

BOARD OF COUNTY COMMISSIONERS

DATE: October 21, 2014

AGENDA ITEM NO. 18a.

Consent Agenda ☐

Regular Agenda ☒

Public Hearing ☐

 **County Administrator's Signature:**

Subject:

Approval of an Economic Development Grant Funding Agreement (Agreement) in the amount of \$240,000 between Pinellas County and Raytheon Company (Raytheon).

Department:

Department of Planning and Development Services

Staff Member Responsible:

Mike Meidel, Director
Economic Development

Recommended Action:

I RECOMMEND THE BOARD OF COUNTY COMMISSIONERS (BOARD) APPROVE THE ECONOMIC DEVELOPMENT GRANT FUNDING AGREEMENT WITH RAYTHEON AND AUTHORIZE THE CHAIR TO SIGN AND THE CLERK TO ATTEST THE AGREEMENT.

Summary Explanation/Background:

Florida Statute 125.045 authorizes counties to expend public funds to support economic development activities, including making grants for the expansion of businesses to the community. Pinellas County Resolution 14-12, approved at the Board's January 28, 2014 meeting, established a financial commitment of \$240,000 to Raytheon (which was known as Project B3102357477 at that time).

Raytheon intends to expand its Pinellas County engineering and manufacturing operations at the Young-Rainey STAR Center in Largo and add 62 new employees at annual pay scales above 150% of the average state annual wage. The project will also retain 162 employees with annual pay scales above 150% of the average state annual wage. The current average state annual wage is \$42,446. The Florida Department of Economic Opportunity has committed to provide the Company with a Quick Action Closing Fund (QAC) award of \$1 million. Pinellas County's financial commitment of \$240,000 is the local match for the State QAC award.

Fiscal Impact/Cost/Revenue Summary:

Four annual payments of \$60,000 each, beginning in FY2015, will be allocated from non recurring revenues within the General Fund budget and will be included in the Economic Development Department budget. The disbursement of payments will not be made until the conditions preceded in the Economic Development Grant Funding Agreement have been satisfied. Clawback provisions have been included in the Agreement.

Exhibits/Attachments Attached:

Economic Development Grant Funding Agreement
Quick Action Closing Fund Agreement
Contract Review Transmittal

NON-PURCHASING CONTRACT REVIEW TRANSMITTAL SLIP

PROJECT: Approval of Economic Development Grant Funding Agreement between Pinellas County and Raytheon Company. (Company).

CONTRACT NO.: N/A

ESTIMATED EXPENDITURE / REVENUE: \$240,000

(Circle or underline appropriate choice above.)

In accordance with Contract Administration and its Review Process, the attached documents are submitted for your review and comment. Please complete this Non-Purchasing Contract Review Transmittal Slip below with your assessment, and **forward to the next Review Authority on the list, skipping any authority marked "N/A."** Indicate suggested changes by noting those in "Comments" column, or by revising, in RED, the appropriate section(s) of the document(s) to reflect the exact wording of the desired change(s).

OTHER SPECIFICS RELATING TO THE CONTRACT:

Pinellas County Resolution 14-12, approved at the Board's January 28, 2014 meeting, established a financial commitment of \$240,000 to the Company (which was known as Project B3102357477 at that time).

REVIEW SEQUENCE	DATE	INITIAL/ SIGNATURE	COMMENTS (IF ANY)	COMMENTS REVIEWED & ADDRESSED OR INCORPORATED
Originator: Mike Meidel	9/8/14	MM		
Legal: Michael Zas	11/11/14	MZas		
Risk Mgmt: Virginia Holscher Guth 9-12-14	9/12/14	GW	Grant funding	MM 10/2/14
Finance:** Cassandra Williams	9/17/14	CW		
OMB:** Bill Berger	9/19/14		See attached.	MM 10/2/14
Assistant County Administrator or Executive Director: Jacob F. Stowers	9/23/14			

Please return to Becky Wills by September 12, 2014.

All inquiries should be made to Mike Meidel at ext. 48114.

** See Contract Review Process

OMB Contract Review

Contract Name	Economic Development Grant Funding Agreement		
CATS#	45576	Contract #	n/a

Mark all Applicable Boxes:

Type of Contract									
CIP		Grant		Other	X	Revenue		Project	

Contract information:

New Contract (Y/N)	Y	Original Contract Amount	n/a
Fund(s)	0001	Amount of Change	n/a
Cost Center(s)	261210	Contract Amount	\$240,000
Program(s)	1484	Amount Available	Total:
Account(s)	5820001	Included in Applicable Budget? (Y/N)	N
Fiscal Year(s)	FY15		

Description & Comments

(What is it, any issues found, is there a financial impact to current/next FY, does this contract vary from previous FY, etc.)

This agreement establishes financial commitment of \$400,000 to the Raytheon (Project B3102357477 in Resolution 14-12) for match to the State's Quick Action Closing Fund Agreement (Project Afterburner).

- If first Phase 1 award conditions are satisfactory met by Raytheon by December 31, 2014, not more than \$60,000 will be paid.
- If second Phase 1 award conditions are satisfactory met by Raytheon by December 31, 2015 not more than \$60,000 will be paid.
- If Phase 2 award conditions are satisfactory met by Raytheon by December 31, 2015, not more than \$60,000 will be paid.
- If Phase 3 award conditions are satisfactory met by Raytheon by December 31, 2015, not more than \$60,000 will be paid.
- Term of the agreement is from the Effective Date to June 30, 2022.

This was not included in the FY15 budget for the cost center.

Analyst: **Katherine Burbridge**

Ok to Sign with Comment: ☒

Instructions/Checklist

1. Upon receipt of a contract and notification in County Admin Tracking System (CATS) review the Agenda and Contract for language and accuracy. Make sure there are available funds, the dept is not overextending itself, was it planned, etc.
2. Complete the form above using the contract document and the County accounting & budgeting systems.
3. Use the "Description & Comments" section to give a brief summary of the contract and include your thoughts and pertinent information.
4. Print the form, initial, and leave folder on the Director's desk.

5. Login to CATS and click in the cell next to your name. A date will appear and click on the date you completed your review. Choose save and close the CATS system.

ECONOMIC DEVELOPMENT GRANT FUNDING AGREEMENT

THIS ECONOMIC DEVELOPMENT GRANT FUNDING AGREEMENT (“Grant Funding Agreement”) is made and entered into on the ____ day of _____, 2014 (“Effective Date”), by and between Pinellas County, a political subdivision of the State of Florida (“County”), for and on behalf of Pinellas County Economic Development (“Department”) and Raytheon Company, a Delaware corporation authorized to do business in Florida (“Raytheon”) (all parties hereto sometimes individually referred to as “Party” or collectively as “Parties”).

W I T N E S S E T H

WHEREAS, Raytheon has offices operating at 7887 Bryan Dairy Rd, Largo, Pinellas County, Florida 33777 and 7401 22nd Ave N, St. Petersburg, Pinellas County, Florida 33710 (“Project Location”), where it conducts engineering and manufacturing operations; and

WHEREAS, the State of Florida has targeted entities such as Raytheon in order to expand the State’s economic base; and

WHEREAS, the County recognizes that the presence of Raytheon in Pinellas County would help to attract the type of high-wage primary jobs envisioned by the County’s “Vision Pinellas” and “Pinellas by Design” plans, while helping to facilitate economic growth already targeted by the County; and

WHEREAS, the State of Florida, acting through its Department of Economic Opportunity’s Division of Strategic Business Development (“DSBD”) has committed to provide Raytheon with Quick Action Closing Fund funding to be used to support the retention and expansion of its Project at the Project Location in order to retain and create jobs in the County, pursuant to the State of Florida Department of Economic Opportunity Quick Action Closing Fund Agreement, dated June 30, 2014, between Raytheon and DSBD (“State Incentive Agreement”), a copy of which is attached hereto as **Exhibit A**; and

WHEREAS, pursuant to the authority granted in Section 125.045, Florida Statutes, the County agrees to provide Raytheon with an economic development grant of up to \$240,000 (“Grant Funding Award”), payable in 4 equal phased award payments as local match for the State Incentive Agreement funding, as previously authorized in the County Resolution 14-12 for Project B3102357477; and

WHEREAS, this Grant Funding Agreement sets forth the rights and obligations of the Parties related to the Grant Funding Award.

NOW, THEREFORE, for and in consideration of the foregoing recitals, the mutual promises contained herein and other good and valuable consideration, the receipt and adequacy of which are hereby acknowledged, the Parties agree as follows:

1. RECITALS. The above recitals are true and correct and are adopted as an integral part of this Grant Funding Agreement.

2. DEFINITIONS. Unless a capitalized term is specifically defined in this Grant Funding Agreement, all capitalized terms shall have the same meaning as set forth in the State Incentive Agreement.

A. “Project Wage” means an average annualized wage for New Project Jobs of at least \$63,000, as described in Exhibit B of the State Incentive Agreement.

B. “Raytheon Confidential Information” means for the purposes of this Grant Funding Agreement any Raytheon information that is designated in writing as “Raytheon Confidential Information” and is confidential and/or exempt from Sec. 119.07(1), Florida Statutes, pursuant to Sec. 288.075, Florida Statutes, including trade secrets as defined in Chapter 688, Florida Statutes, confidential proprietary information, and all other information confidential and/or exempt pursuant to Sec. 288.075, Florida Statutes. Notwithstanding the foregoing, Raytheon Confidential Information does not include information that: (a) becomes public other than as a result of a disclosure by the County in breach of this Agreement; (b) becomes available to the County on a non-confidential basis from a source other than Raytheon, which is not prohibited from disclosing such information; or (c) is known by the County prior to its receipt from Raytheon.

C. “New Project Jobs” for the purposes of this Grant Funding Agreement means those certain jobs meeting the criteria for same as defined in the State Incentive Agreement.

D. “Retained Jobs” for the purposes of this Grant Funding Agreement means those certain jobs meeting the criteria for same as defined in the State Incentive Agreement.

3. TERM. The term of this Grant Funding Agreement shall commence on the Effective Date and continue in full force and effect through and up to June 30, 2022, except for those obligations that survive the termination of the term, and unless the term is otherwise terminated or extended as provided herein.

4. CONDITIONS PRECEDENT TO GRANT FUNDING. The disbursement of the Grant Funding Award and/or continued funding from the County is conditioned upon the satisfaction of the following conditions precedent:

A. All related agreements are executed to the satisfaction of all parties.

B. The Pinellas Board of County Commissioners grants final approval of the terms and conditions of all related agreements to which it is a party.

C. Raytheon secures such other approvals, grants, and/or affiliation agreements pursuant to Sec. 288.1088, Florida Statutes, as may be necessary or required to expand in Pinellas County.

D. Raytheon is in compliance with all terms of the State Incentive Agreement, including, if applicable, any terms of the State Incentive Agreement amended in the future by both Raytheon and DSBD, pursuant to the State Incentive Agreement.

E. Raytheon has qualified for and received the annual incentive payment from DSBD pursuant to the State Incentive Agreement for each calendar year as set forth therein.

5. FUNDING AND AWARD CONDITIONS. Upon Raytheon satisfying the conditions precedent in Section 4, and the County's receipt of any and all required performance documentation, and subject to the termination and award reductions terms in Section 8, the Parties agree that:

A. The project is limited to the location of Raytheon's engineering and manufacturing operations in Pinellas County, Florida (the "Project").

B. The County shall pay the sum of not-to-exceed \$60,000 (the “First Phase One Payment”) to Raytheon upon the satisfaction of the following conditions (collectively, the “First Phase One Award Conditions”), provided, however, that the First Phase One Award Conditions shall be satisfied by no later than December 31, 2014 (the “First Award Date”).

1. Raytheon shall have created at least 27 New Project Jobs paying the Project Wage;
2. Raytheon shall have retained the Phase One Retained Jobs (as set forth in the State Incentive Agreement) paying at least the Project Wage;
3. a private capital investment (excluding the acquisition or leasing of real property) of at least \$798,000 in the County shall have been made by or on behalf of Raytheon in connection with the Project;
4. the representations and warranties of Raytheon contained in this Agreement shall be true and correct in all respects (in the case of any representation or warranty qualified by materiality or material adverse effect) or in all material respects (in the case of any representation or warranty not qualified by materiality or material adverse effect);
5. Raytheon shall have duly performed and complied in all material respects with all agreements, covenants and conditions required by this Agreement and the State Incentive Agreement entered into between Raytheon and DSBD; and
6. no lawsuit, proceeding or litigation shall have been commenced against the County, DSBD, the Escrow Agent or Raytheon, which would prevent the disbursement of the Award Payment(s) to the Raytheon and no injunction or restraining order shall have been issued by any governmental authority, and be in effect, which restrains or prohibits the Project.

C. The County shall pay the sum of not-to-exceed \$60,000 (the “Second Phase One Payment to Raytheon upon the satisfaction of the following conditions (collectively, the “Second Phase One Award Conditions”) provided, however, that the Second Phase One Award Conditions shall be satisfied by no later than December 31, 2015 (the “Second Award Date”).

1. Raytheon shall have created at least 10 additional New Project Jobs paying the Project Wage;

2. Raytheon shall have retained the Phase One Retained Jobs (as set forth in the State Incentive Agreement) paying at least the Project Wage;
3. an additional private capital investment (excluding the acquisition or leasing of real property) of at least \$2,569,000 in the County, shall have been made by or on behalf of Raytheon in connection with the Project;
4. the representations and warranties of Raytheon contained in this Agreement shall be true and correct in all respects (in the case of any representation or warranty qualified by materiality or material adverse effect) or in all material respects (in the case of any representation or warranty not qualified by materiality or material adverse effect);
5. Raytheon shall have duly performed and complied in all material respects with all agreements, covenants and conditions required by this Agreement and the State Incentive Agreement entered into between Raytheon and DSBD; and
6. no lawsuit, proceeding or litigation shall have been commenced against the County, DSBD, the Escrow Agent or Raytheon, which would prevent the disbursement of the Award Payment to the Raytheon and no injunction or restraining order shall have been issued by any governmental authority, and be in effect, which restrains or prohibits the Project.

