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Meeting Date
12/20/16



ADD ON	
AGENDA	
Section	New Business
Item No.	VI E 1

AGENDA REPORT
BREVARD COUNTY BOARD OF COUNTY COMMISSIONERS

SUBJECT:	APPROVAL OF FIRST AMENDMENT TO INCENTIVE AGREEMENT (PROJECT LANDMARK)
DEPT/OFFICE:	MANAGEMENT SERVICES & COMMUNITY SERVICES/COUNTY MANAGER'S OFFICE

Requested Action:

The North Brevard Economic Development Zone (NBEDZ) requests that the Board of County Commissioners (BOC) approve the proposed First Amendment to the Economic Incentive Agreement, to permit the project company undertaking Project Landmark to alter the schedule for the creation of new jobs.

Summary Explanation & Background:

In April of 2016, the company undertaking Project Landmark in Titusville entered into an Economic Incentive Agreement with the NBEDZ, an agreement that received concurrence from the BOC. According to that agreement, the company was required to create a minimum of 25 new jobs by December 31, 2016. Subsequent job creation beyond that date was to be incentivized with grant assistance from the NBEDZ.

Due to market forces and organizational challenges within the firm, the company is now forecasting that it will be unable to meet this threshold for job creation by the December 31st deadline. However, because the company remains committed to implementing the tenets of Project Landmark in Titusville - as long as the provision of the local incentive from the NBEDZ remains - the company has requested that the job creation schedule stated in the agreement be revised, and that the deadline requiring a minimum of 25 new jobs created at the project site be moved to December 31, 2018. The company is further requesting that the deadline for triggering a bonus grant amount of \$250,000 - which, under the current agreement, would require the company to create 150 jobs by December 31, 2018 - be extended for two years beyond that 2018 date.

At a meeting of its board of the directors in December, the NBEDZ voted in favor of revising that part of the agreement calling for the creation of 25 new jobs by December 31, 2016 - agreeing to move that deadline to December 31, 2018 - but voted to mandate the creation of 250 new jobs by December 31, 2019 as the requirement for receiving the bonus grant of \$250,000.

Since the incentive award involves increment tax revenue allocated to the NBEDZ by the BOC, concurrence from the BOC to the changes approved by the NBEDZ board is required.

Fiscal Impact: The cost of grant proceeds, if it is determined that the project qualifies on the basis of job creation under the Economic Incentive Agreement, would be provided by the NBEDZ over a series of years, per its annual budget allocation.

NBEDZ Staff Contact: troy.post@brevardfl.gov, 321-960-1458

EDC Contact: gweiner@spacecoastedc.org, 321-638-2000

Clerk to the Board instruction: Need the adopted Resolution ASAP.

Exhibits Attached: Copy of proposed AMENDMENT to incentive agreement

Contract / Agreement (If attached): Reviewed by County Attorney		Yes	<input type="checkbox"/>	No	<input type="checkbox"/>	PR	<input type="checkbox"/>
County Manager		Department Director / Extension					
Stockton Whitten							



Tammy Rowe, Clerk to the Board, 400 South Street • P.O. Box 999, Titusville, Florida 32781-0999

Telephone: (321) 637-2001
Fax: (321) 264-6972
Tammy.Rowe@brevardclerk.us

December 21, 2016

MEMORANDUM

TO: Stockton Whitten, County Manager

RE: Item VI.E.1., First Amendment to Incentive Agreement with North Brevard Economic Development District and Lockheed Martin Corporation d/b/a Lockheed Martin Space Systems Company for Project Landmark to Alter the Schedule for the Creation of New Jobs

The Board of County Commissioners, in regular session on December 20, 2016, approved the first Amendment to the Economic Incentive Agreement with North Brevard Economic Development District and Lockheed Martin Corporation d/b/a Lockheed Martin Space Systems Company for Project Landmark, to permit Project Landmark to alter the schedule for the creation of new jobs.

Upon Execution by Lockheed-Martin Space Systems Company and the North Brevard Development District, please return the fully-executed Agreement to this office for inclusion in the official minutes.

Your continued cooperation is greatly appreciated.

