development Admin | 12,250,000 | Increase estimated revenue from Federal Grants |
| Total Revenues | <u>203,125,000</u> | |
| Appropriations | | |
| Capital Outlay | <u>203,125,000</u> | Increase appropriation for Capital Outlay - Pensacola MRO Expansion |
| Total Appropriations | <u>203,125,000</u> | |



Memorandum

File #: 2019-11

City Council

3/28/2019

LEGISLATIVE ACTION ITEM

SPONSOR: Grover C. Robinson, IV, Mayor

SUBJECT:

RESOLUTION NO. 2019-11 - TRIUMPH GULF COAST, INC. GRANT AWARD AGREEMENT

RECOMMENDATION:

That City Council adopt Resolution No. 2019-11.

A RESOLUTION AUTHORIZING AND DIRECTING THE MAYOR OF THE CITY OF PENSACOLA TO EXECUTE GRANT AWARD AGREEMENT PENSACOLA AIRPORT MRO/PROJECT #120 WITH TRIUMPH GULF COAST, INC. FOR AN AIRCRAFT MAINTENANCE, REPAIR, OVERHAUL AVIATION CAMPUS AT PENSACOLA INTERNATIONAL AIRPORT; PROVIDING AN EFFECTIVE DATE.

HEARING REQUIRED: No Hearing Required

SUMMARY:

On December 17, 2013, the City executed a nonbinding Memorandum of Understanding with ST Aerospace allowing the City of Pensacola to begin contract negotiations with VT Mobile Aerospace Engineering, Inc. (VT MAE) for the construction and operation of a maintenance, repair, and overhaul (MRO) facility at the Pensacola International Airport. City Council approved the negotiated lease agreement on September 9, 2014. The 173,000 sq. ft. facility officially opened in June 2018 and is on the way to creating 400 new high-wage jobs for the area.

The Mayor and Staff have a longer term strategy to grow the MRO capacity, sometimes referred to as "Project Titan". A second hangar similar in size and configuration to the first hangar, a possible support services center, an aircraft apron and automobile parking would be constructed on 16 acres of Airport property directly south of the first hangar. The construction of this second hangar area was otherwise contemplated and accounted for during the development process for the first hangar, and is referenced in the current real property lease with VT MAE. Additional facilities consisting of two hangars, each approximately 191,000 sq. ft., a 100,000 sq. ft. support services center, a 120,000 sq. ft. administrative office building, aircraft aprons, and automobile parking would also be constructed on approximately 50 acres of Airport property adjacent to Tippin Avenue on the west side of the Airport. It is expected that the project will create a minimum of 1,325 full-time jobs with an annual average salary of \$44,461, excluding benefits. The total project cost of \$210,125,000 is funded by a

combination of VT MAE investment, state and federal grants, and local funds.

As part of the funding strategy for Project Titan, the City submitted an application to Triumph Gulf Coast, Inc. in March 2018. Triumph Gulf Coast funding is intended to support programs that generate maximum economic activity. Based on their review of the information submitted, the Triumph Board has offered a Grant Award Agreement in the amount of sixty-six million dollars towards the planning and construction of the MRO expansion. The grant is predicated on the creation of 1,325 net new private sector, full-time equivalent jobs within a certain period of time after project completion, and at a certain average salary level. The failure of the MRO lessee to create and maintain the required jobs will activate payback provisions. The clawback/payback provisions are the sole obligation of VT MAE however, not the City. The City has no liability to Triumph should VT fail to create and maintain the required jobs.

PRIOR ACTION:

June 13, 2013 - City Council adopted a resolution to support the acceptance of a grant offered by the Florida Department of Transportation as a Joint Participation Agreement # 43360229401 in the amount of \$11,090,000 for air commerce park phases I and IA - Infrastructure Development.

February 13, 2014 - City Council Discussion Item and Presentation on the ST Aerospace Economic Development Project at the Pensacola International Airport.

February 27, 2014 - City Council approved the Interlocal Agreement with Escambia County and the City of Pensacola for Funding of Economic Development Project - ST Aerospace of Mobile, Inc.

September 9, 2014 - City Council approved the lease with VT Mobile Aerospace Engineering.

July 16, 2015 - City Council approved the selection of Greenhut Construction and authorized the Mayor to execute the contract.

September 17, 2015 - City Council authorized the Mayor to execute acceptance of the Florida Department of Transportation Joint Participation Agreement # 43571729401 in the amount of \$1,531,546 for construction funding to expand the cargo apron and construct a taxiway connector at the Pensacola International Airport of which \$1,121,242 will be used towards taxiway connecting future VT MAE facility to runway 17-35.

March 17, 2016 - City Council authorized the Mayor to execute acceptance of the Florida Department of Transportation Joint Participation Agreements # 42030029401, # 42960929401, and # 42960939401 in the amount of \$2,975,305 for construction of a taxiway connector at the Pensacola International Airport.

April 14, 2016 - City Council authorized the Mayor to execute acceptance of the Florida Department of Transportation Joint Participation Agreement # 43571769401 in the amount of \$8,599,600 for construction of a hangar at the Pensacola International Airport.

September 22, 2016 - City Council authorized the Mayor to execute Amendment No. 1 to the lease the VT Mobile Aerospace Engineering.

September 22, 2016 - City Council authorized the Mayor to execute Amendment No. 1 to the contract with

Atkins North America.

February 8, 2017 - City Council authorized the Mayor to execute Amendment No. 2 and Amendment No. 3 to the contract with Atkins North America.

March 8, 2018 - City Council authorized the Mayor to execute acceptance of the State of Florida Department of Economic Opportunity Grant Agreement G0009 in the amount of \$4,000,000 for construction of infrastructure related to MRO expansion.

September 13, 2018 - City Council authorized the Mayor to accept and execute the State of Florida Department of Transportation Public Transportation Grant Agreement Financial Project 441494-2-94-01 in the amount of \$3,000,000 for Pensacola International Airport Facilities Development related to MRO expansion.

September 13, 2018 - City Council committed funding in the amount of \$10 million from Local Option Sales Tax Series IV in support of the aerospace maintenance repair and overhaul (MRO) campus expansion.

February 6, 2019 - City Council approved the amended Interlocal Agreement between the Escambia County Board of County Commissioners and the City of Pensacola related to additional funding requirements for the aerospace maintenance, repair and overhaul (MRO) campus expansion at the Pensacola International Airport, and approved additional Local Option Sales Tax IV funding of \$5 million for the City's share of the aerospace maintenance, repair and overhaul (MRO) campus expansion at the Pensacola International Airport.

FUNDING:

| | | |
|---------|-----------------------|--|
| Budget: | \$ 35,000,000 | ST Aerospace Engineering |
| | 3,000,000 | State Legislature |
| | 14,000,000 | Governor's Job Growth |
| | 45,000,000 | FDOT Grant |
| | 15,000,000 | Escambia County |
| | 15,000,000 | City Local Option Sales Tax Series IV |
| | 12,250,000 | Federal - U.S. Economic Development Administration |
| | 66,000,000 | Triumph Gulf Coast |
| | <u>4,875,000</u> | Anticipated Additional Funding (City Responsibility) |
| | <u>\$ 210,125,000</u> | |

Actual: \$ 210,125,000 Estimated

FINANCIAL IMPACT:

Adoption of a supplemental budget resolution will appropriate the funds for the project.

CITY ATTORNEY REVIEW: Yes

3/13/2019

STAFF CONTACT:

Christopher L. Holley, City Administrator
Daniel Flynn, Airport Director

ATTACHMENTS:

- 1) Resolution No. 2019-11
- 2) Triumph Grant Agreement

PRESENTATION: No

RESOLUTION
NO. 2019-11

A RESOLUTION
TO BE ENTITLED

A RESOLUTION AUTHORIZING AND DIRECTING THE MAYOR OF THE CITY OF PENSACOLA TO EXECUTE GRANT AWARD AGREEMENT PENSACOLA AIRPORT MRO/PROJECT #120 WITH TRIUMPH GULF COAST, INC. FOR AN AIRCRAFT MAINTENANCE, REPAIR, OVERHAUL AVIATION CAMPUS AT PENSACOLA INTERNATIONAL AIRPORT; PROVIDING AN EFFECTIVE DATE.

WHEREAS, The City of Pensacola uses the Airport Management as a tool for scheduling and planning projects at the Pensacola International Airport; and

WHEREAS, Triumph Gulf Coast, Inc. has approved the project and offered a Grant Award Agreement in the amount of \$66,000,000;

NOW, THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF PENSACOLA, FLORIDA AS FOLLOWS:

SECTION 1. That the City of Pensacola shall enter into the Grant Award Agreement for the purpose of obtaining aid for the planning and construction of an Aircraft Maintenance, Repair, and Overhaul Aviation Campus.

SECTION 2. The Mayor is hereby empowered to take all actions necessary relating to this Resolution, the duties hereunder, and any agreements or documents related hereto.

SECTION 3. This Resolution shall become effective on the fifth business day after adoption, unless otherwise provided pursuant to Section 4.03(d) of the City Charter of the City of Pensacola.

Adopted: _____

Approved: _____
President of City Council

Attest:

City Clerk

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 s. 11.062, F.S., and s. 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 term is 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 32317
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: \$ _____

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 _____ 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: _____



Memorandum

File #: 2019-13

City Council

3/28/2019

LEGISLATIVE ACTION ITEM

SPONSOR: Grover C. Robinson, IV, Mayor

SUBJECT:

SUPPLEMENTAL BUDGET RESOLUTION 2019-13 - TRIUMPH GULF COAST, INC. GRANT AWARD AGREEMENT

RECOMMENDATION:

That City Council approve Supplemental Budget Resolution No. 2019-13.

A RESOLUTION AUTHORIZING AND MAKING REVISIONS AND APPROPRIATIONS FOR THE FISCAL YEAR ENDING SEPTEMBER 30, 2019; PROVIDING AN EFFECTIVE DATE.

HEARING REQUIRED: No Hearing Required

SUMMARY:

On December 17, 2013, the City executed a nonbinding Memorandum of Understanding with ST Aerospace allowing the City of Pensacola to begin contract negotiations with VT Mobile Aerospace Engineering, Inc. (VT MAE) for the construction and operation of a maintenance, repair, and overhaul (MRO) facility at the Pensacola International Airport. City Council approved the negotiated lease agreement on September 9, 2014. The 173,000 sq. ft. facility officially opened in June 2018 and is on the way to creating 400 new high-wage jobs for the area.

The Mayor and Staff have a longer term strategy to grow the MRO capacity, sometimes referred to as "Project Titan". A second hangar similar in size and configuration to the first hangar, a possible support services center, an aircraft apron and automobile parking would be constructed on 16 acres of Airport property directly south of the first hangar. The construction of this second hangar area was otherwise contemplated and accounted for during the development process for the first hangar, and is referenced in the current real property lease with VT MAE. Additional facilities consisting of two hangars, each approximately 191,000 sq. ft., a 100,000 sq. ft. support services center, a 120,000 sq. ft. administrative office building, aircraft aprons, and automobile parking would also be constructed on approximately 50 acres of Airport property adjacent to Tippen Avenue on the west side of the Airport. It is expected that the project will create a minimum of 1,325 full-time jobs with an annual average salary of \$44,461, excluding benefits. The total project cost of \$210,125,000 is funded by a combination of VT MAE investment, state and federal grants, and local funds.

As part of the funding strategy for Project Titan, the City submitted an application to Triumph Gulf Coast, Inc. in March 2018. Triumph Gulf Coast funding is intended to support programs that generate maximum economic activity. Based on their review of the information submitted, the Triumph Board has offered a Grant Award Agreement in the amount of sixty-six million dollars towards the planning and construction of the MRO expansion. The grant is predicated on the creation of 1,325 net new private sector, full-time equivalent jobs within a certain period of time after project completion, and at a certain average salary level. The failure of the MRO lessee to create and maintain the required jobs will activate payback provisions. The clawback/payback provisions are the sole obligation of VT MAE however, not the City. The City has no liability to Triumph should VT fail to create and maintain the required jobs.

PRIOR ACTION:

June 13, 2013 - City Council adopted a resolution to support the acceptance of a grant offered by the Florida Department of Transportation as a Joint Participation Agreement # 43360229401 in the amount of \$11,090,000 for air commerce park phases I and IA - Infrastructure Development.

February 13, 2014 - City Council Discussion Item and Presentation on the ST Aerospace Economic Development Project at the Pensacola International Airport.

February 27, 2014 - City Council approved the Interlocal Agreement with Escambia County and the City of Pensacola for Funding of Economic Development Project - ST Aerospace of Mobile, Inc.

September 9, 2014 - City Council approved the lease with VT Mobile Aerospace Engineering.

July 16, 2015 - City Council approved the selection of Greenhut Construction and authorized the Mayor to execute the contract.

September 17, 2015 - City Council authorized the Mayor to execute acceptance of the Florida Department of Transportation Joint Participation Agreement # 43571729401 in the amount of \$1,531,546 for construction funding to expand the cargo apron and construct a taxiway connector at the Pensacola International Airport of which \$1,121,242 will be used towards taxiway connecting future VT MAE facility to runway 17-35.

March 17, 2016 - City Council authorized the Mayor to execute acceptance of the Florida Department of Transportation Joint Participation Agreements # 42030029401, # 42960929401, and # 42960939401 in the amount of \$2,975,305 for construction of a taxiway connector at the Pensacola International Airport.

April 14, 2016 - City Council authorized the Mayor to execute acceptance of the Florida Department of Transportation Joint Participation Agreement # 43571769401 in the amount of \$8,599,600 for construction of a hangar at the Pensacola International Airport.

September 22, 2016 - City Council authorized the Mayor to execute Amendment No. 1 to the lease the VT Mobile Aerospace Engineering.

September 22, 2016 - City Council authorized the Mayor to execute Amendment No. 1 to the contract with Atkins North America.

February 8, 2017 - City Council authorized the Mayor to execute Amendment No. 2 and Amendment No. 3 to the contract with Atkins North America.

March 8, 2018 - City Council authorized the Mayor to execute acceptance of the State of Florida Department of Economic Opportunity Grant Agreement G0009 in the amount of \$4,000,000 for construction of infrastructure related to MRO expansion.

September 13, 2018 - City Council authorized the Mayor to accept and execute the State of Florida Department of Transportation Public Transportation Grant Agreement Financial Project 441494-2-94-01 in the amount of \$3,000,000 for Pensacola International Airport Facilities Development related to MRO expansion.

September 13, 2018 - City Council committed funding in the amount of \$10 million from Local Option Sales Tax Series IV in support of the aerospace maintenance repair and overhaul (MRO) campus expansion.

February 6, 2019 - City Council approved the amended Interlocal Agreement between the Escambia County Board of County Commissioners and the City of Pensacola related to additional funding requirements for the aerospace maintenance, repair and overhaul (MRO) campus expansion at the Pensacola International Airport, and approved additional Local Option Sales Tax IV funding of \$5 million for the City's share of the aerospace maintenance, repair and overhaul (MRO) campus expansion at the Pensacola International Airport.

FUNDING:

| | | |
|---------|-----------------------|--|
| Budget: | \$ 35,000,000 | ST Aerospace Engineering |
| | 3,000,000 | State Legislature |
| | 14,000,000 | Governor's Job Growth |
| | 45,000,000 | FDOT Grant |
| | 15,000,000 | Escambia County |
| | 15,000,000 | City Local Option Sales Tax Series IV |
| | 12,250,000 | Federal - U.S. Economic Development Administration |
| | 66,000,000 | Triumph Gulf Coast |
| | <u>4,875,000</u> | Anticipated Additional Funding (City Responsibility) |
| | <u>\$ 210,125,000</u> | |

Actual: \$ 210,125,000 Estimated

FINANCIAL IMPACT:

Approval of the supplemental budget resolution will appropriate the funds for the project.

CITY ATTORNEY REVIEW: Yes

3/13/2019

STAFF CONTACT:

Christopher L. Holley, City Administrator
Daniel Flynn, Airport Director

ATTACHMENTS:

- 1) Supplemental Budget Resolution No. 2019-13
- 2) Supplemental Budget Explanation No. 2019-13

PRESENTATION: No

**RESOLUTION
NO. 2019-13**

A RESOLUTION
TO BE ENTITLED:

A RESOLUTION AUTHORIZING AND MAKING REVISIONS AND APPROPRIATIONS FOR THE
FISCAL YEAR ENDING SEPTEMBER 30, 2019; PROVIDING FOR AN EFFECTIVE DATE.

BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF PENSACOLA, FLORIDA

SECTION 1. The following appropriations from funds on hand in the fund accounts stated below, not heretofore appropriated, and transfer from funds on hand in the various accounts and funds stated below, heretofore appropriated, be, and the same are hereby made, directed and approved to-wit:

A. LOCAL OPTION SALES TAX FUND

| | | |
|----------------------------------|---|------------|
| | Fund Balance | 9,000,000 |
| To: | Transfer To Airport Fund | 15,000,000 |
| As Reads: Amended To Read: | Capital Outlay - Economic Development Initiatives | 7,000,000 |
| | Capital Outlay - Economic Development Initiatives | 1,000,000 |

B. AIRPORT FUND

| | | |
|----------------------------------|--|-------------|
| To: | Triumph Gulf Coast | 66,000,000 |
| To: | ST Engineering | 35,000,000 |
| To: | Escambia County | 15,000,000 |
| To: | Transfer In From Local Option Sales Tax Fund | 15,000,000 |
| As Reads: Amended To Read: | State Grants | 11,329,217 |
| | State Grants | 71,204,217 |
| As Reads: Amended To Read: | Federal Grants | 5,505,143 |
| | Federal Grants | 17,755,143 |
| As Reads: Amended To Read: | Capital Outlay | 22,596,013 |
| | Capital Outlay | 225,721,013 |

SECTION 2. All resolutions or parts of resolutions in conflict herewith are hereby repealed to the extent of such conflict.

SECTION 3. This resolution shall become effective on the fifth business day after adoption, unless otherwise provided pursuant to Section 4.03(d) of the City Charter of the City of Pensacola.

Adopted: _____

Approved: _____
President of City Council

Attest:

City Clerk

THE CITY OF PENSACOLA

MARCH 2019 - SUPPLEMENTAL BUDGET RESOLUTION - PENSACOLA MRO EXPANSION - RES NO. 2019-13

| FUND | AMOUNT | DESCRIPTION |
|--|--------------------|---|
| A. LOCAL OPTION SALES TAX | | |
| Estimated Revenues | | |
| Fund Balance | <u>9,000,000</u> | Increase appropriated fund balance |
| Appropriations | | |
| Capital Outlay | (6,000,000) | Decrease appropriation for Capital Outlay (Economic Development Initiatives) |
| Transfer to Airport Fund | <u>15,000,000</u> | Appropriate funding for Transfer to Airport Fund |
| Total Appropriations | <u>9,000,000</u> | |
| B. AIRPORT FUND | | |
| Estimated Revenues | | |
| Triumph Gulf Coast | 66,000,000 | Appropriate estimated revenue from Triumph Gulf Coast |
| ST Engineering | 35,000,000 | Appropriate estimated revenue from ST. Engineering |
| Escambia County | 15,000,000 | Appropriate estimated revenue from Escambia County |
| Transfer In From Local Option Sales Tax Fund | 15,000,000 | Appropriate estimated revenue from Transfer In From Local Option Sales Tax Fund |
| State Grants - FDOT | 45,000,000 | Increase estimated revenue from State Grants |
| State Grants - Governor's Job Growth fund | 10,000,000 | Increase estimated revenue from State Grants |
| State Grants - Anticipated Additional Funding | 4,875,000 | Increase estimated revenue from State Grants |
| Federal Grants - US Economic Development Admin | 12,250,000 | Increase estimated revenue from Federal Grants |
| Total Revenues | <u>203,125,000</u> | |
| Appropriations | | |
| Capital Outlay | <u>203,125,000</u> | Increase appropriation for Capital Outlay - Pensacola MRO Expansion |
| Total Appropriations | <u>203,125,000</u> | |



City of Pensacola

222 West Main Street
Pensacola, FL 32502

Memorandum

File #: 2019-15

City Council

3/28/2019

LEGISLATIVE ACTION ITEM

SPONSOR: Grover C. Robinson, IV, Mayor

SUBJECT:

RESOLUTION NO. 2019-15 - AUTHORIZING THE ISSUANCE OF A TAXABLE AIRPORT FACILITIES SPECIAL REVENUE NOTE, IN THE PRINCIPAL AMOUNT NOT TO EXCEED \$20,000,000 TO FINANCE A PORTION OF THE COST OF THE EXPANSION AND IMPROVEMENT OF THE AEROSPACE MAINTENANCE, REPAIR AND OVERHAUL CAMPUS AND RELATED FACILITIES AT THE PENSACOLA INTERNATIONAL AIRPORT.

RECOMMENDATION:

That City Council adopt Resolution No. 2019-15.

A RESOLUTION AUTHORIZING THE ISSUANCE BY THE CITY OF PENSACOLA, FLORIDA OF A TAXABLE AIRPORT FACILITIES SPECIAL REVENUE NOTE, IN THE PRINCIPAL AMOUNT NOT TO EXCEED \$20,000,000 TO FINANCE A PORTION OF THE COST OF THE EXPANSION AND IMPROVEMENT OF THE AEROSPACE MAINTENANCE, REPAIR AND OVERHAUL CAMPUS AND RELATED FACILITIES AT THE PENSACOLA INTERNATIONAL AIRPORT; PROVIDING FOR THE PAYMENT OF SUCH NOTE FROM CERTAIN LEGALLY AVAILABLE NON-AD VALOREM REVENUES OF THE CITY BUDGETED AND APPROPRIATED THEREFOR; ESTABLISHING CRITERIA FOR DETERMINING THE DATE, INTEREST RATES, SERIES DESIGNATION AND MATURITY SCHEDULE FOR SUCH NOTE; AUTHORIZING THE EXECUTION AND DELIVERY OF A LOAN AGREEMENT; AUTHORIZING THE EXECUTION OF OTHER RELATED FINANCING DOCUMENTS IN CONNECTION WITH SUCH NOTE; AUTHORIZING THE AWARD OF THE SALE OF SUCH NOTE ON A NEGOTIATED BASIS; AUTHORIZING FURTHER OFFICIAL ACTION IN CONNECTION WITH THE DELIVERY OF SUCH NOTE; PROVIDING FOR SEVERABILITY; PROVIDING FOR REPEAL OF INCONSISTENT PROVISIONS; AND PROVIDING AN EFFECTIVE DATE.

