



# Agenda Report

2725 Judge Fran Jamieson  
Way  
Viera, FL 32940

## Consent

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F.25.

5/21/2024

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### Subject:

Approval of Resolution for a Modification to the Proposed Economic Incentive Agreement between the North Brevard Economic Development Zone and Project "Topaz" in Titusville

### Fiscal Impact:

Grant proceeds for the economic incentive provision would come from tax increment funds allocated to the NBEDZ.

### Dept/Office:

County Manager's Office

### Requested Action:

The North Brevard Economic Development Zone (NBEDZ) formally requests that the Board of County Commissioners (BOCC) approve a modified version of the proposed economic incentive agreement for the economic development project known as Project "Topaz," and authorize the BOCC chair to execute all documents in connection thereof.

### Summary Explanation and Background:

Project "Topaz," a qualified targeted industry sector business under the NBEDZ's Economic Development Plan (approved by the BOCC in Resolution No. 12-113), involves a firm with specialized manufacturing capabilities that anticipates the servicing of a military contract with the U.S. Department of Defense. The company has formally requested confidentiality of certain materials and records, per its rights under Chapter 288.075 of the Florida Statutes; as a result, the project is being referred to only as "Topaz," until the confidentiality provisions of those statutes no longer apply, or until the company desires to make public comment.

On September 12, 2023, the BOCC formally approved the provision of an economic incentive to the company to induce a decision to locate a new 200,000 sq. ft. manufacturing facility in Titusville, a project expected to create up to 300 new jobs by 2033, with an average annual wage of \$89,466. As a decision on whether to proceed with the project nears, the company has requested a modification to the language of the proposed economic incentive agreement presented to the BOCC in September of 2023. This change to the agreement would provide for a definition on "base jobs" - that is, employment positions existing before any new jobs connected with Topaz had been created at the project site in Titusville.

The NBEDZ, which would be required to track job creation activity at the site if the incentive agreement was entered into by all parties, formally approved this change at a meeting of its board of directors on May 10, 2024.

Contact: Troy Post, NBEDZ, at 321-960-1458 (or [troy.post@brevardfl.gov](mailto:troy.post@brevardfl.gov)).

**Clerk to the Board Instructions:**

Provide signed copy of resolution to CAO and NBEDZ.



May 22, 2024

**M E M O R A N D U M**

**TO:** Frank Abbate, County Manager

**RE:** Item F.25., Approval of Resolution for a Modification to the Proposed Economic Incentive Agreement between the North Brevard Economic Development Zone and Project "Topaz" in Titusville

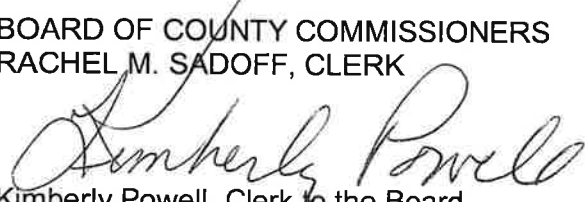
The Board of County Commissioners, in regular session on May 21, 2024, approved and adopted Resolution No. 24-051; and approved and authorized the Chair to execute the modified version of the proposed Economic Incentive Agreement for the economic development project known as Project "Topez". Enclosed is a fully-executed Resolution.

**Upon execution by all parties, please return a fully-executed copy of the Agreement to this office for inclusion in the official minutes of the Board.**

Your continued cooperation is always appreciated.

