

Meeting Date
12/19/2017



AGENDA	
Section	Unfinished Business
Item No.	V.B

**REVISED AGENDA REPORT**  
 BREVARD COUNTY BOARD OF COUNTY COMMISSIONERS

SUBJECT:	North Brevard Development District /Blue Origin Validation
DEPT/OFFICE:	County Attorney's Office/County Manager's Office

Requested Action:

Request authorization to retain bond counsel, Nabors, Giblin, to file validation suit seeking court approval of County's borrowing \$8 million to satisfy the grant incentive payable to Blue Origin; approval of proposed resolution authorizing the borrowing; authorize attached form of the note; approval of the attached retainer agreement with Nabors, Giblin; approval of interlocal agreement with North Brevard Development District; alternative option of a tri-party County/District/Lending Institution agreement.

Summary Explanation & Background:

As part of an economic incentive approved by resolution of the the County Commission on March 26, 2015 implemented by an agreement dated March 1, 2016, (attached as Composite Exhibit A), the Commission in conjunction with the North Brevard Development District, agreed to make its best efforts to pay a total cash incentive to Blue Origin in the amount of \$8 million within 120 days of the issuance of a Certificate of Occupancy on a 250,000 square foot rocket manufacturing facility at Exploration Park. The company is close to obtaining the Certificate of Occupancy on, what has turned out to be, a manufacturing facility of about 630,000 square feet.

In order to make the cash payment, it is recommended that the County seek a loan in the grant amount. Since the \$8 million in borrowed funds would be payable to a private company as an economic incentive grant, the Florida Constitution requires the County to establish a paramount public purpose for borrowing the funds. Establishing a paramount public purpose will require validation of that purpose by the Circuit Court. An example of a paramount purpose approved by the courts, is financing of sports stadiums.

The proposed Resolution authorizing the borrowing and the proposed note are attached as Exhibit B. The note would be repaid from North Brevard Development District funds, in accordance with the attached interlocal agreement. (Exhibit C)

Alternatively, it may be advisable to structure the loan with the District as a primary obligor and the County providing back-up credit support. This could be accomplished through a tri-party agreement among the District, the County and the lending institution. This would require additional action by the District and the County at future meetings.

The proposed Nabors, Giblin retainer agreement is set forth in the attached retainer letter. (Exhibit D) Nabors, Giblin has indicated that the fees for circuit court validation should not exceed \$25,000. Should an appeal be filed by the State of Florida, which is the Respondent to the validation suit through the State Attorney's Office, the law firm has agreed that the not to exceed amount of the fee will be \$35,000.

**Fiscal Impact:** The source of funds for repaying the note would come from revenue allocated by the county annually to the NBEDZ for use in granting economic development incentives.

**For More Information:** Contact Troy Post with the NBEDZ, at 321-264-5205, or [troy.post@brevardfl.gov](mailto:troy.post@brevardfl.gov); or Scott Knox, County Attorney, at 321-633-2090, or [scott.knox@brevardfl.gov](mailto:scott.knox@brevardfl.gov).

Clerk to the Board Instructions:

Exhibits Attached:

Contract /Agreement (If attached): Reviewed by County Attorney Yes  No  PR

County Manager Frank Abbate	Interim Assistant County Manager Jim Liesenfelt	Department Director / Extension Scott Knox, County Attorney / 321-633-2090
	Assistant County Manager John Denninghoff	



Correct

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

February 9, 2018

MEMORANDUM

TO: Scott Knox, County Attorney

RE: Item V.B., Payment of Debt Service on Financing of Blue Origin Grant Agreement for Blue Origin Validation

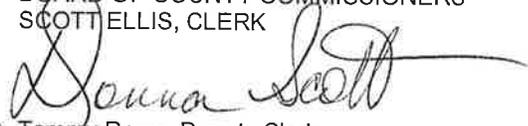
**This is to correct memorandum of January 24, 2018.** The Board of County Commissioners, in regular session on December 19, 2017, adopted Resolution No. 17-257, authorizing the issuance of its Non-Ad Valorem Revenue Note, Series 2018; approved Interlocal Agreement between the North Brevard Economic Development District and Brevard County relating to the payment of debt service on financing of Blue Origin Grant Agreement; authorized retaining bond counsel Nabors, Giblin & Nickerson to file a bond validation suit, not to exceed \$35,000 at the circuit court level and \$25,000 at the appellate level, seeking court approval of Brevard County borrowing up to \$8,100,000 to satisfy the grant incentive payable in lump sum to Blue Origin; and further, as the bond validation proceeding is expected to be ongoing when the incentive is due to Blue Origin, the Board of County Commissioners authorized the North Brevard Economic Development District to make the first payment to Blue Origin in the amount of \$1.379 million within 120 days of receipt of the Certificate of Occupancy (CO). Enclosed is certified copy of Resolution, executed Interlocal Agreement, and Nabors, Giblin & Nickerson bond counsel judicial validation document for your action.

Upon execution by the North Brevard Economic Development District and you, please return the fully-executed Interlocal Agreement, and the Nabors, Giblin & Nickerson document to this office for inclusion in the official minutes.

Your continued cooperation is always appreciated.

Sincerely,

BOARD OF COUNTY COMMISSIONERS  
SCOTT ELLIS, CLERK

*for*   
for Tammy Rowe, Deputy Clerk  
/ds

Encls. (3)

cc: NBEDZ Director  
County Manager  
Finance  
Budget

old

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 20, 2017

MEMORANDUM

TO: Scott Knox, County Attorney

RE: Item V.B., Payment of Debt Service on Financing of Blue Origin Grant Agreement for Blue Origin Validation

The Board of County Commissioners, in regular session on December 19, 2017, authorized retaining bond counsel Nabors, Giblin & Nickerson to file a bond validation suit, not to exceed \$25,000 at the circuit court level and \$35,000 at the appellate level, seeking court approval of Brevard County borrowing up to \$8,100,000 to satisfy the grant incentive payable in lump sum to Blue Origin; and further, as the bond validation proceeding is expected to be ongoing when the incentive is due to Blue Origin, the Board of County Commissioners authorized the North Brevard Economic Development District to make the first payment to Blue Origin in the amount of \$1.379 million within 120 days of receipt of the Certificate of Occupancy (CO).

Your continued cooperation is always appreciated.

Sincerely,

BOARD OF COUNTY COMMISSIONERS  
SCOTT ELLIS, CLERK

*Tammy Rowe*

Tammy Rowe, Deputy Clerk

/ds

cc: NBEDZ Director  
County Manager  
Finance  
Budget

**RESOLUTION NO. 17-257**

A RESOLUTION OF THE BOARD OF COUNTY COMMISSIONERS OF BREVARD COUNTY, FLORIDA AUTHORIZING THE ISSUANCE OF ITS NON-AD VALOREM REVENUE NOTE, SERIES 2018 IN THE AGGREGATE PRINCIPAL AMOUNT OF NOT TO EXCEED \$8,100,000 TO FINANCE A GRANT TO BE MADE TO BLUE ORIGIN; COVENANTING TO BUDGET AND APPROPRIATE CERTAIN LEGALLY AVAILABLE NON-AD VALOREM REVENUES TO PAY DEBT SERVICE ON THE SERIES 2018 NOTE; MAKING CERTAIN OTHER COVENANTS AND AGREEMENTS IN CONNECTION WITH THE ISSUANCE OF SUCH SERIES 2018 NOTE; PROVIDING CERTAIN TERMS AND DETAILS FOR THE SERIES 2018 NOTE; PROVIDING FOR THE RIGHTS, SECURITIES AND REMEDIES FOR THE OWNER OF THE SERIES 2018 NOTE; AUTHORIZING VALIDATION OF THE SERIES 2018 NOTE; AND PROVIDING FOR AN EFFECTIVE DATE.

NOW THEREFORE, BE IT RESOLVED BY THE BOARD OF COUNTY COMMISSIONERS OF BREVARD COUNTY, FLORIDA that:

**SECTION 1. FINDINGS.** It is hereby found and determined that:

A. Brevard County, Florida (the "Issuer" or the "County"), created the North Brevard Economic Development Zone Dependent Special District (the "District") for the purpose of implementing the economic development powers set forth in Section 125.045, Florida Statutes, and enhancing and expanding economic development within the District.

B. In accordance with its adopted Economic Development Plan, the District entered into the North Brevard Development District Economic Incentive Agreement (the "Incentive Agreement") with Blue Origin Florida, LLC ("Blue Origin"), pursuant to which the District agreed to provide a reimbursement grant in the amount of \$8,000,000 (the "Grant") to Blue Origin to induce Blue Origin to prepare and construct a building pad and a 250,000 square foot manufacturing facility and ancillary facilities within the District (the "Initial Facilities") and to construct a launch pad, integration facility and engine test facility within the Issuer (collectively with the Initial Facilities, the "Project").

Ex-B

The actual square footage of the Initial Facilities under construction is approximately 700,000 square feet.

C. The Incentive Agreement contemplates that Blue Origin will make a capital investment in the Project of at least \$160,000,000 and that the Project will result in 330 new jobs on or before December 31, 2026, with an average annual wage of \$89,000 per job.

D. In accordance with the Incentive Agreement, Blue Origin is obligated to reimburse the District certain portions of the Grant in the event the number of jobs created do not meet the Jobs Creation Schedule set forth in the Incentive Agreement.

E. Pursuant to the Incentive Agreement, the District is obligated to reimburse Blue Origin \$8,000,000 for costs it incurred with respect to the Project within 120 days of a certificate of occupancy (the "CO") being issued for the Initial Facilities.

F. It is anticipated that a CO for the Initial Facilities will be issued prior to the end of calendar year 2017.

G. As completed, the Initial Facilities will be approximately 700,000 square feet and it is now expected that the Project will result in more than 330 jobs and Blue Origin's capital investment in the Project will now exceed \$160,000,000.

H. It is in the best interests of the District and the Issuer for the Issuer to issue the Brevard County, Florida Non-Ad Valorem Revenue Note, Series 2018 (the "Series 2018 Note") in order to finance the Grant; the issuance of the Series 2018 Note and the payment of the Grant to Blue Origin serves a paramount public purpose as the Project will create significant new employment within the Issuer, increase the Issuer's tax base, expand and diversify the Issuer's economy, and otherwise increase and maintain the health, safety and welfare of the citizens of the Issuer.

I. The Series 2018 Note shall be secured solely by a covenant of the Issuer, subject to certain conditions set forth herein, to budget and appropriate from Available Non-Ad Valorem Revenues (as defined herein) amounts sufficient to pay the principal of and interest on the Series 2018 Note, when due, and the ad valorem taxing power of the Issuer will never be necessary or authorized to pay the principal of and interest on the Series 2018 Note or to make any other payments provided for in this Resolution, and the Series 2018 Note shall not constitute a lien upon any property whatsoever of or in the Issuer.