D. The County shall pay the sum of not-to-exceed \$60,000 (the “Phase Two Award Payment”) to Raytheon upon the satisfaction of the following conditions (collectively, the “Phase Two Award Conditions”) provided, however, that the Phase Two Award Conditions shall also be satisfied by no later than December 31, 2015.

1. Raytheon shall have retained the Retained Jobs (as set forth in the State Incentive Agreement) paying at least the Project Wage;
2. an additional private capital investment (excluding the acquisition or leasing of real property) of at least \$356,000 in the County shall have been made by or on behalf of Raytheon in connection with the Project (the “Phase Two Capital Investment”);
3. Raytheon shall have notified DSBD in writing, with a copy of set Notice to the County, that Raytheon has been awarded a contract from the United States Department of Defense (the “DoD”) to produce secure communications devices

or Raytheon otherwise elects to be subject to the covenants in the State Incentive Agreement Section, 5(g)(2) and (g)(5) (the “Phase Two Condition Precedent”);

4. the representations and warranties of Raytheon contained in this Agreement shall be true and correct in all respects (in the case of any representation or warranty qualified by materiality or material adverse effect) or in all material respects (in the case of any representation or warranty not qualified by materiality or material adverse effect);
5. no lawsuit, proceeding or litigation shall have been commenced against the County, DSBD, the Escrow Agent or Raytheon, which would prevent the disbursement of the Phase Two Award Payment to Raytheon and no injunction or restraining order shall have been issued by any governmental authority, and be in effect, which restrains or prohibits the Project.

E. The County shall pay the sum of not-to-exceed \$60,000 (the “Phase Three Award Payment”), the final payment hereunder, to Raytheon upon the satisfaction of the following conditions (collectively, the “Phase Three Award Conditions”) provided, however, that the Phase Three Award Conditions shall also be satisfied by no later than December 31, 2015.

1. Raytheon shall have created at least 25 additional New Project Jobs paying the Project Wage;
2. Raytheon shall have retained the Phase One Retained Jobs (as set forth in State Incentive Agreement) paying at least the Project Wage;
3. an additional private capital investment (excluding the acquisition or leasing of real property) of at least \$6,000,000 in the County shall have been made by or on behalf of Raytheon in connection with the Project (the “Phase Three Capital Investment”);
4. Raytheon shall have notified DSBD in writing with a copy of set Notice to the County that Raytheon has been awarded a contract from the DoD to develop and produce secure long-range radar systems or Raytheon otherwise elects to be subject to the covenants in the State Incentive Agreement, Section 5(g)(3) and Section 5(g)(6) (the “Phase Three Condition Precedent”);

5. the representations and warranties of Raytheon contained in this Agreement shall be true and correct in all respects (in the case of any representation or warranty qualified by materiality or material adverse effect) or in all material respects (in the case of any representation or warranty not qualified by materiality or material adverse effect);
6. no lawsuit, proceeding or litigation shall have been commenced against the County, DSBD, the Escrow Agent or Raytheon, which would prevent the disbursement of the Phase Three Award Payment to Raytheon and no injunction or restraining order shall have been issued by any governmental authority, and be in effect, which restrains or prohibits the Project.

F. In order to remain qualified for the applicable Award Payments and to avoid award reductions pursuant to this Agreement, Raytheon shall be in full compliance with all terms of the State Incentive Agreement, including, if applicable, any terms of the State Incentive Agreement amended in the future by both Raytheon and DSBD, pursuant to the State Incentive Agreement, and shall satisfy all conditions in this agreement.

6. RAYTHEON COVENANTS AND RESPONSIBILITIES. During the term of this Grant Funding Agreement, Raytheon covenants, represents and agrees to:

A. Manage, operate, pay all costs and be solely responsible for completing the Project, including, but not limited to: (i) satisfying the requirements of this Grant Funding Agreement and the State Incentive Agreement; (ii) securing all permits and approvals required for the Project; (iii) contracting and/or subcontracting with all third parties necessary to complete the Project.

B. Provide copies of its annual certification of Average Project Wage and number of New Project Jobs, Retained Jobs documentation, and Capital Investment documentation as set forth in the State Incentive Agreement's "Exhibit B" to the County within fifteen (15) calendar days after Raytheon's submittal of the same to DSBD.

7. EXTENSION OF PERFORMANCE AND PAYMENT CONDITIONS.

A. Notwithstanding anything to the contrary herein, Pinellas County hereby grants to the Company the one-time option (the "Option") to extend the Expiration Date, the Job Creation Schedule, the New Job Maintenance Schedule, the Retained Job Maintenance Schedule, the

Capital Investment Schedule, the Capital Investment Maintenance Schedule, the Final Transfer Date, and the Final Award Date (and any other date on which an Award Payment is required to be disbursed) by twelve (12) months.

B. In the event that the Company exercises the Option, within ten (10) business days of exercising the Option, the Company shall pay to Pinellas County a sanction equal to the lesser of (A) five percent of the Award (5%) or (B) fifteen percent (15%) of all Award Payments disbursed to the Company to date.

C. The Option shall be exercisable in whole but not in part at any time from and after the Effective Date. The Company may exercise the Option by delivering to Pinellas County written notice of the Company's intention to exercise the Option (an "Exercise Notice") in accordance with Section 13. Upon Pinellas County's receipt of an Exercise Notice, the exercise of the Option shall be irrevocable.

8. TERMINATION AND AWARD REDUCTIONS.

A. This Grant Funding Agreement may be terminated by the County at its sole option upon (1.) the failure of Raytheon to comply with any material term(s) of this Grant Funding Agreement, or (2.) the failure of Raytheon to comply with any material term(s) of the State Incentive Agreement as determined by both DSBD and Raytheon; or (3.) if Raytheon ceases operations in Pinellas County prior to the last day of the term of this Grant Funding Agreement. Raytheon may terminate this Grant Funding Agreement by providing written notice to the County with such notice providing an explanation for Raytheon's decision to terminate. Termination of this Grant Funding Agreement by either Party shall be effective upon written notice, as described in Section 12.

B. If, in respect of any year in the Phase One Job Creation Schedule, the New Job Maintenance Schedule, the Retained Job Maintenance Schedule, or with respect to the Project Job Requirements set forth in the First Phase One Award Conditions or the Second Phase One Award Conditions, the Closing Fund Awardee fails to fully satisfy the Phase One Project Job creation or maintenance requirements set forth in Section 5 herein, then the Company shall repay, or the Award Payment that is otherwise due and payable in respect of such period shall be reduced by, an amount determined by first multiplying one-fifth of the Phase One Award Payments by a quotient, the numerator of which is the difference between

the actual number of Phase One Project Jobs, retained and new, for the relevant period and the required number of Phase One Project Jobs for such period and the denominator of which is the required number of Phase One Project Jobs, retained and new, for such period, plus interest, as determined in accordance with Section 8 herein, on the amount of such required repayment or if an Award Payment is otherwise due and payable in respect of such period, then such Award Payment shall be reduced by such sanction and the Company shall only be required to repay any excess plus interest thereon.

C. Subject to the satisfaction of the Phase Two Condition Precedent, if, in respect of any year in the Retained Job Maintenance Schedule, the Closing Fund Awardee fails to satisfy at least seventy percent (70%) of the Phase Two Retained Job requirements set forth in Section 5 herein, then the Company shall repay an amount equal to one-fourth of the Phase Two Award Payment plus interest, as determined in accordance with Section 8 herein, on the amount of such required repayment or if an Award Payment is otherwise due and payable in respect of such period, then such Award Payment shall be reduced by such sanction and the Company shall only be required to repay any excess plus interest thereon.

D. Subject to the satisfaction of the Phase Two Condition Precedent, if, in respect of any year in the Retained Job Maintenance Schedule, the Closing Fund Awardee fails to fully satisfy the Phase Two Retained Job requirements set forth in Section 5 herein, but satisfies at least seventy percent (70%) of such Phase Two Retained Job requirements, then the Company shall repay an amount determined by first multiplying one-fourth of the Phase Two Award Payment by a quotient, the numerator of which is the difference between the actual number of Phase Two Project Jobs for the relevant period and the required number of Phase Two Project Jobs for such period and the denominator of which is the required number of Phase Two Project Jobs for such period, plus interest, as determined in accordance with Section 8 herein, on the amount of such required repayment or if an Award Payment is otherwise due and payable in respect of such period, then such Award Payment shall be reduced by such sanction and the Company shall only be required to repay any excess plus interest thereon.

E. Subject to the satisfaction of the Phase Three Condition Precedent, if, in respect of any year in the Phase Three Job Creation Schedule or the New Job Maintenance Schedule, the

Closing Fund Awardee fails to satisfy at least seventy percent (70%) of the Phase Three New Job creation or maintenance requirements set forth in Section 5 herein, then the Company shall repay an amount equal to one-fourth of the Phase Three Award Payment plus interest, as determined in accordance with Section 8 herein, on the amount of such required repayment or if an Award Payment is otherwise due and payable in respect of such period, then such Award Payment shall be reduced by such sanction and the Company shall only be required to repay any excess plus interest thereon.

F. Subject to the satisfaction of the Phase Three Condition Precedent, if, in respect of any year in the Phase Three Job Creation Schedule or the New Job Maintenance Schedule, the Closing Fund Awardee fails to fully satisfy the Phase Three New Job creation or maintenance requirements set forth in Section 5 herein, but satisfies at least seventy percent (70%) of such Phase Three New Job creation or maintenance requirements, then the Company shall repay an amount determined by first multiplying one-fourth of the Phase Three Award Payment by a quotient, the numerator of which is the difference between the actual number of Phase Three New Jobs for the relevant period and the required number of Phase Three New Jobs for such period and the denominator of which is the required number of Phase Three New Jobs for such period, plus interest, as determined in accordance with Section 8 herein, on the amount of such required repayment or if an Award Payment is otherwise due and payable in respect of such period, then such Award Payment shall be reduced by such sanction and the Company shall only be required to repay any excess plus interest thereon.

G. If, in respect of any year in the Phase One Job Creation Schedule, the New Job Maintenance Schedule, or the Retained Job Maintenance Schedule, the Closing Fund Awardee fails to pay in respect of the Phase One Project Jobs the greater of (i) seventy percent (70%) of the Project Wage or (ii) 125% of the average annual private sector wage in Florida for the year ended December 31, 2011 (such greater amount, the “Minimum Project Wage”), then the Company shall repay an amount equal to one-fifth of the Phase One Award Payments plus interest, as determined in accordance with Section 8 herein, on the amount of such required repayment or if an Award Payment is otherwise due and payable in respect of such period, then such Award Payment shall be reduced by such sanction and the Company shall only be required to repay any excess plus interest thereon.

H. If, in respect of any year in the Phase One Job Creation Schedule, the New Job Maintenance Schedule, or the Retained Job Maintenance Schedule, the Closing Fund Awardee fails to pay the Project Wage in connection with the Phase One Project Jobs, but pays at least the Minimum Project Wage with respect to such Phase One Project Jobs, then the Company shall repay an amount determined by first multiplying one-fifth of the Phase One Award Payments by a quotient, the numerator of which is the difference between the actual average annualized wage paid by the Closing Fund Awardee in respect of the Phase One Project Jobs during the relevant time period and the Project Wage and the denominator of which is the Project Wage, plus interest, as determined in accordance with Section 8 herein, on the amount of such required repayment or if an Award Payment is otherwise due and payable in respect of such period, then such Award Payment shall be reduced by such sanction and the Company shall only be required to repay any excess plus interest thereon.

I. Subject to the satisfaction of the Phase Two Condition Precedent, if, in respect of any year in the Retained Job Maintenance Schedule, the Closing Fund Awardee fails to pay the Minimum Project Wage in respect of the Phase Two Retained Jobs, then the Company shall repay an amount equal to one-fourth of the Phase Two Award Payment plus interest, as determined in accordance with Section 8 herein, on the amount of such required repayment or if an Award Payment is otherwise due and payable in respect of such period, then such Award Payment shall be reduced by such sanction and the Company shall only be required to repay any excess plus interest thereon.

J. Subject to the satisfaction of the Phase Two Condition Precedent, if, in respect of any year in the Retained Job Maintenance Schedule, the Closing Fund Awardee fails to pay the Project Wage in connection with the Phase Two Retained Jobs, but pays at least the Minimum Project Wage with respect to such Phase Two Retained Jobs, then the Company shall repay an amount determined by first multiplying one-fourth of the Phase Two Award Payment by a quotient, the numerator of which is the difference between the actual average annualized wage paid by the Closing Fund Awardee in respect of the Phase Two Retained Jobs during the relevant time period and the Project Wage and the denominator of which is the Project Wage, plus interest, as determined in accordance with Section 8 herein, on the amount of such required repayment or if an Award Payment is otherwise due and payable in

respect of such period, then such Award Payment shall be reduced by such sanction and the Company shall only be required to repay any excess plus interest thereon.