HEARING REQUIRED: No Hearing Required

SUMMARY:

On December 17, 2013, the City executed a nonbinding Memorandum of Understanding with ST Aerospace allowing the City of Pensacola to begin contract negotiations with VT Mobile Aerospace Engineering, Inc. (VT

MAE) for the construction and operation of a maintenance, repair, and overhaul (MRO) facility at the Pensacola International Airport. City Council approved the negotiated lease agreement on September 9, 2014. The 173,000 sq. ft. facility officially opened in June 2018 and is on the way to creating 400 new high-wage jobs for the area.

The Mayor and Staff have a longer term strategy to grow the MRO capacity, sometimes referred to as “Project Titan”. A second hangar similar in size and configuration to the first hangar, a possible support services center, an aircraft apron and automobile parking would be constructed on 16 acres of Airport property directly south of the first hangar. The construction of this second hangar area was otherwise contemplated and accounted for during the development process for the first hangar, and is referenced in the current real property lease with VT MAE. Additional facilities consisting of two hangars, each approximately 191,000 sq. ft., a 100,000 sq. ft. support services center, a 120,000 sq. ft. administrative office building, aircraft aprons, and automobile parking would also be constructed on approximately 50 acres of Airport property adjacent to Tippen Avenue on the west side of the Airport. It is expected that the project will create a minimum of 1,325 full-time jobs with an annual average salary of \$44,461, excluding benefits. The total project cost of \$210,125,000 is funded by a combination of VT MAE investment, State and Federal grants, and local funds.

To ensure sufficient cash is available to pay project cost until Federal, State, local and private funds become available, City Staff, upon consultation with the City’s Financial Advisor and Bond Counsel, explored various financing structures to bridge any potential shortfalls. The structure presented in the attached resolution authorizes the Mayor to award a taxable, not to exceed \$20,000,000, draw-down bank loan with a maturity date not to exceed October 1, 2044, a market rate, variable rate and/or fixed interest rate not to exceed 6% per annum and a security payable solely by a covenant to budget and appropriate Non Ad-Valorem Revenues of the City of Pensacola. While it is not certain the City will ultimately utilize this financing, by authorizing the Mayor to award the sale of a note in relation to this project puts the City in the best position to ensure that there are no delays in construction due to funding requirements for the project.

The financing team consists of Julie Santamaria, the City’s Financial Advisor with RBC Capital Markets, LLC and Duane Draper, Esq., and Randy Clement, Esq., each with Bryant Miller Olive, the City’s Bond Counsel.

PRIOR ACTION:

June 13, 2013 - City Council adopted a resolution to support the acceptance of a grant offered by the Florida Department of Transportation as a Joint Participation Agreement # 43360229401 in the amount of \$11,090,000 for air commerce park phases I and IA - Infrastructure Development.

February 13, 2014 - City Council Discussion Item and Presentation on the ST Aerospace Economic Development Project at the Pensacola International Airport.

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July 16, 2015 - City Council approved the selection of Greenhut Construction and authorized the Mayor to execute the contract.

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March 17, 2016 - City Council authorized the Mayor to execute acceptance of the Florida Department of Transportation Joint Participation Agreements # 42030029401, # 42960929401, and # 42960939401 in the amount of \$2,975,305 for construction of a taxiway connector at the Pensacola International Airport.

April 14, 2016 - City Council authorized the Mayor to execute acceptance of the Florida Department of Transportation Joint Participation Agreement # 43571769401 in the amount of \$8,599,600 for construction of a hangar at the Pensacola International Airport.

September 22, 2016 - City Council approved the issuance of the Taxable Airport Facilities Grant Anticipation Note, Series 2016 to finance a portion of the cost of the construction of a hangar at the Pensacola International Airport until grant funds would be available for draw down.

September 22, 2016 - City Council authorized the Mayor to execute Amendment No. 1 to the lease the VT Mobile Aerospace Engineering.

September 22, 2016 - City Council authorized the Mayor to execute Amendment No. 1 to the contract with Atkins North America.

February 8, 2017 - City Council authorized the Mayor to execute Amendment No. 2 and Amendment No. 3 to the contract with Atkins North America.

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September 13, 2018 - City Council authorized the Mayor to accept and execute the State of Florida Department of Transportation Public Transportation Grant Agreement Financial Project 441494-2-94-01 in the amount of \$3,000,000 for Pensacola International Airport Facilities Development related to MRO expansion.

September 13, 2018 - City Council committed funding in the amount of \$10 million from Local Option Sales Tax Series IV in support of the aerospace maintenance repair and overhaul (MRO) campus expansion.

February 6, 2019 - City Council approved the amended Interlocal Agreement between the Escambia County Board of County Commissioners and the City of Pensacola related to additional funding requirements for the aerospace maintenance, repair and overhaul (MRO) campus expansion at the Pensacola International Airport, and approved additional Local Option Sales Tax IV funding of \$5 million for the City's share of the aerospace maintenance, repair and overhaul (MRO) campus expansion at the Pensacola International Airport.

FUNDING:

| | | |
|---------|-----------------------|--|
| Budget: | \$ 35,000,000 | ST Aerospace Engineering |
| | 3,000,000 | State Legislature |
| | 14,000,000 | Governor's Job Growth |
| | 45,000,000 | FDOT Grant |
| | 15,000,000 | Escambia County |
| | 15,000,000 | City Local Option Sales Tax Series IV |
| | 12,250,000 | Federal - U.S. Economic Development Administration |
| | 66,000,000 | Triumph Gulf Coast |
| | <u>4,875,000</u> | Anticipated Additional Funding (City Responsibility) |
| | <u>\$ 210,125,000</u> | |

Actual: \$ 210,125,000 Estimated

FINANCIAL IMPACT:

The structure of the loan and repayment schedule will be determined based on the requirements at the time of issuance. It is anticipated that the loan will have a variable interest rate with interest only payments through the end of the construction period. Once construction is complete, it is anticipated that the loan will convert to a fixed interest rate with level principal and interest payments and a maturity date no later than October 1, 2044. The market at the time of issuance will determine if a variable rate, fixed rate or combination of the two will be used.

CITY ATTORNEY REVIEW: Choose an item.

[Click here to enter a date.](#)

STAFF CONTACT:

Christopher L. Holley, City Administrator
Richard Barker, Jr., Chief Financial Officer
Daniel Flynn, Airport Director

ATTACHMENTS:

- 1) Resolution No. 2019-15

PRESENTATION: No

RESOLUTION NO. 2019-15

OF THE

CITY OF PENSACOLA, FLORIDA

ADOPTED MARCH 28, 2019

RELATING TO:

NOT EXCEEDING

\$20,000,000

CITY OF PENSACOLA, FLORIDA

TAXABLE AIRPORT FACILITIES SPECIAL REVENUE NOTE

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EXHIBIT A – FORM OF LOAN AGREEMENT

EXHIBIT B – FORM OF LENDER’S CERTIFICATE

EXHIBIT C – FORM OF DISCLOSURE LETTER

RESOLUTION NO. 2019-15

A RESOLUTION AUTHORIZING THE ISSUANCE BY THE CITY OF PENSACOLA, FLORIDA OF A TAXABLE AIRPORT FACILITIES SPECIAL REVENUE NOTE, IN THE PRINCIPAL AMOUNT NOT TO EXCEED \$20,000,000 TO FINANCE A PORTION OF THE COST OF THE EXPANSION AND IMPROVEMENT OF THE AEROSPACE MAINTENANCE, REPAIR AND OVERHAUL CAMPUS AND RELATED FACILITIES AT THE PENSACOLA INTERNATIONAL AIRPORT; PROVIDING FOR THE PAYMENT OF SUCH NOTE FROM CERTAIN LEGALLY AVAILABLE NON-AD VALOREM REVENUES OF THE CITY BUDGETED AND APPROPRIATED THEREFOR; ESTABLISHING CRITERIA FOR DETERMINING THE DATE, INTEREST RATES, SERIES DESIGNATION AND MATURITY SCHEDULE FOR SUCH NOTE; AUTHORIZING THE EXECUTION AND DELIVERY OF A LOAN AGREEMENT; AUTHORIZING THE EXECUTION OF OTHER RELATED FINANCING DOCUMENTS IN CONNECTION WITH SUCH NOTE; AUTHORIZING THE AWARD OF THE SALE OF SUCH NOTE ON A NEGOTIATED BASIS; AUTHORIZING FURTHER OFFICIAL ACTION IN CONNECTION WITH THE DELIVERY OF SUCH NOTE; PROVIDING FOR SEVERABILITY; PROVIDING FOR REPEAL OF INCONSISTENT PROVISIONS; AND PROVIDING AN EFFECTIVE DATE.

BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF PENSACOLA, FLORIDA, that:

Section 1. Authority for this Resolution. This Resolution is adopted pursuant to the provisions of Chapter 166, Part II, Florida Statutes, as amended, the municipal charter of the City of Pensacola, Florida (the "Issuer"), and other applicable provisions of law (collectively, the "Act").

Section 2. Definitions. The following terms shall have the following meanings when used in this resolution unless the context clearly requires otherwise. Words importing singular numbers shall include the plural number in each case and vice versa, and words importing persons shall include firms and corporations. Capitalized terms used herein and not otherwise defined shall have the meaning set forth in the Loan Agreement (herein defined).

"Bond Counsel" means Bryant Miller Olive P.A. or any other nationally recognized bond counsel subsequently appointed by the Issuer.

"Charter" means the municipal charter of the Issuer.

“Chief Financial Officer” means the Chief Financial Officer of the Issuer, or his or her designee.

“City” means the City of Pensacola, Florida, a municipal corporation of the State.

“City Administrator” means the City Administrator of the Issuer, or any acting or interim City Administrator, or his or her designee.

“City Attorney” means the City Attorney of the Issuer, or his or her designee.

“City Council” means the City Council of the Issuer, as the governing body of the Issuer.

“Clerk” means the Clerk of the Issuer, any acting, deputy, or assistant Clerk, or his or her designee.

“Financial Advisor” means RBC Capital Markets, LLC or any other nationally recognized municipal financial advisor subsequently appointed by the Issuer.

“Lender” means the purchaser of the Note pursuant to the Loan Agreement as authorized herein.

“Loan” means the advance of moneys from the Lender to the Issuer pursuant to the Loan Agreement.

“Loan Agreement” means the agreement between the Lender and the Issuer setting forth the terms and details of the Loan, in substantially the form attached hereto as Exhibit A with such changes, modifications, revisions, insertions or deletions as are authorized herein.

“Mayor” means the Mayor of the Issuer or the City Administrator on behalf of the Mayor or the Chief Financial Officer on behalf of the Mayor.

“Non-Ad Valorem Revenues” means the revenues of the Issuer in the General Fund which are legally available for the payment of principal of and interest on the Note in each year and which are derived from all sources other than ad valorem taxation on real and personal property.

“Note” means the City of Pensacola, Florida, Taxable Airport Facilities Special Revenue Note, authorized herein, in substantially the form attached to the Loan Agreement as Exhibit A, with such changes, modifications, insertions or deletions as are authorized herein.

“Project” means the construction of expansions and improvements to the aerospace maintenance, repair and overhaul campus and related facilities at the Pensacola International Airport, including the construction of three additional hangars, an administrative office building, a

warehouse, shops and support facilities and associated aircraft aprons, taxi ways and automobile parking.

“Resolution” means, collectively, this resolution and all resolutions amendatory hereof and supplemental hereto.

“State” means the State of Florida.

Section 3. Findings. It is hereby found, declared, and determined by the City Council:

(A) The Issuer owns and operates as an enterprise fund the Pensacola International Airport (the “Airport”).

(B) The undertaking of the Project will promote the economic development of the Airport and the Issuer, the creation of jobs and the economic well-being of the inhabitants of the Issuer and the improvement of the health, safety and welfare of the inhabitants of the Issuer, is in the best interests of the Issuer and the inhabitants thereof and serves a paramount public purpose of the Issuer.

(C) The State (through State Legislative appropriations, the Governor’s Job Growth Fund and grants by the Florida Department of Transportation), Escambia County, Florida, the U.S. Economic Development Administration, Triumph Gulf Coast, ST Aerospace Engineering and the Issuer have committed and are expected to commit to provide substantial funding for the construction of the Project.

(D) It is in the best interests of the Issuer to obtain the Loan (as defined herein) to finance a portion of the cost of the Project.

(E) The Note will be a special limited obligation of the Issuer payable solely from Non-Ad Valorem Revenues budgeted and appropriated therefor in the manner and to the extent provided herein and in the Loan Agreement. The Non-Ad Valorem Revenues budgeted and appropriated in each fiscal year as provided herein and in the Loan Agreement are anticipated to be sufficient to pay the principal of and accrued interest on the Note as the same becomes due.

(F) Because of the characteristics of the Note, prevailing and anticipated market conditions, and additional savings to be realized from an expeditious sale of the Note, it is in the best interest of the Issuer to sell the Note at a private negotiated sale to the Lender on the terms and conditions provided herein. Prior to the issuance of the Note, the Issuer shall receive from the Lender, a Lender's Certificate, the form of which is attached hereto as Exhibit B and the Disclosure Letter containing the information required by Section 218.385, Florida Statutes, a form of which is attached hereto as Exhibit C.

(G) The obligation of the Issuer to repay the Note in accordance with its terms and to make the payments required under the Loan Agreement are hereby declared to be and shall be special, limited obligations of the Issuer, payable solely from Non-Ad Valorem Revenues budgeted and appropriated therefor in each fiscal year in the manner and to the extent provided herein and in the Loan Agreement. The obligation of the Issuer to repay the Note in accordance with its terms and to make any other payments, if any, required under the Note or the Loan Agreement shall not be or constitute a general obligation or indebtedness of the Issuer and neither the Note nor the Loan Agreement shall be or constitute a general obligation or indebtedness of the Issuer. Neither the Lender nor any successor owner of the Note shall be entitled to compel the exercise of the ad valorem taxing power of the Issuer or the payment of the principal of or interest on the Note or the making of any payments required under the Note or the Loan Agreement from any moneys of the Issuer other than the Non-Ad Valorem Revenues budgeted and appropriated therefor in the manner and to the extent provided herein and in the Loan Agreement.

(H) It is necessary and desirable to provide for the securing of the Loan and for the execution and delivery of the Loan Agreement the issuance of the Note and the taking of all other action in connection with the consummation of the Loan.

Section 4. Instrument to Constitute a Contract. In consideration of the making of the Loan and the acceptance of the Note by the Lender and its registered successors and assigns, this Resolution shall be deemed to be and shall constitute a contract between the Issuer and the Lender and any successor registered owner of the Note.

Section 5. Authorization of Note and Project.

(A) The Project is hereby authorized. The City Council and the proper officers of the Issuer are hereby directed to take all action and steps deemed necessary to construct the Project, which are not inconsistent with the terms and provisions of this Resolution or the Loan Agreement.

(B) Subject and pursuant to the provisions hereof and of the Loan Agreement, the Note, to be known as the "City of Pensacola, Florida Airport Facilities Special Revenue Note, Series ____" (with such series designation as the Mayor shall determine) is hereby authorized to be issued in a maximum principal amount of not to exceed \$20,000,000, or such lesser amount as may be approved by the Mayor, for the purpose of financing a portion of the cost of the Project and paying costs of issuance in connection with the Note.

The Mayor is hereby authorized to award the sale of the Note to such Lender as shall be approved by the Mayor upon the advice and recommendation of the Financial Advisor, provided that:

- (i) the maximum principal amount of the Note shall not exceed \$20,000,000;

(ii) the Note shall finally mature not later than October 1, 2044;

(iii) the Note shall be structured as a draw-down line of credit with the aggregate principal amount drawn amortized in substantially level principal and interest installments over a period of not less than ten years; and

(iv) the Note may bear interest at a variable rate, at a variable rate during the draw period and a fixed rate during the amortization period, or at a fixed rate, provided that the variable rate shall be determined by such index, formula or reference rate as the Financial Advisor shall advise provides a reasonable market rate of interest, the fixed rate shall not exceed 6% per annum and, in any event, the Note shall not bear interest in excess of the maximum rate permitted by applicable law.

Subject to the foregoing, the Note shall have such terms as provided pursuant to the Loan Agreement.

Section 6. Covenant to Budget and Appropriate. The Issuer hereby covenants and agrees to the extent permitted by and in accordance with applicable law and budgetary processes, to prepare, approve and appropriate in its annual budget for each fiscal year of the Issuer, by amendment if necessary, Non Ad-Valorem Revenues in an amount which together with any other legally available revenues budgeted and appropriated for such purpose shall be sufficient to pay all principal of, interest and redemption premiums, if any, on the Note and all other payment obligations of the Issuer with respect to the Note or under the Loan Agreement becoming due and payable in such fiscal year. Such covenant and agreement shall be cumulative, and shall continue until Non-Ad Valorem Revenues in amounts, together with any other legally available revenues budgeted and appropriated for such purposes, sufficient to make all required payments hereunder, under the Note and under the Loan Agreement as and when due, including any delinquent payments, shall have been budgeted and appropriated. Such covenant and agreement shall not constitute a pledge of or lien, either legal or equitable, on any of the Issuer's Non-Ad Valorem Revenues, nor shall it give the Lender or registered owner of the Note a prior claim on the Non-Ad Valorem Revenues.

Nothing herein shall be deemed to pledge ad valorem taxation revenues or to permit or constitute a mortgage or lien upon any assets or property owned by the Issuer, and neither the Lender nor any other person may compel the levy of ad valorem taxes on real property within the boundaries of the Issuer for the purpose of paying the principal of, interest or redemption premiums, if any, on the Note or any other amounts payable under the Note or the Loan Agreement or to maintain or continue any program or services which generate Non-Ad Valorem Revenues. The obligations hereunder, under the Note and under the Loan Agreement shall not constitute a general obligation or indebtedness of the Issuer within the meaning of any constitutional, statutory or charter provision or limitation, and neither the Lender nor any other person shall have the right to compel the exercise of the ad valorem taxing power of the Issuer

or taxation of any real or personal property therein for the payment by the Issuer of its obligations hereunder, under the Note and under the Loan Agreement. Except to the extent expressly set forth herein or in the Loan Agreement, this Resolution and the obligations of the Issuer hereunder and under the Loan Agreement and the Note shall not be construed as a limitation on the ability of the Issuer to pledge or covenant to budget and appropriate any of its Non-Ad Valorem Revenues or any revenues or taxes of the Issuer for other legally permissible purposes. Notwithstanding any provisions of this Resolution, the Note or the Loan Agreement to the contrary, the Issuer shall never be obligated to maintain or continue any of the activities of the Issuer which generate user service charges, regulatory fees or any Non-Ad Valorem Revenues or the rates for such services or regulatory fees. Neither this Resolution nor the obligations of the Issuer hereunder, under the Note or under the Loan Agreement shall be construed as a pledge of or a lien on all or any Non-Ad Valorem Revenues of the Issuer, but shall be payable solely as provided in this Section and are subject in all respects to the provisions of Section 166.241, Florida Statutes.

The obligation of the Issuer to budget and appropriate Non-Ad Valorem Revenues for the payment of the principal of and interest and redemption premiums, if any, on the Note and to make all other payments due under the Note or Loan Agreement, is subject to the satisfaction of funding requirements for obligations secured by an express pledge of or lien on Non-Ad Valorem Revenues and funding of essential governmental services of the Issuer; however, such obligation is cumulative and would carry over from fiscal year to fiscal year.

Section 7. Approval of Form of Loan Agreement and Note. The Loan Agreement, in substantially the form attached hereto as Exhibit A, and the Note, in substantially the form attached to the Loan Agreement as Exhibit A, are hereby approved, subject to such changes, amendments, modifications, omissions and additions, including any additional covenants and agreements, as shall be consistent with the terms of this Resolution and approved by the Mayor upon the advice of the City Attorney, Chief Financial Officer, Bond Counsel and/or Financial Advisor, execution of the Loan Agreement and the Note by the Mayor to be conclusive evidence of such approval. Pursuant to Section 4.01(1) of its Charter, the Issuer hereby authorizes the Mayor to execute the Loan Agreement and Note, such execution to be attested under seal by the City Clerk, approved as to substance by the Chief Financial Officer and designated as legal in form and valid as drawn by the City Attorney and further authorizes the Mayor to deliver the Loan Agreement and the Note to the Lender, and to take such other actions as shall be necessary to consummate the Loan. The Chief Financial Officer is hereby authorized to submit requests for Advances on behalf of the Issuer in accordance with and for the purposes provided in the Loan Agreement.

Section 8. Authorization of Other Action. The Mayor, City Administrator, City Attorney, the Clerk, the Chief Financial Officer and such other authorized officers, employees and agents of the Issuer are each designated agents of the Issuer in connection with the execution and delivery of the Loan Agreement and the Note and are authorized and empowered, collectively or individually, to take all action and steps to execute and deliver any and all instruments,

documents or contracts on behalf of the Issuer which are necessary or desirable in connection with the execution and delivery of the Loan Agreement and the Note to the Lender, including, without limitation, making modifications to the Loan Agreement and the Note, as permitted hereby to conform to the terms of the proposal by the Lender to make the Loan.

Section 9. Application of Proceeds of Loan. The proceeds of the Loan shall be used as more fully described in the Loan Agreement and includes the payment of related associated costs of issuance (including but not limited to legal and financial advisory fees and expenses).

Section 10. Repeal of Inconsistent Provisions. All resolutions or parts thereof in conflict with this Resolution are hereby repealed to the extent of such conflict.

Section 11. Severability. If any one or more of the covenants, agreements, or provisions of this Resolution should be held contrary to any express provision of law or contrary to the policy of express law, though not expressly prohibited, or against public policy, or shall for any reason whatsoever be held invalid, then such covenants, agreements, or provisions shall be null and void and shall be deemed separate from the remaining covenants, agreements or provisions, and in no way affect the validity of all other provisions of the Resolution or of the Note or Loan Agreement delivered hereunder.

Section 12. Amendment. This Resolution may not be amended or repealed following the issuance of the Note except with the prior written consent of the Lender.

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Section 13. Effective Date. This Resolution shall become effective on the fifth business day after adoption, unless otherwise provided pursuant to Section 4.03(d) of the Charter of the Issuer.

Adopted: March 28, 2019

[SEAL]

Approved: _____
Council President

ATTEST:

City Clerk

EXHIBIT A

FORM OF LOAN AGREEMENT

LOAN AGREEMENT

by and between

CITY OF PENSACOLA, FLORIDA

and

Dated _____, ____

relating to

NOT EXCEEDING

\$20,000,000

CITY OF PENSACOLA, FLORIDA

TAXABLE AIRPORT FACILITIES SPECIAL REVENUE NOTE, SERIES _____

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LOAN AGREEMENT

This **LOAN AGREEMENT** is made and entered into as of _____, ____ by and between **CITY OF PENSACOLA, FLORIDA**, a municipal corporation of the State of Florida (the "Issuer"), and _____, an _____ banking corporation (together with its successors and/or assigns, the "Lender").

