PROJECT DEVELOPMENT AGREEMENT
BETWEEN

VT MOBILE AEROSPACE ENGINEERING, INC.
AND
CITY OF PENSACOLA, FLORIDA

EFFECTIVE DATE: _____, 2019

Execution Version 03.15.19

EXHIBITS:

Exhibit A - Land

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 feett- 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 associatedttaxiways, 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 1that 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 WARRANTEES**

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 warrantees 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 oft 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:

CITY OF PENSACOLA

By:_____
Grover C. Robinson, IV, Mayor

Date:_____

Attest:

_____
Ericka L. Burnett, City Clerk

Approved As To Content:

By:_____
Daniel E. Flynn,
Airport Director

Approved As To Form

By:_____
Susan A. Woolf,
City Attorney

COMPANY:

VT MOBILE AEROSPACE ENGINEERING, INC.,
an Alabama corporation

By:_____
_____, Chairman

Date: _____

Attest:

_____
Print Name: _____
Title: _____

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-~~2~~ 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.E
Project Titan Preliminary Project Schedule
Pensacola International Airport

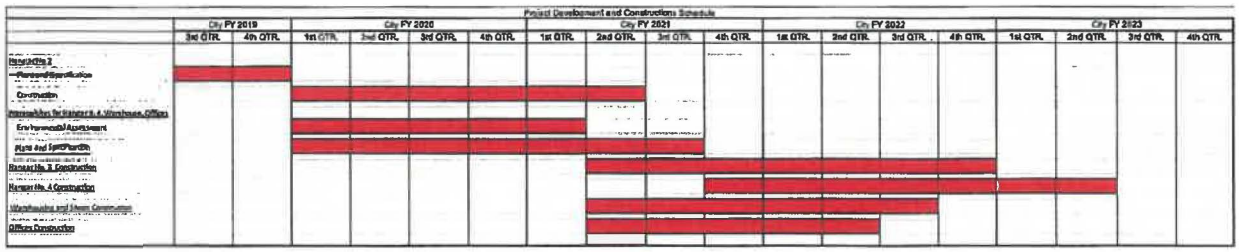

Exhibit F Preliminary Project Budget

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

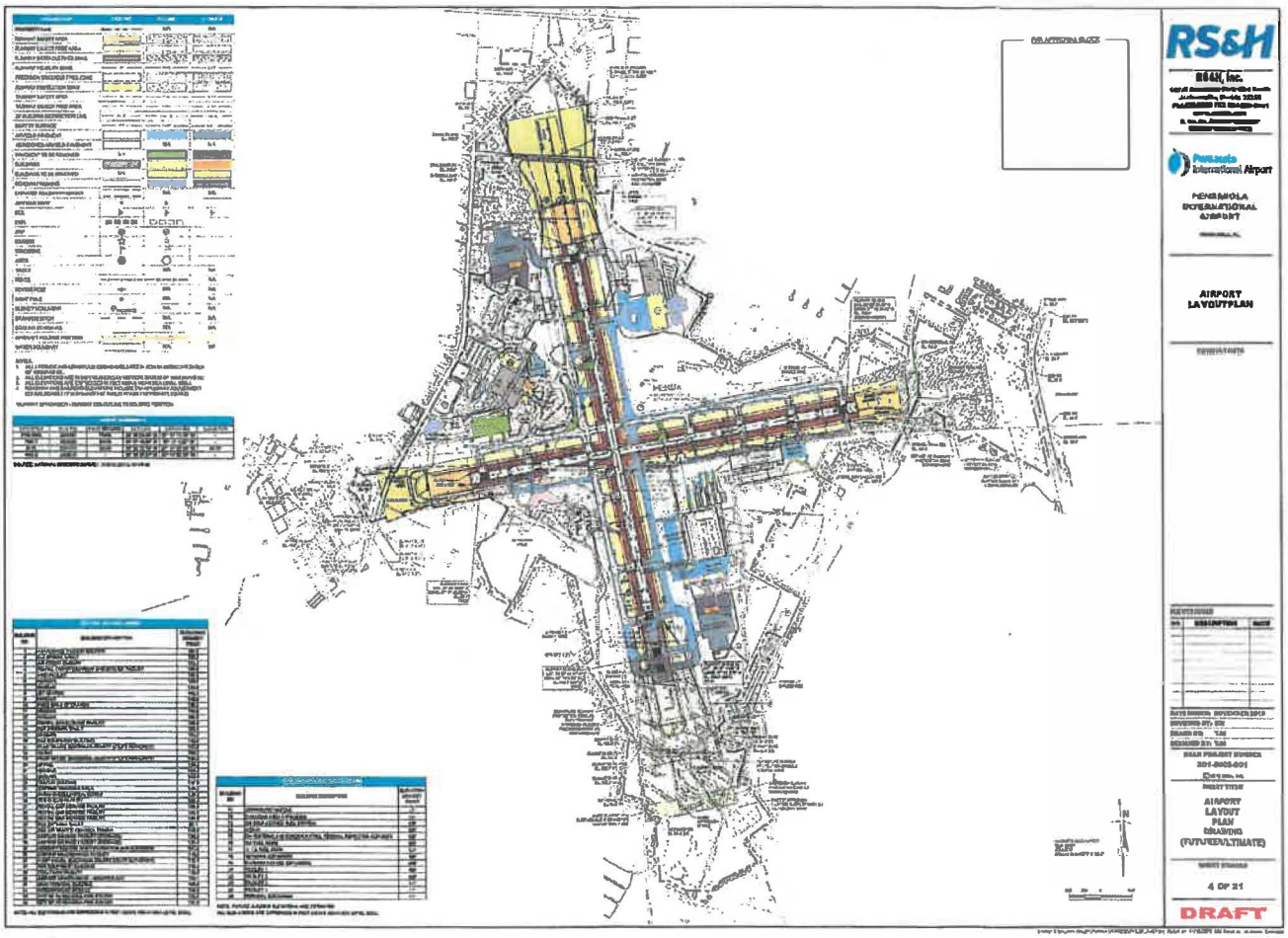
RS&H
PENSACOLA INTERNATIONAL AIRPORT
AIRPORT LAYOUT PLAN
AIRPORT LAYOUT PLAN DRAWING (FUTURE/ULTIMATE)
4 OF 21
DRAFT

Exhibit H FAA Airspace Determination Letter

TO BE ADDED UPON RECEIPT FROM FAA

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://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 carryon 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:	**If to VT:**
Triumph Gulf Coast, Inc. P.O. Box 12007 Tallahassee, FL 32317 Attention: Executive Director	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