K. Subject to the satisfaction of the Phase Three Condition Precedent, if, in respect of any year in the Phase Three Job Creation Schedule or the New Job Maintenance Schedule, the Closing Fund Awardee fails to pay the Minimum Project Wage in respect of the Phase Three New Jobs, then the Company shall repay an amount equal to one-fourth of the Phase Three Award Payment plus interest, as determined in accordance with Section 8 herein, on the amount of such required repayment or if an Award Payment is otherwise due and payable in respect of such period, then such Award Payment shall be reduced by such sanction and the Company shall only be required to repay any excess plus interest thereon.

L. Subject to the satisfaction of the Phase Three Condition Precedent, if, in respect of any year in the Phase Three Job Creation Schedule or the New Job Maintenance Schedule, the Closing Fund Awardee fails to pay the Project Wage in connection with the Phase Three New Jobs, but pays at least the Minimum Project Wage with respect to such Phase Three New Jobs, then the Company shall repay an amount determined by first multiplying one-fourth of the Phase Three Award Payment by a quotient, the numerator of which is the difference between the actual average annualized wage paid by the Closing Fund Awardee in respect of the Phase Three New Jobs during the relevant time period and the Project Wage and the denominator of which is the Project Wage, plus interest, as determined in accordance with Section 8 herein, on the amount of such required repayment or if an Award Payment is otherwise due and payable in respect of such period, then such Award Payment shall be reduced by such sanction and the Company shall only be required to repay any excess plus interest thereon.

M. If, in respect of any year in the Phase One Capital Investment Schedule, the Capital Investment Maintenance Schedule, or with respect to the Capital Investment Requirements set forth in the First Phase One Award Conditions or the Second Phase One Award Conditions, the Closing Fund Awardee fails to fully satisfy the Capital Investment Requirements set forth in Section 5 herein, then the Company shall repay, or the Award Payment that is otherwise due and payable in respect of such period shall be reduced by, an amount determined by first multiplying one-eighth of the Phase One Award Payments by a

quotient, the numerator of which is the difference between the actual capital investment for the relevant period and the Capital Investment Requirements with respect to Phase One for such period and the denominator of which is the Capital Investment Requirements for such period, plus interest, as determined in accordance with Section 8 herein, on the amount of such required repayment or if an Award Payment is otherwise due and payable in respect of such period, then such Award Payment shall be reduced by such sanction and the Company shall only be required to repay any excess plus interest thereon.

N. Subject to the satisfaction of the Phase Two Condition Precedent, if, in respect of any year in the Phase Two Capital Investment Schedule or the Capital Investment Maintenance Schedule, the Closing Fund Awardee fails to satisfy at least fifty percent (50%) of the Capital Investment Requirements set forth in Section 5 herein, then the Company shall repay an amount equal to one-seventh of the Phase Two Award Payment plus interest, as determined in accordance with Section 8 herein, on the amount of such required repayment or if an Award Payment is otherwise due and payable in respect of such period, then such Award Payment shall be reduced by such sanction and the Company shall only be required to repay any excess plus interest thereon.

O. Subject to the satisfaction of the Phase Two Condition Precedent, if, in respect of any year in the Phase Two Capital Investment Schedule or the Capital Investment Maintenance Schedule, the Closing Fund Awardee fails to fully satisfy the Capital Investment Requirements set forth in Section 5 herein, but satisfies at least fifty percent (50%) of such Capital Investment Requirements, then the Company shall repay an amount determined by first multiplying one-seventh of the Phase Two Award Payment by a quotient, the numerator of which is the difference between the actual capital investment for the relevant period and the Capital Investment Requirements with respect to Phase Two for such period and the denominator of which is the Capital Investment Requirements for such period, plus interest, as determined in accordance with Section 8 herein, on the amount of such required repayment or if an Award Payment is otherwise due and payable in respect of such period, then such Award Payment shall be reduced by such sanction and the Company shall only be required to repay any excess plus interest thereon.

P. Subject to the satisfaction of the Phase Three Condition Precedent, if, in respect of any year in the Phase Three Capital Investment Schedule or the Phase Three Capital Investment Maintenance Schedule, the Closing Fund Awardee fails to satisfy at least fifty percent (50%) of the Capital Investment Requirements set forth in Section 5 herein, then the Company shall repay an amount equal to one-fifth of the Phase Three Award Payment plus interest, as determined in accordance with Section 8 herein, on the amount of such required repayment or if an Award Payment is otherwise due and payable in respect of such period, then such Award Payment shall be reduced by such sanction and the Company shall only be required to repay any excess plus interest thereon.

Q. Subject to the satisfaction of the Phase Three Condition Precedent, if, in respect of any year in the Phase Three Capital Investment Schedule or the Phase Three Capital Investment Maintenance Schedule, the Closing Fund Awardee fails to fully satisfy the Capital Investment Requirements set forth in Section 5 herein, but satisfies at least fifty percent (50%) of such Capital Investment Requirements, then the Company shall repay an amount determined by first multiplying one-fifth of the Phase Three Award Payment by a quotient, the numerator of which is the difference between the actual capital investment for the relevant period and the Capital Investment Requirements with respect to Phase Three for such period and the denominator of which is the Capital Investment Requirements for such period, plus interest, as determined in accordance with Section 8 herein, on the amount of such required repayment or if an Award Payment is otherwise due and payable in respect of such period, then such Award Payment shall be reduced by such sanction and the Company shall only be required to repay any excess plus interest thereon.

R. The interest rate on any portion of the Award that is required to be repaid by the Closing Fund Awardee pursuant to this Section 8 herein, shall be a fixed annual rate equal to 500 basis points over the “Prime Rate” as reported in *The Wall Street Journal* on the Effective Date and shall be calculated on the basis of the actual days elapsed between the date on which the obligations pursuant to Section 5 herein, giving rise to the sanctions pursuant to this Section 8 herein, were required to have been satisfied and the repayment date based on a 365-day year.

9. COMPLIANCE WITH LAWS. The Parties shall comply with all applicable federal, state, and local laws, ordinances, rules and regulations, the federal and state constitutions, and the orders and decrees of any lawful authorities having jurisdiction over the matter at issue (collectively, “Laws”), including but not limited to public records laws.

10. INDEMNIFICATION. Raytheon shall defend, indemnify and pay the cost of defense, and hold harmless the County from all damages, suits, actions or claims of any character brought on account of any injuries or damages received or sustained by any person, persons, or property, or in any way relating to or arising from the construction or operation of the Project, or on account of any actual or claimed trademark, patent or copyright infringement or litigation based thereon; or by, or on account of, any claim or amounts received under the Workers’ Compensation Law or of any other laws, by-laws, ordinance, order or decree. Raytheon shall not indemnify the County for that portion of any loss or damages proximately caused by the negligent act or omission of the County.

11. DUE AUTHORITY. Each Party represents and warrants to the other Party that (i) it has the full right and authority and has obtained all necessary approvals to enter into this Grant Funding Agreement, (ii) each person executing this Grant Funding Agreement on behalf of the Party is authorized to do so; and (iii) this Grant Funding Agreement constitutes a valid and legally binding obligation of the Party, enforceable in accordance with its terms.

12. ASSIGNMENT. No Party may assign any rights or delegate any duties under this Grant Funding Agreement without the prior written consent of the other Party, such consent not to be unreasonably withheld.

13. NOTICES.

A. Unless and to the extent otherwise provided in this Grant Funding Agreement, all notices, demands, requests for approvals and other communications which are required to be given by either Party shall be in writing and shall be deemed given and delivered on the date delivered in person to the authorized representative of the recipient provided below, upon the expiration of five (5) calendar days following the date mailed by registered or certified mail, postage prepaid, return receipt requested, to the authorized representative of the recipient provided below, or upon the date delivered by overnight courier (signature required) to the authorized representative of the recipient provided below:

TO THE COUNTY:

Mike Meidel, Director
Pinellas County Economic Development
13805 58th Street North, Suite 1-200
Clearwater, FL 33760

TO RAYTHEON:

Hugh McKinnon
Raytheon Company
870 Winter Street
Waltham, Massachusetts 02451

B. Either Party may change its authorized representative or address for receipt of notices by providing the other Party with written notice of such change. The change shall become effective ten (10) calendar days after receipt by the non-changing Party of the written notice of change.

14. WAIVER. No act of omission or commission of either Party, including without limitation, any failure to exercise any right, remedy, or recourse, shall be deemed a waiver, release, or modification of the same unless otherwise agreed upon by the Parties. Such a waiver, release, or modification is to be effected only through a duly executed written modification to this Grant Funding Agreement.

15. GOVERNING LAW. This Grant Funding Agreement shall be construed in accordance with the Laws of the State of Florida.

16. JURISDICTION AND VENUE. Venue for any action brought in state court shall be in Pinellas County, Florida. Venue for any action brought in federal court shall be in the Middle District of Florida, Tampa Division, unless a division shall be created in St. Petersburg or Pinellas County, in which case the action shall be brought in that division. The Parties consent to the personal jurisdiction of the aforementioned courts and irrevocably waive any objections to said jurisdiction.

17. BINDING EFFECT. This Grant Funding Agreement shall inure to the benefit of and be binding upon the Parties' respective successors and assigns.

18. NO THIRD PARTY BENEFICIARY. Persons not a Party to this Grant Funding Agreement may not claim any benefit hereunder or as third party beneficiaries hereto.

19. HEADINGS. The paragraph headings are inserted herein for convenience and reference only and in no way define, limit, or otherwise describe the scope or intent of any provisions hereof.

20. NO CONSTRUCTION AGAINST PREPARER OF AGREEMENT. Both Parties participated in the preparation of this Grant Funding Agreement. The County, Raytheon, and

their professional advisors believe that this Grant Funding Agreement expresses their understanding and that it should not be interpreted in favor of either Raytheon or the County or against the County or Raytheon merely because of their efforts in preparing it.

21. PUBLIC RECORDS/RAYTHEON CONFIDENTIAL INFORMATION.

The County is subject to the Florida Public Records Law, Chapter 119, Florida Statutes, and all documents, materials, and data submitted pursuant to the Agreement are governed by the disclosure, maintenance, retention, exemption and confidentiality provisions relating to public records in Florida Statutes. Except for Raytheon Confidential Information, all documents, materials, and data received pursuant to this Agreement related to Raytheon are subject to all Public Records Law provisions. With regards to information designated in writing as Raytheon Confidential Information:

A. The County acknowledges and agrees to maintain Raytheon Confidential Information and respond to public records requests for said information consistent with its policies and procedures for maintaining information that is confidential and/or exempt from the Public Records Law generally.

B. Raytheon acknowledges and agrees that: (i) after notice from the County that a public records request has been made for the materials designated as Raytheon Confidential Information, Raytheon shall be solely responsible for defending its determination that submitted material is a trade secret that is not subject to disclosure at its sole cost, and shall take such action as it deems necessary to protect such information immediately, but no later than 10 calendar days from the date of notification; (ii) that the County and its officials, employees, agents, and representatives in any way involved in processing, evaluating, negotiating contract terms, approving any contract amendments, paying invoices, or engaging in any other activity relating to the Agreement are hereby granted full rights to access, view, consider, and discuss the information designated as Raytheon Confidential Information throughout the term of the Grant Funding Agreement.

22. SURVIVAL. The following Sections shall survive the expiration or termination of the term of this Grant Funding Agreement: 6-12, 14-18 and 21.

23. ENTIRE AGREEMENT. This Grant Funding Agreement constitutes the entire agreement between the Parties and no change will be valid unless made by supplemental written agreement executed by the Parties.

24. SEVERABILITY. Should any paragraph or portion of any paragraph of this Grant Funding Agreement be rendered unenforceable by any court of law for any reason, such determination shall not render unenforceable any other paragraph or portion of this Grant Funding Agreement.

25. NON-APPROPRIATION. The funds to be used for this Grant Award are subject to periodic appropriation of funds by the County. Further, obligations under this Grant Funding Agreement are contingent upon the availability of funds. If funds are not appropriated by the County for any or all of this Grant Funding Agreement, the County shall not be obligated to pay the Grant Funding Award beyond the portion for which funds are appropriated. Such failure of appropriation shall not constitute a breach of this Grant Funding Agreement. The County agrees to promptly notify Raytheon in writing of such failure of appropriation.

26. INDEPENDENT CAPACITY.

A. The Parties agree that Raytheon, its officers, agents, and employees, in the performance of this Grant Funding Agreement, will act in the capacity of an independent contractor and not as an officer, employee, or agent of the County. Raytheon agrees to take such steps as may be necessary to ensure that any third party Raytheon contracts with will be deemed to be an independent contractor and will not be considered or permitted to be an agent of the County.

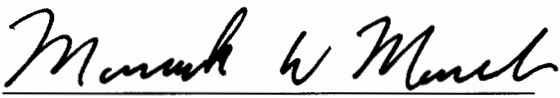
B. Raytheon has no authority to, and shall not pledge Pinellas County's credit or make Pinellas County a guarantor of payment or surety for any contract, debt, obligation, judgment lien, or any form of indebtedness.

IN WITNESS WHEREOF, the Parties have caused this Grant Funding Agreement to be executed by their duly authorized representatives on the date first above written.

PINELLAS COUNTY, FLORIDA, by and
through its Board of County Commissioners

RAYTHEON COMPANY

By: _____
Karen W. Seel, Chair
Date: _____

By: 
Title: Vice President - Tax
Date: 8/21/2014

ATTEST:
KEN BURKE, CLERK OF COURT

By: _____
Deputy Clerk

APPROVED AS TO FORM

By: Hzw
Office of the County Attorney

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Exhibit A to Economic Development Grant Funding Agreement

[Copy of State Incentive Agreement]

**STATE OF FLORIDA
DEPARTMENT OF ECONOMIC OPPORTUNITY
QUICK ACTION CLOSING FUND AGREEMENT**

THIS QUICK ACTION CLOSING FUND AGREEMENT (SB14160; Project Flyby) (this "Agreement") is made and entered into by and between the Division of Strategic Business Development of the Florida Department of Economic Opportunity ("DSBD") and Raytheon Company, a Delaware corporation (the "Company"), and any Subsidiary Closing Fund Awardee and Affiliate Closing Fund Awardee (as such terms are hereinafter defined) (collectively with the Company, the "Closing Fund Awardee" and collectively with DSBD, the "Parties").