WITNESSETH:

WHEREAS, the Issuer owns and operates as an enterprise fund the Pensacola International Airport (the "Airport");

WHEREAS, the Issuer has determined that the undertaking of the Project hereinafter described will promote the economic development of the Airport and the Issuer, the creation of jobs, the economic well-being and health, safety and welfare of the Issuer and its inhabitants, is in the best interest of the Issuer its inhabitants, and that the Project serves a paramount public purpose of the Issuer; and

WHEREAS, the Lender has agreed to lend the Issuer an aggregate principal amount of not exceeding \$20,000,000 to be used to pay a portion of the costs of the Project upon the terms and conditions provided herein; and

WHEREAS, the Issuer has determined it is in the best interests of the Issuer and the inhabitants thereof to obtain the Loan as provided herein to finance a portion of the cost of the Project; and

WHEREAS, pursuant to Section 6 of the Resolution (as hereinafter defined), and subject to the terms and conditions thereof, the Issuer has covenanted and agreed to budget and appropriate sufficient Non-Ad Valorem Revenues (as hereinafter defined) to pay the principal of and interest on the Series ____ Note and all other amounts payable hereunder or under the Series ____ Note; and

WHEREAS, the Issuer has determined that the Non-Ad Valorem Revenues budgeted and appropriated pursuant to Section 6 of the Resolution are anticipated to be sufficient in to repay the debt service coming due on the Series ____ Note and all other payment obligations of the Issuer hereunder and under the Series ____ Note; and

WHEREAS, the obligation of the Issuer to repay principal of and interest on the Series ____ Note will not constitute a general obligation or indebtedness of the Issuer as a "bond" within the meaning of any provision of the Constitution or laws of the State of Florida, but shall be and is hereby declared to be a special, limited obligation of the Issuer, payable solely from the Non-Ad Valorem Revenues budgeted and appropriated by the Issuer pursuant to Section 6 of the Resolution; and

WHEREAS, the Issuer is not obligated or authorized to levy taxes on any property of or in the Issuer to pay the principal of or interest on the Series ____ Note or to make any other payments provided for herein or to continue or maintain any programs or services which generate Non-Ad Valorem Revenues;

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

SECTION 1. DEFINITIONS. Capitalized terms used in this Loan Agreement and not defined in this Section 1 shall have the meanings assigned in the Resolution. The following terms shall have the following meanings herein, unless the text otherwise expressly requires:

“Authorized Investments” means any investment, obligation, agreement or other financial instrument to the extent not inconsistent with the terms of the investment policy of the Issuer and applicable law.

“Bond Counsel” means Bryant Miller Olive P.A. or any other nationally recognized bond counsel subsequently appointed by the Issuer.

“Business Day” means any day of the year other than a day on which the Lender or the Issuer are lawfully closed for business.

“Chief Financial Officer” means the Chief Financial Officer of the Issuer, or his or her designee.

“City Administrator” means the City Administrator of the Issuer, or any acting or interim City Administrator, or his or her designee.

“City Attorney” means the City Attorney of the Issuer, or his or her designee.

“City Council” means the City Council of the Issuer, as the governing body of the Issuer.

“Clerk” means the Clerk of the Issuer, any acting, deputy, or assistant Clerk, or his or her designee.

“Date of Delivery” means _____ / ____.

“Default” means an Event of Default as defined and described in Section 15 hereof.

“Draw-Down Period” shall mean the period commencing on _____ / ____ and ending on _____ / ____.

“Fiscal Year” means the period from each October 1 to the succeeding September 30.

“Interest Payment Date” means each [October 1 of each year commencing October 1, ____], and continuing through the Maturity Date.

“Lender” or “Purchaser” means _____, a _____ banking corporation, and its successors and/or assigns.

“Loan” shall have the meaning ascribed thereto in Section 7 hereof.

“Loan Agreement” means this agreement between the Lender and the Issuer setting forth the terms and details of the Loan.

“Maturity Date” means October 1, ____.

“Mayor” means the Mayor of the Issuer or the City Administrator on behalf of the Mayor or the Chief Financial Officer on behalf of the Mayor.

“Non-Ad Valorem Revenues” means the revenues of the Issuer in the General Fund which are legally available for the payment of principal of and interest on the Note in each year and which are derived from all sources other than ad valorem taxation on real and personal property.

“Paying Agent” means an officer of the Issuer or the bank or trust company which the Issuer may from time to time designate to serve as paying agent for the Series ____ Note, initially the Chief Financial Officer.

“Payment Date” means any Interest Payment Date or Principal Payment Date.

“Person” or words importing persons, means firms, associations, partnerships (including without limitation, general and limited partnerships), joint ventures, societies, estates, trusts, corporations, public or governmental bodies, other legal entities, and natural persons.

“Principal Amount” means the aggregate principal amount advanced under the Series ____ Note not to exceed [Twenty Million Dollars (\$20,000,000)].

“Principal Payment Date” means [October 1 of each year, commencing October __, ____].

“Project” means the construction of expansions and improvements to the aerospace maintenance, repair and overhaul campus and related facilities at the Pensacola International Airport, including the construction of three additional hangars, an administrative office building, a warehouse, shops and support facilities and associated aircraft aprons, taxi ways and automobile parking.

“Register” means the books maintained by the Registrar in which are recorded the name and address of the Registered Owner of the Series ____ Note.

“Registered Owner” means the person in whose name the ownership of the Series ____ Note is registered on the books maintained by the Registrar. The initial Registered Owner shall be the Lender.

“Registrar” means the Person maintaining the Register. The Registrar shall initially be the Chief Financial Officer.

“Resolution” means Resolution No. 2019-15 adopted by the Issuer on March 28, 2019, as may be amended and supplemented from time to time.

“Series ____ Note” means the Taxable Airport Facilities Special Revenue Note, Series ____, of the Issuer, substantially in the form attached hereto as Exhibit A.

“State” means the State of Florida.

SECTION 2. INTERPRETATION. Unless the context clearly requires otherwise, words of masculine gender shall be construed to include correlative words of the feminine and neuter genders and vice versa, and words of the singular number shall be construed to include correlative words of the plural number and vice versa. This Loan Agreement and all the terms and provisions hereof (a) have been negotiated between the Issuer and the Lender; (b) shall not be construed strictly in favor of or against either party hereto; and (c) shall be construed to effectuate the purpose set forth herein and to sustain the validity hereof.

The titles and headings of the Sections and subsections of this Agreement, which have been inserted for convenience of reference only and are not to be considered part hereof, shall not in any way modify or restrict any of the terms and provisions hereof, and shall not be considered or given any effect in construing this Agreement or any provision hereof or in ascertaining intent, if any question of intent should arise.

SECTION 3. DESCRIPTION OF SERIES ____ NOTE. The obligation of the Issuer to repay the Loan shall be evidenced by the Series ____ Note. The Series ____ Note shall be dated as of the Date of Delivery; shall mature on the Maturity Date; and shall be in registered form.

Interest shall accrue from the date of the initial Advance under the Series ____ Note on the outstanding principal balance thereof and shall be payable on each Interest Payment Date at **[insert interest rate formula or rate]**; provided, however, that the interest rate on the Series ____ Note shall never exceed the Maximum Lawful Rate (as defined below). Interest on the Series ____ Note shall be calculated on the basis of a 360-day year and the actual number of days elapsed.

Notwithstanding anything herein to the contrary, if at any time the interest rate applicable to any amounts payable under the Series ____ Note, together with all fees, charges and other amounts which may be treated as interest with respect thereto under applicable law (collectively, the “Charges”), shall exceed the maximum lawful rate of interest (the “Maximum

Lawful Rate”) which may be contracted for, charged, taken, received or reserved in accordance with applicable law, the rate of interest payable in respect of such amounts payable under the Series ____ Note, together with all Charges payable in respect thereof, shall be limited to the Maximum Lawful Rate and, to the extent lawful, the interest and Charges that would have been payable in respect of such payment obligations but were not payable as a result of the operation of this paragraph shall be cumulated and the interest and Charges payable in respect of amounts payable under the Series ____ Note shall be increased (but not above the Maximum Lawful Rate therefor) until such cumulated amount, shall have been received by the Registered Owner.

Principal on the Series ____ Note shall be paid in _____ installments on the Principal Payment Dates, in amounts specified in Schedule 2 attached to the Series ____ Note.

The Series ____ Note is subject to prepayment prior to maturity at any time, **[insert redemption terms]**.

SECTION 4. EXECUTION OF SERIES ____ NOTE. The Series ____ Note shall be executed in the name of the Issuer by the Mayor, attested under seal by the City Clerk, approved as to substance by the Chief Financial Officer, and designated legal in form and valid as drawn by the City Attorney. The Series ____ Note may be signed and sealed on behalf of the Issuer by any person who at the actual time of the execution of the Series ____ Note shall hold the appropriate office in the Issuer, although at the date thereof the person may not have been so authorized. The Series ____ Note may be executed by the facsimile signatures of the Mayor, the Clerk, the Chief Financial Officer and/or City Attorney, provided that at least one of the Mayor or Clerk’s signatures must be a manual signature.

SECTION 5. REGISTRATION AND TRANSFER OF SERIES ____ NOTE. Ownership of the Series ____ Note shall be registered on the Register. There shall be a Registrar who shall be responsible for maintaining the Register. The person in whose name ownership of a Series ____ Note is shown on the Register shall be deemed the Registered Owner thereof by the Issuer and the Registrar, who may treat the Registered Owner as the absolute owner of the Series ____ Note for all purposes, whether or not the Series ____ Note shall be overdue, and any notice to the contrary shall not be binding upon the Issuer or the Registrar.

Ownership of the Series ____ Note may be transferred or assigned only as a whole and only upon the Register and upon assumption by the transferee of the obligations of the Lender hereunder. Upon surrender to the Registrar for transfer or exchange of the Series ____ Note accompanied by an assignment or written authorization for exchange, whichever is applicable, duly executed by the Registered Owner or its attorney duly authorized in writing, the Registrar shall deliver in the name of the Registered Owner or the transferee, as the case may be, a new fully registered Series ____ Note of the same amount, maturity and interest rate as the Series ____ Note surrendered. Provided however, any assignment or transfer by the Registered Owner of the Series ____ Note shall be in whole and not in part.

The Series ____ Note presented for transfer, exchange, redemption or payment (if so required by the Issuer or the Registrar) shall be accompanied by a written instrument or instruments of transfer or authorization for exchange, in a form and with guaranty of signature satisfactory to the Registrar, duly executed by the Registered Owner or by his duly authorized attorney.

The City Administrator and the Registrar may charge the Registered Owner a sum sufficient to reimburse them for any expenses incurred in making any exchange or transfer after the first such exchange or transfer following the delivery of such Series ____ Note. The Registrar or the City Administrator may also require payment from the Registered Owner or his transferee, as the case may be, of a sum sufficient to cover any tax, fee or other governmental charge that may be imposed in relation thereto by any governmental entity other than the Issuer. Such charges and expenses shall be paid before any such new Series ____ Note shall be delivered.

The new Series ____ Note delivered upon any transfer or exchange shall be a valid obligation of the Issuer, evidencing the same debt as the Series ____ Note surrendered, shall be secured under this Loan Agreement, and shall be entitled to all of the security and benefits hereof to the same extent as the Series ____ Note surrendered.

Whenever a Series ____ Note shall be delivered to the Registrar for cancellation, upon payment of the principal amount thereof, or for replacement, transfer or exchange, such Series ____ Note shall be cancelled and destroyed by the Registrar, and counterparts of a certificate of destruction evidencing such destruction shall be furnished to the Issuer.

SECTION 6. SERIES ____ NOTE MUTILATED, DESTROYED, STOLEN OR LOST. In case the Series ____ Note shall be mutilated, or be destroyed, stolen or lost, upon the Registered Owner furnishing the Registrar satisfactory indemnity and complying with such other reasonable regulations and conditions as the Issuer may prescribe and paying such expenses as the Issuer may incur, the Registrar shall issue and deliver a new Series ____ Note of like tenor as the Series ____ Note so mutilated, destroyed, stolen or lost, in lieu of or substitution for the Series ____ Note, if any, destroyed, stolen or lost, or in exchange and substitution for such mutilated Series ____ Note, upon surrender of such mutilated Series ____ Note, if any, to the Registrar and the cancellation thereof; provided however, if the Series ____ Note shall have matured or be about to mature, instead of issuing a substitute Series ____ Note, the Issuer may pay the same, upon being indemnified as aforesaid, and if such Series ____ Note be lost, stolen or destroyed, without surrender thereof. Any Series ____ Note surrendered under the terms of this Section 6 shall be cancelled by the Registrar.

Any such new Series ____ Note issued pursuant to this section shall constitute an original, additional contractual obligation on the part of the Issuer whether or not, as to the new Series ____ Note, the lost, stolen or destroyed Series ____ Note be at any time found by anyone, and such new Series ____ Note shall be entitled to equal and proportionate benefits and rights

as to security for payment to the same extent as the Series ____ Note originally issued hereunder.

SECTION 7. LOAN AND LOAN LIMIT. Subject to the terms and conditions hereof, the Lender agrees to make advances to the Issuer from time to time (each, an “Advance,” and together with the outstanding principal balance of all such Advances from time to time, as the context requires, the “Loan”) during the Draw-Down Period in an aggregate principal amount outstanding not to exceed [**Twenty Million Dollars (\$20,000,000)**] (the “Loan Limit”). The Loan shall be evidenced by the Series ____ Note. During the Draw-Down Period, the Issuer may borrow up to the maximum principal amount of the Loan Limit, subject to the terms and conditions set forth herein. The Issuer shall request each Advance by written notice (or telephonic notice promptly confirmed in writing) to the Lender not later than 3:00 P.M. eastern standard time, at least two Business Days prior to the date of the requested funding of the Advance. Such written notice shall be in substantially the form attached hereto as Exhibit B. Each such request for an Advance shall specify aggregate principal amount to be borrowed and describe the costs of the Project, including capitalized interest on the Series ____ Note, to be financed with such Advance. After the expiration of the Draw-Down Period, the Issuer shall not be entitled to receive any further advance under the Loan. The outstanding principal balance of the Loan and interest thereon shall be repaid in accordance with the terms hereof and the Series ____ Note.

SECTION 8. PROJECT FUND.

A separate account is hereby created and established to be known as the “City of Pensacola, Florida Taxable Airport Facilities Special Revenue Note, Series ____ Project Fund” (the “Project Fund”). Proceeds of each Advance (other than Advances for the payment of accrued interest on the Series ____ Note which may, at the direction of the Issuer, be paid or credited to the Registered Owner in payment of such accrued interest) shall be deposited to the credit of the Project Fund and shall be applied by the Issuer to pay costs of the Project. Monies in the Project Fund may be invested in Authorized Investments, and all income derived therefrom shall be deposited in the Project Fund.

To the extent there are no other available funds held hereunder, the Issuer shall use any remaining funds in the Project Fund to pay principal and interest on the Series ____ Note when due.

Such fund shall be kept separate and apart from all other funds of the Issuer and the moneys on deposit therein shall be withdrawn, used and applied by the Issuer solely for the purposes set forth herein. Such proceeds shall be and constitute trust funds for such purpose and there is hereby created a lien in favor of the Series ____ Note upon such money until so applied by the Issuer solely for the purposes set forth herein.

SECTION 9. FORM OF SERIES ____ NOTE. The Series ____ Note shall be in substantially the form attached hereto as Exhibit A, with such variations, omissions and insertions as may be necessary, desirable and authorized or permitted by this Loan Agreement.

SECTION 10. SECURITY FOR SERIES ____ NOTE; SERIES ____ NOTE NOT DEBT OF THE ISSUER. The principal of and interest and redemption premiums, if any, on the Series ____ Note and all obligations of the Issuer hereunder and under the Series ____ Note shall be payable solely from Non-Ad Valorem Revenues and any other legally available revenues of the Issuer budgeted and appropriated for such purpose pursuant to and in the manner and extent provided in Section 6 of the Resolution, the terms of which are hereby incorporated herein by reference to the same extent as if repeated verbatim herein. The principal of and interest on the Series ____ Note and any other obligations of the Issuer hereunder or under the Series ____ Note shall not constitute a general obligation or indebtedness of the Issuer, but shall be limited obligations of the Issuer payable solely from the Non-Ad Valorem Revenues budgeted and appropriated by the Issuer pursuant to Section 6 of the Resolution. The Registered Owner and the Lender shall never have the right to compel the levy of taxes upon any property of or in the Issuer for the payment of the principal of and interest and redemption premiums, if any, on the Series ____ Note or any obligations of the Issuer hereunder or under the Series ____ or to continue or maintain any services or programs that generate Non-Ad Valorem Revenues.

SECTION 11. COVENANTS OF THE ISSUER. Until the principal of and interest on the Series ____ Note shall have been paid in full or provision for payment of the Series ____ Note shall have been made in accordance with the provisions of this Loan Agreement, the Issuer covenants with the Registered Owner of the Series ____ Note as follows:

A. Financial Statements. At no cost to the Lender, the Issuer shall provide to the Lender (i) unaudited quarterly financial statements prepared by the Issuer within 45 days after the end of each fiscal quarter; and (ii) audited year-end financial statements prepared in accordance with generally accepted accounting principles within five days of receipt of such audited statements but not later than 180 days after the end of each Fiscal Year.

B. Annual Budget. The Issuer will prepare its annual budget in accordance with applicable law, and will provide at no cost to the Lender a copy of its final annual budget for each Fiscal Year within 30 days of adoption thereof by the City Council.

C. Other Information. The Issuer will provide the Lender such other financial or public information as the Lender may reasonably request.

D. Maintenance of Existence. The Issuer shall not permit the termination of its existence as a municipal corporation under the laws of the State.

SECTION 12. REPRESENTATIONS AND WARRANTIES. The Issuer represents and warrants to the Lender that:

A. Organization. The Issuer is a municipal corporation, duly organized and existing under the laws of the State.

B. Adoption of Resolution, Authorization of Loan Agreement and Related Documents. The Issuer has duly adopted the Resolution, the Issuer has the power and has taken all necessary action to adopt the Resolution and to authorize the execution and delivery of and the performance by the Issuer of its obligations under the Resolution, this Loan Agreement and the Series ____ Note in accordance with their respective terms. This Loan Agreement and the Series ____ Note have been duly executed and delivered by the Issuer and, together with the Resolution, are valid and binding obligations of the Issuer, enforceable against the Issuer in accordance with their respective terms, except to the extent that such enforcement may be limited by laws regarding bankruptcy, insolvency, reorganization or moratorium applicable to the Issuer or by general principles of equity regarding the availability of specific performance.

C. Non-Ad Valorem Revenues. The Issuer is legally entitled to covenant to budget and appropriate Non-Ad Valorem Revenues sufficient to provide for the payment of the principal of and interest and redemption premiums, if any, on the Series ____ Note and all obligations of the Issuer hereunder and under the Series ____ Note when due as provided in Section 6 of the Resolution. The Issuer estimates that the Non-Ad Valorem Revenues budgeted and appropriated pursuant to Section 6 of the Resolution will be available in amounts sufficient to pay the principal of and interest and redemption premiums, if any, on the Series ____ Note as the same become due prior to and on the Maturity Date, and to pay all other obligations of the Issuer hereunder and under the Series ____ Note.

D. Financial Statements. The audited financial statements of the Issuer for the Fiscal Year ended September 30, ____ (the "Financial Statements"), previously provided to the Lender were prepared in accordance with generally accepted accounting principles, are correct and present fairly the financial condition of the Issuer as of such date and the results of its operations for the period then ended.

SECTION 13. CONDITIONS PRECEDENT. The obligation of the Lender to make the Loan is subject to the satisfaction of each of the following conditions precedent on or before the Date of Delivery:

A. Action. The Lender shall have received a copy of the Resolution certified as complete and correct as of the closing date, together with an executed Loan Agreement, the executed Series ____ Note and the customary closing certificates.

B. Incumbency of Officers. The Lender shall have received an incumbency certificate of the Issuer in respect of each of the officers who is authorized to sign this Loan Agreement, the Series ____ Note, and the related financing documents on behalf of the Issuer.

C. Opinion of City Attorney. The Lender shall have received a written opinion of the City Attorney as to (1) the valid existence of the Issuer as a municipal corporation of the State; (2) the due adoption of the Resolution; (3) the due authorization and execution of this

Loan Agreement, the Series ____ Note and the transaction contemplated hereby; (4) the Loan Agreement and the Series ____ Note constituting valid and binding obligations of the Issuer, enforceable against the Issuer, in accordance with their respective terms; and (5) the absence of litigation against the Issuer relating to (a) its existence or powers, (b) its authority to issue the Series ____ Note or covenant to budget and appropriate Non-Ad Valorem Revenues as provided in Section 6 of the Resolution, (c) the procedures governing the authorization and issuance of the Series ____ Note, and (d) any other matter which may result in any material adverse change in the business, properties, assets or financial condition of the Issuer in a form and substance satisfactory to the Lender.

D. Certificate of Chief Financial Officer. The Lender shall have received a certificate from the Chief Financial Officer that: (1) since the date of the Financial Statements, referred to in Section 12.D. above, there has been no material adverse change in the financial condition, revenues, properties or operations of the Issuer; (2) there are no liabilities (of the type required to be reflected on balance sheets prepared in accordance with generally accepted accounting principles), direct or indirect, fixed or contingent, of the Issuer as of the date of such financial information which are not reflected therein, other than its _____; (3) there has been no material adverse change in the financial condition or operations of the Issuer since the date of such Financial Statements (and to the Chief Financial Officer's knowledge no such material adverse change is pending or threatened); and (4) the Issuer has not guaranteed the obligations of, or made any investment in or loans to, any person except as disclosed in such information.

E. Representations and Warranties; No Default. The representations and warranties made by the Issuer herein shall be true and correct in all material respects on and as of the Date of Delivery, as if made on and as of such date; no Default shall have occurred and be continuing as of the Date of Delivery or will result from the consummation of the Loan; and the Lender shall have received a certificate from the Issuer to the foregoing effect.

F. Lender Certificates. The Issuer shall have received the fully executed Lender's Certificate substantially in the form attached to the Resolution as Exhibit B and the Disclosure Letter containing the information required by Section 218.385, Florida Statutes, substantially in the form attached to the Resolution as Exhibit C.