## **SECTION 2. AUTHORITY FOR THIS SUPPLEMENTAL RESOLUTION.**

This Resolution is enacted pursuant to the provisions of the Constitution of the State of Florida, Chapter 125, Florida Statutes, the Charter of the Issuer, and other applicable provisions of law (collectively, the "Act").

**SECTION 3. DEFINITIONS.** Capitalized terms not otherwise defined herein shall have the following meanings except as the context may clearly indicate otherwise:

"Additional Amount" shall mean (i) the difference between (a) interest on the Series 2018 Note for the period commencing on the date on which the interest on the Series 2018 Note (or portion thereof) loses its tax-exempt status and ending on the date the Series 2018 Note begins bearing interest at the Adjusted Rate (the "Taxable Period") at a rate per annum equal to the Adjusted Rate and (b) the aggregate amount of interest payable on the Series 2018 Note for the Taxable Period under the provisions of the Series 2018 Note, plus (ii) any penalties, fines, fees, costs and interest paid or payable by the Owner to the Internal Revenue Service by reason of such Determination of Taxability.

"Adjusted Ad Valorem Tax Revenues" shall mean all ad valorem tax revenues of the Issuer after deducting therefrom the required debt service payments on any limited or unlimited general obligation debt of the Issuer.

"Adjusted Non-Ad Valorem Revenues" shall mean all Non-Ad Valorem Revenues (except revenues of any enterprise fund of the County, unless and until such revenues are transferred from such enterprise fund to the County's general fund) less that portion of the Adjusted Costs of Essential Services which exceeds Adjusted Ad Valorem Tax Revenues.

"Adjusted Costs of Essential Services" shall mean that portion of the Costs of Essential Services which are identified as "general government" or "public safety" in the Issuer's Annual Audit.

"Adjusted Rate" shall have the meaning ascribed thereto in Section 12 hereof.

"Annual Audit" shall mean the annual audited financial statements of the Issuer prepared in accordance with generally accepted accounting principles applicable to governmental entities such as the issuer.

"Available Non-Ad Valorem Revenues" shall mean all Non-Ad Valorem Revenues of the Issuer that are legally available to pay principal of and interest on the Series 2018 Note, except for (i) revenues of any enterprise fund of the County, unless and until such revenues are transferred from such enterprise fund to the County's general fund, (ii) Non-Ad Valorem Revenues from any specific source or sources that have been pledged to secure other indebtedness of the County, until such funds become available for deposit into the County's general fund under the documentation creating such pledge, and (iii) Non-Ad Valorem Revenues required to pay or make provision for the payment of the Costs of Essential Services.

"Balloon Indebtedness" means any indebtedness, 25% or more of the original principal of which matures during any one Fiscal Year.

"Board" shall mean the Board of County Commissioners of the Issuer.

"Bond Counsel" shall mean shall mean Nabors, Giblin & Nickerson, P.A. or any other attorney at law or firm of attorneys, of nationally recognized standing in matters pertaining to the federal tax exemption of interest on obligations issued by states and political subdivisions, and duly admitted to practice law before the highest court of any state of the United States of America.

"Chairman" shall mean the Chairman of the Board or the Vice Chairman of the Board.

"Clerk" shall mean the Clerk of the Circuit Court of the County and Ex-Officio Clerk to the Board or any Deputy Clerk of the County.

"Code" shall mean the Internal Revenue Code of 1986, as amended, and the regulations promulgated thereunder.

"Costs of Essential Services" shall mean the cost of services and programs which are for essential public purposes affecting the health, welfare and safety of the inhabitants of the County or which are legally mandated by applicable law.

"County" or "Issuer" shall mean Brevard County, Florida, a political subdivision of the State.

"County Manager" shall mean the County Manager of the Issuer or any Assistant County Manager.

"Default Rate" shall mean the lesser of (i) the interest rate identified as the Default Rate in a supplemental resolution of the Issuer, or (ii) the highest rate of interest allowed by applicable law.

"Determination of Taxability" shall mean the circumstance of interest paid or payable on the Series 2018 Note becoming includable for federal income tax purposes in the gross income of the Owner a result of any action or inaction of the Issuer. A Determination of Taxability will be deemed to have occurred upon (i) the receipt by the Issuer or the Owner of an original or a copy of an Internal Revenue Service Technical Advice Memorandum or Statutory Notice of Deficiency or other official letter or correspondence from the Internal Revenue Service which holds, in a final determination, that any interest payable on the Series 2018 Note is includable in the gross income of the Owner; (ii) the issuance of any public or private ruling of the Internal Revenue Service that any interest payable on the Series 2018 Note is includable in the gross income of the Owner, or (iii) receipt by the Issuer or the Owner of an opinion of Bond Counsel to the

Issuer that any interest on the Series 2018 Note has become includable in the gross income of the Owner for federal income tax purposes. For all purposes of this definition, a Determination of Taxability will be deemed to occur on the date as of which the interest on the Series 2018 Note is deemed includable in the gross income of the Owner. Without limiting the foregoing, a Determination of Taxability shall not include and is not triggered by a change in law by Congress that causes the interest or any portion thereof to be includable in the Owner's gross income.

"Grant" shall have the meaning ascribed thereto in Section 1(B) hereof.

"Financial Advisor" shall mean Public Financial Management, Inc., financial advisor to the Issuer.

"Fiscal Year" shall mean the period commencing on November 1 of each year and ending on the immediately succeeding September 30.

"Interest Rate" shall have the meaning ascribed thereto in Section 5(B) hereof.

"Maturity Date" shall mean the final maturity date of the Series 2018 Note, which date shall be determined by the County Manager upon the advice of the Financial Advisor and the concurrence of the Purchaser; provided, however, such date shall not be later than December 31, 2028.

"Maximum Annual Debt Service" shall mean with respect to indebtedness that bears interest at a fixed interest rate, the largest aggregate amount of annual debt service coming due in any Fiscal Year in which such indebtedness is scheduled to be outstanding, and, with respect to indebtedness which bears interest at a variable interest rate, Maximum Annual Debt Service shall be determined assuming that interest accrues on such indebtedness at the current "Bond Buyer Revenue Bond Index" as published in *The Bond Buyer* no more than three business days prior to any such calculation; provided, however, if any indebtedness, whether bearing interest at a fixed or variable interest rate, constitutes Balloon Indebtedness, Maximum Annual Debt Service on such indebtedness shall be determined assuming such indebtedness is amortized over 20 years on an approximately level debt service basis.

"Non-Ad Valorem Revenues" shall mean all revenues of the Issuer not derived from ad valorem taxation.

"Other Debt" shall mean all of the following to the extent that they are secured by or payable in whole or in part from any Non-Ad Valorem Revenues (A) all obligations of the Issuer for borrowed money or evidenced by bonds, debentures, notes or other similar instruments; (B) all obligations of the Issuer to pay the deferred purchase price of property or services, except trade accounts payable under normal trade terms and which

arise in the ordinary course of business; and (C) all obligations of the Issuer as lessee under capitalized leases.

"Owner" shall mean the Purchaser and any subsequent owner of the Series 2018 Note which such Owner is required to be either (i) a "Qualified Institutional Buyer" as defined under Rule 144A promulgated by the Securities and Exchange Commission pursuant to the Securities Act of 1933, as amended, or an "Accredited Investor" as defined in Rule 501 of Regulation D (an "Accredited Investor") promulgated under the Securities Act of 1933, (ii) a bank, savings institution or insurance company (whether acting in a trustee or custodial capacity for any Accredited Investor or Qualified Institutional Buyer or on its own behalf) or (iii) a trust or custodial arrangement each of the beneficial owners of which is an Accredited Investor or Qualified Institutional Buyer.

"Paying Agent" and or "Registrar" as it relates to the Series 2018 Note shall mean the County Manager of the Issuer or his designee.

"Person" shall mean natural persons, firms, trusts, estates, associations, corporations, partnerships and public bodies.

"Pledged Funds" shall mean (a) the proceeds of the Series 2018 Note pending the application thereof, and (b) Available Non-Ad Valorem Revenues actually budgeted and appropriated pursuant to Section 8 hereof.

"Purchaser" shall mean the initial purchaser of the Series 2018 Note.

"Resolution" shall mean this Resolution, pursuant to which the Series 2018 Note is authorized to be issued, including any supplemental resolutions.

"Series 2018 Note" shall mean the Brevard County, Florida Non-Ad Valorem Revenue Note, Series 2018, authorized to be issued pursuant to this Resolution, the form of which is attached hereto as Exhibit A.

"State" shall mean the State of Florida.

**SECTION 4. AUTHORIZATION OF SERIES 2018 NOTE.** Subject and pursuant to the provisions of this Resolution, an obligation of the Issuer to be known as the "Brevard County, Florida Non-Ad Valorem Revenue Note, Series 2018" is hereby authorized to be issued under and secured by this Resolution in the aggregate principal amount of not to exceed \$8,100,000 for the purpose of funding the Grant and paying the costs of issuing the Series 2018 Note.

**SECTION 5. DESCRIPTION AND TERMS OF SERIES 2018 NOTE; PREPAYMENT.**

A. The Series 2018 Note shall be dated the date of its delivery and shall mature on the Maturity Date. The aggregate principal amount of the Series 2018 Note and the principal payments due on the Series 2018 Note shall be determined by the County Manager upon the advice of the Financial Advisor and shall be approved by the Purchaser and set forth in the Series 2018 Note. Principal payments shall be payable annually on such dates and in such amounts as is determined by a supplemental resolution of the Issuer and ending on the Maturity Date. The Series 2018 Note shall be executed on behalf of the Issuer with the manual signature of the Chairman, the official seal of the Issuer, and be attested with the manual signature of the Clerk. In case any one or more of the officers who shall have signed or sealed the Series 2018 Note or whose facsimile signature shall appear thereon shall cease to be such officer of the Issuer before the Series 2018 Note so signed and sealed has been actually sold and delivered, such Series 2018 Note may nevertheless be sold and delivered as herein provided and may be issued as if the person who signed or sealed such Series 2018 Note had not ceased to hold such office.

B. The Series 2018 Note shall bear interest from its date of issuance, payable semi-annually on such dates and in such amounts as is determined by a supplemental resolution of the Issuer, at a fixed interest rate determined pursuant to supplemental resolution of the Issuer (the "Interest Rate"). The Interest Rate shall not exceed the maximum rate allowed under applicable law. Interest shall be calculated on the basis of twelve 30-day months and a 360-day year. The Interest Rate may be subject to adjustment as provided in a supplemental resolution. The Series 2018 Note shall be issued as one note and the authorized denomination of the Series 2018 Note shall be its outstanding principal amount, as such principal amount is reduced from time to time.

C. The Series 2018 Note may be subject to such prepayment provisions as may be provided in a supplemental resolution of the Issuer.

D. The Series 2018 Note shall be in substantially the form set forth in Exhibit A hereto with such changes as shall be approved by the County Manager and the Chairman, such approval to be conclusively evidenced by the execution thereof by the Chairman.