RECITALS

WHEREAS, based on the General Project Overview and the Quick Action Closing Fund attachment to the General Project Overview and any amendments thereto (collectively, the "Application") submitted by or on behalf of the Company (in such capacity, the "Applicant"), DSBD has determined that the Applicant's commitments regarding the Closing Fund Awardee satisfy the requirements necessary to recommend the Closing Fund Awardee to the Governor of the State of Florida for an award from the Governor's Quick Action Closing Fund (the "Closing Fund") pursuant to Section 288.1088 of the Florida Statutes, which the Governor approved as of March 20, 2014 (the "Approval Date");

WHEREAS, in addition to the Award (as hereinafter defined), on March 20, 2014, the Governor of the State of Florida also approved an award of up to \$1,000,000 from the Closing Fund in connection with the consolidation and relocation of the Closing Fund Awardee's engineering and manufacturing operations to Pinellas County, Florida ("Project Afterburner");

WHEREAS, concurrently with entering into this Agreement, the Parties have entered into a Quick Action Closing Fund Agreement in connection with Project Afterburner (the "Project Afterburner Agreement"); and

WHEREAS, this Agreement is neither a general obligation of the State of Florida, nor is it backed by the full faith and credit of the State of Florida. Payment of the Award (as defined below) is conditioned on and subject to specific annual appropriations by the Florida Legislature of funds sufficient to pay amounts authorized in Section 288.1088 of the Florida Statutes.

NOW, THEREFORE, for and in consideration of the agreements, covenants and obligations set forth herein and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged and agreed upon, the Parties, intending to be legally bound, hereby agree as follows:

1. NOTICES.

(a) All notices and demands that are required or may be given pursuant to the terms of this Agreement shall be in writing and shall be deemed to have been duly given if delivered to the Parties in accordance with this Section 1 at the following respective addresses:

If to DSBD:

Florida Department of Economic Opportunity
Division of Strategic Business Development
107 East Madison Street, MSC 80,

The Caldwell Building
Tallahassee, Florida 32399-0001
Telephone: (850) 717-8960
Facsimile: (850) 410-4770

If to the Company:

Raytheon Company
870 Winter Street
Waltham, Massachusetts 02451
Telephone: (781) 522-5058
Facsimile: (781) 522-5828

(b) All notices and demands be given or delivered under or by reason of the provisions of this Agreement shall be in writing and shall be deemed to have been given (i) when personally delivered, (ii) when transmitted via facsimile to the number set out above if the sender on the same day sends a confirming copy of such notice by a recognized overnight delivery service (charges prepaid), (iii) the day following the day (except if not a business day then the next business day) on which the same has been delivered prepaid to a reputable national overnight air courier service or (iv) the third business day following the day on which the same is sent by certified or registered mail, postage prepaid. Notices and demands, in each case to the respective Parties, shall be sent to the applicable address set forth in Section 1(a), unless another address has been previously specified in writing in accordance with this Section 1(b).

2. ADMINISTRATORS.

(a) DSBD's administrator in connection with this Agreement is Karl Blischke, Chief of Compliance and Accountability.

(b) The Closing Fund Awardee's administrator in connection with this Agreement is Hugh McKinnon, Senior Tax Manager – State and Local Tax.

(c) All approvals and certifications pursuant to this Agreement must be obtained from the Parties' respective administrators or their respective designees.

(d) The Parties may replace their respective administrators by delivering written notice of the appointment of a replacement administrator to the other Party in accordance with Section 1.

3. TERM. This Agreement is effective as of the date on which DSBD executes this Agreement (such date, the "Effective Date") and shall continue until the earlier to occur of (a) June 30, 2022 (the "Expiration Date") or (b) the date on which this Agreement is terminated pursuant to Section 11. Notwithstanding the foregoing, the provisions of Sections 1, 3, 8, 11 through 16, 18, 20, 21, 22, and 24 shall survive the termination or expiration of this Agreement; provided, however, that the record-keeping and audit-related obligations set forth in Section 15 shall terminate in accordance with the requirements of Section 15.

4. CLOSING FUND AWARDEE DESCRIPTION.

(a) The Company's federal employer identification number ("FEIN") is 95-1778500, and its reemployment tax ("RT") number is 0054306.

(b) For purposes of this Agreement, the Subsidiaries of the Company listed in Exhibit D, as amended to include additional Subsidiaries from time to time (each, a “Subsidiary Closing Fund Awardee”), may perform the obligations of the Company set forth in Section 5(c)(1), (c)(2), (d)(1), (d)(2), (e)(2), (e)(3), (f)(2), (g)(1), (g)(2), and (g)(3) (such obligations, the “Project Job Requirements”) and Section 5(c)(3), (d)(3), (e)(4), (f)(3), (g)(4), (g)(5), and (g)(6) (such obligations, the “Capital Investment Requirements”). The Company covenants and agrees to cause each Subsidiary Closing Fund Awardee to comply with each of the covenants and obligations of the Closing Fund Awardee set forth in this Agreement. For purposes of this Agreement, the term “Subsidiary” means any corporation, limited liability company, partnership, association or other business entity of which (i) if a corporation, a majority of the total voting power of shares of stock entitled (without regard to the occurrence of any contingency) to vote in the election of directors, managers or trustees thereof is at the time owned or controlled, directly or indirectly, by the Company or one or more of the other Subsidiaries of the Company or a combination thereof, or (ii) if a limited liability company, partnership, association or other business entity, a majority of the membership, partnership or other similar ownership interest thereof is at the time owned or controlled, directly or indirectly, by the Company or one or more Subsidiaries of the Company or a combination thereof.

(c) For purposes of this Agreement, the Affiliates of the Company that execute and deliver to DSBD a joinder in the form of Exhibit E (a “Joinder”) may perform the Project Job Requirements and the Capital Investment Requirements (each, an “Affiliate Closing Fund Awardee”). For purposes of this Agreement, the term “Affiliate” means any entity that directly, or indirectly through one or more intermediaries, controls or is controlled by or is under common control with the Company, where the term “control” (including the terms “controlling,” “controlled by” and “under common control with”) means possession, direct or indirect, of the power to direct or cause the direction of the management and policies of an entity, whether through the ownership of voting securities, by contract or otherwise; provided, however, that the term “Affiliate” shall not include any Subsidiary.

5. PROJECT DESCRIPTION AND AWARD CONDITIONS.

(a) The project is limited to the retention and expansion of the Closing Fund Awardee’s research and development and manufacturing operations in Pinellas County, Florida (the “Project”).

(b) DSBD shall deposit \$600,000 (the “Award”) into a bank account (such account, the “Escrow Account”) designated by Enterprise Florida, Inc. (the “Escrow Agent”) pursuant to the terms of the Escrow Agreement (as hereinafter defined) for disbursement to the Closing Fund Awardee subject to the satisfaction of the following conditions (collectively, the “Transfer Conditions”); provided, however, that the Transfer Conditions shall be satisfied by no later than June 30, 2014 (the “Final Transfer Date”):

1. DSBD and the Closing Fund Awardee shall have executed and delivered counterparts of this Agreement to the other Party;
2. the Escrow Agent, DSBD and the Closing Fund Awardee shall have executed and delivered to the other parties thereto counterparts of the Escrow Agreement in the form of Exhibit C hereto (the “Escrow Agreement”);
3. the representations and warranties of the Closing Fund Awardee contained in this Agreement shall be true and correct in all respects (in the case of any representation or warranty qualified by materiality or material adverse effect) or in all material respects (in the case of any representation or warranty not qualified by materiality or material adverse effect);

4. the Closing Fund Awardee shall have duly performed and complied in all material respects with all agreements, covenants and conditions required by this Agreement and the Escrow Agreement to be performed or complied with by it prior to or on the date on which DSBD deposits the Award in the Escrow Account; and
5. no lawsuit, proceeding or litigation shall have been commenced against DSBD, the Escrow Agent or the Closing Fund Awardee, which would prevent the deposit of the Award by DSBD with the Escrow Agent.

(c) Subject to Section 6 and Section 12, DSBD shall instruct the Escrow Agent to disburse to the Closing Fund Awardee \$234,375 (the "First Phase One Award Payment") in accordance with the terms of the Escrow Agreement upon the satisfaction of the following conditions (collectively, the "First Phase One Award Conditions"); provided, however, that the First Phase One Award Conditions shall be satisfied by no later than December 31, 2014 (the "First Award Date");

1. the Closing Fund Awardee shall have created at least 27 New Jobs (as such term is defined below) paying an average annualized wage of at least \$63,000 (excluding benefits), as calculated in accordance with Exhibit B (the "Project Wage");
2. the Closing Fund Awardee shall have retained the Phase One Retained Jobs (as such term is defined in Section 5(g)(1) below) paying at least the Project Wage;
3. a private capital investment (excluding the acquisition or leasing of real property) of at least \$798,000 in Pinellas County, Florida shall have been made by or on behalf of the Closing Fund Awardee in connection with the Project;
4. the representations and warranties of the Closing Fund Awardee contained in this Agreement shall be true and correct in all respects (in the case of any representation or warranty qualified by materiality or material adverse effect) or in all material respects (in the case of any representation or warranty not qualified by materiality or material adverse effect);
5. the Closing Fund Awardee shall have duly performed and complied in all material respects with all agreements, covenants and conditions required by this Agreement and the Escrow Agreement to be performed or complied with by it prior to or on the date on which DSBD instructs the Escrow Agent to disburse the First Phase One Award Payment to the Company; and
6. no lawsuit, proceeding or litigation shall have been commenced against DSBD, the Escrow Agent or the Closing Fund Awardee, which would prevent the disbursement of the First Phase One Award Payment to the Company and no injunction or restraining order shall have been issued by any governmental authority, and be in effect, which restrains or prohibits the Project.

(d) Subject to Section 6 and Section 12, DSBD shall instruct the Escrow Agent to disburse to the Closing Fund Awardee \$234,375 (the "Second Phase One Award Payment" and together with the First Phase One Award Payment, the "Phase One Award Payments") in accordance with the terms of the Escrow Agreement upon the satisfaction of the following conditions (collectively, the "Second Phase One Award Conditions" and together with the First Phase One Award Conditions, the "Phase One Award Conditions"); provided, however, that the Second Phase One Award Conditions shall be satisfied by no later than December 31, 2015 (the "Second Award Date" and together with the First Award Date, the "Award Dates");

1. the Closing Fund Awardee shall have created at least 10 additional New Jobs (as such term is defined below) paying the Project Wage;
2. the Closing Fund Awardee shall have retained the Phase One Retained Jobs (as such term is defined below) paying at least the Project Wage;
3. an additional private capital investment (excluding the acquisition or leasing of real property) of at least \$2,569,000 in Pinellas County, Florida shall have been made by or on behalf of the Closing Fund Awardee in connection with the Project;
4. the representations and warranties of the Closing Fund Awardee contained in this Agreement shall be true and correct in all respects (in the case of any representation or warranty qualified by materiality or material adverse effect) or in all material respects (in the case of any representation or warranty not qualified by materiality or material adverse effect);
5. the Closing Fund Awardee shall have duly performed and complied in all material respects with all agreements, covenants and conditions required by this Agreement and the Escrow Agreement to be performed or complied with by it prior to or on the date on which DSBD instructs the Escrow Agent to disburse the Second Phase One Award Payment to the Company; and
6. no lawsuit, proceeding or litigation shall have been commenced against DSBD, the Escrow Agent or the Closing Fund Awardee, which would prevent the disbursement of the Second Phase One Award Payment to the Company and no injunction or restraining order shall have been issued by any governmental authority, and be in effect, which restrains or prohibits the Project.

(e) Subject to Section 6 and Section 12, DSBD shall instruct the Escrow Agent to disburse to the Closing Fund Awardee \$64,286 (the "Phase Two Award Payment") in accordance with the terms of the Escrow Agreement upon the satisfaction of the following conditions (collectively, the "Phase Two Award Conditions"); provided, however, that the Phase Two Award Conditions shall be satisfied by no later than the Second Award Date:

1. the Company shall have notified DSBD in writing that the Company has been awarded a contract from the United States Department of Defense (the "DoD") to produce secure communications devices or the Closing Fund Awardee otherwise elects to be subject to the covenants in Section 5(g)(2) and (g)(5) (the "Phase Two Condition Precedent");
2. the Closing Fund Awardee shall have retained the Retained Jobs (as such term is defined below) paying at least the Project Wage (as defined in Section 5(c)(1));
3. an additional private capital investment (excluding the acquisition or leasing of real property) of at least \$356,000 in Pinellas County, Florida shall have been made by or on behalf of the Closing Fund Awardee in connection with the Project (the "Phase Two Capital Investment");
4. the representations and warranties of the Closing Fund Awardee contained in this Agreement shall be true and correct in all respects (in the case of any representation or warranty qualified by materiality or material adverse effect) or in all material respects (in the case of any representation or warranty not qualified by materiality or material adverse effect);

5. the Closing Fund Awardee shall have duly performed and complied in all material respects with all agreements, covenants and conditions required by this Agreement and the Escrow Agreement to be performed or complied with by it prior to or on the date on which DSBD instructs the Escrow Agent to disburse the Phase Two Award Payment to the Company; and
6. no lawsuit, proceeding or litigation shall have been commenced against DSBD, the Escrow Agent or the Closing Fund Awardee, which would prevent the disbursement of the Phase Two Award Payment to the Company and no injunction or restraining order shall have been issued by any governmental authority, and be in effect, which restrains or prohibits the Project.