G. Other Documents. The Lender shall have received such other documents, certificates and opinions as the Lender or its counsel shall have reasonably requested.

SECTION 14. NOTICES. All notices, certificates or other communications hereunder shall be sufficiently given and shall be deemed given when hand delivered, delivered by telecopier, mailed by registered or certified mail, postage prepaid, or delivered by courier service to the parties at the following addresses:

Issuer: City of Pensacola, Florida
222 West Main Street

Pensacola, Florida 32502

Attention: City Administrator, with a required copy to the City Attorney at the same address, and a required copy to the Clerk at the same address.

Lender: _____

Attention: _____

Any of the above parties may, by notice in writing given to the others, designate any further or different addresses to which subsequent notices, certificates or other communications shall be sent. Communication via telecopier shall be confirmed by delivery by hand, mail, or courier, as specified above, of an original promptly after such communication by telecopier.

SECTION 15. EVENTS OF DEFAULT DEFINED. The following shall be "Events of Default" under this Loan Agreement, and the terms "Default" and "Events of Default" shall mean (except where the context clearly indicates otherwise), any one or more of the following events:

A. Failure by the Issuer to make any payment of principal of or interest on the Series _____ Note within three (3) days of the date due.

B. Failure by the Issuer to observe and perform any other covenant, condition or agreement on its part to be observed or performed under the Resolution or this Loan Agreement for a period of thirty (30) days after written notice of such failure was or was by the terms hereof required to be delivered to the Issuer by the Lender unless the Lender shall agree in writing to an extension of such time prior to its expiration;

C. The making of any warranty, representation or other statement by the Issuer or by an officer or agent of the Issuer in the Resolution or this Loan Agreement or in any instrument furnished in compliance with or in reference to this Loan Agreement which is false or misleading in any material adverse respect;

D. The filing of a petition against the Issuer under any bankruptcy, reorganization, arrangement, insolvency, readjustment of debt, dissolution or liquidation law of any jurisdiction, whether now or hereafter in effect, if an order for relief is entered under such petition or such petition is not dismissed within sixty (60) days of such filing;

E. The filing by the Issuer of a voluntary petition in bankruptcy or seeking relief under any provision of any bankruptcy, reorganization, arrangement, insolvency, readjustment of debt, dissolution or liquidation law of any jurisdiction, whether now or hereafter in effect, or the consent by the Issuer to the filing of any petition against it under such law; or

F. The admission by the Issuer of its insolvency or bankruptcy or its inability to pay its debts as they become due or that it is generally not paying its debts as such debts become

due, or the Issuer's becoming insolvent or bankrupt or making an assignment for the benefit of creditors, or the appointment by court order of a custodian (including without limitation a receiver, liquidator or trustee) of the Issuer or any of its property taking possession thereof and such order remaining in effect or such possession continuing for more than sixty (60) days.

SECTION 16. NOTICE OF DEFAULTS AND MATERIAL LITIGATION. The Issuer shall within ten Business Days after it acquires knowledge thereof, notify the Registered Owner of the Series ____ Note in writing (a) of any change in any material fact or circumstance represented or warranted by the Issuer in this Loan Agreement or in connection with the issuance of the Series ____ Note, including any litigation which may result in any material adverse change in the business, properties, assets or financial condition of the Issuer; (b) upon the happening, occurrence, or existence of any Event of Default that the Registered Owner is not otherwise aware of, or (c) any event or condition which with the passage of time or giving notice, or both, would constitute an Event of Default, and shall provide the Registered Owner of the Series ____ Note, with such written notice, a detailed statement by the Chief Financial Officer of all relevant facts and the action being taken or proposed to be taken by the Issuer with respect thereto. Regardless of the date of receipt of such notice by the Registered Owner of the Series ____ Note, such date shall not in any way modify the date of occurrence of the actual Event of Default.

SECTION 17. REMEDIES. For all Events of Default, the Lender may sue to protect and enforce any and all rights, including the right to specific performance, existing under the laws of the State, of the United States of America, or granted and contained in this Loan Agreement, and to enforce and compel the performance of all duties required by this Loan Agreement or by any applicable laws to be performed by the Issuer, the City Council or by any officer thereof, and may take all steps to enforce this Loan Agreement to the full extent permitted or authorized by the laws of the State or the United States of America.

The Issuer and the Lender each waives, to the fullest extent permitted by law, any right to trial by jury in respect of any litigation based upon the Series ____ Note or arising out of, under or in conjunction with the Series ____ Note or this Loan Agreement.

SECTION 18. NO PERSONAL LIABILITY. No recourse shall be had for the payment of the principal of and interest on the Series ____ Note or for any claim based on the Series ____ Note or on this Loan Agreement, against any present or former Mayor, officer or employee of the Issuer or member or officer of the City Council or any person executing the Series ____ Note.

SECTION 19. PAYMENTS DUE ON SATURDAYS, SUNDAYS AND HOLIDAYS. In any case where the date for making any payment or the last date for performance of any act or the exercise of any right, as provided in this Loan Agreement, shall be other than a Business Day, then such payment or performance shall be made on the succeeding Business Day with the same force and effect as if done on the nominal date

provided in this Loan Agreement, provided that interest on any monetary obligation hereunder shall accrue at the applicable rate to and including the date of such payment.

SECTION 20. AMENDMENTS, CHANGES AND MODIFICATIONS. This Loan Agreement may be amended only by a writing approved with the same formality as this Agreement, signed by the Issuer and the Registered Owner.

SECTION 21. BINDING EFFECT. To the extent provided herein, this Loan Agreement shall be binding upon the Issuer and the Lender and shall inure to the benefit of the Issuer and the Lender and their respective successors and assigns. This Loan Agreement shall be discharged and neither the Issuer nor the Lender shall have any further obligations hereunder or under the Series ____ Note when the Issuer shall have paid the principal of and interest on the Series ____ Note in full and shall have paid in full all other amounts, if any, due under the Series ____ Note or this Loan Agreement.

SECTION 22. SEVERABILITY. In the event any court of competent jurisdiction shall hold any provision of this Loan Agreement invalid or unenforceable such holding shall not invalidate or render unenforceable, any other provision hereof.

SECTION 23. EXECUTION IN COUNTERPARTS. This Loan Agreement may be simultaneously executed in several counterparts, each of which shall be an original and all of which shall constitute but one and the same instrument.

SECTION 24. APPLICABLE LAW. The laws of the State shall be the law applied in the resolution of any action, claim or other proceeding arising out of the Resolution, the Series ____ Note or this Loan Agreement.

SECTION 25. VENUE; ATTORNEY'S FEES. The parties agree that jurisdiction and venue for the enforcement of the Resolution, this Loan Agreement or the Series ____ Note shall be in the state and/or federal courts of Escambia County, Florida. The prevailing party in any action, claim or proceeding arising out of the Resolution, the Loan Agreement or the Series ____ Note shall be entitled to attorney's fees and costs from the losing party

SECTION 26. ASSIGNMENT. The Lender may assign its rights hereunder to any party to whom it sells or transfers the Series ____ Note as permitted hereby.

[Remainder of page intentionally left blank]

IN WITNESS WHEREOF, the parties hereto have duly executed this Loan Agreement as of the date first above written.

CITY OF PENSACOLA, FLORIDA

By: _____
Grover C. Robinson, IV, Mayor

(SEAL)

ATTEST:

By: _____
City Clerk

Approved as to Substance:

By: _____
Richard Barker, Jr.
Chief Financial Officer

Legal in Form and Valid as Drawn:

By: _____
Susan A. Woolf
City Attorney

[Signature Page of Loan Agreement]

By: _____

Name: _____

Title: _____

[Signature Page of Loan Agreement]

EXHIBIT A

FORM OF SERIES ____ NOTE

No. R-1

Lesser of \$20,000,000
or the Principal Amount
Advanced and Outstanding Hereunder

CITY OF PENSACOLA, FLORIDA
TAXABLE AIRPORT FACILITIES SPECIAL REVENUE NOTE, SERIES ____

| | | |
|----------------------|----------------------|----------------------|
| <u>Interest Rate</u> | <u>Maturity Date</u> | <u>Date of Issue</u> |
| _____ | October 1, ____ | _____ / ____ |

REGISTERED OWNER: _____

PRINCIPAL AMOUNT: NOT EXCEEDING TWENTY DOLLARS (\$20,000,000)

KNOW ALL MEN BY THESE PRESENTS, that the City of Pensacola, Florida (the "Issuer"), for value received, hereby promises to pay to the Registered Owner designated above, or registered assigns, solely from the sources hereinafter mentioned, in installments, on the Principal Payment Dates indicated in Schedule 2 attached hereto and on the Maturity Date, or sooner as provided herein, the principal sum advanced hereunder (as described in Schedule 1 attached hereto), up to the maximum Principal Amount shown above and the interest on the outstanding Principal Amount hereof from the date of the initial Advance hereunder or from the most recent date to which interest has been paid, whichever is applicable, until payment of such Principal Amount, at the Interest Rate described below, with all unpaid accrued interest being due on the Maturity Date or upon the earlier payment of principal hereunder upon presentation and surrender hereof at the office of the Chief Financial Officer for the Issuer, as Registrar and Paying Agent. The principal of and interest on this Note are payable in lawful money of the United States of America.

Interest shall accrue on this Note from the date of the initial Advance hereunder on the outstanding principal balance and shall be payable annually commencing October 1, ____, and continuing on each October 1 thereafter until the full amount of principal due hereunder has been paid, at [insert description of interest rate]. Interest on this Note shall be calculated on the basis of a 360-day year and the actual number of days elapsed.

The Issuer may make draws of principal of this Note until and including _____ __ 1, ____, or until the occurrence of an Event of Default. Draws under this Note, unless an Event of Default, or event that with the giving of notice or the passage of time would constitute an Event of Default, then exists, may be made in the manner prescribed in the Loan Agreement (as herein defined).

This Note is subject to prepayment prior to maturity at any time, **[insert redemption terms]**.

This Note is being issued to finance a portion of the costs of the Project under the authority of and in full compliance with the Constitution and Statutes of the State of Florida, including particularly Chapter 166, Part II, Florida Statutes, as amended, the municipal charter of the Issuer and other applicable provisions of law, and Resolution No. 2019-15, duly adopted by the City Council of the Issuer on March 28, 2019 (the "Resolution"), and pursuant to a Loan Agreement between the Issuer and the Registered Owner, dated _____, ____ (the "Loan Agreement"), to which reference should be made to ascertain those terms and conditions. The terms and provisions of the Loan Agreement and the Resolution, including, without limitation, the definitions therein, are hereby incorporated as a part of this Note. The principal of this Note shall be disbursed by the Registered Owner hereof to the Issuer in immediately available funds by making periodic Advances in accordance with the Loan Agreement.

This Note is payable solely from Non-Ad Valorem Revenues budgeted and appropriated by the Issuer, all in the manner and to the extent provided in, and subject to the terms and conditions of, the Resolution and the Loan Agreement. This Note shall not constitute a general obligation or indebtedness of the Issuer, but shall be a limited obligation of the Issuer payable solely from the Non-Ad Valorem Revenues budgeted and appropriated as provided in Section 6 of the Resolution. The Registered Owner hereof shall never have the right to compel the levy of taxes upon any property of or in the Issuer for the payment of the principal of and interest on this Note or any other obligation of the Issuer under the Loan Agreement or to continue or maintain programs or services that generate Non-Ad Valorem Revenues. Reference is made to the Resolution and Loan Agreement for the provisions relating to the source of payment of this Note and the duties and obligations of the Issuer hereunder.

The Registered Owner may sue to protect and enforce any and all rights, including the right to specific performance, existing under the laws of the State of Florida, of the United States of America, or granted and contained in the Loan Agreement, and to enforce and compel the performance of all duties required by the Loan Agreement or by any applicable laws to be performed by the Issuer, the City Council or by any officer thereof, and may take all steps to enforce the Loan Agreement to the full extent permitted or authorized by the laws of the State of Florida or the United States of America. The Issuer waives its right to trial by jury in the event of any proceedings in state or federal courts to enforce the terms of this Note or of the Loan Agreement, and the Registered Owner, by its acceptance of this Note, waives its right to trial by jury in any such proceedings.

This Note is subject to all the terms of the Loan Agreement.

It is hereby certified and recited that all acts, conditions and things required by the Constitution and laws of the State of Florida to be performed, to exist and to happen precedent to and in the issuance of this Note, have been performed, exist and have happened in regular and due form and time as so required.

IN WITNESS WHEREOF, the City of Pensacola, Florida, has issued this Note and has caused the same to be executed by the manual signature of the Mayor, attested under seal by the City Clerk, approved as to substance by the Chief Financial Officer, and designated legal in form and valid as drawn by the City Attorney, as of the Dated Date set forth above.

CITY OF PENSACOLA, FLORIDA

[SEAL]

By: _____
Grover C. Robinson, IV, Mayor

ATTEST:

By: _____
City Clerk

Approved as to Substance:

By: _____
Richard Barker, Jr.
Chief Financial Officer

Legal in Form and Valid as Drawn:

By: _____
Susan A. Woolf
City Attorney

CERTIFICATE OF AUTHENTICATION OF REGISTRAR

This Note constitutes the Taxable Airport Facilities Special Revenue Note, Series _____, as herein described. The Principal Amount, Interest Rate, Maturity Date and Registered Owner shown above are correct in all respects and have been recorded, along with the applicable federal taxpayer identification number and the address of the Registered Owner, in the Register maintained at the principal office of the undersigned.

CHIEF FINANCIAL OFFICER OF THE
CITY OF PENSACOLA, FLORIDA, as
Registrar

Date of Authentication

SCHEDULE 1 TO SERIES ____ NOTE

PRINCIPAL AMOUNT

| <u>Date of Advance</u> | <u>Principal Advance</u> | <u>Outstanding Principal After Advance</u> |
|------------------------|--------------------------|--|
| __/__/__ | \$ | \$ |
| __/__/__ | \$ | \$ |
| __/__/__ | \$ | \$ |
| __/__/__ | \$ | \$ |
| __/__/__ | \$ | \$ |
| __/__/__ | \$ | \$ |
| __/__/__ | \$ | \$ |
| __/__/__ | \$ | \$ |
| __/__/__ | \$ | \$ |
| Principal Amount | | \$ |

SCHEDULE 2 TO SERIES ____ NOTE

ESTIMATED PRINCIPAL PAYMENTS FOR THE SERIES ____ NOTE

| Principal Payment Date (October 1) | Installment |
|--|-------------|
| | \$ |
| (1)(2) | |
| Total ⁽³⁾ | \$ |

(1) Maturity Date

(2) Or remaining Principal Amount outstanding, if less.

(3) Or aggregate principal amount advanced, if less.

EXHIBIT B
FORM OF ADVANCE REQUEST

[Lender]

Re: City of Pensacola, Florida Taxable Airport Facilities Special Revenue Note, Series ____

The City of Pensacola, Florida (the "Issuer") does hereby request the following Advance Request made pursuant to a Loan Agreement by and between the Issuer and _____ (the "Lender") dated _____, 20__ (the "Agreement"). All terms used herein in capitalized form and not otherwise defined herein shall have the meanings ascribed thereto pursuant to the Loan Agreement.

1. This Advance Request shall be designated as the "City of Pensacola, Florida, Taxable Airport Facilities Special Revenue Note, Series ____ - Draw No. ____."
2. The principal amount of this Advance Request shall be \$_____ and the Advance Request date shall be _____, 20__.
3. The Advance Request is for the payment of the following:

4. The requested disbursement(s) has/have not been subject to any previous Advance Request.
5. No notice of any lien, right to lien or attachment upon, or claim affecting the right to receive payment of, any of the moneys payable herein to any of the persons, firms or corporations named herein has been received, or if any notice of any such lien, attachment or claim has been received, such lien, attachment or claim has been released or discharged or will be released or discharged upon payment of this Advance Request.
6. Each amount requested for payment in this Advance Request will be used by the Issuer promptly upon the receipt of funds from the Lender to make the payments to third parties described in this Advance Request.

Dated _____, 20__ (must be at least one Business Day prior to advance).

CITY OF PENSACOLA, FLORIDA

By: _____

Name: _____

Title: _____

EXHIBIT B

FORM OF LENDER'S CERTIFICATE

This is to certify that _____, or its assignee (the "Lender") has not required the City of Pensacola, Florida (the "Issuer") to deliver any offering document and has conducted its own investigation, to the extent it deems satisfactory or sufficient, into matters relating to business affairs or conditions (either financial or otherwise) of the Issuer in connection with the issuance by the Issuer of its not to exceed \$20,000,000 Taxable Airport Facilities Special Revenue Note, Series ____ (the "Series ____ Note"), and no inference should be drawn that the Lender, in the acceptance of said Series ____ Note, is relying on Bond Counsel or the City Attorney as to any such matters other than the legal opinions rendered by Bond Counsel and by the City Attorney. Any capitalized undefined terms used herein not otherwise defined shall have the meaning set forth in Resolution No. 2019-15 adopted by the City Council of the Issuer on March 28, 2019 (the "Resolution").

We are aware that investment in the Series ____ Note involves various risks, that the Series ____ Note is not a general obligation of the Issuer or payable from ad valorem tax revenues, and that Series ____ Note and obligation of the Issuer under the Loan Agreement between the Issuer and the Lender dated _____, ____ (the "Loan Agreement") are payable solely from the sources described in the Resolution.

We have made such independent investigation of the Issuer as we, in the exercise of sound business judgment, consider to be appropriate under the circumstances. In making our investment decision, we have relied upon the accuracy of information which has been provided to us.

We have knowledge and experience in financial and business matters and are capable of evaluating the merits and risks of our investment in the Series ____ Note and can bear the economic risk of our investment in the Series ____ Note.

We acknowledge and understand that the Issuer has determined that the Resolution and Loan Agreement are not required to be qualified under the Trust Indenture Act of 1939, as amended (the "1939 Act"), and that the Series ____ Note is not required to be registered in reliance upon the exemption from registration under Section 3(a)(2) of the Securities Act of 1933, Section 517.051(1), Florida Statutes, and/or Section 517.061(7), Florida Statutes, and that neither the Issuer, Bond Counsel nor the City Attorney shall have any obligation to effect any such registration or qualification.

The Series ____ Note has been purchased for the account of the Lender for investment purposes only and not with a present view to the distribution, transfer or resale thereof. The Lender intends to hold and book the Series ____ Note as a loan in its loan portfolio; the Lender acknowledges that the use of the word "note" in the name of the debt instrument is not intended

to indicate that the instrument is or is not a security within the meaning of the Securities Act of 1933. The Lender currently intends to hold such Series ____ Note for its own account and for an indefinite period of time and does not currently intend to dispose of all or any portion of such Series ____ Note. The Lender hereby covenants that if the Lender subsequently decides to distribute or resell the Series ____ Note, it shall comply in all respects with all laws then applicable with respect to any such distribution or resale. We understand that the Series ____ Note may not be transferred in a denomination less than the par amount outstanding at the time of transfer.

We are a bank, trust company, savings institution, insurance company, dealer, investment company, pension or profit-sharing trust, or qualified institutional buyer as contemplated by Section 517.061(7), Florida Statutes. We are not purchasing the Series ____ Note for the direct or indirect promotion of any scheme or enterprise with the intent of violating or evading any provision of Chapter 517, Florida Statutes.

We are an "accredited investor" within the meaning of the Securities Act of 1933, as amended, and Regulation D thereunder.

DATED this ____ of _____, ____.

By: _____

Name: _____

Title: _____

EXHIBIT C

FORM OF DISCLOSURE LETTER

The undersigned, as Lender, proposes to negotiate with the City of Pensacola, Florida (the "Issuer") for the private purchase of its not to exceed \$20,000,000 Taxable Airport Facilities Special Revenue Note, Series ____ ("Series ____ Note"). Prior to the award of the Series ____ Note, the following information is hereby furnished to the Issuer:

1. Set forth is an itemized list of the nature and estimated amounts of expenses to be incurred for services rendered to us (the "Lender") in connection with the issuance of the Series ____ Note (such fees and expenses to be paid by the Issuer):

\$[____]
Legal Fees

2. (a) No other fee, bonus or other compensation is estimated to be paid by the Lender in connection with the issuance of the Series ____ Note to any person not regularly employed or retained by the Lender (including any "finder" as defined in Section 218.386(1)(a), Florida Statutes), except as specifically enumerated as expenses to be incurred by the Lender, as set forth in paragraph (1) above.

(b) No person has entered into an understanding with the Lender, or to the knowledge of the Lender, with the Issuer, for any paid or promised compensation or valuable consideration, directly or indirectly, expressly or implied, to act solely as an intermediary between the Issuer and the Lender or to exercise or attempt to exercise any influence to effect any transaction in the purchase of the Series ____ Note.

3. The amount of the underwriting spread expected to be realized by the Lender is \$0.

4. The management fee to be charged by the Lender is \$0.

5. Truth-in-Bonding Statement:

The Series ____ Note is being issued primarily to finance the cost of the Project, as defined in Resolution No. 2019-15 adopted by the Issuer on March 28, 2019 (the "Resolution"). Unless earlier prepaid, the Series ____ Note is expected to be repaid by October 1, ____ (the "Maturity Date"). At an assumed rate of ____%, and assuming all funds are drawn [in accordance with the estimated draw schedule provided by the Issuer], total interest paid over the life of the Series ____ Note is approximately \$_____. Based on the foregoing assumptions, issuance of the Series ____ Note is estimated to result in an annual average of

approximately \$_____ of Non-Ad Valorem Revenues of the Issuer not being available to finance other services of the Issuer during the life of the Series ____ Note.

6. The name and address of the Lender is as follows:

IN WITNESS WHEREOF, the undersigned has executed this Disclosure Letter on behalf of the Lender this ___ day of _____, ____.

By:_____

Name:_____

Title:_____



City of Pensacola

222 West Main Street
Pensacola, FL 32502

Memorandum

File #: 19-00132

City Council

3/28/2019

LEGISLATIVE ACTION ITEM

SPONSOR: Grover C. Robinson, IV, Mayor

SUBJECT:

STATE OF FLORIDA DEPARTMENT OF ECONOMIC OPPORTUNITY GRANT AGREEMENT

RECOMMENDATION:

That City Council authorize the Mayor to accept and execute the State of Florida Department of Economic Opportunity Florida Job Growth Infrastructure Grant Agreement G0050 when finalized in the amount of \$10,000,000 related to the Pensacola International Airport Maintenance, Repair and Overhaul (MRO) Aviation Campus expansion project. Further, that City Council approve the grant resolution and authorize the Mayor or his designee to take all actions necessary related to the finalization of the grant.