Sincerely,

BOARD OF COUNTY COMMISSIONERS  
RACHEL M. SADOFF, CLERK

  
Kimberly Powell, Clerk to the Board

/tr

Encl. (1)

cc: Contracts Administration  
NBEDZ Executive Director  
County Attorney  
Finance  
Budget

**RESOLUTION NO. 2024 - 051**

**RESOLUTION APPROVING A MODIFICATION TO THE PROPOSED  
ECONOMIC DEVELOPMENT INCENTIVE AGREEMENT FROM  
THE NORTH BREVARD ECONOMIC DEVELOPMENT ZONE (NBEDZ)  
ON PROJECT "TOPAZ"**

WHEREAS, the Brevard County Board of Commissioners (hereinafter referred to as the "Board") created the North Brevard Economic Development Zone (the "NBEDZ") Dependent Special District under the powers vested in the Board by 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 NBEDZ's written Economic Development Plan for the dependent special district, as developed and approved by the NBEDZ board of directors; and

WHEREAS, the NBEDZ board of directors, at its meeting held on May 12, 2023, and in accordance with its Economic Development Plan, approved the provision of an incentive to induce an economic development project known as "Topaz," to choose a site location in Titusville and within the geography of the NBEDZ, for the establishment of a manufacturing facility that would employ up to 300 persons, earning an average annual wage of \$89,466; and

WHEREAS, the NBEDZ believes that inducing this project, with its stated goal of creating up to 300 new, permanent jobs would provide a significant economic impact to the greater Titusville area; and

WHEREAS, the Board concurred with the decision of the NBEDZ board of directors, and approved the provision of this incentive to Project "Topaz" at a meeting of the Board held on September 12, 2023, at which time a draft copy of the proposed economic incentive agreement was presented to the Board for its review; and

WHEREAS, Project Topaz has requested a modification to the proposed economic incentive agreement, to provide for a definition on "base jobs," and to establish the initial job year for which job creation in North Brevard would be tracked, per a requirement of the proposed agreement, changes which were approved by the NBEDZ at a meeting of its board of directors held on May 10, 2024.

NOW, THEREFORE BE IT RESOLVED, THAT THE BOARD OF COUNTY COMMISSIONERS OF BREVARD COUNTY, FLORIDA does hereby approve this modification to the NBEDZ's proposed economic incentive agreement with Project "Topaz."

DONE, ORDERED, and ADOPTED, in regular session, this 21st day of May 2024.

ATTEST:

BOARD OF COUNTY COMMISSIONERS  
OF BREVARD COUNTY, FLORIDA



  
\_\_\_\_\_  
Rachel M. Sadoff, Clerk

  
\_\_\_\_\_  
Jason Steele, Chair

As approved by the Board on 05/21/2024

Approved as to legal form and content:

  
\_\_\_\_\_  
County Attorney

**NORTH BREVARD DEVELOPMENT DISTRICT  
ECONOMIC INCENTIVE AGREEMENT  
"PROJECT TOPAZ"**

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**NORTH BREVARD DEVELOPMENT DISTRICT  
ECONOMIC INCENTIVE AGREEMENT  
“PROJECT TOPAZ”**

**THIS ECONOMIC INCENTIVE GRANT AGREEMENT** (the “Agreement”) is made and entered into this \_\_\_\_ day of \_\_\_\_\_, 2023, by and between the following parties: XXXXXXXXXXXXXXXXXXXXXXX (hereinafter referred to as the COMPANY), the NORTH BREVARD DEVELOPMENT DISTRICT (hereinafter referred to as the “DISTRICT”), a dependent special district created by the Brevard County Board of County Commissioners, and BREVARD COUNTY (hereinafter referred to as the “COUNTY”), pursuant to Section 125.045, Florida Statutes and Brevard County Ordinance No. 2011-16 and Ordinance No. 2011-18.

**RECITALS**

**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 existing businesses located within the county, or to attract new businesses to the county; and

**WHEREAS**, Ordinance No. 2011-16 and Ordinance No. 2011-18 authorize the DISTRICT to grant economic incentives to businesses and development projects in accordance with the DISTRICT’s economic development plan, including annual economic development cash incentives; and

**WHEREAS**, the DISTRICT anticipates available budget reserves in future fiscal years for assisting economic development projects in the DISTRICT; and

**WHEREAS**, the DISTRICT has adopted a written Economic Development Plan, approved by the COUNTY per Resolution No. 2012-113, permitting the DISTRICT to offer a program to encourage the attraction of new businesses that would commit to the creation of a significant number of high-wage jobs within the geography of the DISTRICT; and