(f) Subject to Section 6 and Section 12, DSBD shall instruct the Escrow Agent to disburse to the Closing Fund Awardee \$66,964 (the "Phase Three Award Payment") and collectively with the Phase One Award Payments and the Phase Two Award Payment, the "Award Payments") in accordance with the terms of the Escrow Agreement upon the satisfaction of the following conditions (collectively, the "Phase Three Award Conditions") and collectively with the Phase One Award Conditions and the Phase Two Award Conditions, the "Award Conditions"; provided, however, that the Phase Three Award Conditions shall be satisfied by no later than the Second Award Date:

1. the Company shall have notified DSBD in writing that the Company has been awarded a contract from the DoD to develop and produce secure long-range radar systems or the Closing Fund Awardee otherwise elects to be subject to the covenants in Section 5(g)(3) and (g)(6) (the "Phase Three Condition Precedent");
2. the Closing Fund Awardee shall have created at least 25 additional New Jobs (as such term is defined below) paying the Project Wage;
3. an additional private capital investment (excluding the acquisition or leasing of real property) of at least \$6,000,000 in Pinellas County, Florida shall have been made by or on behalf of the Closing Fund Awardee in connection with the Project (the "Phase Three Capital Investment");
4. the representations and warranties of the Closing Fund Awardee contained in this Agreement shall be true and correct in all respects (in the case of any representation or warranty qualified by materiality or material adverse effect) or in all material respects (in the case of any representation or warranty not qualified by materiality or material adverse effect);
5. the Closing Fund Awardee shall have duly performed and complied in all material respects with all agreements, covenants and conditions required by this Agreement and the Escrow Agreement to be performed or complied with by it prior to or on the date on which DSBD instructs the Escrow Agent to disburse the Phase Three Award Payment to the Company; and
6. no lawsuit, proceeding or litigation shall have been commenced against DSBD, the Escrow Agent or the Closing Fund Awardee, which would prevent the disbursement of the Phase Three Award Payment to the Company and no injunction or restraining order shall have been issued by any governmental authority, and be in effect, which restrains or prohibits the Project.

(g) Notwithstanding anything in this Section 5 to the contrary, in order to avoid sanctions pursuant to Section 12, the Closing Fund Awardee shall satisfy the following conditions:

1. The Closing Fund Awardee shall provide evidence satisfactory to DSBD in its reasonable discretion that the Closing Fund Awardee has created at least 37 net new-to-Florida full-time-equivalent jobs in connection with the Project at the Project locations in Pinellas County, Florida, as measured in accordance with Section 7(b) and Exhibit B (collectively, the "Phase One New Jobs") in accordance with the following schedule (the "Phase One Job Creation Schedule"): (A) the first phase shall consist of the creation of at least 27 Phase One New Jobs paying the Project Wage by December 31, 2014 and (B) the second phase shall consist of the creation of at least 10 additional Phase One New Jobs paying the Project Wage, for an aggregate of at least 37 Phase One Jobs by December 31, 2015. The Closing Fund Awardee shall provide evidence satisfactory to DSBD in its reasonable discretion that the Closing Fund Awardee has maintained the Phase One New Jobs, paying the Project Wage from January 1, 2016 until at least December 31, 2018 (the "New Job Maintenance Schedule"). The Closing Fund Awardee shall provide evidence satisfactory to DSBD in its reasonable discretion that, in addition to the Phase One New Jobs, the Closing Fund Awardee has retained at least 138 full-time equivalent jobs in connection with the Project (collectively, the "Phase One Retained Jobs" and collectively with the Phase One New Jobs, the "Phase One Project Jobs") paying the Project Wage from and after the Approval Date until at least the last day of the New Job Maintenance Schedule (the "Retained Job Maintenance Schedule").
2. Subject to the satisfaction of the Phase Two Condition Precedent, the Closing Fund Awardee shall provide evidence satisfactory to DSBD in its reasonable discretion that the Closing Fund Awardee has retained at least 24 full-time equivalent jobs in connection with the Project at the Project locations in Pinellas County, Florida (collectively, the "Phase Two Retained Jobs" and collectively with the Phase One Retained Jobs, the "Retained Jobs") paying the Project Wage during the Retained Job Maintenance Schedule.
3. Subject to the satisfaction of the Phase Three Condition Precedent, the Closing Fund Awardee shall provide evidence satisfactory to DSBD in its reasonable discretion that the Closing Fund Awardee has created at least 25 additional net new-to-Florida full-time-equivalent jobs in connection with the Project at the Project locations in Pinellas County, Florida, as measured in accordance with Section 7(b) and Exhibit B (collectively, the "Phase Three New Jobs" and collectively with the Phase One New Jobs, the "New Jobs" and collectively with the Retained Jobs, the "Project Jobs") shall be created by December 31, 2015 (the "Phase Three Job Creation Schedule" and together with the Phase One Job Creation Schedule, the "Job Creation Schedule"). Subject to the satisfaction of the Phase Three Condition Precedent, the Closing Fund Awardee shall provide evidence satisfactory to DSBD in its reasonable discretion that the Closing Fund Awardee has maintained the Phase Three New Jobs, paying the Project Wage during the New Job Maintenance Schedule.
4. The Closing Fund Awardee shall provide evidence satisfactory to DSBD in its reasonable discretion that an aggregate capital investment of at least \$13,661,690 (the "Phase One Capital Investment") has been made, as determined in accordance with Exhibit B, by or on behalf of the Closing Fund Awardee in connection with the Project in accordance with the following schedule (the "Phase One Capital

Investment Schedule”): (A) the first phase shall consist of a capital investment of at least \$3,498,990 by December 31, 2014; (B) the second phase shall consist of an additional capital investment of at least \$2,569,466 by December 31, 2015; (C) the third phase shall consist of an additional capital investment of at least \$2,525,315 by December 31, 2016; (D) the fourth phase shall consist of an additional capital investment of at least \$2,511,438 by December 31, 2017; and (E) the fifth phase shall consist of an additional capital investment of at least \$2,556,481 by December 31, 2018. The Closing Fund Awardee shall provide evidence satisfactory to DSBD in its reasonable discretion that the Phase One Capital Investment has been maintained from January 1, 2019 until at least December 31, 2021(the “Capital Investment Maintenance Schedule”).

5. Subject to the satisfaction of the Phase Two Condition Precedent, the Closing Fund Awardee shall provide evidence satisfactory to DSBD in its reasonable discretion that an aggregate capital investment of at least \$1,072,426 (the “Phase Two Capital Investment”) has been made, as determined in accordance with Exhibit B, by or on behalf of the Closing Fund Awardee in connection with the Project in accordance with the following schedule (the “Phase Two Capital Investment Schedule”): (A) the first phase shall consist of an additional capital investment of at least \$575,943 by December 31, 2015; (B) the second phase shall consist of an additional capital investment of at least \$171,700 by December 31, 2016; (C) the third phase shall consist of an additional capital investment of at least \$148,663 by December 31, 2017; and (D) the fourth phase shall consist of an additional capital investment of at least \$176,120 by December 31, 2018. The Closing Fund Awardee shall provide evidence satisfactory to DSBD in its reasonable discretion that the Phase Two Capital Investment has been maintained during the Capital Investment Maintenance Schedule.
6. Subject to the satisfaction of the Phase Three Condition Precedent, the Closing Fund Awardee shall provide evidence satisfactory to DSBD in its reasonable discretion that an aggregate capital investment of at least \$6,000,000 (the “Phase Three Capital Investment”) has been made, as determined in accordance with Exhibit B, by or on behalf of the Closing Fund Awardee in connection with the Project in accordance with the following schedule (the “Phase Three Capital Investment Schedule” and collectively with the Phase One Capital Investment Schedule and the Phase Two Capital Investment Schedule, the “Capital Investment Schedule”): (A) the first phase shall consist of an additional capital investment of at least \$4,000,000 by December 31, 2015; and (B) the second phase shall consist of an additional capital investment of at least \$2,000,000 by December 31, 2016. The Closing Fund Awardee shall provide evidence satisfactory to DSBD in its reasonable discretion that the Phase Three Capital Investment has been maintained from January 1, 2017 until at least December 31, 2019 (the “Phase Three Capital Investment Maintenance Schedule”).

6. EXTENSION OF PERFORMANCE AND PAYMENT CONDITIONS.

(a) Notwithstanding anything in Section 5 or Section 12 to the contrary, subject to the terms and conditions of this Section 6, DSBD hereby grants to the Company the one-time right, privilege and option (the "Option") to extend the Expiration Date, the Job Creation Schedule, the New Job Maintenance Schedule, the Retained Job Maintenance Schedule, the Capital Investment Schedule, the Capital Investment Maintenance Schedule, the Final Transfer Date, and the Final Award Date (and any other date on which an Award Payment is required to be disbursed) by twelve (12) months.

(b) In the event that the Company exercises the Option, within ten (10) business days of exercising the Option, the Company shall pay to DSBD a sanction equal to the lesser of (A) five percent of the Award (5%) or (B) fifteen percent (15%) of all Award Payments disbursed to the Company to date.

(c) The Option shall be exercisable in whole but not in part at any time from and after the Effective Date. The Company may exercise the Option by delivering to DSBD written notice of the Company's intention to exercise the Option (an "Exercise Notice") in accordance with Section 1. Upon DSBD's receipt of an Exercise Notice, the exercise of the Option shall be irrevocable.

7. DUTIES OF THE CLOSING FUND AWARDEE.

(a) For the purpose of determining the Closing Fund Awardee's satisfaction of the New Job requirements, the Closing Fund Awardee's average number of employees during the twelve (12) month period beginning on March 1, 2013, and ending on February 28, 2014 (the "Base Jobs") shall be calculated in accordance with Exhibit B. Only those employees hired on or after the Approval Date and working at the Project locations on or after the Effective Date shall be considered New Jobs for purposes of this Agreement.

(b) The Company shall submit its request for the applicable Award Payments in a letter format and clearly state that it has satisfied the applicable conditions, and provide supporting documentation in form and substance satisfactory to DSBD in its reasonable discretion by no later than March 31 of each calendar year immediately following the applicable Award Date.

(c) The Company shall annually submit certifications with respect to the Closing Fund Awardee's employment and average annual wage paid in connection with its satisfaction of the Project Job Requirements using a Qualified Target Industry Tax Refund ("QTI") Claim application or alternative equivalent documentation satisfactory to DSBD in its sole discretion in respect of each year that coincides with the Job Creation Schedule or the New Job Maintenance Schedule by no later than March 31 of each calendar year immediately following each such period. Once in each calendar year, the classification of any full-time equivalent job as a Project Job or a Project Afterburner Job (as defined below) may change (without duplication); provided, that the Company certifies that, with respect to any full-time job, the employee worked predominantly on the Project or Project Afterburner, as the case may be, and, with respect to any job that is not a full-time job, the employee performed the greater portion of paid work on the Project or Project Afterburner, as the case may be. The term "Project Afterburner Job" has the meaning ascribed to the term "Project Job" in the Project Afterburner Agreement.

(d) The Company shall annually submit certifications and documentation with respect to the Closing Fund Awardee's capital investment in connection with its satisfaction of the Capital Investment Requirements in accordance with Exhibit B in respect of each year that coincides with the Capital Investment Schedule or the Capital Investment Maintenance Schedule by no later than March 31 of each calendar year immediately following each such period; provided, however, that no capital investment used to satisfy any of the Capital Investment Requirements may be used to satisfy any of the

Project Afterburner Capital Investment Requirements (as defined below) and no capital investment used to satisfy the Project Afterburner Capital Investment Requirements shall be used to satisfy any of the Capital Investment Requirements. The term "Project Afterburner Capital Investment Requirements" has the meaning ascribed to the term "Capital Investment Requirements" in the Project Afterburner Agreement.

(e) Promptly (and in any event within five (5) business days after the Closing Fund Awardee has knowledge), the Company shall notify DSBD in writing of (i) any developments that materially and adversely affect the ability of the Closing Fund Awardee to perform its obligations under this Agreement; (ii) the occurrence of a Termination Event (as hereinafter defined); or (iii) the occurrence of a Change of Control of the Company. For purposes of this Agreement, the term "Change of Control" means any transaction or series of related transactions pursuant to which any person or entity that is not an Affiliate or group of related persons or entities (together with such persons' or entities' Affiliates) (A) directly or indirectly acquires more than fifty percent (50%) of the issued and outstanding voting stock of or equity interests in the Company, (B) directly or indirectly acquires, leases or exchanges all or substantially all of the consolidated assets of the Company and its Subsidiaries, or (C) directly or indirectly acquires the Company by merger with and into another entity; provided, however, that, in each such case, the applicable transaction shall not be a "Change of Control" if the Company's stockholders or members of record as constituted immediately prior to such acquisition or sale hold more than fifty percent (50%) of the voting power and have the right to elect or appoint a majority of the members of the board of directors or similar governing body of the surviving or acquiring entity.

(f) The Company shall maintain personnel and financial records and reports related to the jobs, wages, and capital investment that are the subject of this Agreement and submit reports to DSBD or its designee for verification as requested by DSBD.