Sincerely,

BOARD OF COUNTY COMMISSIONERS
SCOTT ELLIS, CLERK

Tammy Rowe, Deputy Clerk

/kp

Encl. (1)

cc: NBEDZ Director

AMENDMENT TO NORTH BREVARD DEVELOPMENT DISTRICT ECONOMIC INCENTIVE AGREEMENT

THIS AMENDMENT is made this 20th day of December, 2016, by and between **LOCKHEED MARTIN CORPORATION**, doing business as Lockheed Martin Space Systems Company ("the COMPANY"), the **NORTH BREVARD DEVELOPMENT DISTRICT** ("the DISTRICT"), a dependent special district created by the Brevard County Board of County Commissioners, and **BREVARD COUNTY**, ("the COUNTY"), collectively referred to as "the PARTIES".

For value received, and in consideration of the following covenants and promises, the Parties agree as follows:

1. Sections 3.3 (including the table within that section), 3.3.1 and 3.3.2 of the NORTH BREVARD DEVELOPMENT DISTRICT ECONOMIC INCENTIVE AGREEMENT dated April 15th 2016, are hereby amended as follows:

3.3 Economic incentive, Job Creation and Conditions.

The economic incentive grant to be paid to the COMPANY by the DISTRICT, as approved by the County, is set forth in the table below. The identified incentive for Jobs appearing in each column applies only to the specific range of Jobs shown in that same column. Such incentives shall be paid only upon compliance with the Job creation conditions set forth in in the Jobs Table and described in subsections 3.3.1 through 3.3 .9. below:

Jobs:	Jobs 25-50	Jobs 51-100	Jobs 101-150	Jobs 151-300	Total Potential Bonus:	Potential Total Incentive if 300 Total Jobs Created
Per Job Incentive	\$3,500 per Job if created by 12/31/2018	\$4,000 per Job	\$4,500 per Job	\$6,000 per Job		\$1,500,000
Potential Bonus	N/A	N/A	N/A	\$250,000 for a total of 250 jobs if created by 12/31/19	\$250,000	\$250,000
						\$1,750,000

3.3.1. The COMPANY agrees to create a minimum of twenty- five (25) Jobs in Titusville or within the geographic boundaries of the North Brevard Economic Development Zone during the period of time beginning on December 7, 2015 through and ending by December 31, 2018. Failure to create the required Jobs by the indicated date shall be an event of default rendering this Agreement null and void.

3.3.2. The bonus payment of \$250,000 set forth in the Jobs Table shall only be paid if 250 Jobs are created by December 31, 2019, which date may not be extended.

2. All other provisions and terms of the Agreement shall:

4.2.1 In the event COMPANY fails to create Jobs by December 31, 2018, as defined in paragraph 3.3.1, and unless otherwise extended in writing by the DISTRICT, such failure shall result in the COMPANY being in default of the entire Agreement as and as to the COMPANY, the DISTRICT shall be released of all obligations created under this Agreement.

- a. Remain in full force and effect to the extent those provisions and terms have not been modified by this agreement; and
- b. Be construed in a manner that is consistent with this amendment.

IN WITNESS WHEREOF, the DISTRICT, the COUNTY and the COMPANY have caused this agreement to be executed and delivered by their duly authorized representatives.

Signed, Sealed and Delivered in the presence of:

LOCKHEED MARTIN CORPORATION *LLP*
~~LOCKHEED MARTIN SPACE SYSTEMS COMPANY~~

Jennifer Pardon
 Witness

BY: Quick Johnson

 Witness

5/15/2017
 Date

ATTEST:

NORTH BREVARD DEVELOPMENT DISTRICT

BY: [Signature]

BY: [Signature]
 Chairman

ATTEST:

BREVARD COUNTY

BY: [Signature]
 Scott-Ellis, Clerk

BY: [Signature]
 , Chair

(as approved by the Board on 12/20, 2016)

APPROVED AS TO FORM:

BY: [Signature]
 County Attorney

**NORTH BREVARD DEVELOPMENT DISTRICT
ECONOMIC INCENTIVE AGREEMENT**

THIS ECONOMIC INCENTIVE GRANT AGREEMENT ("Agreement") is made and entered into this 15th day of April, 2016, by and between LOCKHEED MARTIN CORPORATION, doing business as Lockheed Martin Space Systems Company (together hereinafter called the 'COMPANY'), the NORTH BREVARD DEVELOPMENT DISTRICT (hereinafter called the 'DISTRICT'), a dependent special district created by the Brevard County Board of County Commissioners, and BREVARD COUNTY, by and through its Board of County Commissioners (hereafter referred to as the "COUNTY") pursuant to Sections 125.045, Florida Statutes, Brevard County Ordinance No. 2011-16 and Brevard County Ordinance No. 2011-18. Each of the COMPANY, the DISTRICT and the COUNTY are referred to herein as a "Party" and, collectively, as the "Parties".