**SECTION 6. REGISTRATION AND EXCHANGE OF SERIES 2018 NOTE; PERSONS TREATED AS OWNER.** So long as the Series 2018 Note shall remain unpaid, the Issuer will keep books for the registration and transfer of the Series 2018 Note. The Series 2018 Note shall be transferable only upon such registration books in whole but not in part, upon delivery to the Issuer of a certificate in form and substance reasonably acceptable to the Issuer evidencing the sale or transfer of the Series 2018 Note. The Issuer, through the County Manager, shall serve as the Paying Agent and

Registrar for the Series 2018 Note. The Series 2018 Note may only be transferred to an Owner as defined in Section 3 hereof.

The Person in whose name a Series 2018 Note shall be registered shall be deemed and regarded as the absolute owner thereof for all purposes, and payment of principal and interest on such Series 2018 Note shall be made only to or upon the written order of the Owner. All such payments shall be valid and effectual to satisfy and discharge the liability upon such Series 2018 Note to the extent of the sum or sums so paid.

**SECTION 7. OTHER COVENANTS OF ISSUER.** For so long as any of the principal of and interest on the Series 2018 Note shall be outstanding and unpaid, the Issuer covenants with the Owner of the Series 2018 Note as follows:

A. Payment of Series 2018 Note. The Series 2018 Note shall be secured by and payable from the Pledged Funds. The Issuer does hereby irrevocably pledge the Pledged Funds to the payment of the Series 2018 Note in accordance with the provisions hereof. The pledge of and lien on the Pledged Funds shall attach at the time of delivery of the Series 2018 Note.

The Issuer covenants and agrees to transfer to the Owner, solely from the Pledged Funds on or prior to the date designated for payment of any principal of or interest on the Series 2018 Note, sufficient moneys to pay such principal or interest.

B. Books and Records; Other Information. Books and records of the Issuer shall be kept in which complete and correct entries shall be made, in accordance with generally accepted accounting principles. As soon as available, the Issuer shall provide the Owner with its Comprehensive Annual Financial Report, including the Issuer's Annual Audit. Such financial statements will be in sufficient detail to determine compliance with all applicable financial covenants contained in this Resolution.

Upon request of the Owner, the Issuer shall provide the Owner with a certificate of an authorized officer of the Issuer certifying that the Issuer is not in default with respect to any provision of this Resolution and that the Issuer is in compliance with all of the covenants contained in this Resolution.

The Issuer shall provide the Owner with other information relating to the Series 2018 Note or the security with respect thereto upon reasonable request, including but not limited to the Issuer's annual budget for the current or prior Fiscal Year or, if adopted, the upcoming Fiscal Year.

D. Notice of Defaults. The Issuer shall within ten (10) days after it acquires actual knowledge thereof, notify the Owner in writing upon the happening, occurrence, or existence of any Event of Default (as defined in Section 16 hereof), and any event or condition which with the passage of time or giving of notice, or both, would constitute an

Event of Default, and shall provide the Owner with such written notice, a detailed statement by a responsible officer of the Issuer of all relevant facts and the action being taken or proposed to be taken by the Issuer with respect thereto.

E. Records. The Issuer agrees that any and all records of the Issuer with respect to the Series 2018 Note shall be open to inspection by the Owner or its representatives at all reasonable times at the offices the Issuer upon reasonable advance written notice.

**SECTION 8. COVENANT TO BUDGET AND APPROPRIATE.**

Subject to the other provisions of this Section 8, the Issuer covenants and agrees to appropriate in its annual budget, by amendment, if necessary, from Available Non-Ad Valorem Revenues, amounts sufficient to pay the regularly scheduled payments of principal and interest of the Series 2018 Note. Such covenant and agreement on the part of the Issuer to budget and appropriate such amounts of Available Non-Ad Valorem Revenues shall be cumulative to the extent not paid, and shall continue until such Available Non-Ad Valorem Revenues in amounts sufficient to make all such required payments shall have been budgeted, appropriated and actually paid. No lien upon or pledge of such budgeted Non-Ad Valorem Revenues shall be in effect until such monies are budgeted and appropriated.

Such covenant to budget and appropriate does not create any lien upon or pledge of such Non-Ad Valorem Revenues, nor does it preclude the Issuer from pledging in the future its Non-Ad Valorem Revenues or any component thereof, nor does it require the Issuer to levy and collect any particular Non-Ad Valorem Revenues, nor does it give the Owner of the Series 2018 Note a prior claim on any Non-Ad Valorem Revenues. Such covenant to budget and appropriate Available Non-Ad Valorem Revenues is subject in all respects to the prior payment of obligations secured by a pledge of such Non-Ad Valorem Revenues heretofore or hereafter entered into (including the payment of debt service on other debt instruments). Anything in this Resolution to the contrary notwithstanding, it is understood and agreed that the obligations of the Issuer, if any, to pay amounts due hereunder shall be payable from the portion of Available Non-Ad Valorem Revenues budgeted and appropriated as provided for hereunder and nothing herein shall be deemed to pledge ad valorem tax revenues for such interest or to permit or constitute a mortgage or lien upon any assets owned by the Issuer and no Owner of the Series 2018 Note nor any other person, may compel the levy of ad valorem taxes on real or personal property within the boundaries of the Issuer to pay such interest.

Notwithstanding any provisions of this Resolution or the Series 2018 Note to the contrary, the Issuer shall never be obligated to maintain or continue any of the activities of the Issuer which generate user service charges, regulatory fees or any Non-Ad Valorem Revenues. Neither this Resolution nor the obligations of the Issuer hereunder shall be construed as a pledge of or a lien on all or any legally available Non-Ad Valorem

Revenues of the Issuer, but shall be payable solely as provided herein and is subject in all respects to the provisions of Section 129.01, Florida Statutes.

The covenant to budget and appropriate for the purposes and in the manner stated herein shall have the effect of making available for the payment of the Series 2018 Note, in the manner described herein, Available Non-Ad Valorem Revenues, and placing on the Issuer a positive duty to appropriate and budget, by amendment, if necessary, amounts sufficient to meet its obligations hereunder; subject, however, in all respects to the restrictions of Sections 129.03 and 129.07, Florida Statutes. The Issuer agrees that its covenant and agreement to budget and appropriate Available Non-Ad Valorem Revenues shall be deemed entered into for the benefit of the Owner of the Series 2018 Note and this obligation may be enforced by a court of competent jurisdiction.

**SECTION 9. ANTI-DILUTION AND ADDITIONAL DEBT.** During each Fiscal Year that the Series 2018 Note is outstanding hereunder, the Issuer agrees and covenants with the Owner that Adjusted Non-Ad Valorem Revenues shall cover projected aggregate Maximum Annual Debt Service on the Series 2018 Note and Other Debt for each Fiscal Year by at least 1.5x. The Issuer agrees to provide the Owner with a certification that such anti-dilution test has been satisfied and accompanying calculation not later than 210 days after each Fiscal Year end. During each Fiscal Year that the Series 2018 Note is outstanding hereunder, prior to the incurrence of any additional Other Debt, the Issuer agrees and covenants with the Owner that Adjusted Non-Ad Valorem Revenues shall cover the aggregate Maximum Annual Debt Service on the Series 2018 Note and Other Debt, including the proposed Other Debt, by at least 1.5x. Such calculation shall be determined using the average of actual Adjusted Non-Ad Valorem Revenues for the prior two Fiscal Years based on the Issuer's Annual Audits.

**SECTION 10. APPLICATION OF PROCEEDS OF SERIES 2018 NOTE.**

A. An amount of the Series 2018 Note proceeds equal to \$8,000,000 shall be paid to Blue Origin for the Grant in satisfaction of the Issuer's obligations under the Incentive Agreement.

B. The balance of the proceeds of the Series 2018 Note shall be applied to the payment of costs and expenses relating to the issuance of the Series 2018 Note.

**SECTION 11. TAX COVENANT.** The Issuer covenants to the Owners of the Series 2018 Note that the Issuer will not make any use of the proceeds of the Series 2018 Note at any time during the term of the Series 2018 Note which, if such use had been reasonably expected on the date the Series 2018 Note was issued, would have caused such Series 2018 Note to be an "arbitrage bond" within the meaning of the Code. The Issuer will comply with the requirements of the Code and any valid and applicable rules and regulations promulgated thereunder necessary to ensure the exclusion of

interest on the Series 2018 Note from the gross income of the holder thereof for purposes of federal income taxation.

**SECTION 12. ADJUSTMENT TO INTEREST RATE.** In the event of a Determination of Taxability, the interest rate on the Series 2018 Note shall be increased to such rate as shall provide the Owner with the same rate of return that the Owner would have otherwise received on the Series 2018 Note taking into account the increased taxable income of the Owner as a result of such Determination of Taxability (the "Adjusted Rate"); provided, however, such Adjusted Rate shall never exceed the maximum rate allowable by law. Immediately upon a Determination of Taxability, the Issuer agrees to pay to the Owner the Additional Amount.

**SECTION 13. AMENDMENT.** The Issuer will not modify or amend this Resolution in any respect that impairs the Owner's security or rights hereunder without the written consent of the Owner of the Series 2018 Note.

**SECTION 14. LIMITATION OF RIGHTS.** With the exception of any rights herein expressly conferred, nothing expressed or mentioned in or to be implied from this Resolution or the Series 2018 Note is intended or shall be construed to give to any Person other than the Issuer and the Owner any legal or equitable right, remedy or claim under or with respect to this Resolution or any covenants, conditions and provisions herein contained; this Resolution and all of the covenants, conditions and provisions hereof being intended to be and being for the sole and exclusive benefit of the Issuer and the Owner.

**SECTION 15. NOTE MUTILATED, DESTROYED, STOLEN OR LOST.** In case the Series 2018 Note shall become mutilated, or be destroyed, stolen or lost, the Issuer shall issue and deliver a new Series 2018 Note of like tenor as the Series 2018 Note so mutilated, destroyed, stolen or lost, in exchange and in substitution for such mutilated Series 2018 Note, or in lieu of and in substitution for the Series 2018 Note destroyed, stolen or lost and upon the Owner furnishing the Issuer proof of ownership thereof and indemnity reasonably satisfactory to the Issuer and complying with such other reasonable regulations and conditions as the Issuer may prescribe and paying such expenses as the Issuer may incur. The Series 2018 Note so surrendered shall be canceled.