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

**WHEREAS**, the COMPANY considered multiple sites for “Project Topaz” outside 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 "High-Wage Job Opportunity" program, as the source of a grant for up to \$1,260,000.00, the proceeds of which will be used by the COMPANY in support of the job creation outlined more specifically in Section 3 of this Agreement; and

**WHEREAS**, the DISTRICT approved an economic incentive for the COMPANY at a meeting of the DISTRICT's Board of Directors on May 12, 2023, based upon the forecast number of jobs to be created in the Titusville area by "Project Topaz;" and

**WHEREAS**, in accordance with the Ordinances, the COUNTY is required to approve any economic incentive grant in excess of \$500,000.00; and

**WHEREAS**, information delivered to the DISTRICT by the COMPANY and its affiliated companies or guarantors, if any, including without limitation, any information relating to the financial condition of the COMPANY, accurately represents the condition of the COMPANY; and

**WHEREAS**, the COMPANY warrants and represents that the information in the application and supplemental documentation requested by the DISTRICT in support of the grant request is true and correct; 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; and

**WHEREAS**, the DISTRICT finds and declares that this Agreement serves a public purpose which includes advancement of economic development, job growth, and the future expansion of projects within the DISTRICT, as well as the COUNTY's tax base;

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

## **1. RECITALS**

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

## **2. DEFINITIONS**

**2.1** "Economic Incentive Grant," "Economic Incentive," and "Award" shall mean the provision of grant funds more fully described in Section 3.2 of this Agreement.

**2.2** "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.



**2.3** “Project” means the economic development project described in Section 3.1 of this Agreement.

**2.4** “Project Site” shall mean the property located at XXXXXXXXXXXXXXXXXXXX in Titusville, Florida.

**2.5** “Job” shall mean a full-time salaried employee or full-time equivalent (hereinafter referred to as “FTE”) employee who works at least 35 paid hours per week, performing tasks directly related to the products or services of the Project. A Job may include positions obtained from wholly-owned subsidiaries of the COMPANY, an employment agency or employee leasing company, through a union agreement, or co-employment under a professional employer organization agreement that results directly from the Project located within the geography of the DISTRICT. In tabulating hours worked, any paid leave an employee takes during the pay period, such as vacation or sick leave, may be included.

**2.6** “Base Jobs” shall mean positions paid directly or indirectly by the Company during the 12-month period beginning on August 1, 2022 and ending on July 31, 2023.

**2.76** “Average Project Wage” shall mean the following forms of compensation for all Jobs: salaries; commissions; bonuses; advances given to an employee against future earnings; overtime wages; vacation pay; sick leave pay; dismissal pay; cash prizes and awards; supplemental payments to make up the difference between regular pay and jury-duty pay or workers’ compensation benefits; and payments to employees on leave while serving in the military. Benefits may be included in the Average Project Wage calculation only if, as a company policy, the employee has the option of accepting the value of the benefits in the form of cash payments, and converts the benefit to cash within any reporting period. Whichever method the COMPANY uses to calculate Jobs – head count or FTE – also must be used in its Average Project Wage calculation. Each calculation of Average Project Wage by the COMPANY must be determined in a manner consistent with the following procedure: actual wages, salaries, and other payments (as listed above in this Section 2.6) for Jobs for each pay period are added, then divided by the number of Jobs. The Average Project Wage must be equal to or greater than \$89,466 in order for the COMPANY to be entitled to receive the economic incentives for Job creation provided herein.

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

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

The COMPANY agrees and commits to undertake the Project described in general terms below:

**3.1.1.** The COMPANY will build an approximately 200,000 sq. ft. production facility at the Project Site to accommodate a manufacturing operation in connection

with a multi-decade military contract through the U.S. Department of Defense. The Project would result in the creation of up to three hundred (300) new, permanent jobs at the Project Site. In addition to those employment positions, the U.S. military branch associated with this contract would station as many as 100 personnel (civilian and military positions) at the project site, however, those 100 personnel shall NOT be counted towards the job creation numbers committed to by the COMPANY for the purposes of receiving the economic incentive grant from the DISTRICT described in Section 3.2 of this Agreement.