WHEREAS, the Florida Legislature has enacted Section 125.045, Florida Statutes, which confers economic development powers to counties and authorizes the expenditure of public funds for economic development activities as a valid public purpose; and

WHEREAS, Section 125.045(3), Florida Statutes, specifically authorizes a county to make incentive payments in the form of grants to private enterprise for expanding businesses located within the county, or to attract new businesses to the county; and

WHEREAS, Ordinance No. 2011-16 and Ordinance No. 2011-18 (hereafter referred to as "the Ordinances") authorizes the DISTRICT to grant economic incentives to new businesses in accordance with the DISTRICT's written Economic Development Plan, including annual economic development cash incentives; and

WHEREAS, the DISTRICT is anticipated to have available budget reserves in the current and future fiscal years for assisting economic development projects in the DISTRICT; and

WHEREAS, the Economic Development Commission of Florida's Space Coast (EDC) has worked with the COMPANY and the DISTRICT to develop and consummate an economic development project heretofore known to the public as "Project Landmark;" and

WHEREAS, the COMPANY considered a site for "Project Landmark" located outside of the State of Florida, but chose a site within the geography of the DISTRICT, in large part due to the offer of an economic incentive from the DISTRICT; and

WHEREAS, the COMPANY has filed an application with the DISTRICT for participation in the DISTRICT's forthcoming funds as the source of a grant for up to \$1,750,000, the proceeds of which will be used by the COMPANY in support of the job creation as outlined in subsection 3.3 of this Agreement; and

WHEREAS, the DISTRICT approved an economic incentive based on job creation requirements for the COMPANY at a meeting of its board of directors on May 22, 2015; and

WHEREAS, in accordance with the Ordinances, the COUNTY is required to approve any economic incentive grant in excess of \$500,000; and

WHEREAS, the COUNTY on May 26, 2015, approved the provision of the DISTRICT'S economic incentive to the COMPANY and acknowledging that the source of the local financial support would be the DISTRICT, as more particularly described in the body of this Agreement below; and

WHEREAS, the COMPANY acknowledges that the DISTRICT is subject to the Florida Public Records Act, Chapter 119, Florida Statutes (the "Public Record Act") and to certain provisions of Chapter 286, Florida Statutes, relating to public meetings and records, both of which specifically are made applicable to governmental parties by Section 286.011 Florida Statutes; and

WHEREAS, the DISTRICT has established terms and conditions in this Agreement which, if complied with by the COMPANY, will allow the COMPANY to receive the benefits outlined in this Agreement; and

WHEREAS, the DISTRICT finds and declares that this Agreement serves a public purpose which includes promotion of economic development, job growth, and the future expansion of projects within the DISTRICT, along with the expansion of the COUNTY's tax base.

NOW THEREFORE, in consideration of the mutual promises and agreements contained herein, and other valuable and good consideration, the DISTRICT, the COUNTY, and the COMPANY agree as follows:

1. RECITALS

The above recitals are true and correct and, are hereby incorporated and made part of this Agreement.

2. DEFINITIONS

2.1 "Effective Date" is the date upon which the last Party executes this Agreement. The Agreement shall not be effective against any Party until said date.

2.2 "Project" shall mean the project described in paragraph 3.1.1 of this Agreement.

2.3 "Job" shall mean a full-time salaried employee or a full-time equivalent employee who works at least 35 paid hours per week, performing tasks directly related to the products or services of the Project. A Job may include positions obtained from wholly owned subsidiaries of the Company, an employment agency or employee leasing company, through a union agreement, or co-employment under a professional employer organization agreement that result directly from the Project within the North Brevard Economic Development Zone. In tabulating hours worked, any paid leave an employee takes during the pay period, such as vacation or sick leave, may be included.