**SECTION 16. EVENTS OF DEFAULT; REMEDIES OF NOTEHOLDER.** The following shall constitute "Events of Default": (A) if the Issuer fails to pay any payment of principal of or interest on the Series 2018 Note when due and payable; (B) if the Issuer defaults in the performance or observance of any covenant or agreement contained in this Resolution or the Series 2018 Note (other than set forth in (A) above) and fails to cure the same within thirty (30) days following written notice, or such longer period as may be necessary to cure the default, provided that the Issuer is making all reasonable efforts to cure such default with reasonable diligence; (C) filing of a petition by or against the Issuer relating to bankruptcy, reorganization, arrangement or

readjustment of debt of the Issuer or for any other relief relating to the Issuer under the United States Bankruptcy Code, as amended, or any other insolvency act or law now or hereafter existing, or the involuntary appointment of a receiver or trustee for the Issuer, and, in the case of a proceeding other than a voluntary proceeding commenced by the Issuer, the continuance of any such event for 90 days undismissed or undischarged or (D) any representation or warranty of the Issuer contained in this Resolution or in any certificate or other closing document executed and delivered by the Issuer in connection with the issuance of the Series 2018 Note shall prove to have been untrue in any material respect when executed and delivered, thereby adversely impairing the security for the Series 2018 Note.

Upon the occurrence and during the continuation of any Event of Default, the Owner of the Series 2018 Note may either at law or in equity, by suit, action, mandamus or other proceeding (including specific performance) in any court of competent jurisdiction, protect and enforce any and all rights under the laws of the State, or granted or contained in this Resolution, and may enforce and compel the performance of all duties required by this Resolution, or by any applicable statutes to be performed by the Issuer or by any officer thereof. Additionally, upon the occurrence and continuation of an Event of Default specified in clause (A) above that is not cured within three (3) days of the scheduled payment date, the Series 2018 Note shall bear interest at the Default Rate and all payments made on the Series 2018 Note during any such period shall be applied first to interest and then to principal.

**SECTION 17. SEVERABILITY.** If any provision of this Resolution shall be held or deemed to be or shall, in fact, be illegal, inoperative or unenforceable in any context, the same shall not affect any other provision herein or render any other provision (or such provision in any other context) invalid, inoperative or unenforceable to any extent whatever.

**SECTION 18. APPLICABLE PROVISIONS OF LAW.** This Resolution shall be governed by and construed in accordance with the laws of the State.

**SECTION 19. RULES OF INTERPRETATION.** Unless expressly indicated otherwise, references to sections or articles are to be construed as references to sections or articles of this instrument as originally executed. Use of the words "herein," "hereby," "hereunder," "hereof," "hereinbefore," "hereinafter" and other equivalent words refer to this Resolution and not solely to the particular portion in which any such word is used.

**SECTION 20. CAPTIONS.** The captions and headings in this Resolution are for convenience only and in no way define, limit or describe the scope or intent of any provisions or sections of this Resolution.

**SECTION 21. PERSONAL LIABILITY EXEMPTION.**

A. No recourse under or upon any obligation, covenant or agreement of this Resolution or the Series 2018 Note or for any claim based thereon or otherwise in respect thereof, shall be had against any member of the Board, the Chairman, the Clerk, the County Attorney, the County Manager or any staff, employees or agents of the Issuer, past, present or future, either directly or through the Issuer (collectively, "Issuer Participants") it being expressly understood (i) that no personal liability whatsoever shall attach to, or is or shall be incurred by, the Issuer Participants under or by reason of the obligations, covenants or agreements contained in this Resolution or implied therefrom, and (ii) that any and all such personal liability, either at common law or in equity or by constitution or statute, of, and any and all such rights and claims against, every Issuer Participant are waived and released as a condition of, and as a consideration for, the execution of this Resolution and the issuance of the Series 2018 Note, on the part of the Issuer.

B. No recourse under or upon any obligation, covenant or agreement of this Resolution or the Series 2018 Note or for any claim based thereon or otherwise in respect thereof, shall be had against any officers, employees or agents of the Purchaser, past, present or future, either directly or through the Purchaser it being expressly understood (i) that no personal liability whatsoever shall attach to, or is or shall be incurred by, the officers, employees or agents of the Purchaser under or by reason of the obligations, covenants or agreements contained in this Resolution or implied therefrom, and (ii) that any and all such personal liability, either at common law or in equity or by constitution or statute, of, and any and all such rights and claims against, every such officers, employees or agents of the Purchaser, as such, are waived and released as a condition of, and as a consideration for the purchase of the Series 2018 Note. Notwithstanding the foregoing, nothing in this clause (B) shall be read or construed to release the Purchaser from any liability or obligation, or to release any officers, employees or agents of the Purchaser, past, present or future, from any liability arising out of such party's gross negligence, willful misconduct or breach of fiduciary duty.

**SECTION 22. VALIDATION.** To the extent deemed necessary by Bond Counsel, Nabors, Giblin & Nickerson, P.A., or necessary or desirable by the County Attorney, Bond Counsel and the County Attorney are authorized to institute appropriate proceedings for validation of the Series 2018 Note pursuant to Chapter 75, Florida Statutes.

**SECTION 23. AUTHORIZATIONS.** The Chairman and any member of the Board, the County Attorney, the Clerk, the County Manager and such other officials and employees of the Issuer as may be designated by the Issuer are each designated as agents of the Issuer in connection with the issuance and delivery of the Series 2018 Note and the financing of the Grant and are authorized and empowered, collectively or individually, to take all action and steps and to execute all instruments, documents, and

contracts on behalf of the Issuer that are necessary or desirable in connection with the execution and delivery of the Series 2018 Note and the financing of the Grant, and which are specifically authorized or are not inconsistent with the terms and provisions of this Resolution.

**SECTION 24. REPEALER.** All resolutions or parts thereof in conflict herewith are hereby repealed.

**SECTION 25. NO THIRD-PARTY BENEFICIARIES.** Except such other persons as may be expressly described in this Resolution or in the Series 2018 Note, nothing in this Resolution or in the Series 2018 Note, expressed or implied, is intended or shall be construed to confer upon any person, other than the Issuer and the Owner, any right, remedy or claim, legal or equitable, under and by reason of this Resolution, or any provision thereof, or of the Series 2018 Note, all provisions thereof being intended to be and being for the sole and exclusive benefit of the Issuer and the persons who shall from time to time be the Owner.

**SECTION 26. EFFECTIVE DATE.** This Resolution shall be effective immediately upon its adoption.

This Resolution passed and adopted this 19 day of December, 2017.

**BOARD OF COUNTY COMMISSIONERS  
BREVARD COUNTY, FLORIDA,**

(SEAL)

By:   
RITA PRITCHETT, Chair

Approved by Board December 19, 2017

ATTEST:

  
  
Scott Ellis, Clerk of the Circuit Court  
and Ex-Officio Clerk to the Board of  
County Commissioners of Brevard  
County, Florida

**EXHIBIT A**

**FORM OF SERIES 2018 NOTE**

\_\_\_\_\_, 2018

\$ \_\_\_\_\_

BREVARD COUNTY, FLORIDA  
NON-AD VALOREM REVENUE NOTE, SERIES 2018

Maturity Date: \_\_\_\_\_ 1, 20\_\_

Brevard County, Florida (the "Issuer"), for value received, promises to pay from the sources hereinafter provided, to the order of \_\_\_\_\_, or registered assigns (hereinafter, the "Owner"), the principal sum of \_\_\_\_\_ AND 00/100 DOLLARS, in the amounts and on the dates described below, together with interest on the principal balance at a rate of \_\_\_\_% per annum (subject to adjustment as described in the hereinafter described Resolution) semi-annually on each \_\_\_\_\_ 1 and \_\_\_\_\_ 1 commencing \_\_\_\_\_ 1, 2018. Interest shall be calculated on the basis of twelve 30-day months and a 360-day year.

Principal on this Note is payable annually in lawful money of the United States of America at such place as the Owner may designate to the Issuer in writing pursuant to the following schedule:

<u>Payment Date</u>	<u>Principal Amount</u>
---------------------	-------------------------

[insert prepayment provisions]

If any date for the payment of principal and interest hereon or the taking of any action hereunder shall fall on a day which is not a business day, the payment due or action to be taken on such date shall be due on the next succeeding day which is a business day, but the Issuer shall not receive credit for the payment until it is received by the Owner.

All payments by the Issuer pursuant to this Note shall apply first to accrued interest, then to other charges due the Owner, and the balance thereof shall apply to principal.

This Note is issued pursuant to the provisions of the Constitution of the State of Florida, Chapter 125, Florida Statutes, the Charter of the Issuer, and other applicable provisions of law (the "Act"), and Resolution No. \_\_\_\_\_ adopted by the Board of County Commissioners of the Issuer on December \_\_, 2017 (the "Resolution"), and is subject to all the terms and conditions of the Act and the Resolution. All terms, conditions and provisions of the Resolution are by this reference thereto incorporated herein as a part of this Note. Terms used herein in capitalized form and not otherwise defined herein shall have the meanings ascribed thereto in the Resolution.

Payments of the principal of and interest on this Note shall be limited obligations of the Issuer, payable solely from the Pledged Funds to the extent provided in the Resolution. The Issuer has agreed in the Resolution, subject to the limitations described therein, to appropriate in its annual budget, by amendment, if necessary, from Available Non-Ad Valorem Revenues, amounts sufficient to pay the regularly scheduled payments of principal and interest of this Note. Such covenant and agreement on the part of the Issuer to budget and appropriate such amounts of Available Non-Ad Valorem Revenues shall be cumulative to the extent not paid, and shall continue until such Available Non-Ad Valorem Revenues in amounts sufficient to make all such required payments shall have been budgeted, appropriated and actually paid. No lien upon or pledge of such budgeted Non-Ad Valorem Revenues shall be in effect until such monies are budgeted and appropriated.

Such covenant to budget and appropriate does not create any lien upon or pledge of such Non-Ad Valorem Revenues, nor does it preclude the Issuer from pledging in the future its Non-Ad Valorem Revenues or any component thereof, nor does it require the Issuer to levy and collect any particular Non-Ad Valorem Revenues, nor does it give the Owner a prior claim on the Non-Ad Valorem Revenues. Such covenant to budget and appropriate Available Non-Ad Valorem Revenues is subject in all respects to the prior payment of obligations secured by a pledge of such Non-Ad Valorem Revenues heretofore or hereafter entered into (including the payment of debt service on other debt instruments). Anything in the Resolution to the contrary notwithstanding, it is

understood and agreed that the obligations of the Issuer, if any, to pay amounts due on this Note shall be payable from the portion of Available Non-Ad Valorem Revenues budgeted and appropriated as provided for under the Resolution and nothing in the Resolution or this Note shall be deemed to pledge ad valorem tax revenues for such interest or to permit or constitute a mortgage or lien upon any assets owned by the Issuer and the Owner of this Note nor any other person, may compel the levy of ad valorem taxes on real or personal property within the boundaries of the Issuer to pay such interest.

Notwithstanding any provisions of the Resolution or this Note to the contrary, the Issuer shall never be obligated to maintain or continue any of the activities of the Issuer which generate user service charges, regulatory fees or any Non-Ad Valorem Revenues. Neither the Resolution nor the obligations of the Issuer under the Resolution or this Note shall be construed as a pledge of or a lien on all or any legally available Non-Ad Valorem Revenues of the Issuer, but shall be payable solely as provided herein and is subject in all respects to the provisions of Section 129.01, Florida Statutes.