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

### **3.2 Economic Incentive.**

For the purpose of inducing the COMPANY to implement the Project at the Project Site, the DISTRICT agrees to provide an economic incentive grant to the COMPANY, the proceeds of which will be used by the COMPANY in support of the job creation activities at the Project Site. The DISTRICT's total grant will not exceed \$1,260,000.00.

**3.2.1.** The COMPANY agrees to create a minimum of thirty (30) Jobs and up to three hundred (300) Jobs in Titusville or within the geographic boundaries of the DISTRICT over and above the Base Jobs during the period of time beginning on August 28, 2023 during the period of time beginning on the Effective Date of this Agreement, and ending December 31, 2033 or such earlier date by which COMPANY creates 300 Jobs, but no later than December 31, 2033 unless extended per Section 6.2 (the "Jobs Deadline"), with an Average Project Wage of at least \$89,466. The payout schedule for the economic incentive is set forth in the Jobs Table below. The identified incentive for the Jobs to be created appearing in the second column of each row applies only to the specific range of Jobs shown in the first column of that same row. No incentive will be paid for Jobs created after the Jobs Deadline.

**[This space intentionally left blank.]**

**Project "Topaz" Jobs Table**

<b>Jobs to be Created</b>	<b>Grant Amount per Job Created</b>	<b>Potential Grant for Job Creation</b>
Jobs 0 – 140	\$3,500 per job	\$490,000
Jobs 141 – 250	\$4,500 per job	\$495,000

Jobs 251 – 300	\$5,500 per job	\$275,000
<i>Total Grant Amount, if All Jobs Created</i>	N/A	\$1,260,000

**3.2.2.** On or before March 31 of each year, beginning in year 2028 and continuing through and including the March 31<sup>st</sup> immediately following termination of this Agreement, the COMPANY shall provide to the DISTRICT a report on the Jobs created at the Project Site, as of December 31 of the preceding year. Such report shall provide the (a) title or job description of each Job; (b) the original date of hire; (c) separation date, if applicable; (d) total compensation as defined in Section 2.6 above paid by the COMPANY to that employee during the preceding year; (e) the location of that Job (if a location outside the Project Site but within the geographic boundaries of the DISTRICT); and (f) whether the Job was a transfer into the Project Site. The report will form the basis for the DISTRICT's determination on whether the COMPANY has achieved the employment required for the disbursement of economic incentive funds.

**3.2.3.** The COMPANY further agrees to maintain in Titusville or within the geographic boundaries of the DISTRICT each Job for which an incentive is paid for a period of at least three (3) years following the Jobs Deadline.

**3.2.4.** The Project shall substantially conform in all material respects to the incentive application filed with the DISTRICT by the COMPANY.

### **3.3 Capital Investment**

The Parties acknowledge that the COMPANY's capital investment will vary, depending upon the actual number of Jobs created, although the COMPANY has estimated in the incentive application on file with the DISTRICT a planned, total capital investment of \$107 million at the Project Site.

### **3.4 Reporting Requirements**

**3.4.1.** The COMPANY agrees to keep detailed accounts and records demonstrating the creation of Jobs at the Project Site, and of the Average Annual Wages paid for said Jobs for each year throughout the term of this Agreement (hereinafter collectively referred to as "Jobs Reports") and to submit an annual Job Report to the DISTRICT no later than March 31 of each year following the preceding year covered by the applicable Job Report required under this Agreement.

**3.4.2.** Incentive payments shall be due upon verification of each Jobs Report received, subject to the satisfaction of the DISTRICT's Executive Director. The COMPANY may

appeal a decision of the Executive Director by directly approaching the DISTRICT's board of directors at one of its regular meetings, which are open to the public. The DISTRICT has up to two (2) years from the date an incentive payment is due to make payment to the COMPANY.