2.4 "Average Project Wage" shall mean the following forms of compensation for all Jobs: wages; salaries; commissions; bonuses; advances given to an employee against

future earnings; vacation pay; sick leave pay; dismissal pay; cash prizes and awards; supplemental payments to make up the difference between regular pay and jury-duty pay or workers' compensation benefits; and payments to employees on leave while serving in the military. Benefits may be included in the Average Project Wage calculation only if, as a company policy, the employee has the option of accepting the value of the benefits in the form of cash payments, and converts the benefit to cash within any reporting period. Whichever method the COMPANY uses to calculate Jobs – head count or FTE – also must be used to in its Average Project Wage calculation. Each calculation of Average Project Wage by the COMPANY must be determined in a manner consistent with the following procedure: actual wages, salaries and other payments (as listed above in this Section 2.4) for Jobs for each pay period are added, then divided by the number of Jobs.

3. DISTRICT, COUNTY AND COMPANY OBLIGATIONS

3.1 Project Description.

The COMPANY shall endeavor to undertake the following:

3.1.1. Project Landmark resides in the Lockheed Martin Space Systems Co. business area and an expansion of the COMPANY'S existing property would enhance its ability to design, build, integrate and test commercial and government aerospace components and systems more affordably and with reduced cycle time due to a beneficial rate structure and colocation of skills and processes. This project is limited to the location expansion of the COMPANY's space systems engineering and manufacturing operations (the "Project") at the facility currently located at 1515 Chaffee Drive in Titusville, Florida, as well as any future expansion adjacent to the current facility that may have a different address in Titusville, Florida (the "Project Location"). If the Project Location is expanded beyond the 1515 Chaffee Drive address but is still located in Titusville or within the geographic boundaries of the North Brevard Economic Development Zone, the COMPANY shall notify all other Parties of such expansion as soon as commercially feasible and, thereafter, the term "Project Location" shall include the 1515 Chaffee Drive address and any new addresses listed in the COMPANY's notice to the other Parties.

3.1.2. The COMPANY's federal employer identification number is 52-1893632, and its reemployment tax ("RT") number is 1523134.

3.1.3. COMPANY shall promptly notify the DISTRICT in writing if any material changes occur to any information provided by COMPANY to the DISTRICT or COUNTY relating to this Agreement and the Project.

3.1.4. The Parties intend the economic incentive hereunder to qualify under Section 118 of the Internal Revenue Code of 1986, as amended from time to time. The economic incentive described herein is specifically bargained for by and between the Parties. The economic incentive is not compensation for quantifiable services provided, or to be provided, by the COMPANY for/to the DISTRICT or the COUNTY. The use of such economic incentive by the COMPANY is limited to the capital investment described in Section 3.4 and will not be used by the COMPANY to pay current cash operating costs or dividends. Nothing in this Section 3.1.4

shall require the DISTRICT or the COUNTY to take any legal action or participate in any regulatory proceeding or inquiry on behalf of, or in coordination with, the COMPANY, or to expend any funds in connection therewith.

3.2 COUNTY Approval

In accordance with the requirements of section 98-246(b)(4), Code of Ordinances of Brevard County, Florida, the COUNTY hereby approves the cash incentive grant to the COMPANY under the terms and conditions set forth in this economic incentive Agreement and in substantial conformance with the North Brevard Economic Development Zone Financial Assistance Program Application Form filed by the COMPANY.

3.3 Economic incentive, Job Creation and Conditions.

The economic incentive grant to be paid to the COMPANY by the DISTRICT, as approved by the County, is set forth in the table below. The identified incentive for Jobs appearing in each column applies only to the specific range of Jobs shown in that same column. Such incentives shall be paid only upon compliance with the Job creation conditions set forth in the Jobs Table and described in subsections 3.3.1 through 3.3.9. below:

Jobs:	JOBS TABLE					Total Potential Bonus:	Potential Total Incentive if 300 Total Jobs Created
	Jobs 25-50	Jobs 51-100	Jobs 101-150	Jobs 151-300			
Per Job Incentive	\$3,500 per Job if created by 12/31/2016	\$4,000 per Job	\$4,500 per Job	\$6,000 per Job			\$1,500,000
Potential Bonus	N/A	N/A	\$250,000 for a total of 150 jobs if created by 12/31/18	N/A	\$250,000		\$250,000
						+	\$1,750,000

3.3.1. The COMPANY agrees to create a minimum of twenty-five (25) Jobs in Titusville or within the geographic boundaries of the North Brevard Economic Development Zone during the period of time beginning on December 7, 2015, through and ending by December 31, 2016. Failure to create the required Jobs by indicated date shall be an event of default rendering this Agreement null and void.