8. INDEMNIFICATION. Each Closing Fund Awardee and its successors and permitted assigns shall, jointly and severally, indemnify, defend, and hold harmless the State, the Florida Department of Economic Opportunity and DSBD, and their officers, agents, and employees (collectively, the "Indemnified Parties") from and against and pay on behalf of or reimburse such Indemnified Parties as and when incurred, for any and all Losses (as defined below), which any such Indemnified Party may suffer, sustain or become subject to, as a result of, in connection with, or relating to: (a) the breach of any representation, warranty, covenant or agreement made by the Closing Fund Awardee in this Agreement or the Applicant in the Application, or any allegation by a third party that, if true, would constitute such a breach; and (b) any arrangement made by or on behalf of the Closing Fund Awardee or any of its Subsidiaries, Affiliates or representatives with any consultant, broker, finder or agent in connection with this Agreement or the transactions contemplated hereby. As used herein, the term "Losses" means any loss, liability, action, cause of action, cost, damage or expense, in each case whether or not arising out of third-party claims, including interest, penalties, and reasonable attorneys' fees and expenses (including such reasonable attorneys' fees and expenses incurred in connection with the enforcement of DSBD's rights under this Agreement) and all amounts paid in investigation, prosecution, defense or settlement of any of the foregoing.

9. DUTIES OF DSBD. DSBD shall authorize the disbursement of the Award Payments from the Escrow Account within thirty (30) days of DSBD's verification that the Closing Fund Awardee has satisfied the applicable Award Conditions.

10. REPRESENTATIONS AND WARRANTIES OF THE CLOSING FUND AWARDEE. Each of the Company and any Affiliate Closing Fund Awardee hereby makes the following representations and warranties to DSBD, each of which shall be deemed to be a separate representation and warranty, all of which have been made for the purpose of inducing DSBD to enter into this

Agreement, and in reliance on which DSBD has entered into this Agreement, as of the Effective Date, the dates on which the Company submits each submittal required under this Agreement, the date of any Exercise Notice, and the dates on which the Company receives any Award Payment:

(a) Organization; Power and Authority. The Closing Fund Awardee is duly organized, validly existing in good standing in its state of incorporation or formation, and has all requisite power and authority to own, lease and operate its properties and to carry on its business as currently conducted.

(b) Authorization and Binding Obligation. The Company and any Affiliate Closing Fund Awardee have all necessary power and authority to execute and deliver this Agreement and to consummate the transactions contemplated hereby. The execution and delivery of this Agreement and the consummation of the transactions contemplated hereby have been duly authorized by all necessary corporate or limited liability company action on the part of the Company and any Affiliate Closing Fund Awardee. This Agreement has been duly executed and delivered by the Company and any Affiliate Closing Fund Awardee and, assuming the due authorization, execution and delivery of this Agreement by DSBD, constitutes the legal, valid and binding obligation of the Closing Fund Awardee, enforceable against the Closing Fund Awardee in accordance with its terms (subject to applicable bankruptcy, insolvency, moratorium, reorganization, or similar laws affecting the rights of creditors generally and the availability of equitable remedies).

(c) No Violations. The execution and delivery by the Company and any Affiliate Closing Fund Awardee of this Agreement and the performance by it of the transactions contemplated hereby do not (i) conflict with or result in a breach of any provision of the Closing Fund Awardee's certificate of incorporation, certificate of formation, bylaws, operating agreement or similar constitutive document, (ii) result in violation or breach of or constitute a default (or an event which, with or without notice or lapse of time or both, would constitute a default) under, or result in the termination, modification, cancellation or acceleration under the terms, conditions, or provisions of any of the Closing Fund Awardee's indentures, material agreements or other material instruments or (iii) violate any applicable law or regulation. The Closing Fund Awardee has not been convicted of a "public entity crime" (as such term is defined in Section 287.133 of the Florida Statutes) nor has the Closing Fund Awardee been placed on the "discriminatory vendor list" (as such term is defined in Section 287.134 of the Florida Statutes).

(d) No Material Adverse Change. No event, change or condition has occurred that has had, or would reasonably be expected to have, a material adverse effect on the business, assets, operations or financial condition of the Closing Fund Awardee, taken as a whole, since the date of the Application.

(e) Location Decision and Retained Jobs. In accordance with Section 288.1088 of the Florida Statutes, the Applicant submitted, or caused to be submitted, the Application to DSBD prior to the Closing Fund Awardee having made its decision to locate the Project in Florida and the Award induced the Closing Fund Awardee to locate the Project in Florida. Prior to the Closing Fund Awardee's decision to locate the Project in Florida, the Retained Jobs were at substantial risk of being lost.

(f) Litigation; Compliance with Laws. Neither the Closing Fund Awardee nor any of its material properties or assets is in violation of, nor will the continued operations of its material properties and assets as currently conducted, violate any law, rule or regulation applicable to the Closing Fund Awardee (including any zoning rule, ordinance, code or approval or any building permits where such violation or default would be material to the Closing Fund Awardee, taken as a whole), or is in default with respect to any judgment, writ, injunction, decree or order applicable to the Closing Fund Awardee of any governmental authority, in each case where such violation or default would reasonably be expected to

result in a material adverse effect on the business, assets, operations or financial condition of the Closing Fund Awardee, taken as a whole.

(g) Subsidiary Closing Fund Awardees and Affiliate Closing Fund Awardees. In the event that any Subsidiary Closing Fund Awardee or Affiliate Closing Fund Awardee is included in the Project pursuant to Section 4(b) or (c), then each such Subsidiary Closing Fund Awardee is a Subsidiary and each such Affiliate Closing Fund Awardee is an Affiliate, as the case may be.

(h) No Material Misstatements. No information, report, financial statement, exhibit or schedule (other than forward-looking statements and projections) furnished by the Applicant or the Closing Fund Awardee to DSBD or Enterprise Florida, Inc. in connection with the negotiation of this Agreement (including, without limitation, the Application) or delivered pursuant to this Agreement, when taken together, contained or contains any material misstatement of fact or omitted or omits to state any material fact necessary to make the statements contained herein or therein, in the light of the circumstances under which they were made, not misleading.

11. TERMINATION.

(a) DSBD may terminate this Agreement in the event that (i) the Closing Fund Awardee breaches any of its representations, warranties, covenants or other obligations in this Agreement in any material respect; (ii) the Closing Fund Awardee commits fraud or willful misconduct in connection with this Agreement or the transactions contemplated hereby; (iii) the Closing Fund Awardee institutes or consents to the institution of any bankruptcy or insolvency proceeding, or makes an assignment for the benefit of creditors, or applies for or consents to the appointment of any receiver, trustee, custodian, conservator, liquidator, rehabilitator or similar officer for it or for all or any material part of its property; or any receiver, trustee, custodian, conservator, liquidator, rehabilitator or similar officer is appointed without the application or consent of such person or entity and the appointment continues undischarged or unstayed for sixty (60) calendar days; or any bankruptcy or insolvency proceeding relating to the Closing Fund Awardee or to all or any material part of its property is instituted without the consent of the Closing Fund Awardee and the Closing Fund Awardee fails to challenge such proceeding or such proceeding is challenged but continues undismissed or unstayed for sixty (60) calendar days, or an order for relief is entered in any such proceeding; (iv) the Closing Fund Awardee becomes unable to or admits in writing its inability to or fails generally to pay its debts as they become due, or any writ or warrant of attachment or execution or similar process is issued or levied against all or any material part of the property of the Closing Fund Awardee or the Closing Fund Awardee otherwise becomes insolvent; or (v) a decision by the Closing Fund Awardee either (A) not to proceed with the Project, including upon receipt by DSBD of the Closing Fund Awardee's written request to terminate its eligibility to receive the Award, or (B) to proceed with the Project in a location other than Pinellas County, Florida ((i) through (v) collectively, the "Termination Events"); provided, however, that if the Closing Fund Awardee does not satisfy the applicable Project Job Requirements and/or Capital Investment Requirements, then such failure shall not constitute a Termination Event; provided, that the Company provides evidence to DSBD's reasonable satisfaction that the Closing Fund Awardee intends to proceed with the Project substantially in accordance with this Agreement. Notwithstanding anything in this Agreement to the contrary, in the event that DSBD exercises its right to terminate this Agreement as the result of the occurrence of a Termination Event, any Award Payments that have not been disbursed to the Company, including any Award Payment that has been authorized and not yet disbursed, shall be immediately forfeited and any sanctions payable as of the date of such termination pursuant to Section 12 or that would have otherwise been payable during the term of this Agreement pursuant to Section 12 had the Closing Fund Awardee not performed any of its obligations after the date of such termination in accordance with Section 5(f) shall be immediately due and payable (subject to Section 12(s)).

(b) The Company may terminate this Agreement in the event that (i) DSBD breaches any of its covenants or other obligations in this Agreement in any material respect or (ii) the Closing Fund Awardee decides not to proceed with the Project at any time prior to the date on which DSBD disburses the Award to the Escrow Account. The termination of this Agreement pursuant to this Section 11(b) will result in the loss of eligibility for receipt of all Award Payments previously approved and scheduled, but not paid to the Company and any sanctions payable as of the date of such termination pursuant to Section 12 or that would have otherwise been payable during the term of this Agreement pursuant to Section 12 had the Closing Fund Awardee not performed any of its obligations after the date of such termination in accordance with Section 5(f) shall be immediately due and payable (subject to Section 12(s)).

(c) If either Party avails itself of the right to terminate this Agreement, such Party shall deliver written notice of such termination to the other Party with reference to the particular provision of this Agreement pursuant to which such Party is terminating this Agreement.

(d) In the event that the Closing Fund Awardee fails to satisfy its obligations pursuant to Section 5(g) and DSBD terminates this Agreement pursuant to Section 11(a)(v), the Company will provide to DSBD an explanation in writing of the reasons why the Closing Fund Awardee was unable satisfy such obligations.

12. AWARD REDUCTIONS.

(a) If, in respect of any year in the Phase One Job Creation Schedule, the New Job Maintenance Schedule, the Retained Job Maintenance Schedule, or with respect to the Project Job Requirements set forth in the First Phase One Award Conditions or the Second Phase One Award Conditions, the Closing Fund Awardee fails to fully satisfy the Phase One Project Job creation or maintenance requirements set forth in Section 5(c), 5(d), or 5(g)(1), then the Company shall repay, or the Award Payment that is otherwise due and payable in respect of such period shall be reduced by, an amount determined by first multiplying one-fifth of the Phase One Award Payments by a quotient, the numerator of which is the difference between the actual number of Phase One Project Jobs, retained and new, for the relevant period and the required number of Phase One Project Jobs for such period and the denominator of which is the required number of Phase One Project Jobs, retained and new, for such period, plus interest, as determined in accordance with Section 12(r), on the amount of such required repayment or if an Award Payment is otherwise due and payable in respect of such period, then such Award Payment shall be reduced by such sanction and the Company shall only be required to repay any excess plus interest thereon.

(b) Subject to the satisfaction of the Phase Two Condition Precedent, if, in respect of any year in the Retained Job Maintenance Schedule, the Closing Fund Awardee fails to satisfy at least seventy percent (70%) of the Phase Two Retained Job requirements set forth in Section 5(g)(2), then the Company shall repay an amount equal to one-fourth of the Phase Two Award Payment plus interest, as determined in accordance with Section 12(r), on the amount of such required repayment or if an Award Payment is otherwise due and payable in respect of such period, then such Award Payment shall be reduced by such sanction and the Company shall only be required to repay any excess plus interest thereon.

(c) Subject to the satisfaction of the Phase Two Condition Precedent, if, in respect of any year in the Retained Job Maintenance Schedule, the Closing Fund Awardee fails to fully satisfy the Phase Two Retained Job requirements set forth in Section 5(g)(2), but satisfies at least seventy percent (70%) of such Phase Two Retained Job requirements, then the Company shall repay an amount determined by first multiplying one-fourth of the Phase Two Award Payment by a quotient, the numerator of which is the difference between the actual number of Phase Two Project Jobs for the relevant period and the required

number of Phase Two Project Jobs for such period and the denominator of which is the required number of Phase Two Project Jobs for such period, plus interest, as determined in accordance with Section 12(r), on the amount of such required repayment or if an Award Payment is otherwise due and payable in respect of such period, then such Award Payment shall be reduced by such sanction and the Company shall only be required to repay any excess plus interest thereon.

(d) Subject to the satisfaction of the Phase Three Condition Precedent, if, in respect of any year in the Phase Three Job Creation Schedule or the New Job Maintenance Schedule, the Closing Fund Awardee fails to satisfy at least seventy percent (70%) of the Phase Three New Job creation or maintenance requirements set forth in Section 5(g)(3), then the Company shall repay an amount equal to one-fourth of the Phase Three Award Payment plus interest, as determined in accordance with Section 12(r), on the amount of such required repayment or if an Award Payment is otherwise due and payable in respect of such period, then such Award Payment shall be reduced by such sanction and the Company shall only be required to repay any excess plus interest thereon.

(e) Subject to the satisfaction of the Phase Three Condition Precedent, if, in respect of any year in the Phase Three Job Creation Schedule or the New Job Maintenance Schedule, the Closing Fund Awardee fails to fully satisfy the Phase Three New Job creation or maintenance requirements set forth in Section 5(g)(1), but satisfies at least seventy percent (70%) of such Phase Three New Job creation or maintenance requirements, then the Company shall repay an amount determined by first multiplying one-fourth of the Phase Three Award Payment by a quotient, the numerator of which is the difference between the actual number of Phase Three New Jobs for the relevant period and the required number of Phase Three New Jobs for such period and the denominator of which is the required number of Phase Three New Jobs for such period, plus interest, as determined in accordance with Section 12(r), on the amount of such required repayment or if an Award Payment is otherwise due and payable in respect of such period, then such Award Payment shall be reduced by such sanction and the Company shall only be required to repay any excess plus interest thereon.