HEARING REQUIRED: No Hearing Required

SUMMARY:

On December 17, 2013, the City executed a nonbinding Memorandum of Understanding with ST Aerospace allowing the City of Pensacola to begin contract negotiations with VT Mobile Aerospace Engineering, Inc. (VT MAE) for the construction and operation of a maintenance, repair, and overhaul (MRO) facility at the Pensacola International Airport. City Council approved the negotiated lease agreement on September 9, 2014. The 173,000 sq. ft. facility officially opened in June 2018 and is on the way to creating 400 new high-wage jobs for the area.

The Mayor and Staff have a longer term strategy to grow the MRO capacity, sometimes referred to as "Project Titan". A second hangar similar in size and configuration to the first hangar, a possible support services center, an aircraft apron and automobile parking would be constructed on 16 acres of Airport property directly south of the first hangar. The construction of this second hangar area was otherwise contemplated and accounted for during the development process for the first hangar, and is referenced in the current real property lease with VT MAE. Additional facilities consisting of two hangars, each approximately 191,000 sq. ft., a 100,000 sq. ft. support services center, a 120,000 sq. ft. administrative office building, aircraft aprons, and automobile parking would also be constructed on approximately 50 acres of Airport property adjacent to Tippin Avenue on the west side of the Airport. It is expected that the project will create a minimum of 1,325 full-time jobs with an annual average salary of \$44,461, excluding benefits. The total project cost of \$210,125,000 is funded by a combination of VT MAE investment, state and federal grants, and local funds.

As part of the funding strategy for Project Titan, the City submitted a proposal to the Florida Job Growth Grant Fund, administered by the Department of Economic Opportunity. In response to the grant proposal, the State of Florida Department of Economic Opportunity has offered a Florida Job Growth Infrastructure Grant Agreement in the amount of \$10,000,000 to assist in the construction of the MRO aviation campus. City staff and DEO staff are presently finalizing the grant agreement.

PRIOR ACTION:

June 13, 2013 - City Council adopted a resolution to support the acceptance of a grant offered by the Florida Department of Transportation as a Joint Participation Agreement # 43360229401 in the amount of \$11,090,000 for air commerce park phases I and IA - Infrastructure Development.

February 13, 2014 - City Council Discussion Item and Presentation on the ST Aerospace Economic Development Project at the Pensacola International Airport.

February 27, 2014 - City Council approved the Interlocal Agreement with Escambia County and the City of Pensacola for Funding of Economic Development Project - ST Aerospace of Mobile, Inc.

September 9, 2014 - City Council approved the lease with VT Mobile Aerospace Engineering.

July 16, 2015 - City Council approved the selection of Greenhut Construction and authorized the Mayor to execute the contract.

September 17, 2015 - City Council authorized the Mayor to execute acceptance of the Florida Department of Transportation Joint Participation Agreement # 43571729401 in the amount of \$1,531,546 for construction funding to expand the cargo apron and construct a taxiway connector at the Pensacola International Airport of which \$1,121,242 will be used towards taxiway connecting future VT MAE facility to runway 17-35.

March 17, 2016 - City Council authorized the Mayor to execute acceptance of the Florida Department of Transportation Joint Participation Agreements # 42030029401, # 42960929401, and # 42960939401 in the amount of \$2,975,305 for construction of a taxiway connector at the Pensacola International Airport.

April 14, 2016 - City Council authorized the Mayor to execute acceptance of the Florida Department of Transportation Joint Participation Agreement # 43571769401 in the amount of \$8,599,600 for construction of a hangar at the Pensacola International Airport.

September 22, 2016 - City Council authorized the Mayor to execute Amendment No. 1 to the lease the VT Mobile Aerospace Engineering.

September 22, 2016 - City Council authorized the Mayor to execute Amendment No. 1 to the contract with Atkins North America.

February 8, 2017 - City Council authorized the Mayor to execute Amendment No. 2 and Amendment No. 3 to the contract with Atkins North America.

March 8, 2018 - City Council authorized the Mayor to execute acceptance of the State of Florida Department of

Economic Opportunity Grant Agreement G0009 in the amount of \$4,000,000 for construction of infrastructure related to MRO expansion.

September 13, 2018 - City Council authorized the Mayor to accept and execute the State of Florida Department of Transportation Public Transportation Grant Agreement Financial Project 441494-2-94-01 in the amount of \$3,000,000 for Pensacola International Airport Facilities Development related to MRO expansion.

September 13, 2018 - City Council committed funding in the amount of \$10 million from Local Option Sales Tax Series IV in support of the aerospace maintenance repair and overhaul (MRO) campus expansion.

February 6, 2019 - City Council approved the amended Interlocal Agreement between the Escambia County Board of County Commissioners and the City of Pensacola related to additional funding requirements for the aerospace maintenance, repair and overhaul (MRO) campus expansion at the Pensacola International Airport, and approved additional Local Option Sales Tax IV funding of \$5 million for the City's share of the aerospace maintenance, repair and overhaul (MRO) campus expansion at the Pensacola International Airport.

FUNDING:

| | | |
|---------|-----------------------|--|
| Budget: | \$ 35,000,000 | ST Aerospace Engineering |
| | 3,000,000 | State Legislature |
| | 14,000,000 | Governor's Job Growth |
| | 45,000,000 | FDOT Grant |
| | 15,000,000 | Escambia County |
| | 15,000,000 | City Local Option Sales Tax Series IV |
| | 12,250,000 | Federal - U.S. Economic Development Administration |
| | 66,000,000 | Triumph Gulf Coast |
| | 4,875,000 | Anticipated Additional Funding (City Responsibility) |
| | <u>\$ 210,125,000</u> | |
| Actual: | <u>\$ 210,125,000</u> | Estimated |

FINANCIAL IMPACT:

The funds for the project have been appropriated on Supplemental Budget Resolution No. 2019-13.

CITY ATTORNEY REVIEW: Yes

3/13/2019

STAFF CONTACT:

Christopher L. Holley, City Administrator
Daniel Flynn, Airport Director

ATTACHMENTS:

1) Grant Resolution

PRESENTATION: No

RESOLUTION
NO. 2019-16

A RESOLUTION
TO BE ENTITLED

A RESOLUTION AUTHORIZING AND DIRECTING THE MAYOR OF THE CITY OF PENSACOLA TO EXECUTE DEO AGREEMENT NO. G0050, FLORIDA JOB GROWTH INFRASTRUCTURE GRANT AGREEMENT, WITH THE STATE OF FLORIDA DEPARTMENT OF ECONOMIC OPPORTUNITY FOR THE PENSACOLA INTERNATIONAL AIRPORT MAINTENANCE, REPAIR AND OVERHAUL (MRO) AVIATION CAMPUS EXPANSION PROJECT; PROVIDING AN EFFECTIVE DATE.

WHEREAS, The City of Pensacola uses the Airport Management as a tool for scheduling and planning projects at the Pensacola International Airport; and

WHEREAS, the State of Florida Department of Economic Opportunity has approved the project and offered a Grant Agreement in the amount of \$10,000,000;

NOW, THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF PENSACOLA, FLORIDA AS FOLLOWS:

SECTION 1. That the City of Pensacola shall enter into the Grant Agreement for the purpose of obtaining State aid for the Airport's MRO expansion.

SECTION 2. The Mayor is hereby empowered to take all actions necessary relating to this Resolution, the duties hereunder, and any agreements or documents related hereto.

SECTION 3. This Resolution shall become effective on the fifth business day after adoption, unless otherwise provided pursuant to Section 4.03(d) of the City Charter of the City of Pensacola.

Adopted: _____

Approved: _____
President of City Council

Attest:

City Clerk



City of Pensacola

222 West Main Street
Pensacola, FL 32502

Memorandum

File #: 2019-16

City Council

3/28/2019

LEGISLATIVE ACTION ITEM

SPONSOR: Grover C. Robinson, IV, Mayor

SUBJECT:

RESOLUTION NO. 2019-16 - STATE OF FLORIDA DEPARTMENT OF ECONOMIC OPPORTUNITY GRANT AGREEMENT

RECOMMENDATION:

That City Council adopt Resolution No. 2019-16.

A RESOLUTION AUTHORIZING AND DIRECTING THE MAYOR OF THE CITY OF PENSACOLA TO EXECUTE DEO AGREEMENT NO. G0050, FLORIDA JOB GROWTH INFRASTRUCTURE GRANT AGREEMENT, WITH THE STATE OF FLORIDA DEPARTMENT OF ECONOMIC OPPORTUNITY FOR THE PENSACOLA INTERNATIONAL AIRPORT MAINTENANCE, REPAIR AND OVERHAUL (MRO) AVIATION CAMPUS EXPANSION PROJECT; PROVIDING AN EFFECTIVE DATE.

HEARING REQUIRED: No Hearing Required

SUMMARY:

On December 17, 2013, the City executed a nonbinding Memorandum of Understanding with ST Aerospace allowing the City of Pensacola to begin contract negotiations with VT Mobile Aerospace Engineering, Inc. (VT MAE) for the construction and operation of a maintenance, repair, and overhaul (MRO) facility at the Pensacola International Airport. City Council approved the negotiated lease agreement on September 9, 2014. The 173,000 sq. ft. facility officially opened in June 2018 and is on the way to creating 400 new high-wage jobs for the area.

The Mayor and Staff have a longer term strategy to grow the MRO capacity, sometimes referred to as "Project Titan". A second hangar similar in size and configuration to the first hangar, a possible support services center, an aircraft apron and automobile parking would be constructed on 16 acres of Airport property directly south of the first hangar. The construction of this second hangar area was otherwise contemplated and accounted for during the development process for the first hangar, and is referenced in the current real property lease with VT MAE. Additional facilities consisting of two hangars, each approximately 191,000 sq. ft., a 100,000 sq. ft. support services center, a 120,000 sq. ft. administrative office building, aircraft aprons, and automobile parking would also be constructed on approximately 50 acres of Airport property adjacent to Tippin Avenue on the west

side of the Airport. It is expected that the project will create a minimum of 1,325 full-time jobs with an annual average salary of \$44,461, excluding benefits. The total project cost of \$210,125,000 is funded by a combination of VT MAE investment, state and federal grants, and local funds.

As part of the funding strategy for Project Titan, the City submitted a proposal to the Florida Job Growth Grant Fund, administered by the Department of Economic Opportunity. In response to the grant proposal, the State of Florida Department of Economic Opportunity has offered a Florida Job Growth Infrastructure Grant Agreement in the amount of \$10,000,000 to assist in the construction of the MRO aviation campus. City staff and DEO staff are presently finalizing the grant agreement.

PRIOR ACTION:

June 13, 2013 - City Council adopted a resolution to support the acceptance of a grant offered by the Florida Department of Transportation as a Joint Participation Agreement # 43360229401 in the amount of \$11,090,000 for air commerce park phases I and IA - Infrastructure Development.

February 13, 2014 - City Council Discussion Item and Presentation on the ST Aerospace Economic Development Project at the Pensacola International Airport.

February 27, 2014 - City Council approved the Interlocal Agreement with Escambia County and the City of Pensacola for Funding of Economic Development Project - ST Aerospace of Mobile, Inc.

September 9, 2014 - City Council approved the lease with VT Mobile Aerospace Engineering.

July 16, 2015 - City Council approved the selection of Greenhut Construction and authorized the Mayor to execute the contract.

September 17, 2015 - City Council authorized the Mayor to execute acceptance of the Florida Department of Transportation Joint Participation Agreement # 43571729401 in the amount of \$1,531,546 for construction funding to expand the cargo apron and construct a taxiway connector at the Pensacola International Airport of which \$1,121,242 will be used towards taxiway connecting future VT MAE facility to runway 17-35.

March 17, 2016 - City Council authorized the Mayor to execute acceptance of the Florida Department of Transportation Joint Participation Agreements # 42030029401, # 42960929401, and # 42960939401 in the amount of \$2,975,305 for construction of a taxiway connector at the Pensacola International Airport.

April 14, 2016 - City Council authorized the Mayor to execute acceptance of the Florida Department of Transportation Joint Participation Agreement # 43571769401 in the amount of \$8,599,600 for construction of a hangar at the Pensacola International Airport.

September 22, 2016 - City Council authorized the Mayor to execute Amendment No. 1 to the lease the VT Mobile Aerospace Engineering.

September 22, 2016 - City Council authorized the Mayor to execute Amendment No. 1 to the contract with Atkins North America.

February 8, 2017 - City Council authorized the Mayor to execute Amendment No. 2 and Amendment No. 3 to the contract with Atkins North America.

March 8, 2018 - City Council authorized the Mayor to execute acceptance of the State of Florida Department of Economic Opportunity Grant Agreement G0009 in the amount of \$4,000,000 for construction of infrastructure related to MRO expansion.

September 13, 2018 - City Council authorized the Mayor to accept and execute the State of Florida Department of Transportation Public Transportation Grant Agreement Financial Project 441494-2-94-01 in the amount of \$3,000,000 for Pensacola International Airport Facilities Development related to MRO expansion.

September 13, 2018 - City Council committed funding in the amount of \$10 million from Local Option Sales Tax Series IV in support of the aerospace maintenance repair and overhaul (MRO) campus expansion.

February 6, 2019 - City Council approved the amended Interlocal Agreement between the Escambia County Board of County Commissioners and the City of Pensacola related to additional funding requirements for the aerospace maintenance, repair and overhaul (MRO) campus expansion at the Pensacola International Airport, and approved additional Local Option Sales Tax IV funding of \$5 million for the City's share of the aerospace maintenance, repair and overhaul (MRO) campus expansion at the Pensacola International Airport.

FUNDING:

| | | |
|---------|-----------------------|--|
| Budget: | \$ 35,000,000 | ST Aerospace Engineering |
| | 3,000,000 | State Legislature |
| | 14,000,000 | Governor's Job Growth |
| | 45,000,000 | FDOT Grant |
| | 15,000,000 | Escambia County |
| | 15,000,000 | City Local Option Sales Tax Series IV |
| | 12,250,000 | Federal - U.S. Economic Development Administration |
| | 66,000,000 | Triumph Gulf Coast |
| | <u>4,875,000</u> | Anticipated Additional Funding (City Responsibility) |
| | <u>\$ 210,125,000</u> | |

Actual: \$ 210,125,000 Estimated

FINANCIAL IMPACT:

The funds for the project have been appropriated on Supplemental Budget Resolution No. 2019-13.

CITY ATTORNEY REVIEW: Yes

3/13/2019

STAFF CONTACT:

Christopher L. Holley, City Administrator
Daniel Flynn, Airport Director

ATTACHMENTS:

- 1) Resolution No. 2019-16

PRESENTATION: No

RESOLUTION
NO. 2019-16

A RESOLUTION
TO BE ENTITLED

A RESOLUTION AUTHORIZING AND DIRECTING THE MAYOR OF THE CITY OF PENSACOLA TO EXECUTE DEO AGREEMENT NO. G0050, FLORIDA JOB GROWTH INFRASTRUCTURE GRANT AGREEMENT, WITH THE STATE OF FLORIDA DEPARTMENT OF ECONOMIC OPPORTUNITY FOR THE PENSACOLA INTERNATIONAL AIRPORT MAINTENANCE, REPAIR AND OVERHAUL (MRO) AVIATION CAMPUS EXPANSION PROJECT; PROVIDING AN EFFECTIVE DATE.

WHEREAS, The City of Pensacola uses the Airport Management as a tool for scheduling and planning projects at the Pensacola International Airport; and

WHEREAS, the State of Florida Department of Economic Opportunity has approved the project and offered a Grant Agreement in the amount of \$10,000,000;

NOW, THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF PENSACOLA, FLORIDA AS FOLLOWS:

SECTION 1. That the City of Pensacola shall enter into the Grant Agreement for the purpose of obtaining State aid for the Airport's MRO expansion.

SECTION 2. The Mayor is hereby empowered to take all actions necessary relating to this Resolution, the duties hereunder, and any agreements or documents related hereto.

SECTION 3. This Resolution shall become effective on the fifth business day after adoption, unless otherwise provided pursuant to Section 4.03(d) of the City Charter of the City of Pensacola.

Adopted: _____

Approved: _____
President of City Council

Attest:

City Clerk



Memorandum

File #: 19-00117

City Council

3/28/2019

LEGISLATIVE ACTION ITEM

SPONSOR: Grover C. Robinson, IV, Mayor

SUBJECT:

FY18 EDWARD BYRNE MEMORIAL JUSTICE ASSISTANCE GRANT (JAG) PROGRAM: LOCAL SOLICITATION

RECOMMENDATION:

That City Council approve and authorize the Mayor to execute the acceptance of the 2018 Edward Byrne Memorial Justice Assistance Grant (JAG) Program: Local Solicitation, between the City of Pensacola and the U.S. Department of Justice, Office of Justice Programs in the amount of \$27,010 upon award of grant. Further, that City Council authorize the Mayor to take all actions necessary relating to the finalization of the grant. Finally, that City Council adopt the supplemental budget resolution appropriating the grant funds.

HEARING REQUIRED: No Hearing Required

SUMMARY:

The Pensacola Police Department (PPD) will be submitting a grant application to the U.S. Department of Justice, Bureau of Assistance, under the Edward Byrne Memorial Justice Assistance Grant (JAG) Formula (Local Solicitation) to support efforts in DUI Enforcement.

To increase effectiveness and efficiency in DUI investigations, the grant will provide funding for the creation of an Intoxilyzer room at the PPD Headquarters. Currently, a room has been shared with all agencies in the area at the Escambia County Sheriff's Office. The PPD provides the agency inspections and PPD officers are often called to court to testify for other agency arrests. Having multiple agencies share the room causes some accountability issues when certain requirements are not followed. With the City of Pensacola having its own Intoxilyzer room, the PPD's responsibilities will be limited to PPD cases only. The room will also have a camera which will record directly into the evidence system, reducing time officers currently have to spend downloading video from their body worn cameras. The grant will also provide funding for overtime allowing officers to focus on high intensity traffic enforcement.

The JAG Program blends the previous Byrne Formula and Local Law Enforcement Block Grant (LLEBG) Programs (under Title XI-Department of Justice Reauthorization) to provide agencies with the flexibility to prioritize and place justice funds where they are most needed. The JAG Program provides states, tribes and local governments funding to support a broad range of activities to prevent and control crime based upon local

needs and conditions. Matching funds are not required under the JAG Program.

Among the grant requirements are that the Pensacola Police Department notify City Council of its intended use of the grant and to allow the citizens an opportunity to comment prior to the application submission.

PRIOR ACTION:

None

FUNDING:

Budget: \$27,010

Actual: \$27,010

FINANCIAL IMPACT:

The estimate grant award for the FY18 Edward Byrne Memorial Justice Assistance (JAG) Program Local Solicitation is \$27,010, based on the 2018 Florida Local JAG Allocations. Projects to be funded from this grant award do not require a local match. Approval of the supplemental budget resolution will appropriate funding for this grant.

CITY ATTORNEY REVIEW: Yes

2/28/2019

STAFF CONTACT:

Christopher L. Holley, City Administrator
Tommi Lyter, Chief of Police

ATTACHMENTS:

1. FY 18 Local Solicitation Budget Detail Worksheet
2. Supplemental Budget Resolution
3. Supplemental Budget Explanation

PRESENTATION: No

**CITY OF PENSACOLA POLICE DEPARTMENT
INTOXILYZER ROOM
FY2018 LOCAL SOLICITATION
2018-H3996-FL-DJ
Budget Detail Worksheet**

Purpose: This grant would be used to support our department's efforts in DUI Enforcement. To increase our effectiveness and efficiency in DUI investigations, we are planning on creating an Intoxilyzer room at our headquarters. We currently utilize a room we share with the all other agencies in our area at the Escambia County Sheriff's Office. We provide the agency inspections and our officers are often called to court to testify for other agency arrests. Having multiple agencies share the room has caused some accountability issues when certain requirements are not followed. Having our own Intoxilyzer room will limit our responsibilities to our own agency cases. The room will also have a camera which will record directly into our evidence system reducing time officers currently have to spend downloading video from their body worn cameras. To accomplish this goal, we will need to add certain equipment to an already existing room. This grant will be used to

A. Personnel--List each position by title and name of employee, if available. Show the annual salary rate and the percentage of time to be devoted to the project. Compensation paid for employees engaged in grant activities must be consistent with that paid for similar work within the applicant organization.

| Name/Position | Computation | Cost |
|---------------|------------------|--------------------|
| n/a | \$19,760.00 100% | \$19,760 |
| TOTAL | | \$19,760.00 |

B. Fringe Benefits--Fringe benefits should be based on actual known costs or an established formula. Fringe benefits are for the personnel listed category (A) and only for the percentage of time devoted to the project. Fringe benefits on overtime hours are limited to FICA, Workman's Compensation, and Unemployment Compensation.

| | | | |
|--|--------|----|--------------------|
| Employer's FICA | \$0.00 | 1% | \$0.00 |
| Retirement | \$0.00 | 1% | \$0.00 |
| Uniform Allowance | \$0.00 | 1% | \$0.00 |
| Health Insurance | \$0.00 | 1% | \$0.00 |
| Workman's Compensation | \$0.00 | 1% | \$0.00 |
| Unemployment Compensation | \$0.00 | 1% | \$0.00 |
| TOTAL | | | \$0.00 |
| Total Personnel & Fringe Benefits | | | \$19,760.00 |

C. Travel-- Itemize travel expenses of project personnel by purpose (e.g., staff to training, field interviews, advisory group meetings, etc. Show the basis of computation (e.g., six people 3-day training at \$X airfare, \$X lodging, \$X subsistence). In training projects travel and meals for trainees should be listed separately. Show the number of trainees and unit cost involved. Identify the location of travel, if known. Indicate source of Travel Policies applied, Applicant or Federal Travel Regulations.

| Purpose of Travel | Location | Item | Computation | Cost |
|-------------------|----------|---------|-------------|---------------|
| n/a | | Airfare | \$0.00 1 | \$0.00 |
| | | Hotel | \$0.00 1 | \$0.00 |
| | | Meals | \$0.00 1 | \$0.00 |
| TOTAL | | | | \$0.00 |

D. Equipment-- List non-expendable items that are to be purchased. (Note: Organization's own capitalization policy for

classification of equipment should be used). Expendable items should be included in the "Supplies" category. Applicants should analyze the cost benefits of purchasing versus leasing equipment, especially high cost items and those subject to rapid technical advances. Rented or leased equipment costs should be listed in the "Contractual" category.