3.3.2. The bonus payment of \$250,000 set forth in the Jobs Table shall only be paid if 150 Jobs are created by December 31, 2018, which date may not be extended.

3.3.3. If at least 50 Jobs are in place by December 31, 2017, the Company may request, in writing, a one time, one year extension of the non-bonus portion of the offer. Said request must be made in writing and filed with the DISTRICT not later than March 31, 2018. Not later than June 30, 2018, the COMPANY must declare the number of Jobs for which it seeks extension. It is agreed that the failure to create at least 85% of the Jobs requested within the granted extension period shall be an event of default and that all incentive payments due under that extension shall be reduced by 50%.

3.3.4. In the absence of a properly submitted extension request, no incentives to the COMPANY shall be due from the DISTRICT on Jobs created after December 31, 2019.

3.3.5. [Intentionally Deleted.]

3.3.6 The COMPANY further agrees to maintain in Brevard County the number of Jobs for which an incentive is paid for a period of three (3) years following the date the incentive payment is due.

3.3.7. The Project shall substantially conform in all material respects to the incentive application filed by the COMPANY.

3.3.8. A joint public announcement of the Project and Project Location by the COMPANY and COUNTY must be made not later than 60 calendar days following the date of this Agreement. Such announcement shall be made in coordination with the DISTRICT and shall include appropriate language attributing the DISTRICT's role in locating the Project in Titusville.

3.4 Average Project Wage and **Capital Investment.**

The Parties acknowledge that: (i) the COMPANY'S capital investment will vary depending upon actual number of Jobs created, and based on 25 Jobs, the Company's projected capital investment is \$1M (construction) with a projected maximum investment of up to \$80 million in construction and equipment if the maximum projection of 300 Jobs are created and (ii) the Jobs created by the COMPANY are anticipated to have an Average Project Wage of not less than \$89,000.00. Neither the capital investment nor the Average Project Wage stated above in this Section 3.4 are obligations on the part of the COMPANY and shall not be default triggers pursuant to Section 4 herein.

3.5 **Reporting Requirements.**

3.5.1 The COMPANY agrees to keep detailed accounts and records demonstrating the creation of Jobs at the Project Location and of the Average Project Wages paid for said Jobs for each year throughout the term of this Agreement

(collectively, "Job Reports") and to submit an annual Job Report to the DISTRICT by no later than March 31st of each year following the preceding year covered by the applicable Job Report required under this Agreement.

3.5.2. Incentive payments shall be due upon verification to the satisfaction of the DISTRICT of each received Job Report. The DISTRICT has up to two (2) years from the date an incentive payment is due to make payment to the COMPANY.

3.6 Audit and Public Records.

3.6.1 The COMPANY acknowledges, unless exempt under Florida law, the COMPANY's records relating to the acceptance and use of the DISTRICT's economic incentive grant are considered public records that may be subject to production and delivery to the public upon request. The COMPANY grants to the DISTRICT the right to review and audit all COMPANY records relating to the DISTRICT's economic incentive grant contemplated by this Agreement, to the extent such records are not exempt under state law. If the COMPANY submits records to DISTRICT and/or COUNTY that are confidential and exempt from public disclosure as trade secrets pursuant to Section 288.075(3) of the Florida Statutes or proprietary confidential business information pursuant to Section 288.075(4) of the Florida Statutes, such records should be marked accordingly by the COMPANY prior to submittal to the DISTRICT and COUNTY.