### **3.5 County Approval**

In accordance with the requirements of Section 98-246(b)(4), Code of Ordinances of Brevard County, Florida, the COUNTY hereby approves the cash incentive grant to the COMPANY under the terms and conditions set forth in this economic incentive Agreement and in substantial conformance with the application filed by the COMPANY with the DISTRICT.

## **4. DEFAULT**

**4.1** 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.

**4.2** 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 and has not been corrected, cured or brought into compliance within thirty (30) days after written notice thereof to the COMPANY by the DISTRICT.

**4.3** 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.

## **5. REMEDIES**

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

**5.2** If the COMPANY fails to continually maintain any Job for which the DISTRICT paid an incentive for the period specified in Section 3.2.3, the DISTRICT may require the COMPANY to repay as a one-time repayment to the DISTRICT the grant amount paid for each such Job, plus interest at the rate established pursuant to section 55.03, Florida Statutes for judgments or decrees, accrued since the date the grant payment for each such Job was received by the COMPANY.

**5.3** In any annual reporting period in which the Average Project Wage is below \$89,466, the DISTRICT may require the COMPANY to repay to the DISTRICT an amount

equal to the percentage by which the Average Project Wage is less than \$89,466, multiplied by the total economic incentive grant received by the COMPANY, plus interest at the rate established pursuant to section 55.03, Florida Statutes for judgments or decrees, accrued since the date each grant payment was received by the COMPANY.

## **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 later of the Jobs Deadline or 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, upon COMPANY's filing or institution of bankruptcy, reorganization, liquidation or receivership proceedings, or upon an assignment of a substantial portion of the assets for the benefit of creditors by COMPANY; provided, however, that in the case of any involuntary bankruptcy proceeding such right to terminate shall only become effective if COMPANY consents to the involuntary bankruptcy or such proceeding is not dismissed within ninety (90) days after the filing thereof.

**6.2** If the COMPANY makes a request in writing, prior to the expiration of the time period indicated in Section 3.2.1, to extend the time period for up to an additional twelve (12) months, the DISTRICT and the COUNTY will consider the request, and the COUNTY may grant the requested extension in its reasonable discretion.

**6.3** Sections 3.2.2, 3.2.3, 3.4, 4, 5, and 6 shall expressly survive termination or expiration of this Agreement to the extent necessary to fully comply with the repayment provisions of this agreement.

**6.4** 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. **BOTH PARTIES AGREE TO WAIVE ANY RIGHT TO JURY TRIAL AND THAT ANY TRIAL SHALL BE NONJURY.**

## **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 are as follows:

**"Project Topaz" CONTACT INFO HERE:**

**NAME [HERE]**

**TITLE [HERE]**

**COMPANY NAMED [HERE]**

**COMPANY ADDRESS [HERE]**

**PHONE NUMBER [HERE]**

**EMAIL ADDRESS [HERE]**

**Troy Post, Executive Director**

**NORTH BREVARD ECONOMIC DEVELOPMENT ZONE**

**7101 U.S. HIGHWAY ONE**

**TITUSVILLE, FLORIDA 32780**

**Phone: 321-621-4713**

**E-mail: [troy.post@brevardfl.gov](mailto:troy.post@brevardfl.gov)**

## **9. BINDING EFFECTS AND ASSIGNMENT**

**9.1** No portion of this Agreement, neither the rights nor the obligations herein, may 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 to the extent such assignment has been consented to by the DISTRICT.

**9.3** COMPANY must operate the Project at the Project Site in order to receive the grant incentive.

## **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, and 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 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 it shall reimburse to the DISTRICT any public expenditure found to be unlawful by a court of competent jurisdiction.

## **11. MODIFICATION**

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

## **12. 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.

## **13. RELATIONSHIP OF THE PARTIES**

Nothing in this Agreement, nor any act of the Parties, shall be deemed or construed by the Parties 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.

## **14. 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. The District must obtain the COMPANY's consent to any written or oral material to be published by the DISTRICT or the COUNTY prior to publication. Further, if the COMPANY consents, the DISTRICT shall be permitted to erect signage during the construction phase of the Project, indicating that the Project was assisted with the promise of financial help from the DISTRICT.