The covenant to budget and appropriate for the purposes and in the manner stated in the Resolution shall have the effect of making available for the payment of this Note, in the manner described in the Resolution, Available Non-Ad Valorem Revenues, and placing on the Issuer a positive duty to appropriate and budget, by amendment, if necessary, amounts sufficient to meet its obligations under the Resolution; subject, however, in all respects to the restrictions of Sections 129.03 and 129.07, Florida Statutes. The Issuer agrees that its covenant and agreement to budget and appropriate Available Non-Ad Valorem Revenues shall be deemed entered into for the benefit of Owner of this Note and this obligation may be enforced by a court of competent jurisdiction.

The Note shall not constitute a general obligation or a pledge of the faith, credit or taxing power of the Issuer, the State, or any political subdivision or agency thereof, within the meaning of any constitutional or statutory provisions. Neither the State, nor any political subdivision or agency thereof, nor the Issuer shall be obligated (i) to exercise its ad valorem taxing power in any form on any real or personal property of or in the Issuer to pay the principal of the Note, the interest thereon, or other costs incidental thereto or (ii) to pay the same from any other funds of the Issuer except from the Pledged Funds, in the manner provided in the Resolution.

This Note may be exchanged or transferred by the Owner hereof, in whole but not in part, but only upon the registration books maintained by the Issuer and in the manner and subject to the conditions provided in the Resolution.

The interest rate on this Note is subject to adjustment as provided in Sections 12 and 16 of the Resolution.

It is hereby certified, recited and declared that all acts, conditions and prerequisites required to exist, happen and be performed precedent to and in the execution, delivery

and the issuance of this Note do exist, have happened and have been performed in due time, form and manner as required by law, and that the issuance of this Note is in full compliance with and does not exceed or violate any constitutional or statutory limitation.

IN WITNESS WHEREOF, Brevard County, Florida, has issued this Note and has caused the same to be signed by the Chairman of the Board of County Commissioners and attested to and countersigned by the Chief Deputy Clerk of said Board, either manually or with their facsimile signatures, and its corporate seal or a facsimile thereof to be reproduced hereon, all as of the 19 day of Dec., 2017

**BREVARD COUNTY, FLORIDA**

(SEAL)

By:   
RITA PRITCHETT, Chair  
Approved by the Board on 12/19, 2017

ATTEST:

  
By:   
Scott Ellis, Clerk of the Circuit Court  
and Ex-Officio Clerk to the Board  
of County Commissioners of  
Brevard County, Florida

STATEMENT OF VALIDATION

This Bond is one of a series of Bonds which were validated by judgment of the Circuit Court of the Eighteenth Judicial Circuit in and for Brevard County, Florida rendered on December 19, 2017.

**BREVARD COUNTY, FLORIDA**

(SEAL)



\_\_\_\_\_  
-RITA PRITCHETT, Chair

Approved by Board 12/19/17

ATTEST:



\_\_\_\_\_  
SCOTT ELLIS, CLERK

**INTERLOCAL AGREEMENT BETWEEN THE NORTH BREVARD ECONOMIC  
DEVELOPMENT DISTRICT AND BREVARD COUNTY RELATING TO THE  
PAYMENT OF DEBT SERVICE ON FINANCING OF BLUE ORIGIN GRANT  
AGREEMENT**

This Interlocal Agreement is made this 19 day of December, 2017 by and between the North Brevard Economic Development District, a dependent special district (hereafter sometimes referred to as the "DISTRICT") and BREVARD COUNTY, by and through its Board of County Commissioners (hereafter sometimes referred to as the "COUNTY").

**RECITALS:**

**WHEREAS**, Section 125.045(1), Florida Statutes, states that the Florida Legislature “finds and declares that this state faces increasing competition from other states and other countries for the location and retention of private enterprises within its borders,” and further that “there is a need to enhance and expand economic activity in the counties of this state by attracting and retaining manufacturing development, business enterprise management, and other activities conducive to economic promotion, in order to provide a stronger, more balanced, and stable economy in the state; and

**WHEREAS**, Section 125.045(2), Florida Statutes, specifically makes a legislative determination that expending public funds to attract and retain business enterprises, and the use of public funds toward the achievement of such economic development goals constitutes a 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 attracting new businesses to the county; and

**WHEREAS**, with economic development in mind, the COUNTY created the DISTRICT by Ordinance 2011-18, now codified as sections 98-240 through 98-251 of the Code of Ordinances of Brevard County, Florida (hereafter sometimes referred to as "the Ordinance"); and

**WHEREAS**, the COUNTY adopted Ordinance No. 2011-16, as amended and reworded by Ordinance No. 2012-14 (hereafter referred to as the County Tax Increment Ordinance) authorizing the use of available tax increment revenues within the North Brevard Development District boundaries commonly referred to as "the Zone" as a dedicated economic development tool and funding source enhancing the general welfare of the COUNTY through the advancement of new employment opportunities, the implementation of the potential creation of new economic development locations and the expansion of existing employment centers; and

**WHEREAS**, the City of Titusville enacted Ordinance No. 15-2011 as amended by Ordinance No. 14-2013 (hereafter referred to as the City Tax Increment Ordinance) providing for the calculation of an annual tax increment value within the boundaries of the CITY and the use of that tax increment for economic development purposes; and

**WHEREAS**, pursuant to the Ordinance, the DISTRICT adopted an Economic Development Plan for the DISTRICT which the COUNTY approved on May 15, 2012 and the CITY approved on May 22, 2012 in accordance with the requirements of the Ordinance; and

**WHEREAS**, the DISTRICT is empowered to administer and implement the adopted Economic Development Plan; and

**WHEREAS**, the DISTRICT is authorized to expend funds maintained in the Trust Fund created under the Tax Increment Ordinance for economic development purposes consistent with the requirements of Florida law, the Economic Development Plan and the Brevard County Home Rule Charter; and

**WHEREAS**, the plan authorizes DISTRICT assistance with the redevelopment, development and infrastructure improvements for projects meeting the criteria specified in the Economic Development Plan; and

**WHEREAS**, the economic development program identifies DISTRICT incentives, donations or contributions where deemed necessary, as a means to further economic development within the boundaries of the North Brevard Development District which may include expenditures on public infrastructure improvements where necessary to implement and support the adopted Economic Development Plan; and

**WHEREAS**, the state-wide economic development entity known as SPACE FLORIDA, along with the Economic Development Commission of Florida's Space Coast (EDC), worked with the DISTRICT to develop an economic development project called "Project Panther" which offered an \$8,000,000 economic development incentive as a means to attracting Blue Origin Florida, LLC, a large scale aerospace company to choose a site within the geography of the DISTRICT; and

**WHEREAS**, the DISTRICT approved Blue Origin Florida, LLC. (the Company), on May 22, 2015 for a reimbursement grant of \$8,000,000 as an inducement to the Company to prepare and construct a building pad and manufacturing facility measuring approximately 250,000 sq. ft. in Brevard County's Exploration Park, Phase II at NASA's Kennedy Space Center, upon land leased by SPACE FLORIDA, as well as constructing a launch pad, integration facility and engine test facility at the U.S. Air Force's Cape Canaveral Air Station (the Project); and

**WHEREAS**, in return, the Company agreed to make a capital investment in Brevard County to create an Orbital Launch Complex valued at \$160 Million and create three hundred thirty (330) net new-to-Brevard County full time-equivalent jobs at the Orbital Launch Complex on or before December 31, 2026, with an Average Annual Wage of \$89,000.00 per job without calculating in the additional value of employee benefits; and

**WHEREAS**, in return, the Company agreed that 36 minimum jobs will be created by the end of calendar year 2018; and

**WHEREAS**, the COUNTY adopted Resolution No. 2015-083 on May 26, 2015, approving 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; and

**WHEREAS**, the agreement provides the payment of the economic incentive is triggered by the issuance of the Certificate of Occupancy on the completion of the Orbital Launch Complex; and

**WHEREAS**, as of December 6, 2017, the issuance of the Certificate of Occupancy is imminent; and

**WHEREAS**, the economic incentives to the Company and the economic benefits that will be derived from the Project will provide significant benefits to the citizens and properties both within the boundaries of the DISTRICT and the COUNTY as a whole; and

**WHEREAS**, the Project and the reimbursement grant to the COMPANY for a portion of its costs related to the PROJECT serves a paramount public purpose; and

**WHEREAS**, the issuance of indebtedness for the payment of the reimbursement grant to the Company provides the COUNTY and the DISTRICT with cash flow benefits and the most efficient and cost effective method to issue any such indebtedness is through the County ; and

**WHEREAS**, the DISTRICT's ability to provide the cash payment *in toto* depends upon issuance of indebtedness and it is in the best interests of the DISTRICT and the COUNTY for the COUNTY to issue such indebtedness with the repayment to be made from budgeted legally available non-ad valorem revenues, primarily from annual tax increment revenues transferred from the DISTRICT to the COUNTY; and

**NOW THEREFORE**, in consideration of the following promises, conditions, covenants and obligations and for value received, the DISTRICT and COUNTY agree as follows:

1. The DISTRICT and the COUNTY agree that the above-stated Recitals are true and correct and are incorporated by reference as part of this Interlocal Agreement.

2. Both the DISTRICT and the COUNTY agree that the County Tax Increment Ordinance and the City Tax Increment Ordinance provide that, commencing in October 1, 2016, the tax increment value shall be determined by the application of the following formulas:

A. As to the City Tax Increment Ordinance: 40% of the difference between (1) the amount of ad valorem taxes levied by the CITY on all taxable real and tangible property (excluding the uses and geographic areas excluded in the First Tax Increment Period calculation) and (2) the amount of ad valorem taxes that would have been produced by a levy of the CITY millage rate on taxable real property in the base year real property assessment roll which is defined as the real property assessment roll certified by the property appraiser for the County Tax Year commencing October 1, 2011. The millage rate under the City Tax Increment Ordinance is applied to both taxable real and tangible personal property.

B. As to the County Tax Increment Ordinance: 90% of the difference between (1) the amount of Countywide Ad Valorem Taxes levied by the COUNTY at the millage rate on taxable real property in the base year real property assessment roll which is defined as the real property assessment roll certified by the property appraiser for the COUNTY Tax Year commencing October 1, 2011, on all real and tangible personal property (excluding the uses and geographic areas excluded in the First Tax Increment Period calculation) and (2) the amount that

would have been produced by a levy by the COUNTY of Countywide Ad Valorem Taxes in the base year real property assessment rolls which is the real and tangible personal property assessment rolls certified by the property appraiser for the County Tax Year commencing October 1, 2011. The millage rate under the County Tax Increment Ordinance is applicable to both taxable real and tangible personal property.