3.6.2 The COMPANY also acknowledges and understands that the DISTRICT has certain obligations to allow for the inspection and copying of public records pursuant to Article 1, Section 24 of the Constitution of the State of Florida (the "Constitution," and together with the Public Records Act and the applicable parts of Chapter 286, Florida Statutes, hereinafter referred to together as the "Sunshine Laws"). With the exception of any COMPANY written request for an exemption set forth in section 288.075, Florida Statutes, the DISTRICT will be subject to certain disclosure requirements under the Sunshine Laws, and such disclosure requirements shall be superior to and shall supersede any confidentiality restrictions previously imposed upon the DISTRICT for a period of not more than 12 months after the date of public announcement of "Project Landmark," unless a 12-month extension is requested under the provisions of section 288.075, Florida Statutes." In addition, either Party may disclose all or any portion of the confidential information without liability and with prior notice to the other Party (a) if required by law or regulation, (b) if requested by any governmental authority or any representative of any thereof with legal authority to compel disclosure, (c) pursuant to subpoena or legal process, or (d) in any action of proceeding arising out of or related to this Agreement to the extent and only to the extent such disclosure is necessary for the parties involvement in such action. If either the DISTRICT's or COUNTY's claim of exemption asserted in response to the COMPANY's assertion of confidentiality is challenged in a court of law, the DISTRICT or COUNTY, whichever Party is involved, shall promptly notify the COMPANY of such challenge and the COMPANY shall defend, assume and be responsible for all fees, costs and expenses in connection with such challenge.

4. DEFAULT TRIGGERS & SPECIFIC REMEDIES

4.1 General Default:

4.1.1 Any Party is in default of this Agreement if that Party has materially breached any covenant contained in this Agreement and such breach has not been corrected or cured within thirty (30) calendar days after written notice thereof from a non-defaulting party.

4.1.2 COMPANY is in default if any representation or warranty made by the Company herein or in, application, or other documentation furnished to the DISTRICT that induces the DISTRICT's grant payment or other performance under the Agreement is untrue at the time provided in a material respect and the effect of that material misrepresentation has not been cured or mitigated by the COMPANY within thirty (30) calendar days after written notice thereof to the COMPANY by the DISTRICT.

4.1.3 COMPANY is in default if it fails to provide to the DISTRICT any of the Job Reports when due as set forth in Section 3.5 herein and such breach has not been cured within thirty (30) calendar days after written notice thereof from the DISTRICT.

4.2 **Specific Default Triggers**

4.2.1 In the event COMPANY fails to create Jobs by December 31, 2016, as defined in paragraph 3.1, and unless otherwise extended in writing by the DISTRICT, such failure shall result in the COMPANY being in default of the entire Agreement and as to the COMPANY, the DISTRICT shall be released of all obligations created under this Agreement.

5. REMEDIES

5.1 COMPANY'S remedy for default by DISTRICT or COUNTY may be a claim for the funds for which the DISTRICT'S obligation to pay has ripened by virtue of the COMPANY'S compliance with all conditions precedent established under the terms of this Agreement. Such claims do not include consequential or special damages, and shall not exceed the total potential Project economic incentive.

5.2 DISTRICT'S remedy for default by COMPANY may include a claim for a prorated reimbursement from COMPANY that may be calculated by dividing the number of Jobs created but not maintained by the total number of Jobs that COMPANY under Section 3.3 created and maintained at the time of such default by COMPANY, with COMPANY to repay an amount equal to the prorated difference between the total economic incentive paid to COMPANY and the percentage difference of COMPANY'S failure to maintain Jobs pursuant to Section 3.3.

6. TERM AND TERMINATION

6.1 This Agreement shall terminate on the earlier of:

- 6.1.1 Three years after the satisfactory performance by the COMPANY of all of its obligations set forth in this Agreement.
- 6.1.2 The execution by all Parties of a written agreement terminating this Agreement;
- 6.1.3 At the option of the COMPANY in the event the COUNTY or the DISTRICT is in default as described in paragraph 4.1 and such defaulting Party fails to cure such default within the time period specified therein;
- 6.1.4 At the option of the DISTRICT or the COUNTY in the event the COMPANY is in default as described in paragraph 4.1 and the COMPANY fails to cure such default within the time period specified therein; and
- 6.1.5 At the option of DISTRICT if COMPANY suffers an event of bankruptcy or insolvency.
- 6.2 Sections 3.5, 4 and 5 shall expressly survive termination or expiration of this Agreement to the extent necessary to fully comply with the repayment provisions of Section 5.2.
- 6.3 Termination or expiration of this Agreement shall not affect any other rights of any Party which may have vested or accrued up to the date of such termination or expiration.