## **15. PUBLIC RECORDS DISCLOSURES**

**15.1** The COMPANY agrees and understands that Florida has broad public disclosure laws, and that any written communications with the COMPANY, to include emails, email



addresses, a copy of this Agreement, and any supporting documentation related to this Agreement are subject to public disclosure upon request, unless otherwise exempt or confidential under Florida Statute.

Public records are defined as all documents, papers, letters, maps, books, tapes, photographs, films, sound recordings, data processing software, or other material, regardless of the physical form, characteristics, or means of transmission, made or received pursuant to law or ordinance or in connection with the transaction of official business by any agency. In this case, the portion of the COMPANY's records relating to the acceptance and use of the DISTRICT's economic incentive grant are public records that may be subject to production upon request. The COMPANY agrees to keep and maintain these public records until completion of this Agreement.

Upon a request for public records related to this Agreement, the COMPANY will forward any such request to the DISTRICT and the DISTRICT will provide the COMPANY with a reasonable opportunity to protect any documents or information which may be subject to any protection under applicable law. The DISTRICT will respond to any public records request. Upon request, the COMPANY will provide access or electronic copies of any pertinent public records related to this Agreement to the DISTRICT within a reasonable time at a cost that does not exceed the cost provided in Chapter 119, Florida Statutes. Upon completion of the Agreement, COMPANY will transfer, at no cost, to the DISTRICT, any public records in its possession.

**IF THE COMPANY HAS QUESTIONS REGARDING THE APPLICATION OF CHAPTER 119, FLORIDA STATUTES, TO THE COMPANY'S DUTY TO PROVIDE PUBLIC RECORDS RELATING TO THIS AGREEMENT, CONTACT THE CUSTODIAN OF PUBLIC RECORDS AT THE DISTRICT, Troy Post, [troy.post@brevardfl.gov](mailto:troy.post@brevardfl.gov), ~~MS. JO SOJOURNER~~, [JO.SOJOURNER@BREVARDFL.GOV](mailto:JO.SOJOURNER@BREVARDFL.GOV), 7101 U.S. HIGHWAY ONE, TITUSVILLE, FLORIDA 32780.**

**15.2** The COMPANY agrees and acknowledges that the COUNTY will consider all documentation the DISTRICT submits to support payment of this grant to the COMPANY to be subject to public records disclosure. If the COMPANY has a specific concern that any portion of the documentation supporting payment should be redacted under a confidentiality agreement, under section 288.075, Florida Statutes, or under Chapter 119, Florida Statutes, the COMPANY should address that concern with the DISTRICT prior to submission for payment.

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

**16.1** COMPANY represents that it is possessed with all requisite lawful authority to enter into this Agreement, and the individual executing this Agreement is possessed with the authority to so sign and bind COMPANY.



**16.2** COMPANY further warrants that it has not entered into any agreement nor has any obligations which, to its knowledge, would prohibit COMPANY from locating its Project at the Project Site in Titusville.

**16.3** To the extent permitted by law and subject to the limitations contained in Section 768.28, Florida Statutes, the COMPANY shall indemnify and hold harmless the DISTRICT and its agents and employees from and against any and all claims, damages, losses, bodily injuries (including death), and expenses, including attorney's fees, arising out of or resulting from any services provided pursuant to this Agreement, but only to the extent such claim, damage, loss, or expense is caused in whole or in part by the negligence of the COMPANY. In agreeing to this provision, neither Party intends to waive any defense of sovereign immunity, or limit a damage to which it may be entitled under Section 768.28, Florida Statutes, or otherwise provided by law. Nothing herein shall be construed as consent by the DISTRICT or COMPANY to be sued by third parties in any matter arising out of any contract. The Parties acknowledge that specific consideration has been exchanged for this provision.