3. The COUNTY agrees to incur a indebtedness to fund the payment of the reimbursement grant to the Company which indebtedness shall be payable from a covenant of the COUNTY to annually budget and appropriate sufficient legally available non-ad valorem revenues. The DISTRICT agrees to annually budget and appropriate legally available revenues sufficient to pay the annual debt service on such indebtedness, in a principal amount not to exceed the \$8,000,000 Blue Origin economic development grant, the final maturity date for such indebtedness to be no later than ten years from the date of issuance. The DISTRICT shall provide such revenues to the COUNTY at such times and in such amounts to allow the COUNTY to timely make the required payments for the indebtedness.

4. The DISTRICT agrees that, if in any year, DISTRICT revenues are insufficient for it to make all of the annual debt service on the indebtedness when due, the COUNTY shall budget and appropriate from legally available non-ad valorem revenues to make up any shortfall and satisfy the annual debt service payments. If any such shortfall contribution is made by the COUNTY from its legally available non-ad valorem revenues, then the DISTRICT agrees to repay the total COUNTY contribution in every DISTRICT fiscal year following the COUNTY's debt service payments in which adequate District revenues are available to repay all or a portion of the total shortfall payments made by the COUNTY until those COUNTY shortfall payments are repaid in full.

5. The COUNTY agrees to seek judicial validation of the indebtedness in an amount sufficient as to cover the *in toto* cash economic incentive owed to Blue Origin.

6. If the COUNTY is unsuccessful in the bond validation proceedings, or while an appeal is pending, the DISTRICT agrees to budget and appropriate the annual repayments described at paragraph 3.2.3. in the North Brevard Development District Economic Incentive Agreement with Blue Origin (the incentive agreement) from the DISTRICTS annual revenue. If, in any given year, the annual revenue budget is insufficient to cover the repayments described at 3.2.3., the COUNTY may budget to cover the shortfall from available non-ad valorem tax revenue. If such shortfall is contributed by the COUNTY from available non-ad valorem tax revenue, the DISTRICT agrees to repay the COUNTY contributions in every DISTRICT fiscal year following the COUNTY's debt service payments in which adequate District revenues are available to repay all or a portion of the total shortfall payments made by the COUNTY until those COUNTY shortfall payments are repaid in full.

7. The DISTRICT agrees that it will request from Blue Origin, on an annual basis, the detailed accounts and records that demonstrate the creation of Project Jobs and of the Average Annual Wages paid for such jobs. The DISTRICT agrees to provide the COUNTY with this information prior to October 1st of each year.



15. The invalidity or unenforceability of any particular provision of this Agreement shall not affect the other provisions, and this Agreement shall be construed in all respects as if such invalid or unenforceable provisions were omitted.

[signature page follows]

**IN WITNESS WHEREOF, the parties have caused this agreement to be signed and executed:**

North Brevard Development District

Brevard County

BY: [Signature]  
Chair

BY: [Signature]  
Chair

DATE: 2/27/18

DATE: 01-23-18

ATTEST: [Signature]

ATTEST: [Signature]  
Scott Ellis, Clerk

As approved by the Board on December 19, 2017.

TALLAHASSEE  
1600 Mahan Drive  
Suite 200  
Tallahassee, Florida 32308  
(850) 224-4070 Tel  
(850) 224-4073 Fax

**Nabors  
Giblin &  
Nickerson** P.A.  
ATTORNEYS AT LAW

TAMPA  
2502 Rocky Point Drive  
Suite 1060  
Tampa, Florida 33607  
(813) 281-2222 Tel  
(813) 281-0128 Fax

FORT LAUDERDALE  
110 East Broward Boulevard  
Suite 1700  
Fort Lauderdale, Florida 33301  
(954) 315-3852 Tel

Reply to Tallahassee

November 27, 2017

Via Electronic Mail

Scott Knox  
County Attorney  
Brevard County, Florida  
2725 Judge Fran Jamieson Way  
Viera, Florida 32940  
[Scott.Knox@brevardcounty.us](mailto:Scott.Knox@brevardcounty.us)

Re: Validation of Brevard County, Florida  
Non-Ad Valorem Revenue Note Series 2018

Dear Mr. Knox:

It is my understanding that Brevard County, Florida is seeking the judicial validation of its proposed Non-Ad Valorem Revenue Note Series 2018. We would be pleased to represent the County in those and related proceedings.

We propose that the legal services for such proceedings be compensated on an hourly basis at the following hourly rates which are consistent with the provisions of Section 4 of the Firm's Bond Counsel Retainer Agreement relating to Ancillary Services:

- Partners: \$275.00 per hour
- Associates: \$225.00 per hour
- Law Clerks: \$ 75.00 per hour

NOT TO EXCEED \$35,000 AT CIRCUIT COURT LEVEL  
NOT TO EXCEED \$25,000 AT APPELLATE LEVEL

Time spent in travel would not be charged.

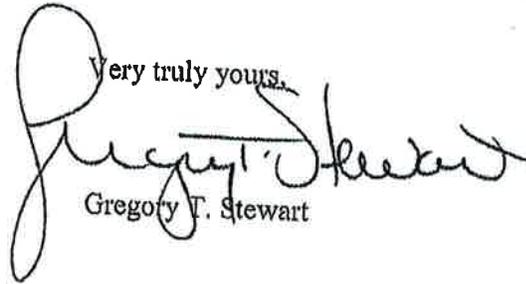
In addition to such legal fees, the firm will expect to be reimbursed for actual costs incurred on long-distance telephone charges, travel expenses and overnight delivery charges. Photocopies will be billed at 25 cents per page. Such fees and costs would be billed on a monthly basis and submitted to the County for fees and costs incurred the previous month.

Ex. D

Scott Knox  
County Attorney  
November 27, 2017  
Page 2

If you have any questions or desire any further information, please feel free to call us at any time.

Very truly yours,

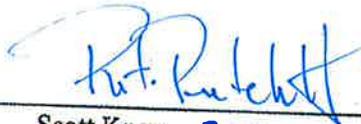


Gregory T. Stewart

GTS:III

ACCEPTED:

By:



Scott Knox *RITA PRITCHETT, CHAIR*  
County Attorney  
Brevard County, Florida

*AS APPROVED BY THE BOARD ON December 19, 2017*

**RESOLUTION NO. 2015 - 083**

**RESOLUTION APPROVING A GRANT AWARD FROM THE NORTH BREVARD ECONOMIC DEVELOPMENT ZONE (NBEDZ) FOR PROJECT PANTHER:**

WHEREAS, the Brevard County Board of Commissioners created the North Brevard Economic Development Zone (NBEDZ) Dependent Special District under the powers vested in the Board under Chapter 125, Florida Statutes, Chapter 189, Florida Statutes and section 200.065(1), Florida Statutes; and

WHEREAS, the Board approved Resolution No. 2012-113, adopting the written Economic Development Plan of the NBEDZ Dependent Special District, as approved by its board of directors; and

WHEREAS, the NBEDZ board of directors, in accordance with its Economic Development Plan, has approved the provision of grant assistance to induce an economic development project known as "Project Panther" to build an approximately 155,000 sq. ft. high-tech manufacturing facility in Exploration Park, said assistance to be in an amount expected to be \$8 million; and

WHEREAS, the NBEDZ believes that inducing this project, with its stated goal of creating 330 new, permanent jobs and making a substantial private capital investment of \$205-220 million, will provide a needed economic boost to an area of the county adversely impacted by the end of NASA's Space Shuttle program; and

WHEREAS, the NBEDZ further believes that inducing this project will aid in the future development of additional county-owned lots within the Spaceport Commerce Park by evidencing the viability of this site location.

NOW, THEREFORE BE IT RESOLVED, THAT THE BOARD OF COUNTY COMMISSIONERS OF BREVARD COUNTY, FLORIDA does hereby approve the NBEDZ's incentive package for "Project Panther," it being understood that said NBEDZ grant assistance for the project is expected to be \$8 million.

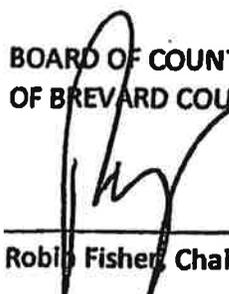
AND, IT IS SO ORDERED, and ADOPTED, in regular session, this 26 day of May, 2015.

TEST:



Scott Ellis, Clerk

BOARD OF COUNTY COMMISSIONERS  
OF BREVARD COUNTY, FLORIDA

  
Robin Fisher, Chairman

As approved by the Board on 05-26-15.

STATE OF FLORIDA  
COUNTY OF BREVARD  
I, Scott Ellis, Clerk of Circuit Court,  
do hereby certify that the foregoing  
is a true and correct copy of the original  
and official seal this 26 day of May,  
2015.  
BY Robin Fisher, Chairman  
D.C.

COMPOSITE EX-A

**NORTH BREVARD DEVELOPMENT DISTRICT  
ECONOMIC INCENTIVE AGREEMENT**

**THIS ECONOMIC INCENTIVE GRANT AGREEMENT** is made and entered into this 15 day of March, 2016, by and between BLUE ORIGIN FLORIDA, LLC., (hereinafter called the 'COMPANY') on the one hand, and on the other hand the NORTH BREVARD DEVELOPMENT DISTRICT (hereinafter called the 'DISTRICT'), a dependent special district of the Brevard County Board of County Commissioners, (hereinafter called the 'COUNTY'), pursuant to Section 125.045, Florida Statutes and Brevard County Ordinance No. 2011-16 and Ordinance No. 2011-18 and, for purposes of Section 3.2.3 and Section 15 below, the COUNTY.

**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. 2011-6 and Ordinance No. 2011-18 were enacted by the COUNTY for the express purpose of implementing Section 125.045, Florida Statutes within the boundaries of the DISTRICT by bestowing limited authority to the DISTRICT that allows the DISTRICT to grant economic incentives to new or expanding businesses, in accordance with the DISTRICT's written Economic Development Plan, which incentives include annual economic development cash incentives of \$500,000 per year when approved by the COUNTY; 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 state-wide economic development entity known as SPACE FLORIDA, along with the Economic Development Commission of Florida's Space Coast (EDC), have worked with the COMPANY and the DISTRICT to develop and consummate an economic development project heretofore known to the public as "Project Panther;" and

**WHEREAS**, the COMPANY considered multiple site locations for "Project Panther" 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 reimbursement grant for \$8,000,000, representing the local support necessary to induce the COMPANY to prepare a building pad and construct a manufacturing facility measuring approximately 250,000 sq. ft. in Brevard County's Exploration Park, Phase II at NASA's Kennedy Space Center, upon land leased by SPACE FLORIDA, and to construct a launch pad, integration facility and engine test facility at the U.S. Air Force's Cape Canaveral Air Station which is expected to result in the

creation of at least 330 new jobs to the State of Florida, averaging \$89,000 annually per job; and

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

**WHEREAS**, the COUNTY adopted Resolution No. 2015-083 on May 26, 2015, approving 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; and

**WHEREAS**, the COMPANY acknowledges that the DISTRICT and COUNTY are subject to the Florida Public Records Act, Chapter 119, Florida Statutes (the "Public Records Act") and to certain provisions of Chapter 286, Florida Statutes, relating to records and public meetings; and

**WHEREAS**, the DISTRICT has established terms and conditions which, if complied with by the COMPANY, will allow the COMPANY to receive the benefits outlined in this Agreement, so that the COMPANY may obtain the financial assistance pledged by the DISTRICT in the form of a reimbursement of a portion of funds used by the COMPANY in the construction of its planned facilities at Exploration Park, Phase II and the associated launch pad, integration facility and engine testing facility; 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, largely through the indirect economic development likely to result from the COMPANY'S activities in Brevard County.