7. ATTORNEY FEES AND EXPENSES

Should either Party prosecute any action in connection with this Agreement for collection of payments due under this Agreement or the enforcement of performance or observance of any obligation or agreement herein contained, each party shall bear its own attorney's fees and costs, including appellate attorney's fees, as well as expert witness fees, if any.

8. NOTICES AND ADMINISTRATORS

- 8.1 All notices required or permitted under this Agreement and any written consents or approvals required hereunder shall be in writing and are in effect upon receipt. Notices shall be transmitted either by personal hand delivery; United States Post Office, certified mail return receipt requested; or, overnight express mail delivery. E-mail transmission may be used if the notice is also transmitted by one of the preceding forms of delivery. The addresses set forth below for the respective parties shall be the places where notices shall be sent, unless prior written notice of change of address is given.
- 8.2 The Parties' designated representatives and their respective addresses for purposes of this Agreement are as follows:

**LOCKHEED MARTIN CORPORATION
SPACE SYSTEMS COMPANY
Attn: Carl McMillan
1111 Lockheed Martin Way
Building 157
Sunnyvale, CA 94089
Telephone: (408)756-1831
E-mail: : carl.mcmillan@lmco.com**

With a copy to:

**Lockheed Martin Corporation
Space Systems Company
Attn: Office of General Counsel
12257 South Wadsworth Blvd. M/S 5120
Littleton, CO 80125-8500
Telephone: 303-9717-385715
Email: shawn.cheadle@lmco.com**

**LMC Properties Inc.
Attn: Julie Dow
100 S. Charles Street, Suite 1400
Baltimore, MD 21201
Telephone: 202.380.8766
Email: Julie.dow@lmco.com**

**Troy Post, Executive Director
North Brevard Economic Development Zone (NBEDZ)
400 South Street – Suite 1-A
Titusville, FL 32780**

9. BINDING EFFECTS AND ASSIGNMENT

- 9.1 This Agreement may not be assigned by COMPANY to any other legal entity or person without the prior written consent of the DISTRICT. such consent not to be unreasonably withheld, and only upon satisfactory terms providing for the completion of the Project. Notwithstanding the foregoing, no prior written consent from the DISTRICT is required if an assignment is made by COMPANY to an entity that is a wholly owned subsidiary of the COMPANY and the COMPANY remains responsible for the fulfillment of all of its obligations set forth in this Agreement for the remainder of the terms after any such assignment to a wholly owned subsidiary. Neither the DISTRICT nor the COUNTY may assign this Agreement without the prior written consent of the COMPANY.
- 9.2 This Agreement shall be binding upon the successors and assigns of the parties hereto to the extent such assignment has been consented to by the DISTRICT.

10. GOVERNING LAW, VENUE AND WAIVER OF REMOVAL TO FEDERAL COURT, SERVICE OF PROCESS, REMEDY FOR UNLAWFUL PAYMENTS

10.1 This Agreement shall be governed by, interpreted and construed in accordance with the laws of the State of Florida. Venue in any litigation arising out of this agreement shall be Brevard County, Florida in the state court with jurisdiction. COMPANY, the DISTRICT and the COUNTY hereby consents and waives any objection or defenses relating to Florida state court having jurisdiction over any dispute or claim arising out of this agreement and consents to process being served upon its Florida registered agent. Each of the COMPANY, the DISTRICT and the COUNTY expressly waives removal of any claim or action arising under this Agreement to federal court.

10.2 COMPANY agrees that any public expenditure pursuant to this Agreement found to be unlawful by a court of competent jurisdiction shall be reimbursed to the DISTRICT.

11. MODIFICATION

This Agreement may not be changed or modified except by written instrument signed by authorized representatives of all of the Parties hereto.

12. SURVIVAL

All covenants, agreements, representations, warranties and endowments made herein relating to repayment by the COMPANY in the event of the COMPANY'S default shall survive the termination of this Agreement until any claim or claims made under this Agreement by the DISTRICT are resolved.

13. FURTHER ASSURANCES

Each Party, without further consideration, shall take such action, execute and deliver such documents as the other may reasonably request to correct or effectuate the purpose of this Agreement.