| Item | Computation | QTY | Cost |
|---------------------------|-------------|----------|-------------------|
| Security Access Equipment | \$2,500.00 | 1 | \$2,500.00 |
| Soundproofing Materials | \$2,000.00 | 1 | \$2,000.00 |
| Office Equipment | \$750.00 ✓ | 1 478.95 | \$750.00 |
| TOTAL | | | \$5,250.00 |

E.-Supplies--List items by type (office supplies, postage, training materials, copying paper, and other expendable items such as books, hand held tape recorders) and show the basis for computation. Generally, supplies include any materials that are expendable or consumed during the course of the project.

| Supply Items | Computation | Cost |
|----------------------|-------------|-------------------|
| Intoxilyzer supplies | | \$2,000.00 |
| TOTAL | | \$2,000.00 |

F. Construction-- As a rule, construction costs are not allowable. In some cases, minor repairs or renovations may be allowable. Consult with the program office before budgeting funds in this category.

| Purpose | Description of Work | Cost |
|--------------|---------------------|---------------|
| n/a | | \$0.00 |
| TOTAL | | \$0.00 |

G. Consultants/Contracts-- Indicate whether applicant's formal, written Procurement Policy or the Federal Acquisitions

Consultant Fee: For each consultant enter the name, if known, service to be provided, hourly or daily fee (8-hour day), and estimated time on the project. Consultant fees in excess of \$450 per day require additional justification and prior approval from OJP.

| Name of Consultant | Service Provided | Computation | Cost |
|--------------------|------------------|-------------|--------|
| n/a | | \$0.00 1 | \$0.00 |
| Subtotal | | | \$0 |

Consultant Expenses: List all expenses to be paid from the grant to the individual consultant in addition to their fees (i.e., travel, meals, lodging, etc.)

| Item | Location | Computation | Cost |
|----------|----------|-------------|--------|
| n/a | | \$0.00 1 | \$0.00 |
| Subtotal | | | \$0 |

Contracts: Provide a description of the product or services to be procured by contract and an estimate of the cost. Applicants are encouraged to promote free and open competition in awarding contracts. A separate justification must be

provided for solersourpercontracts in excess of \$100,000.

| | |
|------------------|--------------|
| Item | Cost |
| Contract 1 - n/a | \$0 |
| | Subtotal \$0 |

CONSULTANTS/CONTRACTS TOTAL

H. Other Costs-- List items (e.g., rent, reproduction, telephone, janitorial or security services, and investigative or confidential funds) by major type and the basis of the computation. For example, provide the square footage and the cost per square foot rent, and provide a monthly rental cost and how many months to rent.

| Description | Computation | Cost |
|-------------|---------------|---------------|
| n/a | \$0.00 1 | \$0.00 |
| | \$0.00 1 | \$0.00 |
| | TOTAL | \$0.00 |

I. Indirect Cost--Indirect costs are allowed only if the applicant has Federally approved indirect cost rate. A copy of the rate approval, (a fully executed, negotiated agreement), must be attached. If the applicant does not have an approved rate, one can be requested by contacting the applicant's cognizant Federal agency, which will review all documentation and approve a rate for the applicant organization, or if the applicant's accounting system permits, costs may be allocated in the direct costs categories.

| Description | Computation | Cost |
|-------------|----------------|---------------|
| n/a | \$0.00 1% | \$0.00 |
| | TOTAL | \$0.00 |

Budget Summary--When you have completed the budget worksheet, transfer the totals for each category to the spaces below. Compute the total costs and the total project costs. Indicate the amount of Federal requested and the amount of non-Federal funds that will support the project.

| Budget Category | Amount |
|--------------------------------|------------------------|
| A. Personnel | \$19,760.00 |
| B. Fringe Benefits | \$0.00 |
| C. Travel | \$0.00 |
| D. Equipment | \$5,250.00 |
| E. Supplies | \$2,000.00 |
| F. Construction | \$0.00 |
| G. Consultants/Contracts | \$0.00 |
| H. Other | \$0.00 |
| Total Direct Costs | \$27,010.00 |
| I. Indirect Costs | \$0.00 |
| TOTAL PROJECT COSTS | \$27,010.00 |
| Federal Request | \$27,010.00 |
| Non-Federal Amount | \$0.00 |

Procurement: Law enforcement personnel assigned to manage this grant will work with the budget & planning department to ensure City procurement regulations are followed. The departmental needs will be identified and other accredited law enforcement agencies consulted regarding equipment proven to be effective in the field. The training division is assigned to

**RESOLUTION
NO. 2019-12**

A RESOLUTION
TO BE ENTITLED:

A RESOLUTION AUTHORIZING AND MAKING REVISIONS AND APPROPRIATIONS FOR THE
FISCAL YEAR ENDING SEPTEMBER 30, 2019; PROVIDING FOR AN EFFECTIVE DATE.

BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF PENSACOLA, FLORIDA

SECTION 1. The following appropriations from funds on hand in the fund accounts stated below, not heretofore appropriated, and transfer from funds on hand in the various accounts and funds stated below, heretofore appropriated, be, and the same are hereby made, directed and approved to-wit:

A. SPECIAL GRANTS FUND

| | | |
|----------|--------------------|-----------|
| As Reads | Federal Grants | 1,633,624 |
| To: | | |
| Reads | Federal Grants | 1,660,634 |
| As Reads | Personal Services | 222,684 |
| To: | | |
| Reads | Personal Services | 242,444 |
| As Reads | Operating Expenses | 408,599 |
| To: | | |
| Reads | Operating Expenses | 415,849 |

SECTION 2. All resolutions or parts of resolutions in conflict herewith are hereby repealed to the extent of such conflict.

SECTION 3. This resolution shall become effective on the fifth business day after adoption, unless otherwise provided pursuant to Section 4.03(d) of the City Charter of the City of Pensacola.

Adopted: _____

Approved: _____
President of City Council

Attest:

City Clerk

THE CITY OF PENSACOLA

MARCH 2019 - SUPPLEMENTAL BUDGET RESOLUTION - FY 18 EDWARD BYRNE MEMORIAL JAG PROGRAM - RES NO. 2019-12

| <u>FUND</u> | <u>AMOUNT</u> | <u>DESCRIPTION</u> |
|----------------------------|---------------|---|
| SPECIAL GRANTS FUND | | |
| Estimated Revenues | | |
| Federal Grants | 27,010 | Increase estimated revenue for Federal Grants |
| Total Revenues | <u>27,010</u> | |
| Appropriations | | |
| Personal Services | 19,760 | Increase appropriation for Personal Services |
| Operating Expenses | <u>7,250</u> | Increase appropriation for Operating Expenses |
| Total Appropriations | <u>27,010</u> | |



City of Pensacola

222 West Main Street
Pensacola, FL 32502

Memorandum

File #: 2019-12

City Council

3/28/2019

LEGISLATIVE ACTION ITEM

SPONSOR: Grover C. Robinson, IV, Mayor

SUBJECT:

SUPPLEMENTAL BUDGET RESOLUTION NO. 2019-12 - FY18 EDWARD BYRNE MEMORIAL JUSTICE ASSISTANCE GRANT (JAG) PROGRAM: LOCAL SOLICITATION

RECOMMENDATION:

That City Council adopt Supplemental Budget Resolution No. 2019-12.

A RESOLUTION AUTHORIZING AND MAKING REVISIONS AND APPROPRIATIONS FOR THE FISCAL YEAR ENDING SEPTEMBER 30, 2019; PROVIDING FOR AN EFFECTIVE DATE.

HEARING REQUIRED: No Hearing Required

SUMMARY:

The Pensacola Police Department (PPD) will be submitting a grant application to the U.S. Department of Justice, Bureau of Assistance, under the Edward Byrne Memorial Justice Assistance Grant (JAG) Formula (Local Solicitation) to support efforts in DUI Enforcement.

To increase effectiveness and efficiency in DUI investigations, the grant will provide funding for the creation of an Intoxilyzer room at the PPD Headquarters. Currently, a room has been shared with all agencies in the area at the Escambia County Sheriff's Office. The PPD provides the agency inspections and PPD officers are often called to court to testify for other agency arrests. Having multiple agencies share the room causes some accountability issues when certain requirements are not followed. With the City of Pensacola having its own Intoxilyzer room, the PPD's responsibilities will be limited to PPD cases only. The room will also have a camera which will record directly into the evidence system, reducing time officers currently have to spend downloading video from their body worn cameras. The grant will also provide funding for overtime allowing officers to focus on high intensity traffic enforcement.

The JAG Program blends the previous Byrne Formula and Local Law Enforcement Block Grant (LLEBG) Programs (under Title XI-Department of Justice Reauthorization) to provide agencies with the flexibility to prioritize and place justice funds where they are most needed. The JAG Program provides states, tribes and local governments funding to support a broad range of activities to prevent and control crime based upon local needs and conditions. Matching funds are not required under the JAG Program.

Among the grant requirements are that the Pensacola Police Department notify City Council of its intended use of the grant and to allow the citizens an opportunity to comment prior to the application submission.

PRIOR ACTION:

None

FUNDING:

Budget: \$27,010

Actual: \$27,010

FINANCIAL IMPACT:

The estimate grant award for the FY18 Edward Byrne Memorial Justice Assistance (JAG) Program Local Solicitation is \$27,010, based on the 2018 Florida Local JAG Allocations. Projects to be funded from this grant award do not require a local match. Approval of the supplemental budget resolution will appropriate funding for this grant.

CITY ATTORNEY REVIEW: Yes

2/28/2019

STAFF CONTACT:

Christopher L. Holley, City Administrator
Tommi Lyter, Chief of Police

ATTACHMENTS:

1. Supplemental Budget Resolution No. 2019-12
2. Supplemental Budget Explanation No. 2019-12

PRESENTATION: No

**RESOLUTION
NO. 2019-12**

A RESOLUTION
TO BE ENTITLED:

A RESOLUTION AUTHORIZING AND MAKING REVISIONS AND APPROPRIATIONS FOR THE
FISCAL YEAR ENDING SEPTEMBER 30, 2019; PROVIDING FOR AN EFFECTIVE DATE.

BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF PENSACOLA, FLORIDA

SECTION 1. The following appropriations from funds on hand in the fund accounts stated below, not heretofore appropriated, and transfer from funds on hand in the various accounts and funds stated below, heretofore appropriated, be, and the same are hereby made, directed and approved to-wit:

A. SPECIAL GRANTS FUND

| | | |
|----------|--------------------|-----------|
| As Reads | Federal Grants | 1,633,624 |
| To: | | |
| Reads | Federal Grants | 1,660,634 |
| As Reads | Personal Services | 222,684 |
| To: | | |
| Reads | Personal Services | 242,444 |
| As Reads | Operating Expenses | 408,599 |
| To: | | |
| Reads | Operating Expenses | 415,849 |

SECTION 2. All resolutions or parts of resolutions in conflict herewith are hereby repealed to the extent of such conflict.

SECTION 3. This resolution shall become effective on the fifth business day after adoption, unless otherwise provided pursuant to Section 4.03(d) of the City Charter of the City of Pensacola.

Adopted: _____

Approved: _____
President of City Council

Attest:

City Clerk

THE CITY OF PENSACOLA

MARCH 2019 - SUPPLEMENTAL BUDGET RESOLUTION - FY 18 EDWARD BYRNE MEMORIAL JAG PROGRAM - RES NO. 2019-12

| <u>FUND</u> | <u>AMOUNT</u> | <u>DESCRIPTION</u> |
|----------------------------|---------------|---|
| SPECIAL GRANTS FUND | | |
| Estimated Revenues | | |
| Federal Grants | 27,010 | Increase estimated revenue for Federal Grants |
| Total Revenues | <u>27,010</u> | |
| Appropriations | | |
| Personal Services | 19,760 | Increase appropriation for Personal Services |
| Operating Expenses | 7,250 | Increase appropriation for Operating Expenses |
| Total Appropriations | <u>27,010</u> | |



City of Pensacola

222 West Main Street
Pensacola, FL 32502

Memorandum

File #: 2019-20

City Council

3/28/2019

LEGISLATIVE ACTION ITEM

SPONSOR: City Council Member Jewel Cannada-Wynn

SUBJECT:

RESOLUTION NO. 2019-20 - ESTABLISHING YOUTH IN GOVERNMENT DAY

RECOMMENDATION:

That City Council adopt Resolution No. 2019-20.

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF PENSACOLA,
FLORIDA ESTABLISHING A YOUTH IN GOVERNMENT DAY TO BE HELD APRIL 22, 2019
WITHIN THE CITY OF PENSACOLA; PROVIDING AN EFFECTIVE DATE

HEARING REQUIRED: No Hearing Required

SUMMARY:

The City of Pensacola views the youth of the community to be the future of the City and it is the desire of the City to provide the youth with the opportunity to see the inner workings of government; it is deemed in the best interest of the City, the youth and the furthering of transparency to urge and promote a closer relationship between our youth and their local government.

PRIOR ACTION:

April 30, 2018 - Youth in Government Day held
September 16, 2016 - Youth in Government Day held
April 13, 2010 - Student Government Day held

FUNDING:

N/A

FINANCIAL IMPACT:

None

STAFF CONTACT:

Don Kraher, Council Executive

ATTACHMENTS:

- 1) Resolution No. 2019-20

PRESENTATION: No

RESOLUTION
NO. 2019-20

A RESOLUTION
TO BE ENTITLED:

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF PENSACOLA, FLORIDA ESTABLISHING A YOUTH IN GOVERNMENT DAY TO BE HELD APRIL 22, 2019 WITHIN THE CITY OF PENSACOLA; PROVIDING AN EFFECTIVE DATE.

WHEREAS, the City of Pensacola views the youth of the community to be the future of the City; and

WHEREAS, the youth of our community are increasingly more politically and civically engaged within the community; and

WHEREAS, issues arise of which the youth in our community have developed unique perspectives; and

WHEREAS, it is the desire of the City to provide the youth of our community with the opportunity to see the inner workings of government; and

WHEREAS, it is deemed in the best interest of the City, the youth and the furthering of transparency to urge and promote a closer relationship between our youth and their local government; and

WHEREAS, the City Council has set aside a certain date to be devoted to such an endeavor.

NOW, THEREFORE BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF PENSACOLA, FLORIDA:

Section 1. That the City Council of the City of Pensacola establishes Monday April 22, 2019 as “Youth in Government Day – 2019” within the City of Pensacola, Florida.

Section 2. This Resolution shall become effective on the fifth business day after adoption, unless otherwise provided pursuant to Section 4.03(d) of the City Charter of the City of Pensacola.

Adopted: _____

Approved: _____
President of City Council

Attest:

City Clerk



City of Pensacola

222 West Main Street
Pensacola, FL 32502

Memorandum

File #: 07-19

City Council

3/28/2019

LEGISLATIVE ACTION ITEM

SPONSOR: Grover C. Robinson, IV, Mayor

SUBJECT:

PROPOSED ORDINANCE NO. 07-19 - REQUEST FOR ZONING MAP AMENDMENT - 3100 NAVY BOULEVARD

RECOMMENDATION:

That City Council adopt Proposed Ordinance No. 07-19 on second reading.

AN ORDINANCE AMENDING THE ZONING CLASSIFICATION OF CERTAIN PROPERTY PURSUANT TO AND CONSISTENT WITH THE COMPREHENSIVE PLAN OF THE CITY OF PENSACOLA; AMENDING THE ZONING MAP OF THE CITY OF PENSACOLA; REPEALING CLAUSE AND EFFECTIVE DATE.

HEARING REQUIRED: No Hearing Required

SUMMARY:

Centennial Imports, LLC is requesting to rezone the property located at 3100 Navy Boulevard from Commercial (C-1 and C-2) to Commercial (C-3). The current future land use category of Commercial would accommodate this rezoning and so this request does not include a change to the future land use designation. The property is currently occupied by Centennial Imports, LLC, used car dealership. The applicant indicates the reason for this request is to make the zoning consistent. This request has been routed through the various City departments and utility providers and those comments are attached for your review.

On February 12, 2019, the Planning Board recommended approval of the proposed Zoning Map amendment by a vote of 5 to 1.

PRIOR ACTION:

March 14, 2019 - City Council voted to approve Proposed Ordinance No. 07-19 on first reading.

FUNDING:

N/A

FINANCIAL IMPACT:

None

CITY ATTORNEY REVIEW: Yes

2/21/2019

STAFF CONTACT:

Christopher L. Holley, City Administrator
Sherry H. Morris, AICP, Planning Services Administrator

ATTACHMENTS:

- 1) Proposed Ordinance No. 07-19
- 2) Rezoning Application, 3100 Navy Boulevard
- 3) Survey, 3100 Navy Boulevard
- 4) Technical Comments, 3100 Navy Boulevard
- 5) February 12, 2019 Planning Board Minutes

PRESENTATION: No

PROPOSED
ORDINANCE NO. 07-19

ORDINANCE NO. _____

AN ORDINANCE
TO BE ENTITLED:

AN ORDINANCE AMENDING THE ZONING CLASSIFICATION OF CERTAIN PROPERTY PURSUANT TO AND CONSISTENT WITH THE COMPREHENSIVE PLAN OF THE CITY OF PENSACOLA; AMENDING THE ZONING MAP OF THE CITY OF PENSACOLA; REPEALING CLAUSE AND EFFECTIVE DATE.

WHEREAS, the City of Pensacola adopted a Comprehensive Plan on October 4, 1990, pursuant to applicable law; and

WHEREAS, a proposed amended zoning classification has been referred to the local planning agency pursuant to §163.3174, Fla. Stat., and a proper public hearing was held on March 14, 2019 concerning the following proposed zoning classification affecting the property described therein; and

WHEREAS, after due deliberation, the City Council has determined that the amended zoning classification set forth herein will affirmatively contribute to the health, safety, and general welfare of the citizens of the City of Pensacola; and

WHEREAS, said amended zoning classification is consistent with all applicable elements of the Comprehensive Plan as amended,
NOW, THEREFORE,

BE IT ORDAINED BY THE CITY OF PENSACOLA, FLORIDA:

SECTION 1. That the Zoning Map of the City of Pensacola and all notations, references and information shown thereon is hereby amended so that the following described real property located in the City of Pensacola, Florida, to-wit:

The parcel of real estate in Escambia County, Florida described as Lot No. 22, Block No. 1, BAYOU GROVE SUBDIVISION, except that portion of said Lot lying East of a line drawn Northerly in a continuation of the East line of Lot No. 23 of said Block 1 of said subdivision, according to plat of said subdivision filed in Plat Book 2, at Page 87 of the Public Records of Escambia County, Florida.

AND:

Lot 23, Block 1, BAYOU GROVE SUBDIVISION, according to plat recorded in Plat Book 2, Page 87 of the Public Records of Escambia County, Florida.

AND:

Beginning at the Northwest corner of the intersection of the North line of Navy Boulevard with the West line of Davison Street, thence North 1 degree 30' West 191.1 feet, thence South 88 degrees 3' West 120 feet, thence South 28 degrees 23' West 80.6 feet, thence North 79 degrees 56' West 40.8 feet, thence South 1 degree 30' East 162.4 feet to the North line of Navy Boulevard, thence North 79 degrees 05' East along the North line of Navy Boulevard 202.7 feet to point of beginning, being Lots 1, 2 and a portion of Lot 22 in Block 1 Bayou Grove, according to plat filed in Plat Book 2 at page 87 and Fractional Lots 9, 10, 11 and 12 in Block 121 Pettersen addition according to plat of the City of Pensacola as copyrighted by Thomas C. Watson in 1906.

is hereby changed from Commercial (C-1 and C-2) to Commercial (C-3).

SECTION 2. All ordinances or parts of ordinances in conflict herewith are hereby repealed to the extent of such conflict.

SECTION 3. This ordinance shall become effective on the fifth business day after adoption, unless otherwise provided pursuant to Section 4.03(d) of the City Charter of the City of Pensacola.

Passed: _____

Approved: _____
President of City Council

Attest:

City Clerk

Lot 1



REZONING

Please check application type:

Conventional Rezoning

Application Fee: \$2,500.00

Rehearing/Rescheduling (Planning Board): \$250.00

Rehearing/Rescheduling (City Council): \$750.00

Comprehensive Plan / FLUM Amendment

(< 10 acres)

\$3,500.00

\$250.00

\$750.00

(≥ 10 acres)

\$3,500.00

\$250.00

\$1,000.00

Applicant Information:

Name: George Biggs Date: 1/3/19

Address: P.O. Box 1552 Pensacola, FL 32591-1552

Phone: 850 430 4307 Fax: 850 430 4308 Email: george@gabiggs.com

Property Information:

Owner Name: Centennial Imports Phone: 877-759-7927

Location/Address: 3100 Navy Blvd. Pensacola, FL 32505

Parcel ID: 00-05-00-9092-220-001 Acres/Square Feet: 4416

Zoning Classification: Existing C-1 Proposed C-3

Future Land Use Classification: Existing Commercial Proposed Commercial

Reason Rezoning Requested: to make 3 adjoining
lots currently C2, C1 & C3
All C-3 for future use

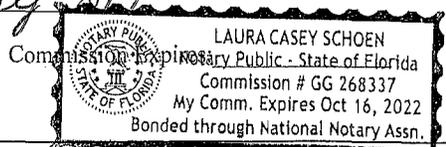
- Required Attachments: (A) Full legal description of property (from deed or survey)
 (B) General location map with property to be rezoned indicated thereon

The above information, together with all other answers and information provided by me (us) as petitioner (s)/applicant (s) in the subject application, and all other attachments thereto, is accurate and complete to the best of my (our) knowledge and belief as of this 4 day of January, 2019

Applicant Signature: George Biggs
Applicant Name (Print): George Biggs

Owner Signature: Karan Pox
Owner Name (Print): Karan Pox

Sworn to and subscribed to before me this 4th day of January, 2019
Name: Laura C. Schoen



FOR OFFICE USE ONLY

Council District: #7 Date Received: 1/11/2019 Case Number: N/A
 Date Postcards mailed: 2/14/19 Planning Board Date: 2/14/19 Recommendation: N/A
 Committee Date: N/A Council Date: _____ e Council Action: _____ e
 Second Reading: _____ Ordinance Number: _____



REZONING

Please check application type:

Conventional Rezoning

Application Fee: \$2,500.00

Rehearing/Rescheduling (Planning Board): \$250.00

Rehearing/Rescheduling (City Council): \$750.00

Comprehensive Plan / FLUM Amendment

(< 10 acres)

\$3,500.00

\$250.00

\$750.00

(≥ 10 acres)

\$3,500.00

\$250.00

\$1,000.00

Applicant Information:

Name: George BIGGS Date: 1/3/19

Address: P.O. Box 1552 Pensacola, FL 32591-1552

Phone: 850 430 4307 Fax: 850 430 4308 Email: george@gabiggs.com

Property Information:

Owner Name: Centennial Imports. Phone: 877-759-7927

Location/Address: 3100 NAVY BLVD; Pensacola, FL 32505

Parcel ID: 00-05-00-9090-001-121 Acres/Square Feet: 8,854.5 SF

Zoning Classification: Existing C-2 Proposed C-3

Future Land Use Classification: Existing Commercial Proposed Commercial

Reason Rezoning Requested: to Make 3 ADJOINING
lots currently C-2, C-1 + C-3 all C-3
for future use

- Required Attachments: (A) Full legal description of property (from deed or survey)
- (B) General location map with property to be rezoned indicated thereon

The above information, together with all other answers and information provided by me (us) as petitioner (s)/applicant (s) in the subject application, and all other attachments thereto, is accurate and complete to the best of my (our) knowledge and belief as of this 4 day of January, 2019.