**NOW THEREFORE**, in consideration of the mutual promises and agreements contained herein, and other valuable and good consideration, DISTRICT 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 "Building" shall mean the manufacturing facility approximating 250,000 sq. ft. to be constructed by the COMPANY in Exploration Park, Phase II, on land leased to SPACE FLORIDA by NASA'S Kennedy Space Center.

2.2 "Economic Incentive" shall mean the provision to the COMPANY of grant funds more fully described in paragraph 3.2 of this Agreement.

2.3 "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.

2.4 "Project" shall mean the project described in paragraph 3.1 of this Agreement.

2.5 "Project Site" shall mean the tract of land in Exploration Park, Phase II, more particularly described on the site plan shown under EXHIBIT "A" to this Agreement, and the Orbital Launch Complex described in paragraph 3.1 of this Agreement.

2.6 "Job" shall mean a direct employment position or 1099 contracted employment at the Project. Each person hired must work at least thirty-five (35) hours a week at the Project, under the control and supervision of the COMPANY. [The percentage of 1099 contracted employees will not exceed twenty percent (20%) of the combined total number of indirect employment positions and 1099 contracted employees as measured on an annual basis.]

2.7 "Average Project Wage" shall mean the annualized average of all wages and salaries paid to employees who hold Jobs at the Project. Such payments may include wages, salaries, commissions, bonuses, drawing accounts, vacation and sick pay, but exclude employee benefit packages.

### **3. DISTRICT AND COMPANY OBLIGATIONS**

#### **3.1 Project Description.**

The COMPANY agrees and commits to undertake the following:

The Project will involve the preparation of an Orbital Launch Complex and the construction of an approximately 250,000 sq. ft. industrial building or buildings, with offices, at Exploration Park, Phase II, at NASA's Kennedy Space Center (hereinafter referred to as "Building"), in order to manufacture components used in the assembly of spacecraft. The Orbital Launch Complex also includes the development and construction of a Launch Pad and associated mission support facilities. The COMPANY anticipates making a capital investment by the COMPANY in the overall development of a Florida Orbital Launch Complex totaling \$160 million. The Project is expected to create three hundred thirty (330) Jobs on or before December 31, 2026, with an Average Annual Wage of \$89,000.00 per Job, as more fully described in paragraph 3.4 of this Agreement.

#### **3.2 Economic Incentive.**

3.2.1 For the purpose of inducing the COMPANY to implement the Project and construct the Building, the DISTRICT agrees to provide an economic development incentive grant to the COMPANY through a reimbursement of funds injected into the Project by the COMPANY, said reimbursement to be in an amount of \$8,000,000.00 (the "Award"). The payout schedule for the Award shall be contingent on the occurrence of the following events:

(a) Execution of this Agreement;

(b) Receipt of all necessary permitting from all appropriate regulatory bodies evidencing that all construction activities at the Project Site have conformed to applicable law;

(c) Use of best efforts to seek out and utilize local vendors and construction firms and labor in the construction of the Building;

(d) Evidence that no construction liens have been filed on the land provided by SPACE FLORIDA that is serving as the Project Site, other than (i) liens arising by operation of law, and (ii) liens dismissed or otherwise rendered void prior to the DISTRICT's payment of the Award; and,

(e) Issuance of a Certificate of Occupancy on the Building from the appropriate government agency that has jurisdiction over the Project Site, evidencing that the Building has been substantially completed and made ready for tenancy by the COMPANY.

3.2.2 The DISTRICT further agrees that it will provide the Award amount of \$8,000,000 *in toto* in a cash payment to be made to the COMPANY within one hundred twenty (120) days of the occurrence of the issuance of the Certificate of Occupancy on the Building (the "Award Due Date") by cashier's check or wire transfer of immediately-available funds to an account designated by the COMPANY. The District may apply for financing from a bank or other financial institution in an attempt to provide the *in toto* grant. However, if the District cannot obtain financing or if the financing terms and requirements proposed to the DISTRICT for the provision of the Award to the COMPANY *in toto* are determined to be unfavorable by the DISTRICT and the COUNTY, then such event shall not relieve the DISTRICT of its obligation to pay the Award amount of \$8,000,000 in the manner prescribed by section 3.2.3. below.

3.2.3 If the DISTRICT fails (for any reason or no reason) to pay the COMPANY the Award amount of \$8,000,000 *in toto* on or before the Award Due Date, and subject to the provisions in section 3.2.3.3. below, the DISTRICT agrees to remit to the COMPANY, in each year over a maximum period of six (6) years, a minimum Annual Payment as specified on the repayment schedule set forth below until the total Award amount of \$8,000,000 has been paid to the COMPANY as an economic development incentive grant. Each Annual Payment shall be made in the form of a cashier's check or wire transfer to an account designated by the COMPANY.

#### REPAYMENT SCHEDULE

<u>Year</u>	<u>Minimum Annual Payment</u>	<u>Projected Cumulative Amount Paid</u>
Year 1	\$1,379,296.00	\$1,379,296.00
Year 2	\$1,379,296.00	\$2,758,592.00
Year 3	\$1,379,296.00	\$4,137,888.00
Year 4	\$1,379,296.00	\$5,517,184.00
Year 5	\$1,379,296.00	\$6,896,480.00
Year 6	\$1,103,520.00	\$8,000,000.00

3.2.3.1. The first Annual Payment shall be due and payable on the later of the two following dates: 1) sixty (60) days after the date the Certificate of Occupancy on the Building is presented by the Company to the DISTRICT or 2) January 15, 2018.

3.2.3.2. In each succeeding year over the following five (5) years a subsequent Annual Payment shall be due and payable within thirty (30) days after the anniversary of the first Annual Payment.

3.2.3.3. The parties acknowledge that, with the exception of the Year 6 Annual Payment, each Annual Payment was formulated by adding the total of : 1) \$1,065,796.00, representing the projected principal and interest the DISTRICT would have paid on an \$8,000,000 loan at six percent (6%) interest, plus 2) a minimum of \$313,500.00, representing ten percent (10%) of \$3,135,000.00, which is the currently projected annual ad valorem tax revenues the DISTRICT will realize in each DISTRICT fiscal year during which an Annual Payment is due. The DISTRICT agrees that, in lieu of the \$313,500.00 component of the Annual Payment in any DISTRICT fiscal year for which the actual ad valorem taxes realized exceed \$3,135,000.00, the DISTRICT shall, in addition to the \$1,065,796.00 component of the Annual Payment, remit to the COMPANY ten percent (10%) of the actual ad valorem taxes realized by the DISTRICT in that fiscal year provided no further Annual Payment or portion thereof shall be due once the Cumulative Amount Paid by the DISTRICT to the COMPANY reaches \$8,000,000.00.

### **3.3 Capital Investment.**

3.3.1 The COMPANY agrees to make or cause to make capital investments in facilities, tooling, and equipment for the overall development of a Florida Orbital Launch Site in an amount sufficient to complete the Building.

3.3.2 It is understood and acknowledged by the COMPANY that the DISTRICT's total outlay to the COMPANY shall not exceed \$8 million.

### **3.4 Job Creation.**

3.4.1 The COMPANY agrees to create THREE HUNDRED THIRTY (330) net new-to-Brevard County full time-equivalent jobs at the Project Site on or before December 31, 2026, said date hereinafter referred to as the "Effective Date of Job Completion," except that COMPANY shall have the right to extend Effective Date of Job Completion by one year only. Jobs shall have an Average Annual Wage of not less than \$89,000.00. The COMPANY may provide paid employee benefits in connection with Jobs created at the Project Site, but the value of such benefits shall not be included in the Average Annual Wage calculation.

3.4.2 The COMPANY agrees to provide the identified number of net new-to-Brevard County jobs during each year specified as the "Minimum Jobs Required at

Project Site” in the following schedule for the creation of jobs (“Jobs Creation Schedule”) at the Project Site:

## Jobs Creation Schedule

End of Calendar Year	2018	2022	2026
<b>Potential New Jobs Created</b>	145	145	40
<b>Cumulative Total</b>	145	290	330
<b>Minimum Jobs Required at Project Site</b>	36	145	247

3.4.3 The COMPANY warrants that it will create a minimum number of jobs at the Project Site by specific calendar dates, to-wit: at least THIRTY-SIX (36) Jobs at the Project Site by December 31, 2018, at least ONE HUNDRED FORTY-FIVE (145) Jobs cumulative at the Project Site by December 31, 2022, and at least TWO HUNDRED FORTY-SEVEN (247) Jobs cumulative at the Project Site by December 31, 2026, said number of Jobs referred to as the “Minimum Jobs Required at Project Site” herein.

3.4.4 In the event that the COMPANY creates less than the Minimum Jobs Required at Project Site by the dates provided in Section 3.4.3 herein, the DISTRICT shall (as its sole remedy) have the right to request a return of the Economic Incentive Award grant funds plus accrued interest in accordance with the following schedule:

(a) For the creation by the COMPANY of Jobs totaling less than 36 by December 31, 2018, the DISTRICT shall be entitled to receive a reimbursement of Twenty Percent (20%) of grant funds received by the COMPANY;

(b) For the creation by the COMPANY of Jobs totaling less than 145 cumulative by December 31, 2022, the DISTRICT shall be entitled to a reimbursement of Twenty Percent (20%) of grant funds received by the COMPANY;

(c) For the creation by the COMPANY of Jobs totaling less than 247 cumulative by December 31, 2026, the DISTRICT shall be entitled to a reimbursement of Twenty Percent (20%) of grant funds received by the COMPANY; and

(d) In the event that the sanctions imposed under this Section 3.4.4 require the COMPANY to repay to the DISTRICT all or a portion of the Award, such sanctions shall be immediately due and payable and the COMPANY shall pay to the DISTRICT the applicable funds by cashier’s check or wire transfer of immediately-available funds to an account designated by the DISTRICT within

ten (10) business days after the DISTRICT delivers to the COMPANY written notice of such sanctions. Notwithstanding anything in this Section 3.4.4 to the contrary, in the event that such sanctions imposed under this Section 3.4.4 require the COMPANY to repay to the DISTRICT all or a portion of the Award, if the COMPANY fails to pay the sanctions under this Section 3.4.4 when due, then the COMPANY shall reimburse the DISTRICT for all reasonable out-of-pocket costs and expenses incurred by the DISTRICT (including reasonable fees and expenses of outside legal counsel) in connection with the collection under and enforcement of this Section 3.4.4.