14. RELATIONSHIP OF THE PARTIES

Nothing in this Agreement, nor any act of the parties, shall be deemed or construed by the Parties hereto or by any third party to create a relationship of principal and agent, partnership, joint venture or of any similar association whatsoever between COMPANY , on the one hand, and the DISTRICT and the COUNTY, on the other hand.

15. PROMOTION OF ECONOMIC INCENTIVES

As to those matters not covered by a lawful confidentiality agreement, with the consent of the COMPANY, the DISTRICT may issue news releases, public announcements, advertisements, or other forms of publicity concerning its efforts in connection with this Agreement. However, the

COMPANY must consent to any written or oral material to be published by the DISTRICT or Brevard County prior to publication.

15. FORCE MAJEURE

No Party shall bear responsibility or liability for non-performance of any obligations under this Agreement caused by, and during the duration of, major events beyond its reasonable control, such as an act of God, emergency, fire, casualty, lockout or strike, unavoidable accident, riot, war, terrorism, financial market disruption, computer virus or similar threat, or any other event of force majeure that is beyond the Party's reasonable control directly impacting both the Project and a Party's ability to perform an obligation under this Agreement.

16. COMPANY'S WARRANTIES/REPRESENTATIONS AND INDEMNIFICATION

- 16.1 COMPANY represents that it is possessed with all requisite lawful authority to enter into this Agreement, and the individual executing this Agreement is possessed with the authority to so sign and bind COMPANY.
- 16.2 COMPANY further warrants that it is not aware of any agreement or obligation of the COMPANY which would prohibit COMPANY from locating its facility in Brevard County, Florida.
- 16.3 To the extent permitted by law, COMPANY shall indemnify and hold DISTRICT and COUNTY harmless for any claims or actions brought by any third party for damages arising out of or related to the gross negligence or intentional misconduct by any COMPANY officer, director or employee in the performance of requirements in this Agreement that results in physical or economic injury to such third party. The COMPANY shall not be liable for any consequential, special or other indirect damages under this paragraph 16.3. Both the DISTRICT and COUNTY shall notify COMPANY of any such claim or action brought by a third party as soon as reasonably possible after the DISTRICT and/or COUNTY becomes aware of such claim or action.
- 16.4 To the extent permitted by law, the DISTRICT and the COUNTY shall jointly and severally indemnify and hold COMPANY harmless for any claims or actions brought by any third party for damages arising out of or related to the gross negligence or intentional misconduct by any DISTRICT or COUNTY official or employee in the performance of this Agreement that results in physical or economic injury to such third party. Neither the DISTRICT nor the COUNTY shall be liable for any consequential, special or other indirect damages under this paragraph 16.4.

17. SEVERABILITY

If any provision of this Agreement shall be held to be invalid, illegal or unenforceable by a court or other tribunal of competent jurisdiction, the validity, legality, and enforceability of the remaining provisions shall not in any way be affected or impaired thereby. The parties shall use

their best efforts to rehabilitate and replace the unenforceable provision or provisions of this Agreement with lawful terms and conditions approximating the original intent of the parties.

18. ENTIRE AGREEMENT AND DUPLICATE AGREEMENTS

This Agreement contains the entire understanding of the Parties and supersedes all prior agreements and negotiations respecting such matter. This Agreement may be signed in any number of counterparts (including by emailed PDF), each of which shall be an original, with the same effect as if the signatures thereto and hereto were upon the same instrument.

IN WITNESS WHEREOF, the DISTRICT and the COMPANY have caused this agreement to be executed and delivered by their duly authorized representatives.

Signed, Sealed and Delivered in the presence of:

LOCKHEED MARTIN CORPORATION

Jennife Paedon
Witness

BY: [Signature]
Title: VP Infrastructure Services

Witness

15 April 2016
Date

ATTEST:

NORTH BREVARD DEVELOPMENT DISTRICT

BY: [Signature]

BY: [Signature]
Chairman

ATTEST:

BREVARD COUNTY

BY: [Signature]
Scott Ellis, Clerk

BY: [Signature]
Jim Barfield, Chair

(as approved by the Board on MAY 26, 2015)

APPROVED AS TO FORM:
BY: [Signature]
County Attorney