George Biggs
Applicant Signature

Karan Box
Owner Signature

George Biggs
Applicant Name (Print)

Karan Box
Owner Name (Print)

Sworn to and subscribed to before me this 4 day of January, 2019

Name: Laura C Schoen

Commission # 11111
LAURA CASEY SCHOEN
Notary Public - State of Florida
Commission # GG 268337
My Comm. Expires Oct 16, 2022
Bonded through National Notary Assn.

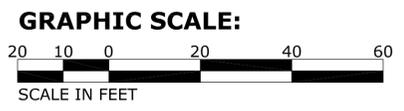
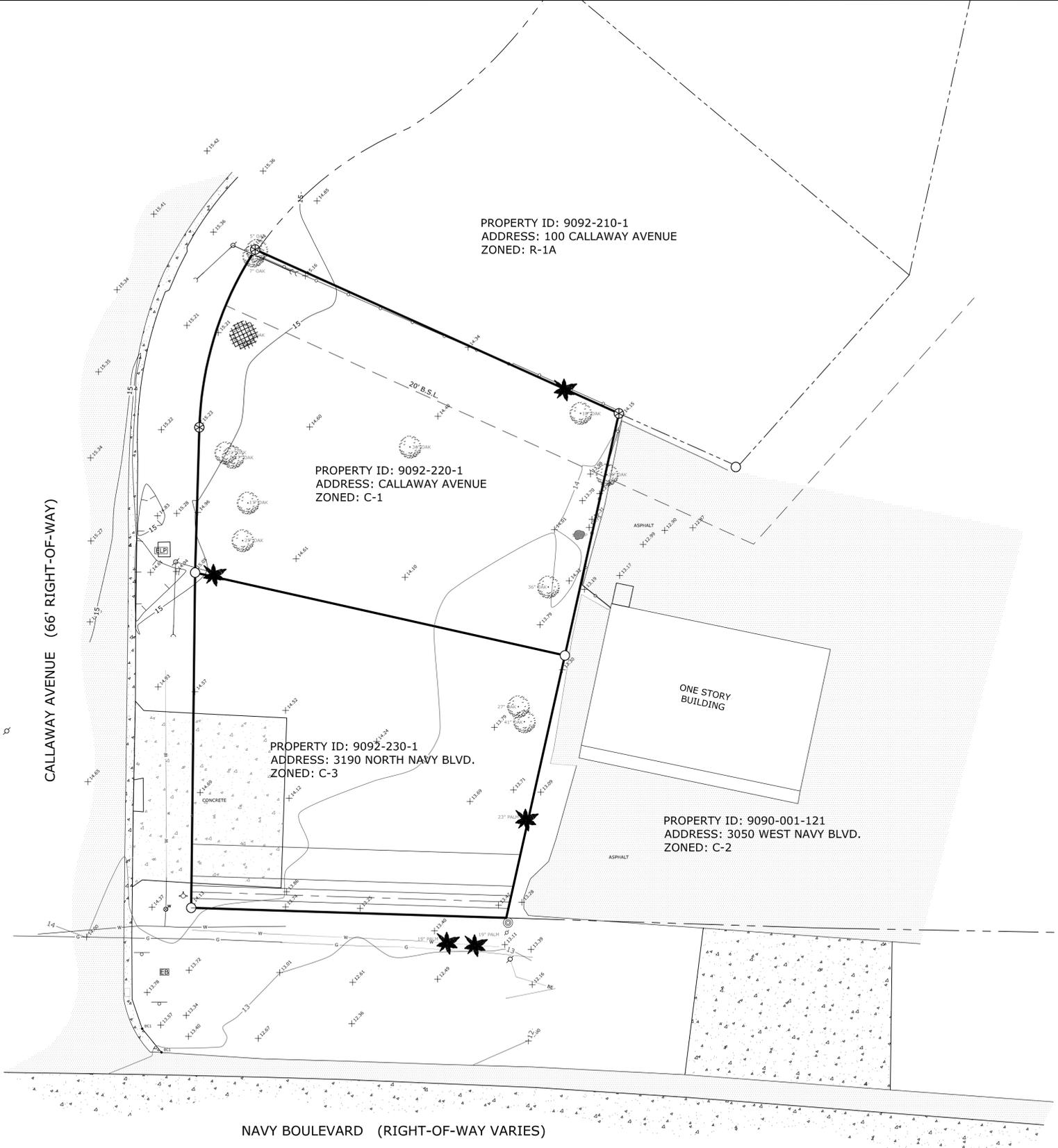
FOR OFFICE USE ONLY

Council District: #1 Date Received: 1/11/2019 Case Number: N/A

Date Postcards mailed: 2/4/19 Planning Board Date: 2/14/19 Recommendation: N/A^e

Committee Date: N/A Council Date: _____ Council Action: e e e

Second Reading: _____ Ordinance Number: _____



- LEGEND:**
- ELECTRIC BOX
 - POWER POLE
 - GUY WIRE ANCHOR
 - 36" CONCRETE UTILTIY POLE
 - WATER VALVE
 - FIRE HYDRANT
 - SIGN
 - BURIED ELECTRIC LINE
 - WATER LINE
 - GAS LINE
 - 1" IRON PIPE FOUND
 - 1/2" CAPPED IRON ROD LB "CORP7277"
 - 1/2" CAPPED IRON ROD ILLEGIBLE

FABRE ENGINEERING, INC.
 DBA
FABRE ENGINEERING & SURVEYING
 ENGINEERS ♦ PLANNERS ♦ SURVEYORS
 119 GREGORY SQUARE PENSACOLA, FLORIDA 32502
 TELEPHONE: 850-433-6438 FAX: 850-434-7842
 L.B. NO. 000679 E.B. NO. 0007215



EXISTING CONDITIONS & TOPOGRAPHY
 NOT Released for Construction Date: _____
 As-Built Record Drawing By: _____ Date: _____

CENTENNIAL IMPORTS
 PARKING LOT EXPANSION
 FOR
 CENTENNIAL IMPORTS OF PENSACOLA
 ESCAMBIA COUNTY FLORIDA

Revisions:

| | |
|--|--|
| | |
| | |
| | |
| | |

Frank J. Fabre, P.E.

 P.E. #15967

Designed By: MER
 Drawn By: JMC
 Checked By: MER
 Date: 10-20-2015
 Job Number: 150088
 File Name: SEE LEFT
 Sheet: **G-201**

Brandi Deese

From: SAUERS, BRAD <bs5403@att.com>
Sent: Monday, January 14, 2019 9:27 AM
To: Brandi Deese
Subject: FW: Please Review & Comment - 3100 Navy Boulevard Rezoning
Attachments: Rezoning Application, 3100 Navy Boulevard, Centennial Imports.pdf; Survey for 3100 Navy Boulevard Rezoning.pdf

AT&T has no objection.

Brad Sauers
Manager – OSP Plng and Eng
Technology Operations

AT&T
605 W Garden St, Pensacola, FL 32502
o 850.436.1495 | bs5403@att.com

MOBILIZING YOUR WORLD

From: FENNER, KARL L
Sent: Friday, January 11, 2019 4:23 PM
To: SAUERS, BRAD <bs5403@att.com>
Subject: FW: Please Review & Comment - 3100 Navy Boulevard Rezoning

Brad,
See below and attached.

Karl Fenner
Area Manager – OSP Plng and Eng
Technology Operations

AT&T
605 W Garden St, Pensacola, FL 32502
o 850.436.1485 | kf5345@att.com

MOBILIZING YOUR WORLD

From: Brandi Deese <bdeese@cityofpensacola.com>
Sent: Friday, January 11, 2019 2:44 PM
To: Andre Calaminus <andre.calaminus@ecua.fl.gov>; Annie Bloxson <ABloxson@cityofpensacola.com>; Bill Kimball <bkimball@cityofpensacola.com>; Brad Hinote <bradhinote@cityofpensacola.com>; Brian Cooper <bcooper@cityofpensacola.com>; Chris Mauldin <CMauldin@cityofpensacola.com>; Dennis Fleming <DFleming@cityofpensacola.com>; Derrik Owens <DOwens@cityofpensacola.com>; Diane Moore <DMoore@cityofpensacola.com>; Jonathan Bilby <JBilby@cityofpensacola.com>; FENNER, KARL L <kf5345@att.com>; KENNINGTON, STEPHEN <sk1674@att.com>; Miriam Woods <MWoods@cityofpensacola.com>; Paul A Kelly(GIS) <PAKelly@cityofpensacola.com>; Robbie Weekley <rweekley@cityofpensacola.com>; Ryan J. Novota <RNovota@cityofpensacola.com>; Sherry Morris <SMorris@cityofpensacola.com>; Simmons, Kellie L. <KLGRESSE@SOUTHERNCO.COM>

Brandi Deese

From: Andre Calaminus <andre.calaminus@ecua.fl.gov>
Sent: Monday, January 14, 2019 2:13 PM
To: Brandi Deese
Subject: RE: Please Review & Comment - 3100 Navy Boulevard Rezoning

Hi Brandi,

ECUA has no comment or objection to the rezoning of those 3 parcels.

Thanks,

Andre Calaminus | Right of Way Agent | Emerald Coast Utilities Authority |

P.O. Box 17089 | Pensacola, FL 32522-7089 | Web: www.ecua.fl.gov |

Phone: (850) 969-5822 | Fax: (850) 969-6511 |

From: Brandi Deese [mailto:bdeese@cityofpensacola.com]
Sent: Friday, January 11, 2019 2:44 PM
To: Andre Calaminus <andre.calaminus@ecua.fl.gov>; Annie Bloxson <ABloxson@cityofpensacola.com>; Bill Kimball <bkimball@cityofpensacola.com>; Brad Hinote <bradhinote@cityofpensacola.com>; Brian Cooper <bcooper@cityofpensacola.com>; Chris Mauldin <CMauldin@cityofpensacola.com>; Dennis Fleming <DFleming@cityofpensacola.com>; Derrik Owens <DOwens@cityofpensacola.com>; Diane Moore <DMoore@cityofpensacola.com>; Jonathan Bilby <JBilby@cityofpensacola.com>; Karl Fenner (KF5345@att.com) <KF5345@att.com>; KENNINGTON, STEPHEN <sk1674@att.com>; Miriam Woods <MWoods@cityofpensacola.com>; Paul A Kelly(GIS) <PAKelly@cityofpensacola.com>; Robbie Weekley <rweekley@cityofpensacola.com>; Ryan J. Novota <RNovota@cityofpensacola.com>; Sherry Morris <SMorris@cityofpensacola.com>; Simmons, Kellie L. <KLGRESSE@SOUTHERNCO.COM>
Cc: Leslie Statler <LStatler@cityofpensacola.com>; Amy Hargett <ahargett@cityofpensacola.com>; Karen Lefebvre <KLefebvre@cityofpensacola.com>
Subject: Please Review & Comment - 3100 Navy Boulevard Rezoning

Happy Friday Afternoon -

Please review and comment on the attached rezoning for 3100 Navy Boulevard – Centennial Imports. The property owner is seeking to make his zoning consistent among the various parcels and has requested the C-1 and C-2 parcels be rezoned to C-3. The land use of a car lot remains the same and there are no plans at this time for that use to change. Please submit all comments/concerns by Friday, January 25th in order for the applicant to move forward to Planning Board in February. Thanks so much and have a wonderful weekend!

Brandi C. Deese, AICP

Planning Services Division

City of Pensacola

222 W. Main Street (5th Floor)

Pensacola, FL 32514

Office: 850.435.1697

www.cityofpensacola.com/139/Planning-Services

Florida has a very broad public records law. Under Florida law, both the content of emails and email addresses are public records. If you do not want the content of your email or your email address released in response to a

Brandi Deese

From: Annie Bloxson
Sent: Tuesday, January 22, 2019 7:33 AM
To: Brandi Deese
Subject: RE: Please Review & Comment - 3100 Navy Boulevard Rezoning

Good Morning,

I have no issues at this time.

Annie Bloxson

Fire Marshal
Pensacola Fire Department
O: 850-436-5200
ABloxson@cityofpensacola.com

From: Brandi Deese <bdeese@cityofpensacola.com>
Sent: Friday, January 18, 2019 4:08 PM
To: Annie Bloxson <ABloxson@cityofpensacola.com>; Bill Kimball <bkimball@cityofpensacola.com>; Brad Hinote <bradhinote@cityofpensacola.com>; Brian Cooper <bcooper@cityofpensacola.com>; Chris Mauldin <CMauldin@cityofpensacola.com>; Dennis Fleming <DFleming@cityofpensacola.com>; Derrick Owens <DOwens@cityofpensacola.com>; Jonathan Bilby <JBilby@cityofpensacola.com>; Kellie L. - Gulf Power Simmons (Kellie.Simmons@nexteraenergy.com) <Kellie.Simmons@nexteraenergy.com>; KENNINGTON, STEPHEN <sk1674@att.com>; Miriam Woods <MWoods@cityofpensacola.com>; Paul A Kelly(GIS) <PAKelly@cityofpensacola.com>; Robbie Weekley <rweekley@cityofpensacola.com>; Ryan J. Novota <RNovota@cityofpensacola.com>; Sherry Morris <SMorris@cityofpensacola.com>
Cc: Leslie Statler <LStatler@cityofpensacola.com>; Amy Hargett <ahargett@cityofpensacola.com>; Karen Lefebvre <KLefebvre@cityofpensacola.com>
Subject: FW: Please Review & Comment - 3100 Navy Boulevard Rezoning

Good Afternoon!

Just a quick reminder that your comments are required by January 25th. Hope you have a wonderful long weekend!

Brandi C. Deese, AICP

Planning Services Division
City of Pensacola
222 W. Main Street (5th Floor)
Pensacola, FL 32514
Office: 850.435.1697
www.cityofpensacola.com/139/Planning-Services

Brandi Deese

From: Diane Moore
Sent: Monday, January 14, 2019 12:06 PM
To: Brandi Deese
Subject: RE: Please Review & Comment - 3100 Navy Boulevard Rezoning

We have no comments concerning the rezoning.

Thanks,
Diane

Diane Moore | Gas Distribution Engineer
Pensacola Energy | 1625 Atwood Drive, Pensacola, FL 32514
Desk: 850-474-5319 | Cell: 850-324-8004 | Fax: 850-474-5331
Email: dmoore@cityofpensacola.com

***Please consider the environment before printing this email.



For Non-Emergency Citizen Requests, Dial 311 or visit Pensacola311.com

Notice: Florida has a very broad public records law. As a result, any written communication created or received by City of Pensacola officials and employees will be made available to the public and media, upon request, unless otherwise exempt. Under Florida law, email addresses are public records. If you do not want your email address released in response to a public records request, do not send electronic mail to this office. Instead, contact our office by phone or in writing.

From: Brandi Deese
Sent: Friday, January 11, 2019 2:44 PM
To: Andre Calaminus; Annie Bloxson; Bill Kimball; Brad Hinote; Brian Cooper; Chris Mauldin; Dennis Fleming; Derrick Owens; Diane Moore; Jonathan Bilby; Karl Fenner (KF5345@att.com); KENNINGTON, STEPHEN; Miriam Woods; Paul A Kelly(GIS); Robbie Weekley; Ryan J. Novota; Sherry Morris; Simmons, Kellie L.
Cc: Leslie Statler; Amy Hargett; Karen Lefebvre
Subject: Please Review & Comment - 3100 Navy Boulevard Rezoning

Happy Friday Afternoon -

Please review and comment on the attached rezoning for 3100 Navy Boulevard – Centennial Imports. The property owner is seeking to make his zoning consistent among the various parcels and has requested the C-1 and C-2 parcels be rezoned to C-3. The land use of a car lot remains the same and there are no plans at this time for that use to change. Please submit all comments/concerns by Friday, January 25th in order for the applicant to move forward to Planning Board in February. Thanks so much and have a wonderful weekend!

Brandi C. Deese, AICP

Planning Services Division
City of Pensacola
222 W. Main Street (5th Floor)

Brandi Deese

From: Derrick Owens
Sent: Friday, January 18, 2019 4:10 PM
To: Brandi Deese
Subject: RE: Please Review & Comment - 3100 Navy Boulevard Rezoning

PW&F has no objection to the subject request.

Thanks

From: Brandi Deese
Sent: Friday, January 18, 2019 4:08 PM
To: Annie Bloxson <ABloxson@cityofpensacola.com>; Bill Kimball <bkimball@cityofpensacola.com>; Brad Hinote <bradhinote@cityofpensacola.com>; Brian Cooper <bcooper@cityofpensacola.com>; Chris Mauldin <CMauldin@cityofpensacola.com>; Dennis Fleming <DFleming@cityofpensacola.com>; Derrick Owens <DOwens@cityofpensacola.com>; Jonathan Bilby <JBilby@cityofpensacola.com>; Kellie L. - Gulf Power Simmons (Kellie.Simmons@nexteraenergy.com) <Kellie.Simmons@nexteraenergy.com>; KENNINGTON, STEPHEN <sk1674@att.com>; Miriam Woods <MWoods@cityofpensacola.com>; Paul A Kelly(GIS) <PAKelly@cityofpensacola.com>; Robbie Weekley <rweekley@cityofpensacola.com>; Ryan J. Novota <RNovota@cityofpensacola.com>; Sherry Morris <SMorris@cityofpensacola.com>
Cc: Leslie Statler <LStatler@cityofpensacola.com>; Amy Hargett <ahargett@cityofpensacola.com>; Karen Lefebvre <KLefebvre@cityofpensacola.com>
Subject: FW: Please Review & Comment - 3100 Navy Boulevard Rezoning

Good Afternoon!

Just a quick reminder that your comments are required by January 25th. Hope you have a wonderful long weekend!

Brandi C. Deese, AICP

Planning Services Division

City of Pensacola

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Pensacola, FL 32514

Office: 850.435.1697

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From: Brandi Deese
Sent: Friday, January 11, 2019 2:44 PM
Subject: Please Review & Comment - 3100 Navy Boulevard Rezoning

Happy Friday Afternoon -

Please review and comment on the attached rezoning for 3100 Navy Boulevard – Centennial Imports. The property owner is seeking to make his zoning consistent among the various parcels and has requested the C-1 and C-2 parcels be rezoned to C-3. The land use of a car lot remains the same and there are no plans at this time for that use to change. Please submit all comments/concerns by Friday, January 25th in order for the applicant to move forward to Planning Board in February. Thanks so much and have a wonderful weekend!

PLANNING SERVICES

MINUTES OF THE PLANNING BOARD

February 12, 2019

MEMBERS PRESENT: Chairman Paul Ritz, Danny Grundhoefer, Kurt Larson, Ryan Wiggins, Nina Campbell, Laurie Murphy

MEMBERS ABSENT: Nathan Monk

STAFF PRESENT: Brandi Deese, Assistant Planning Services Administrator, Leslie Statler, Planner, Robyn Tice, Clerk's Office, Ross Pristera, Advisor

OTHERS PRESENT: Daniel Rivera, Teresa Hill, George Biggs, Laurie Byrne, Bobby Kickliter, Barbara Mayall, David Peaden, Derek Cosson, Fred Gunther, Drew Buchanan, Marcie Whitaker, Sandy Boyd, Councilwoman Ann Hill, Councilwoman Sherri Myers

AGENDA:

- Quorum/Call to Order
- Swearing in of New Member (Laurie Murphy)
- Approval of Meeting Minutes from January 8, 2019.
- **New Business:**
 1. Consider Rezoning for 3100 Navy Boulevard from C-1, C-2 to C-3.
 2. Amendment to LDC Section 12-12-5 Building Permits - Historic Building Demolition Review
- Open Forum
- Adjournment

Call to Order / Quorum Present

Chairman Ritz called the meeting to order at 2:02 pm with a quorum present and explained the Board procedures to the audience.

Swearing in of New Member (Laurie Murphy) The Clerk's Office swore in new board member Laurie Murphy.

Approval of Meeting Minutes

Ms. Wiggins made a motion to approve the January 8, 2019 minutes, seconded by Mr. Larson, and it carried unanimously.

New Business

Consider Rezoning for 3100 Navy Boulevard from C-1, C-2 to C-3

Mr. George Biggs on behalf of Centennial Imports, LLC is requesting to rezone the property located at 3100 Navy Boulevard from Commercial (C-1 and C-2) to Commercial (C-3). The current future land use category of Commercial would accommodate this rezoning and so this request does not include a change to the future land use designation. The property is currently occupied by Centennial Imports, LLC, a used car dealership. The applicant indicates the reason for this request is to make the zoning consistent. This request has been routed through the various City departments and utility providers with no significant comments received.

Chairman Ritz stated this was of a serious nature due to C-3 being the most intense commercial district and requested that Mr. Biggs speak.

Mr. Biggs addressed the Board on behalf of John Mobley, the owner. Mr. Mobley had acquired the lots as they became available, and his intent was to refurbish the area, but the design was difficult to accomplish within the three zoning districts. Ms. Deese confirmed the largest parcel was C-3. Chairman Ritz reminded the Board and the audience that if approved as C-3, anything allowed in C-3 under this owner would be available to future owners as well. Mr. Biggs advised the current car dealership was within the C-2 and C-3 districts. He then provided an overlay to demonstrate what the owner planned to develop, and Ms. Deese confirmed the owner needed C-3 for a car dealership. Mr. Biggs pointed out there would still be the required buffers and landscaping.