3.4.5 The COMPANY further agrees to maintain the Minimum Jobs Required at Project Site for a period of three (3) years (the "Job Maintenance Period") following the Effective Date of Job Completion. Failure on the part of the COMPANY to maintain the Minimum Jobs Required at Project Site for said three year period will entitle the DISTRICT to a reimbursement of Twenty Percent (20%) of grant funds received by the COMPANY.

3.4.6 The COMPANY may avoid the penalties described in Section 3.4.4 herein if COMPANY creates the Minimum Jobs Required at Project Site prior to the calendar schedule provided in Sections 3.4.2 and 3.4.3. Should the COMPANY create 247 or more Jobs prior to December 31, 2026, it is understood that the Job Maintenance Period shall, at the COMPANY's option, commence as of the date the COMPANY first creates 247 Jobs.

3.4.7 The DISTRICT and the COMPANY acknowledge that the ability of COMPANY to reach the Effective Date of Job Completion is dependent upon and subject to the timely issuance of all necessary permits and approvals in connection with construction activities on the Building at the Project Site, including but not limited to permits and approvals at the Brevard County level.

3.4.8 The DISTRICT acknowledges and understands that the COMPANY is taking a business risk by investing in the Project and working to create new Jobs in Brevard County. In no event will the aggregate reimbursements under the paragraphs of Section 3.4 exceed Eighty Percent (80%) of the total Award funds received by the COMPANY.

### **3.5 Reporting Requirements.**

3.5.1 The COMPANY agrees to keep detailed accounts and records demonstrating the creation of Project Jobs and of the Average Annual Wages paid for said Jobs, and will comply with DISTRICT requests for annual status reports on Job creation activities at the Project Site prior to the end of the Job Maintenance Period.

### **3.6 Audit and Public Records.**

3.6.1 The COMPANY 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"). The COMPANY therefore acknowledges that, unless exempt under Florida law, that portion of the COMPANY's records related to the acceptance and use of the DISTRICT's Economic Incentive for construction of the Building are considered public records that may be subject to production and delivery to the public upon request.

3.6.2 The parties further acknowledge that the DISTRICT will be subject to certain disclosure requirements under the Public Records laws subject to certain exemptions, including the specific exemption provided for in Section 288.075, Florida Statutes, and such disclosure requirements shall be superior to and shall supersede any confidentiality exemption previously invoked by the COMPANY for a period of not more than six (6) months after the date of public announcement of "Project Panther," unless otherwise authorized by law. Unless the COMPANY (at the COMPANY's sole discretion) volunteers to undertake defense of a challenge by a third party to the confidentiality exemption requested by the COMPANY, the DISTRICT shall provide a defense against such a challenge using its own attorney and at its own cost. The DISTRICT will not be liable to the COMPANY for any disclosures that the DISTRICT deems reasonably necessary under the Sunshine Laws, and the necessity of such disclosure will be determined by the DISTRICT or its legal counsel in their sole, reasonable discretion. In addition, either party may disclose all or any portion of the Confidential Information without liability (a) as required by law or regulation, (b) as 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 judicially mandated as to the parties involved in such action.

#### **4. DEFAULT TRIGGERS & SPECIFIC REMEDIES**

##### **4.1 General Default:**

4.1.1 Either Party is in default of this Agreement *if* the Party materially breaches any covenant contained in this Agreement and such breach has not been corrected or cured within thirty (30) days after written notice thereof.

4.1.2 The COMPANY is in default if any representation or warranty made by the Company herein or in any report, statement, invoice, certificate, application, or other documentation furnished to the DISTRICT in connection with the performance of the Agreement proves to be untrue in a material respect as of the date of issuance or making thereof, was made with knowledge that it was untrue by the COMPANY employee submitting the documentation, and has not been corrected, cured or brought into compliance within thirty (30) days after written notice thereof to the COMPANY by the DISTRICT.

4.1.3 The COMPANY is in default if it fails to provide to the DISTRICT the written verification, satisfactory to the DISTRICT, of its performance of the COMPANY'S obligations as set forth herein.

## **4.2 Specific Default Triggers**

4.2.1 In the event COMPANY fails to carry out the Project, as defined in paragraph 3.1, the COMPANY will be in default of this Agreement and the DISTRICT shall be entitled to take any legal remedies that may be available to the DISTRICT, as specified herein or otherwise; provided that such remedies shall in no event exceed the total dollar amount of the Award funds received by the COMPANY.

## **5. REMEDIES**

5.1 The COMPANY'S remedy for default by DISTRICT shall be (i) award of 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 (provided that such award does not include consequential or special damages, and in total shall not exceed \$8,000,000); plus (ii) the DISTRICT shall reimburse the COMPANY for all reasonable out-of-pocket costs and expenses incurred by the COMPANY (including reasonable fees and expenses of outside legal counsel) in connection with the collection under and enforcement of this Agreement.

5.2 Subject to Section 4.2.1 above, the DISTRICT remedies for default by COMPANY shall be limited to a claim for reimbursement under the terms specified in this Agreement, if any funds have been extended by the DISTRICT in behalf of the COMPANY. Such claims do not include consequential or special damages, and shall not exceed the total Project Economic Incentive Award.

## **6. TERM AND TERMINATION**

6.1 Unless terminated earlier in accordance with its terms, this Agreement shall terminate on the earlier of:

6.1.1 Three (3) years after the satisfactory performance by the COMPANY of all terms of this Agreement.

6.1.2 The execution by all Parties of a written agreement terminating this Agreement;

6.1.3 At the option of a non-defaulting Party, for cause in the event the other Party is in default; or

6.1.4 At the option of DISTRICT if COMPANY suffers an event of bankruptcy or insolvency.

6.2 Sections 4 and Section 5 shall expressly survive termination or expiration of this Agreement to the extent necessary to fully comply with the repayment provisions of Section 5.

6.3 Termination or expiration of this Agreement shall not affect any other rights of

either 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 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 Postal Service (USPS), certified mail return receipt requested; or, overnight express mail delivery. E-mail and facsimile 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 shall be sent by E-mail with a confirmation copy by overnight courier or registered mail addressed as follows:

If to the COMPANY:

**Scott Henderson**  
**Blue Origin Florida, LLC**  
8910 Astronaut Boulevard, Suite 206  
Cape Canaveral, Florida 32920  
E-mail: [shenderson@BlueOrigin.com](mailto:shenderson@BlueOrigin.com)

*With a copy to:*

**Legal Department**  
**Blue Origin**  
21218 76<sup>th</sup> Avenue South  
Kent, Washington 98032  
E-mail: [legal.department@blueorigin.com](mailto:legal.department@blueorigin.com)

If to the DISTRICT:

**Troy Post, CEcD, CBE**  
**North Brevard Development District**  
400 South Street - #1-A  
Titusville, Florida 32780

E-mail: [troy.post@brevardcounty.us](mailto:troy.post@brevardcounty.us)

*With a copy to:*

**Scott Knox, Esq.**  
**Brevard County Board of Commissioners**  
2725 Judge Fran Jamieson Way  
Building C  
Viera, Florida 32940  
E-mail: [scott.knox@brevardcounty.us](mailto:scott.knox@brevardcounty.us)

## **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 and only upon satisfactory terms providing for the completion of the Project.

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 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. COMPANY expressly waives removal of any claim or action arising under this agreement to federal court.

10.2 COMPANY agrees that any public expenditure 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 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 and DISTRICT.

### **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; provided, however, that neither the DISTRICT nor the COUNTY will issue or otherwise publish any written or oral material after execution of this Agreement without the COMPANY's prior review and consent.

### **16. COMPANY'S WARRANTIES/REPRESENTATIONS AND INDEMNIFICATION**

16.1 The 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 The COMPANY further warrants that it has not entered into any agreement nor has any obligations which would prohibit COMPANY from locating its facility in Brevard County, Florida.

16.3 To the extent permitted by law, other than the COMPANY'S claims arising out of a default by the DISTRICT, COMPANY shall indemnify and hold DISTRICT harmless for any claims or actions of any nature resulting from or arising out of the construction of operation of its facilities or otherwise in the COMPANY's use of this Award.

### **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 matters. This Agreement is executed in duplicate originals.

**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:

**BLUE ORIGIN FLORIDA, LLC**

Katharine Lunder  
Witness

BY: [Signature]  
**Robert E. Meyerson, President** (RBM)

[Signature]  
Witness

1 March 2016  
Date

**ATTEST:**

**NORTH BREVARD  
DEVELOPMENT DISTRICT**

BY: [Signature]

BY: [Signature]  
**George Mikitarian, Chairman**

Brevard County hereby consents and agrees to the payment of the \$8,000,000.00 incentive grant in the manner specified in Section 3.2.2, 3.2.3, and to Section 15 of this Agreement:

**ATTEST:**

**BREVARD COUNTY**

BY: [Signature]

BY: [Signature]  
**Jim Barfield, Chairman**

(as approved by the Board on May 26, 2015 in Resolution 2015-083)

**APPROVED AS TO FORM AND LEGALITY OF CONTENT**



**Scott Knox, County Attorney**

# **EXHIBIT "A"**

## **Preliminary Site Plan**



**Date:** December 15, 2017  
**Subject:** Blue Origin Orbital Launch Site December 2017 Update  
**Reference:** North Brevard Development District Economic Incentive Agreement

**PROJECT OVERVIEW**

Blue Origin's Orbital Launch Site (OLS) encompasses a Manufacturing Complex at Exploration Park, located on NASA Kennedy Space Center property and an Orbital Launch Complex at Cape Canaveral Air Force Station (CCAFS), Florida. The company's OLS development effort is a significant step forward on the path toward frequent and affordable space access. Blue Origin's Florida footprint supports the production and operation of Blue Origin's Orbital Launch Vehicle, New Glenn.



New Glenn Orbital Launch Vehicle Rendering

**AGREEMENT STATUS**

Agreement Description	Requirement*	Blue Origin Project Status
Capital Investment	\$160,000,000	Over \$200,000,000 Invested to date
Minimum jobs required at Project site by Dec. 31, 2018	36 full time jobs by Dec. 2018	90 full time jobs as of December 2017
Manufacturing Facility at Exploration Park	250,000 sq. ft. industrial building	650,000 sq. ft. + manufacturing complex

\* North Brevard Development District Economic Incentive Agreement executed March 1, 2016 as approved by the Board on May 26, 2015 in Resolution 2015-083

**ACCOMPLISHMENTS**

**EXPLORATION PARK**— Blue Origin employees moved into the Manufacturing Complex Dec. 11, 2017. The Manufacturing Complex is custom-built from the ground up to accommodate space vehicle manufacturing, processing, integration and testing. Truly a 21st century production complex, the facility hosts modern machinery, state-of-the art welding technology and cutting-edge composites processes. It enables production of a reusable fleet of orbital vehicles that the company will launch, refurbish, and launch again and again. This site will also house Blue Origin's Launch and Mission Control Centers.

**FACILITY PHOTOS**