## **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, CONSTRUCTION, AND DUPLICATE AGREEMENTS**

This Agreement contains the entire understanding of the Parties and supersedes all prior agreements and negotiations respecting such matter. This Agreement is executed in duplicate originals. The Parties acknowledge that they fully reviewed this Agreement and had the opportunity to consult with legal counsel of their choice, and that this Agreement shall not be construed against any Party as if they were the drafter of the Agreement.

## **19. EMPLOYMENT ELIGIBILITY VERIFICATION (E-VERIFY)**

a. The COMPANY shall utilize the U.S. Department of Homeland Security's E-Verify system to verify the employment eligibility of all new employees hired by the COMPANY during the term of this Agreement. Upon Request, COMPANY shall provide acceptable evidence of their enrollment. Acceptable evidence shall include, but not be limited to, a copy of the fully executed E-Verify Memorandum of Understanding (MOU) for the entity.

b. COMPANY shall expressly require any subcontractors performing work or providing services pursuant to this Agreement to likewise utilize the U.S. Department of Homeland Security's E-

Verify system to verify the employment eligibility of all new employees hired by the subcontractor during the term of this Agreement.

c. COMPANY agrees to maintain records of its participation and compliance with the provisions of the E-Verify program, including participation by its subcontractors as provided above, and to make such records available to the COUNTY consistent with the terms of COMPANY's enrollment in the program. This includes maintaining a copy of proof of COMPANY's and any subcontractors' enrollment in the E-Verify Program.

d. Compliance with the terms of this section is made an express condition of this Agreement and the COUNTY may treat a failure to comply as a material breach of this Agreement.

e. A contractor who registers with and participates in the E-Verify program may not be barred or penalized under this section if, as a result of receiving inaccurate verification information from the E-Verify program, the contractor hires or employs a person who is not eligible for employment.

f. Nothing in this section may be construed to allow intentional discrimination of any class protected by law.

## **20. SCRUTINIZED COMPANIES.**

a. The COMPANY certifies that it and its subcontractors are not on the Scrutinized Companies that Boycott Israel List. Pursuant to Section 287.135, Florida Statutes, the COUNTY may immediately terminate this Agreement at its sole option if the COMPANY or its subcontractors are found to have submitted a false certification; or if the COMPANY, or its subcontractors are placed on the Scrutinized Companies that Boycott Israel List or is engaged in a boycott of Israel during the term of this Agreement.

b. Pursuant to Section 287.135, Florida Statutes, the COUNTY may immediately terminate this Agreement at its sole option if the COMPANY, its affiliates, or its subcontractors are found to have submitted a false certification; or if the COMPANY, its affiliates, or its subcontractors are placed on the Scrutinized Companies that Boycott the Scrutinized Companies with Activities in Sudan List, or Scrutinized Companies with Activities in the Iran Petroleum Energy Sector List, or engaged with business operations in Cuba or Syria during the term of the Agreement.

c. The COMPANY agrees to observe the above requirements for applicable subcontracts entered into for the performance of work under this Agreement.

d. As provided in Subsection 287.135(8), Florida Statutes, if federal law ceases to authorize these contracting prohibitions, this section shall become inoperative and unenforceable.

## **21. COUNTERPARTS AND AUTHORITY**

This Agreement may be executed in counterparts all of which, taken together, shall constitute one and the same Agreement. Each Party represents that the person signing on its

behalf has been fully authorized by all required action to sign on behalf of and to bind that Party to the obligations stated herein.

**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:

**"PROJECT TOPAZ"  
("COMPANY")**

\_\_\_\_\_  
Witness

**By:** \_\_\_\_\_

**Its:** \_\_\_\_\_

**NORTH BREVARD DEVELOPMENT  
DISTRICT ("DISTRICT")**

**By:** \_\_\_\_\_

**Its:** \_\_\_\_\_

**BREVARD COUNTY BOARD OF COUNTY  
COMMISSIONERS ("COUNTY")**

**By:** \_\_\_\_\_

**Its:** \_\_\_\_\_

**APPROVED AS TO LEGAL FORM AND SUFFICIENCY:**

**By:** \_\_\_\_\_

County Attorney