(f) If, in respect of any year in the Phase One Job Creation Schedule, the New Job Maintenance Schedule, or the Retained Job Maintenance Schedule, the Closing Fund Awardee fails to pay in respect of the Phase One Project Jobs the greater of (i) seventy percent (70%) of the Project Wage or (ii) 125% of the average annual private sector wage in Florida for the year ended December 31, 2011 (such greater amount, the "Minimum Project Wage"), then the Company shall repay an amount equal to one-fifth of the Phase One Award Payments plus interest, as determined in accordance with Section 12(r), on the amount of such required repayment or if an Award Payment is otherwise due and payable in respect of such period, then such Award Payment shall be reduced by such sanction and the Company shall only be required to repay any excess plus interest thereon.

(g) If, in respect of any year in the Phase One Job Creation Schedule, the New Job Maintenance Schedule, or the Retained Job Maintenance Schedule, the Closing Fund Awardee fails to pay the Project Wage in connection with the Phase One Project Jobs, but pays at least the Minimum Project Wage with respect to such Phase One Project Jobs, then the Company shall repay an amount determined by first multiplying one-fifth of the Phase One Award Payments by a quotient, the numerator of which is the difference between the actual average annualized wage paid by the Closing Fund Awardee in respect of the Phase One Project Jobs during the relevant time period and the Project Wage and the denominator of which is the Project Wage, plus interest, as determined in accordance with Section 12(r), on the amount of such required repayment or if an Award Payment is otherwise due and payable in respect of such period, then such Award Payment shall be reduced by such sanction and the Company shall only be required to repay any excess plus interest thereon.

(h) Subject to the satisfaction of the Phase Two Condition Precedent, if, in respect of any year in the Retained Job Maintenance Schedule, the Closing Fund Awardee fails to pay the Minimum Project Wage in respect of the Phase Two Retained Jobs, then the Company shall repay an amount equal to one-fourth of the Phase Two Award Payment plus interest, as determined in accordance with Section 12(r), on the amount of such required repayment or if an Award Payment is otherwise due and payable in respect of such period, then such Award Payment shall be reduced by such sanction and the Company shall only be required to repay any excess plus interest thereon.

(i) Subject to the satisfaction of the Phase Two Condition Precedent, if, in respect of any year in the Retained Job Maintenance Schedule, the Closing Fund Awardee fails to pay the Project Wage in connection with the Phase Two Retained Jobs, but pays at least the Minimum Project Wage with respect to such Phase Two Retained Jobs, then the Company shall repay an amount determined by first multiplying one-fourth of the Phase Two Award Payment by a quotient, the numerator of which is the difference between the actual average annualized wage paid by the Closing Fund Awardee in respect of the Phase Two Retained Jobs during the relevant time period and the Project Wage and the denominator of which is the Project Wage, plus interest, as determined in accordance with Section 12(r), on the amount of such required repayment or if an Award Payment is otherwise due and payable in respect of such period, then such Award Payment shall be reduced by such sanction and the Company shall only be required to repay any excess plus interest thereon.

(j) Subject to the satisfaction of the Phase Three Condition Precedent, if, in respect of any year in the Phase Three Job Creation Schedule or the New Job Maintenance Schedule, the Closing Fund Awardee fails to pay the Minimum Project Wage in respect of the Phase Three New Jobs, then the Company shall repay an amount equal to one-fourth of the Phase Three Award Payment plus interest, as determined in accordance with Section 12(r), on the amount of such required repayment or if an Award Payment is otherwise due and payable in respect of such period, then such Award Payment shall be reduced by such sanction and the Company shall only be required to repay any excess plus interest thereon.

(k) Subject to the satisfaction of the Phase Three Condition Precedent, if, in respect of any year in the Phase Three Job Creation Schedule or the New Job Maintenance Schedule, the Closing Fund Awardee fails to pay the Project Wage in connection with the Phase Three New Jobs, but pays at least the Minimum Project Wage with respect to such Phase Three New Jobs, then the Company shall repay an amount determined by first multiplying one-fourth of the Phase Three Award Payment by a quotient, the numerator of which is the difference between the actual average annualized wage paid by the Closing Fund Awardee in respect of the Phase Three New Jobs during the relevant time period and the Project Wage and the denominator of which is the Project Wage, plus interest, as determined in accordance with Section 12(r), on the amount of such required repayment or if an Award Payment is otherwise due and payable in respect of such period, then such Award Payment shall be reduced by such sanction and the Company shall only be required to repay any excess plus interest thereon.

(l) If, in respect of any year in the Phase One Capital Investment Schedule, the Capital Investment Maintenance Schedule, or with respect to the Capital Investment Requirements set forth in the First Phase One Award Conditions or the Second Phase One Award Conditions, the Closing Fund Awardee fails to fully satisfy the Capital Investment Requirements set forth in Section 5(c), 5(d), or 5(g)(4), then the Company shall repay, or the Award Payment that is otherwise due and payable in respect of such period shall be reduced by, an amount determined by first multiplying one-eighth of the Phase One Award Payments by a quotient, the numerator of which is the difference between the actual capital investment for the relevant period and the Capital Investment Requirements with respect to Phase One for such period and the denominator of which is the Capital Investment Requirements for such period, plus interest, as determined in accordance with Section 12(r), on the amount of such required repayment or if

an Award Payment is otherwise due and payable in respect of such period, then such Award Payment shall be reduced by such sanction and the Company shall only be required to repay any excess plus interest thereon.

(m) Subject to the satisfaction of the Phase Two Condition Precedent, if, in respect of any year in the Phase Two Capital Investment Schedule or the Capital Investment Maintenance Schedule, the Closing Fund Awardee fails to satisfy at least fifty percent (50%) of the Capital Investment Requirements set forth in Section 5(g)(5), then the Company shall repay an amount equal to one-seventh of the Phase Two Award Payment plus interest, as determined in accordance with Section 12(r), on the amount of such required repayment or if an Award Payment is otherwise due and payable in respect of such period, then such Award Payment shall be reduced by such sanction and the Company shall only be required to repay any excess plus interest thereon.

(n) Subject to the satisfaction of the Phase Two Condition Precedent, if, in respect of any year in the Phase Two Capital Investment Schedule or the Capital Investment Maintenance Schedule, the Closing Fund Awardee fails to fully satisfy the Capital Investment Requirements set forth in Section 5(g)(5), but satisfies at least fifty percent (50%) of such Capital Investment Requirements, then the Company shall repay an amount determined by first multiplying one-seventh of the Phase Two Award Payment by a quotient, the numerator of which is the difference between the actual capital investment for the relevant period and the Capital Investment Requirements with respect to Phase Two for such period and the denominator of which is the Capital Investment Requirements for such period, plus interest, as determined in accordance with Section 12(r), on the amount of such required repayment or if an Award Payment is otherwise due and payable in respect of such period, then such Award Payment shall be reduced by such sanction and the Company shall only be required to repay any excess plus interest thereon.

(o) Subject to the satisfaction of the Phase Three Condition Precedent, if, in respect of any year in the Phase Three Capital Investment Schedule or the Phase Three Capital Investment Maintenance Schedule, the Closing Fund Awardee fails to satisfy at least fifty percent (50%) of the Capital Investment Requirements set forth in Section 5(g)(6), then the Company shall repay an amount equal to one-fifth of the Phase Three Award Payment plus interest, as determined in accordance with Section 12(r), on the amount of such required repayment or if an Award Payment is otherwise due and payable in respect of such period, then such Award Payment shall be reduced by such sanction and the Company shall only be required to repay any excess plus interest thereon.

(p) Subject to the satisfaction of the Phase Three Condition Precedent, if, in respect of any year in the Phase Three Capital Investment Schedule or the Phase Three Capital Investment Maintenance Schedule, the Closing Fund Awardee fails to fully satisfy the Capital Investment Requirements set forth in Section 5(g)(6), but satisfies at least fifty percent (50%) of such Capital Investment Requirements, then the Company shall repay an amount determined by first multiplying one-fifth of the Phase Three Award Payment by a quotient, the numerator of which is the difference between the actual capital investment for the relevant period and the Capital Investment Requirements with respect to Phase Three for such period and the denominator of which is the Capital Investment Requirements for such period, plus interest, as determined in accordance with Section 12(r), on the amount of such required repayment or if an Award Payment is otherwise due and payable in respect of such period, then such Award Payment shall be reduced by such sanction and the Company shall only be required to repay any excess plus interest thereon.

(q) Notwithstanding anything in this Section 12 to the contrary, except as set forth in Section 12(t), (i) in no year shall the sanctions imposed pursuant to this Section 12 for the Closing Fund Awardee's failure to satisfy its obligations pursuant to Section 5(g)(1) or (g)(4) in respect of such year

exceed one-fifth of the Phase One Award Payments, plus interest, if any, as determined pursuant to Section 12(r); (ii) in no year shall the sanctions imposed pursuant to this Section 12 for the Closing Fund Awardee's failure to satisfy its obligations pursuant to Section 5(g)(2) or (g)(5) in respect of such year exceed one-fourth of the Phase Two Award Payment, plus interest, if any, as determined pursuant to Section 12(r); (iii) in no year shall the sanctions imposed pursuant to this Section 12 for the Closing Fund Awardee's failure to satisfy its obligations pursuant to Section 5(g)(3) or (g)(6) in respect of such year exceed one-fourth of the Phase Three Award Payment, plus interest, if any, as determined pursuant to Section 12(r); (iv) in no event shall the aggregate sanctions imposed pursuant to this Section 12 with respect to the Closing Fund Awardee's obligations pursuant to Section 5(g)(1) and (g)(4) exceed the Phase One Award Payments plus interest, if any, as determined pursuant to Section 12(r); (v) in no event shall the aggregate sanctions imposed pursuant to this Section 12 with respect to the Closing Fund Awardee's obligations pursuant to Section 5(g)(2) and (g)(5) exceed the Phase Two Award Payment plus interest, if any, as determined pursuant to Section 12(r); and (vi) in no event shall the aggregate sanctions imposed pursuant to this Section 12 with respect to the Closing Fund Awardee's obligations pursuant to Section 5(g)(3) and (g)(6) exceed the Phase Three Award Payment plus interest, if any, as determined pursuant to Section 12(r).

(r) The interest rate on any portion of the Award that is required to be repaid by the Closing Fund Awardee pursuant to this Section 12 shall be a fixed annual rate equal to 500 basis points over the "Prime Rate" as reported in *The Wall Street Journal* on the Effective Date and shall be calculated on the basis of the actual days elapsed between the date on which the obligations pursuant to Section 5(g) giving rise to the sanctions pursuant to this Section 12 were required to have been satisfied and the repayment date based on a 365-day year.

(s) The Parties acknowledge and agree that the remedies set forth in this Section 12 constitute liquidated damages and that in the event of a breach of Section 5(g), the actual damages suffered by DSBD would be unreasonably difficult to determine and that the Parties would not have a convenient and adequate alternative to the liquidated damages set forth in this Section 12. Each of the Parties further acknowledges and agrees that the liquidated damages provided in this Section 12 bears a reasonable relationship to the anticipated harm that would be caused by any such breach, is a genuine pre-estimate of the damages that DSBD will suffer or incur as a result of any such breach, and is not a penalty. The Closing Fund Awardee irrevocably waives any right that it may have to raise as a defense that any such liquidated damages are excessive or punitive. The Parties acknowledge that the agreements contained in this Section 12 are an integral part of the transactions contemplated by this Agreement and that without these agreements DSBD would not enter into this Agreement.

(t) In the event that the sanctions imposed under this Section 12 require the Company to repay to DSBD all or a portion of the Award, such sanctions shall be immediately due and payable and the Company shall pay to DSBD the applicable funds by cashier's check or wire transfer of immediately-available funds to an account designated by DSBD within ten (10) business days after DSBD delivers to the Company written notice of such sanctions. Notwithstanding anything in this Section 12 to the contrary, in the event that such sanctions imposed under this Section 12 require the Company to repay to DSBD all or a portion of the Award, if the Company fails to pay the sanctions under this Section 12 when due, then the Company shall reimburse DSBD for all costs and expenses incurred or accrued by DSBD (including fees and expenses of counsel) in connection with the collection under and enforcement of this Section 12.

13. CHOICE OF LAW; VENUE, JURISDICTION AND WAIVER OF JURY TRIAL. The laws of the State of Florida shall govern the construction, enforcement and interpretation of this Agreement, regardless of and without reference to whether any applicable conflicts of laws principles may point to the application of the laws of another jurisdiction. The Parties hereby agree that the

exclusive personal jurisdiction and venue to resolve any and all disputes between them including, without limitation, any disputes arising out of or relating to this Agreement shall be in the state courts of the State of Florida in the County of Leon. The Parties expressly consent to the exclusive personal jurisdiction and venue in any state court located in Leon County, Florida and waive any defense of forum non conveniens, lack of personal jurisdiction, or like defense, and further agree that any and all disputes between them shall be solely in the State of Florida. IN ANY LEGAL OR EQUITABLE ACTION BETWEEN THE PARTIES, THE PARTIES HEREBY EXPRESSLY WAIVE TRIAL BY JURY TO THE FULLEST EXTENT PERMITTED BY LAW.