Chairman Ritz asked for audience input, and there were no speakers. Mr. Biggs stated the existing used car building would be removed and replaced with a whole new configuration. The owner renovated the Mercedes Benz recently which included Volvo, but Volvo now wanted their own space; this was the used car building on the other side of Davidson Street. Chairman Ritz explained this homogenizes the zoning, and this had been a car lot for some time and there were protections for the R-1A district north of it. He felt this would likely improve the entire area and was in favor of approving the request. Mr. Grundhoefer stated he was also in favor of the request since when the zoning maps were drawn, they could easily have been drawn as C-3.

Mr. Larson made a motion to approve, seconded by Ms. Campbell, and the motion carried unanimously.

Amendment to LDC Section 12-12-5 Building Permits - Historic Building Demolition Review

On October 11, 2018, City Council referred to this Board for review and recommendation an Amendment to the Land Development Code to include the addition of a Historic Preservation Commission. Planning Board discussed this agenda item during their November 13, 2018 meeting as well as the January 8, 2019 meeting. This Board directed staff to bring back a previous agenda item that was a recommendation to City Council on November 8, 2016 which addressed this concern from a different angle. The proposed ordinance from 2016 amends Land Development Code Section 12-12-5 Building Permits and sets out a process for review of demolition requests for historic buildings citywide. This would provide standards to be met before demolition permits are issued instead of the creation of a Historic Preservation Commission.

Chairman Ritz pointed out this version references buildings built before 1940 and refers to the Planning Board for some determinations on the historic aspects. Mr. Grundhoefer explained the Board had felt there was no need for an added commission for historic demolition delay. Mr. Larson added the discussion was about the City putting out additional funds for a historic commission and obtaining grant funds.

Chairman Ritz advised the Board would be making the City create additional boards and commissions, whereas this document sticks with what is in play now, and the Board did not believe this would not place an undue burden on this Board. He then asked for audience input.

Mr. Gunther was troubled by the idea of this being controlled by a City employee who was hired and controlled by the Mayor, and it would make more sense to hire someone like Mr. Pristera to determine if the property was historic. Also, it was unclear to him if you wanted to make an application to demolish something, you had to have permits or drawings for what was to replace the structure. He felt this was a little onerous since someone could conceivably be working on plans for replacement while the demolition is ongoing. Ms. Campbell explained she was on the Architectural Review Board (ARB), and when a request is received for a demolition, it is in their comfort zone to know what will replace the structure. In the event the person requesting the demolition has not done all the due diligence, it is in their comfort zone to see what is coming. Mr. Gunther stated that made sense to him in the historic district, but for large areas downtown, it would delay the process unnecessarily. Mr. Grundhoefer explained the intent was that if you want to demolish a building and build something, it helps move the process along since the Board would see the plans for replacement. Ms. Wiggins pointed out Mr. Gunther was not wrong about the mayor, and agreed we have a great mayor. However, she works with another community and had concerns about the current mayor's integrity; he used his staff to punish people who were not his supporters, and she thought that was a point well made with having this in the hands of a City staffer. Ms. Deese clarified this would come before the Planning Board and not as an administrative decision. Chairman Ritz explained the request would come before the Building Official as far as formality and then would be referred to the Board. Ms. Deese read from Page 3, Section (2) Buildings Subject for Review. Ms. Campbell referred to Section 3 Criteria for Determining Significance and the building not necessarily being historical, and this language would be something reviewed by the Board.

Teresa Hill thanked the Board for trying to obtain answers. The demolition of the Sunday House resulted in a demolition moratorium. She advised this process is for districts with no protection, and this ordinance was fully vetted through workshops with public input, however, it was pulled from Council just before the Hallmark demolition. She pointed out the actual existing process to get a demolition required \$100 for the application in which the applicant agrees there is no asbestos, etc., but there is no preemptive site visit; she referred to 1207 Cervantes Street where two houses were demolished. She stated there needs to be some kind of review or public notice for people who might have breathing difficulties. She explained the public was asking for help in protecting areas like Longhollow and Tanyard, giving breathing room for when the demolition permit is issued to when it actually happens.

Mr. Cosson stated he understood the desire for no additional boards. He explained Florida has the Certified Local Government program which is the gateway to national Park Service Grant opportunities for historic properties. Two requirements for becoming a Certified Local Government specifies a Historic Preservation Ordinance which conforms to State guidelines, and a Historic Preservation Board; it is not enough for the duties to be placed on another board, but it requires an additional board to obtain grant monies. He encouraged the Board to consider this path to open up opportunities for Pensacola. Ms. Wiggins indicated the Board spent the majority of the time in the last meeting discussing the positives and negatives of that path.

Mr. Pristera stated he examined the document and the 1940 date.

He pointed out as time marches on, eventually that date would have to be revised and suggested staying with the National Standard of 50 years; if that was not comfortable, try 60 or 75 years, but remove any mention of a hard date. He pointed out the UWF Historic Trust was mentioned in the document as a reviewing party, and that would be a part of their services offered; they could provide research and an unbiased review for determination by the Board. He explained having them as part of the review was critical. He pointed out historical significance was also a National Standard where we use the building to tell a story. He felt it was easier to stay within the National Standard which had already been developed and was the model for many other locations. He also stated if a building was delayed in demolition, it would give his team enough time to document if it was deemed significant and placed it in their records; if it was approved for demolition, they would have some evidence of what it looked like. Mr. Pristera indicated he was not able to get inside of the Hallmark School and was not able to work with anyone to salvage pieces or come up with plans on what could be done afterwards, and this document would give time to consider other solutions.

Mr. Peaden suggested going out and finding what was on the ground before passing a new ordinance or form another layer of regulation. Concerning other alternatives for the applicant to consider, how much can a city or board tell a citizen what they can or cannot do with the property they are trying to get the best use and value out of.

Councilwoman Hill stated she supported the ordinance in 2016 with the delay on demolition, the six-month moratorium, and had worked with Mr. Pristera at other locations and appreciated his thorough job. Taking a demolition one at a time was less time consuming than a full review of the city, and she wanted the Board to support the ordinance.

Chairman Ritz considered Mr. Peaden's suggestion to consider what is here and meshing that with 50 years old designation. Many subdivisions north of I-10 are more than 50 years old which would create huge swaths of the city to be considered historically significant. He considered how much level of effort he would want to go through in order to tear down his own home for something new. Ms. Wiggins pointed out just because a structure is old does not mean it is historic. She also explained we need to be careful with categorizing. Because of its time period (ranch houses), it would be classified historic. She also asked who would maintain the structure if it was determined historic. She agreed with Mr. Pristera that at least the structure should be documented before demolition. She asked if a property owner had a specific plan for a property and was not interested in any alternatives, should they have to wait 120 days. Mr. Grundhoefer explained that delay allowed the Board some time to vet the request. Mr. Larson asked if we allowed everything to be demolished just because someone bought the property, considering shotgun houses, we could lose the history; where would we put the brakes on to say we value the history or we tear down and build new structures. Ms. Wiggins explained there was a cost to maintain the property, and if the City did not maintain it, would it be put on the property owner; we may not want to keep that property since it might become dilapidated. Mr. Grundhoefer pointed out the Board did not have the authority to demand the structure not be demolished, so within a four to five-month period, a house in bad condition would not be in worse condition; he stressed we are trying to preserve our history. Mr. Larson explained we are taking a second look at the requests.

Councilwoman Myers advised she supported this effort even if the Board could not force someone to do something; pushing the pause button was very important since our heritage is quickly being destroyed.

She was most concerned with the Board of Education building on Garden Street which has historical significance relating to WWII and the WPA where women were trained to support the war effort. She stressed before the building is demolished, the public should be able to speak on its preservation. She indicated that building is the rightful heritage of women, and inanimate objects without power to speak for themselves need humans to speak for them before they are destroyed. She also advised the City of Milton has a Historic Preservation Board along with many other cities in Florida.

Chairman Ritz explained whether it was the cultural significance or historical significance of houses or other buildings we may have lost, trying to balance that with someone's economic forward movement for the city was what he wrestled with personally. He explained his father owned the former Sacred Heart Hospital on 12th Avenue, purchasing that building so it would not be torn down; there are few people who would want to make that their life's labor. However, his business makes money in designing new buildings but also in restoring old ones. Mr. Grundhoefer stated there should be a Preservation Board. If this document passes and we see what level of involvement the Board will have and how many projects are referred to the Board, should it become overwhelming, then the City may possibly determine a Historic Board should be developed. He was not prepared to accept the language in the previous document, but this was a good first step, and maybe three to ten years from now, another board could be developed. Chairman Ritz pointed out the powers of this Board did not want to extend beyond what was appropriate by creating another board or saying for the City to create another board; he felt it should originate from the City. Mr. Larson asked if the Board recommended this document to Council, could it ask the question was it the intent of Council to have a Certified Local Government; that would change the whole complexion of the discussion. They had asked the Board to pass a Historic Preservation Commission to maintain our history, but after discussion, the Board did not feel that was in the best interest financially for the City at this time. If their goal is to become a Certified Local Government, then that should return to the Board at that time when that is their focus.

Chairman Ritz pointed out the Board could amend the document for the 1940 hard date. If the date was 1950, there would be a lot of structures such as the Cordova Park, Camelot and entire subdivisions being considered. Ms. Campbell explained if the Board saw the workload becoming overwhelming, then a separate board would be encouraged. Ms. Murphy pointed out some gray areas in determining significance and thought it was a lot of responsibility for the Board. She asked if there was a consultant available for determination for historical or historical significance. Chairman Ritz explained the Board could request outside input, but the document did not guarantee outside input. Mr. Grundhoefer stated the Board had asked Mr. Weeks, the Building Official, how many demolitions were requested; he advised there were only two or three per month at that time. Ms. Deese pointed out demolition permits were issued by Building Inspections, but she remembered the number in 2016 being fewer than they anticipated. Ms. Campbell was interested in the last three years, and Mr. Grundhoefer understood that most of the permits were for unsafe buildings. Ms. Wiggins was more comfortable with razing than demolition as outlined in the document since a remodel fell within a demolition. If she wanted to remodel her home in Cordova Park, it would be considered a demolition because she wanted to remodel a room with an exterior wall facing a public street, and she would come before this Board with a wait of 120 days. Mr. Grundhoefer pointed out the Board was not tasked to review additions like the ARB, however, the exterior wall would come before this Board.

Ms. Deese advised in 2019 there were 98 demolitions, in 2017 99 demolitions, in 2018 90 demolitions, and in 2019 10 so far; this totaled 297 in the last three years for commercial and residential.

Chairman Ritz indicated the direction of the Board could be to fine tune the document, and it would still go through a process for approval with Council. He pointed out except for designated districts, there was nothing citywide for protections.

Ms. Campbell made a motion to change the language from built prior to 1940 to over 60 years old (page 3) and recommending approval of the ordinance as submitted. It was seconded by Mr. Larson. Chairman Ritz was still concerned with the 25% removal of roofs or exterior walls (page 2). **The motion then carried 5 to 1 with Ms. Wiggins dissenting.** Since Council was meeting twice a month, Ms. Deese advised the ordinance would most likely be considered at a March Council meeting. Mr. Grundhoefer wanted assurance this item would not be dropped, and Councilwoman Hill said she would make sure it was not.

Open Forum – Mr. Larson stated since Councilwoman Cannada-Wynn asked the Board to look at a Historic Preservation Commission, could the Board ask if that was their goal to be a Certified Local Government, and if so, that would change the complexion of why the Board said no to begin with. He asked if the Board could ask Council if their goal was to be a Certified Local Government. Ms. Campbell advised this had been tossed around for so long even with Mr. Spencer, and he never pursued it. Chairman Ritz agreed the Board could ask that question to Council and await an answer. Ms. Deese referred to the Board's previous meeting where the Council Executive did touch base with Councilwoman Cannada-Wynn and reported back that the basic concept was she wanted some protection for those areas outside the special review districts, and it may or may not be in the form of a Historic Preservation Commission. Chairman Ritz confirmed the conversation was centered around a protection issue. He advised that as the Council read the minutes, they could determine if it was important at that time or as it develops. Ms. Deese stated the Council meetings were on March 14 and 28, and the ordinance would probably be placed on one of those agendas.

Adjournment – With no further business, Chairman Ritz adjourned the meeting at 3:26 pm.

Respectfully Submitted,



Brandi C. Deese
Secretary to the Board

CITY CLERK'S OFFICE/LEGAL ADS
4TH FLOOR
222 W MAIN ST

PENSACOLA, FL 32502

Published Daily-Pensacola, Escambia County, FL

PROOF OF PUBLICATION

State of Florida
County of Escambia:

Before the undersigned authority personally appeared , who on oath says that he or she is a Legal Advertising Representative of the Pensacola News Journal , a daily newspaper published in Escambia County, Florida that the attached copy of advertisement, being a Legal Ad in the matter of

NOTICE OF PROPOSED ORDINA

as published in said newspaper in the issue(s) of:

03/18/19

Affiant further says that the said Pensacola News Journal is a newspaper in said Escambia County, Florida and that the said newspaper has heretofore been continuously published in said Escambia County, Florida, and has been entered as second class matter at the Post Office in said Escambia County, Florida, for a period of one year next preceding the first publication of the attached copy of advertisement; and affiant further says that he or she has neither paid nor promised any person, firm or coporation any discount, rebate, commission or refund for the purpose of securing this advertisement for publication in the said newspaper.

Sworn to and Subscribed before me this 18th of March 2019, by who is personally known to me



Affiant



Notary

Publication Cost: \$191.46

NOTICE OF PROPOSED ORDINANCES

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The title(s) of the proposed ordinance(s) are as follows:

P.O. #07-19:

AN ORDINANCE AMENDING THE ZONING CLASSIFICATION OF CERTAIN PROPERTY PURSUANT TO AND CONSISTENT WITH THE COMPREHENSIVE PLAN OF THE CITY OF PENSACOLA AMENDING THE ZONING MAP OF THE CITY OF PENSACOLA; REPEALING CLAUSE AND EFFECTIVE DATE. (3100 Navy Boulevard; Rezoning from Commercial (C-1 and C-2) to Commercial (C-3))

P.O. #09-19:

AN ORDINANCE AMENDING SECTION 14-1-136 OF THE CODE OF THE CITY OF PENSACOLA, FLORIDA ENTITLED "DEMOLITION"; PROVIDING FOR SEVERABILITY; REPEALING CLAUSE; PROVIDING AN EFFECTIVE DATE.

A copy of proposed ordinances may be inspected by the public in the City Clerk's office, located on the 3rd Floor of City Hall, 222 West Main Street, Pensacola, Florida, or on-line on the City's website: <https://pensacola.legistar.com/Calendar.aspx>. Interested parties may appear at the Council meeting and be heard with respect to the proposed ordinances.

If any person decides to appeal any decision made with respect to any matter considered at this meeting or public hearing, such person may need to insure that a verbatim record of the proceedings is made, which record includes the testimony and any evidence upon which the appeal is to be based.

The City of Pensacola adheres to the Americans with Disabilities Act and will make reasonable accommodations for access to city services, programs and activities. Please call 435-1606 (or TDD 435-1666) for further information. Requests must be made at least 48 hours in advance of the event in order to allow the City time to provide the requested services.

CITY OF PENSACOLA, FLORIDA

By: Ericka L. Burnett, City Clerk

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City of Pensacola

222 West Main Street
Pensacola, FL 32502

Memorandum

File #: 09-19

City Council

3/28/2019

LEGISLATIVE ACTION ITEM

SPONSOR: City Council Member Ann Hill

SUBJECT:

PROPOSED ORDINANCE NO. 09-19 - AMENDMENT TO SECTION 14-1-136 - DEMOLITION

RECOMMENDATION:

That City Council adopt Proposed Ordinance No. 09-19 on second reading:

AN ORDINANCE AMENDING SECTION 14-1-136 OF THE CODE OF THE CITY OF PENSACOLA, FLORIDA ENTITLED "DEMOLITION"; PROVIDING FOR SEVERABILITY; REPEALING CLAUSE; PROVIDING AN EFFECTIVE DATE.

HEARING REQUIRED: No Hearing Required

SUMMARY:

The purpose of this amendment to Section 14-1-136 (Demolition) is to provide greater notice requirements when a demolition is to take place. The proposed ordinance calls for certification by the applicant for a demolition permit stating that reasonable efforts have been made to provide notice to those within a 300-foot radius of a demolition site. Further it will require the placing of a sign on the property where demolition is to take place showing a NOTICE OF DEMOLITION. Finally, it states that demolition work shall be conducted in compliance with the noise regulations for construction as well as applicable nuisance ordinances contained within the City Code, including dust control and/or mediation.

This amendment was a collaborative effort between a Council Member, City staff (Inspections) and the City's legal team.

PRIOR ACTION:

March 14, 2019 - City Council voted to approve Proposed Ordinance No. 09-19 on first reading.

January 31, 2008 - Ordinance No. 08-08 amending Section 14-1-136(a) was adopted by City Council

FUNDING:

N/A

FINANCIAL IMPACT:

None

STAFF CONTACT:

Don Kraher, Council Executive

ATTACHMENTS:

- 1) Proposed Ordinance No. 09-19

PRESENTATION: No

PROPOSED
ORDINANCE NO. 09-19

AN ORDINANCE
TO BE ENTITLED:

AN ORDINANCE AMENDING SECTION 14-1-136 OF THE CODE OF THE CITY OF PENSACOLA, FLORIDA ENTITLED "DEMOLITION"; PROVIDING FOR SEVERABILITY; REPEALING CLAUSE; PROVIDING AN EFFECTIVE DATE.

BE IT ORDAINED BY THE CITY OF PENSACOLA, FLORIDA:

SECTION 1. Section 14-1-136 of the Code of the City of Pensacola, Florida, is hereby amended to read as follows:

Sec. 14-1-136. - Demolition.

- (a) The demolition of buildings and structures shall be controlled by provisions of the Florida Building Code and the International Property Maintenance Code, as adopted herein, by those additional provisions, outlined for special review districts, contained in Chapter 12-2, Code of the City of Pensacola and those guidelines as established in this part.
- (b) No building or structure shall be demolished, razed, dismantled or removed in whole or in part without first obtaining a permit issued by the Building Official of the city. A permit issued for demolition shall be valid for ninety (90) days. Extensions for periods not exceeding thirty (30) days each may be granted in writing by the building official.
- (c) ~~Applications for demolition permits must include written proof that residents within a three hundred-foot radius of the property of proposed demolition have been provided notice of the intent to demolish with an estimated date of demolition. This proof of notification shall be evidenced by the signature(s) of the resident and/or property owner on the provided form. Also included must be an affidavit, signed by the applicant or the property owner, indicating that all gas, water and electrical utilities have been cut off or disconnected. Utilities shall be cut off at the property line or off premises when a building or structure is to be totally demolished.~~

Applications for demolition permits must include written certification by the applicant that reasonable steps have been taken to provide notice to residents within a three hundred-foot radius of the property of the proposed demolition and the intended date upon which demolition will commence once a permit is obtained. This certification must be included in affidavit form, signed by the applicant or the property owner, also indicating that all gas, water and electrical utilities have been cut off or disconnected. Utilities shall be cut off at the property line or off premises when a building or structure is to be totally demolished.

- (d) After the issuance of permit, the permit holder shall be responsible for placing a sign on the property where demolition is to take place. The sign shall be a minimum of 11" X 17" in

size and mounted at a minimum for four (4) feet above the ground. The sign shall have black lettering with a contrasting white background, have block style lettering a minimum of three (3) inches in height and shall state "NOTICE OF DEMOLITION" with a phone number for contact included. The sign shall be of a material that is durable, laminated or other weather resistant material. Also posted shall be the demolition permit or a copy thereof.

- ~~(d)~~ (e) Demolition permits for structures larger than three thousand (3,000) square feet in floor area or over thirty-five (35) feet in height at any point shall require a current certificate of insurance showing general liability coverage of at least three hundred thousand dollars (\$300,000.00), per occurrence and per accident, for products and completed operations.
- (e) ~~(f)~~ When required by the Building Official, the Florida Building Code, ~~or by the International Property Maintenance Code,~~ or City Ordinance, as adopted herein, barricades and other shielding shall be used to protect adjacent property and the public; to include dust control and/or mediation. At the end of each working day the remainder of the structure shall be left in a stable condition with no dangerous unsupported roofs, walls or other elements. Fencing or continuous security guard(s) may be required.
- ~~(f)~~ (g) All footings, foundations, piers, etc. of one- and two-family dwellings which have been demolished, shall be removed to a depth of not less than twelve (12) inches below the natural ground level. Utility supply and sewer piping shall be removed so as to be flush with grade level. The footings, foundations, utility supply and sewer piping and all pilings of structures larger than a one- or two-family dwelling shall be removed to not less than four (4) feet below the natural ground level. Remaining sections of footings, foundations, pilings, and piping may be buried provided they have not been disturbed from their original position and are surrounded by compacted earth or other permitted backfill. All excavations are to be filled to the natural grade; unnatural hills or mounds of earth are to be leveled or removed.
- ~~(g)~~ (h) Debris and waste materials shall not be allowed to accumulate or be buried on the premises. Usable, recyclable by products of demolition including, but not limited to, steel beams and rip-rap may be stored only where permitted by the provisions of Chapter 12-2, Code of the City of Pensacola.
- ~~(h)~~ (i) Demolition work shall be conducted in compliance with the noise regulations for construction as well as applicable nuisance ordinances contained in the Code of the City of Pensacola.
- ~~(i)~~ (j) The owner of a building or structure or his duly authorized agent may appeal a decision or requirement of the Building Official, concerning demolition, to the Construction Board of Adjustment and Appeals. Filing of an appeal will stay the work until a decision has been rendered by the board. When an appeal is made, the Building Official shall require appropriate safeguards to protect the public and adjacent buildings. If deemed necessary, an immediate meeting of the Construction Board of Adjustment and Appeals shall be called by the chair of the board.

SECTION 2. If any word, phrase, clause, paragraph, section or provision of this ordinance or the application thereof to any person or circumstance is held invalid or unconstitutional, such finding shall not affect the other provision or applications of the ordinance which can be given

effect without the invalid or unconstitutional provisions or application, and to this end the provisions of this ordinance are declared severable.

SECTION 3. All ordinances or parts of ordinances in conflict herewith are hereby repealed to the extent of such conflict.

SECTION 4. This ordinance shall take effect on the fifth business day after adoption, unless otherwise provided pursuant to Section 4.03(d) of the City Charter of the City of Pensacola.

Adopted: _____

Approved: _____
President of City Council

Attest:

City Clerk

CITY CLERK'S OFFICE/LEGAL ADS
4TH FLOOR
222 W MAIN ST

PENSACOLA, FL 32502

Published Daily-Pensacola, Escambia County, FL

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Affiant



Notary

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