14. ATTORNEYS' FEES; EXPENSES. Except as set forth in Section 8, Section 12(v), and Section 16 each of the Parties shall pay its own attorneys' fees and costs in connection with the execution and delivery of this Agreement and the transactions contemplated hereby. All costs and expenses incurred by the Closing Fund Awardee in connection with this Agreement and the transactions contemplated hereby shall be the sole responsibility of the Closing Fund Awardee.

15. RECORD-KEEPING AND AUDIT-RELATED OBLIGATIONS.

(a) Records pertaining to this Agreement, which include, without limitation, supporting documentation for the application process, the Application, documentation pertaining to the Award, and records sufficient to demonstrate compliance with the terms of this Agreement, including personnel and financial records and reports related to the Project Job, Project Wage and Capital Investment Requirements, shall be retained by the Closing Fund Awardee for the longer of (i) five (5) state fiscal years after the term of this Agreement, which includes satisfaction of all reporting requirements and receipt of all payments due under this Agreement; provided, that all applicable audits have been released, or (ii) five (5) years after the date that the last audit report is released. If any litigation, claim, negotiation, or other action involving records has been started before the expiration of the controlling period as identified above, the records shall be retained until completion of the action and resolution of all issues which arise from it, or until the end of the controlling period as identified above, whichever is longer. The Closing Fund Awardee shall maintain these records in accordance with applicable laws, rules and regulations.

(b) The records identified in Section 15(a) shall be subject at all times to inspection, review, or audit by DSBD or its designee, or by state personnel of the Office of the Auditor General or Department of Financial Services, or by other state personnel. Copies of the reporting package required by this Agreement shall be submitted by or on behalf of the Company to DSBD and the State of Florida Auditor General. The Company and any Affiliate Closing Fund Awardee shall, and the Company shall cause any Subsidiary Closing Fund Awardee to, upon the request of DSBD, afford to DSBD and each of its respective employees, advisors, counsel, and other authorized representatives, during normal business hours, reasonable access, upon reasonable advance notice, to all of the books, records, and properties of the Closing Fund Awardee that are reasonably related to this Agreement and to all managers and employees of the Closing Fund Awardee who are reasonably necessary in order to conduct such on-site audit; provided, however, that such access will be subject to the Company's security protocols at the Project's locations and the laws of the United States; provided, that the Company shall make all reasonable efforts to facilitate access to such books, records, and properties.

16. PUBLIC RECORDS. The Closing Fund Awardee shall comply with the provisions of Chapter 119 of the Florida Statutes applicable to this Agreement as the same may be limited or construed by other applicable law. It is expressly understood that DSBD may unilaterally terminate this Agreement for the Closing Fund Awardee's refusal to comply with the applicable provisions of Chapter 119 of the Florida Statutes. The Closing Fund Awardee shall provide notice to DSBD of each request it receives for a public record in connection with this Agreement by forwarding that request to

PRRequest@deo.myflorida.com within one (1) business day after receipt or as soon as practicable, but in no event later than three (3) business days after receipt of the request. If the Closing Fund Awardee submits records to DSBD that are confidential and exempt from public disclosure as trade secrets pursuant to Section 288.075(3) of the Florida Statutes or proprietary confidential business information pursuant to Section 288.075(4) of the Florida Statutes, such records should be marked accordingly by the Closing Fund Awardee prior to submittal to DSBD. In the event that DSBD's claim of exemption asserted in response to the Closing Fund Awardee's assertion of confidentiality is challenged in a court of law, the Closing Fund Awardee shall defend, assume and be responsible for all fees, costs and expenses in connection with such challenge.

17. LOBBYING. Pursuant to Sections 11.062 and 216.347 of the Florida Statutes, the Closing Fund Awardee shall use no portion of the Award for the purpose of lobbying the Florida Legislature, executive branch, judicial branch, or any state agency.

18. NON-ASSIGNMENT. The Closing Fund Awardee shall not assign, subcontract, or otherwise transfer its rights, duties, or obligations under this Agreement without the prior written consent of DSBD, which consent may be withheld in DSBD's sole and absolute discretion. DSBD will at all times be entitled to assign or transfer its rights, duties, or obligations under this Agreement to another governmental entity in the State of Florida upon giving prior written notice to the Closing Fund Awardee. Any attempted assignment of this Agreement or any of the rights hereunder in violation of this provision shall be void *ab initio*.

19. FLORIDA SUBSTITUTE FORM W-9. The Company shall register its W-9 on the Florida Department of Financial Services' website (<http://flvendor.myfloridacfo.com>) and register as a vendor on the MyFloridaMarketPlace website (<http://myfloridamarketplace.com>). Notwithstanding anything in this Agreement to the contrary, DSBD shall not authorize the disbursement of any Award Payment to the Company unless and until the Company has a verified Substitute Form W-9 on file with the Florida Department of Financial Services and is registered as a vendor with the Florida Department of Management Services.

20. CONSTRUCTION; INTERPRETATION. The title of and the section and paragraph headings in this Agreement are for convenience of reference only and shall not govern or affect the interpretation of any of the terms or provisions of this Agreement. The term "this Agreement" means this Agreement together with all Exhibits hereto, as the same may from time to time be amended, modified, supplemented or restated in accordance with the terms hereof. The use in this Agreement of the term "including" and other words of similar import mean "including, without limitation" and where specific language is used to clarify by example a general statement contained herein, such specific language shall not be deemed to modify, limit or restrict in any manner the construction of the general statement to which it relates. The word "or" is not exclusive and the words "herein," "hereof," "hereunder" and other words of similar import refer to this Agreement as a whole, including any Exhibits, and not to any particular section, subsection, paragraph, subparagraph or clause contained in this Agreement. The use herein of terms importing the singular shall also include the plural, and vice versa. The reference to an agreement, instrument or other document means such agreement, instrument or other document as amended, supplemented and modified from time to time to the extent permitted by the provisions thereof and the reference to a statute means such statute as amended from time to time and includes any successor legislation thereto and any regulations promulgated thereunder. All references to "\$" shall mean United States dollars. The recitals of this Agreement are incorporated herein by reference and shall apply to the terms and provisions of this Agreement and the Parties. Time is of the essence with respect to the performance of all obligations under this Agreement. The Parties have participated jointly in the negotiation and drafting of this Agreement. In the event an ambiguity or question of intent or interpretation arises, this Agreement shall be construed as if drafted jointly by the Parties, and no

presumption or burden of proof shall arise favoring or disfavoring any Party by virtue of the authorship of any of the provisions of this Agreement.

21. PRESERVATION OF REMEDIES; SEVERABILITY; RIGHT TO SET-OFF. No delay or omission to exercise any right, power, or remedy accruing to either Party upon breach or default by either Party under this Agreement, will impair any such right, power or remedy of either Party; nor will such delay or omission be construed as a waiver of any breach or default or any similar breach or default. If any term or provision of this Agreement is found to be illegal, invalid or unenforceable, such term or provision will be deemed stricken, and the remainder of this Agreement will remain in full force and effect. DSBD and the State shall have all of its common law, equitable and statutory rights of set-off, including, without limitation, the State's option to withhold for the purposes of set-off any moneys due to the Closing Fund Awardee under this Agreement up to any amounts due and owing to DSBD with respect to this Agreement, any other contract with any State department or agency, including any contract for a term commencing prior to the term of this Agreement, plus any amounts due and owing to the State for any other reason including, without limitation, tax delinquencies or monetary penalties relative thereto. The State shall exercise its set-off rights in accordance with normal State practices including, in cases of set-off pursuant to an audit, the finalization of such audit by the State or its representatives.

22. ENTIRE AGREEMENT. This Agreement embodies the entire agreement of the Parties with respect to the subject matter hereof. There are no provisions, terms, conditions, or obligations other than those contained in this Agreement; and this Agreement supersedes all previous communications, representations, or agreements, either verbal or written, between the Parties. No amendment will be effective unless reduced to writing and signed by an authorized officer of the Closing Fund Awardee and the authorized agent of DSBD.

23. SINGLE AUDIT ACT. In the event that the Florida Department of Financial Services provides a written opinion or determination to DSBD that awards from the Closing Fund pursuant to Section 288.1088 of the Florida Statutes are not subject to the single-audit or project audit requirements of the Florida Single Audit Act (Section 215.97 of the Florida Statutes), then the Parties shall amend this Agreement in order to specify the non-applicability of those requirements in Exhibit A hereto.

24. NO THIRD-PARTY BENEFICIARIES. This Agreement is for the sole benefit of the Parties and their permitted successors and assigns and nothing herein expressed or implied shall give or be construed to give any person or entity, other than the Parties and such permitted successors and assigns, any legal or equitable rights hereunder.

25. COUNTERPARTS. This Agreement may be executed in one or more counterparts, any one of which need not contain the signature of more than one Party, but all such counterparts taken together will constitute one and the same instrument.

[The remainder of this page has been intentionally left blank.]

IN WITNESS WHEREOF, the Parties have duly executed and delivered this Agreement as of the Effective Date.

CLOSING FUND AWARDEE

RAYTHEON COMPANY

By: _____

Name:

Title:

Date:

DSBD

**FLORIDA DEPARTMENT OF ECONOMIC
OPPORTUNITY, DIVISION OF STRATEGIC
BUSINESS DEVELOPMENT**

By: _____

Name:

Title:

Date:

List of Exhibits:

Exhibit A: Special Audit Requirements

Exhibit B: Criteria for Measuring Performance Conditions

Exhibit C: Escrow Agreement

Exhibit D: Subsidiary Closing Fund Awardees

Exhibit E: Form of Joinder

**Approved as to form and legal
sufficiency, subject only to full and
proper execution by the Parties.**

**Office of the General Counsel
Department of Economic Opportunity**

By:

Approved Date:

EXHIBIT A*

*This Exhibit is a Department of Financial Services form adopted by Rule and may not be revised.

EXHIBIT A

SPECIAL AUDIT REQUIREMENTS

The administration of resources awarded by the Department of Economic Opportunity's Division of Strategic Business Development (DSBD) to the Closing Fund Awardee may be subject to audits and/or monitoring by DSBD, as described in this section.

MONITORING

In addition to reviews of audits conducted in accordance with OMB Circular A-133 and Section 215.97, F.S., as revised (see "AUDITS" below), monitoring procedures may include, but not be limited to, on-site visits by DSBD staff, limited scope audits as defined by OMB Circular A-133, as revised, and/or other procedures. By entering into this agreement, the Closing Fund Awardee agrees to comply and cooperate with any monitoring procedures/processes deemed appropriate by DSBD. In the event DSBD determines that a limited scope audit of the Closing Fund Awardee is appropriate, the Closing Fund Awardee agrees to comply with any additional instructions provided by DSBD staff to the Closing Fund Awardee regarding such audit. The Closing Fund Awardee further agrees to comply and cooperate with any inspections, reviews, investigations, or audits deemed necessary by the Chief Financial Officer (CFO) or Auditor General.

AUDITS

PART I: FEDERALLY FUNDED

This part is applicable if the Closing Fund Awardee is a State or local government or a non-profit organization as defined in OMB Circular A-133, as revised.

1. In the event that the Closing Fund Awardee expends \$300,000 (\$500,000 for fiscal years ending after December 31, 2003) or more in Federal awards in its fiscal year, the Closing Fund Awardee must have a single or program-specific audit conducted in accordance with the provisions of OMB Circular A-133, as revised. ATTACHMENT 1 to this agreement indicates Federal resources awarded through DSBD by this agreement. In determining the Federal awards expended in its fiscal year, the Closing Fund Awardee shall consider all sources of Federal awards, including Federal resources received from DSBD. The determination of amounts of Federal awards expended should be in accordance with the guidelines established by OMB Circular A-133, as revised. An audit of the Closing Fund Awardee conducted by the Auditor General in accordance with the provisions OMB Circular A-133, as revised, will meet the requirements of this part.
2. In connection with the audit requirements addressed in Part I, paragraph 1, the Closing Fund Awardee shall fulfill the requirements relative to auditee responsibilities as provided in Subpart C of OMB Circular A-133, as revised.
3. If the Closing Fund Awardee expends less than \$300,000 (\$500,000 for fiscal years ending after December 31, 2003) in Federal awards in its fiscal year, an audit conducted in accordance with the provisions of OMB Circular A-133, as revised, is not required. In the event that the Closing Fund Awardee expends less than \$300,000 *(\$500,000 for fiscal years ending after*

December 31, 2003) in Federal awards in its fiscal year and elects to have an audit conducted in accordance with the provisions of OMB Circular A-133, as revised, the cost of the audit must be paid from non-Federal resources (i.e., the cost of such an audit must be paid from the Closing Fund Awardee's resources obtained from other than Federal entities).

4. A web site that provides links to several Federal Single Audit Act resources can be found at: <http://harvester.census.gov/sac/sainfo.html>

PART II: STATE FUNDED

This part is applicable if the Closing Fund Awardee is a nonstate entity as defined by Section 215.97(2), Florida Statutes.

1. In the event that the Closing Fund Awardee expends a total amount of state financial assistance equal to or in excess of \$500,000 in any fiscal year of such Closing Fund Awardee (for fiscal years ending September 30, 2004 or thereafter), the Closing Fund Awardee must have a State single or project-specific audit for such fiscal year in accordance with Section 215.97, F.S.; applicable rules of the Department of Financial Services; and Chapters 10.550 (local governmental entities) or 10.650 (nonprofit and for-profit organizations), Rules of the Auditor General. ATTACHMENT 1 to this agreement indicates state financial assistance awarded through DSBD by this agreement. In determining the state financial assistance expended in its fiscal year, the Closing Fund Awardee shall consider all sources of state financial assistance, including state financial assistance received from DSBD, other state agencies, and other nonstate entities. State financial assistance does not include Federal direct or pass-through awards and resources received by a nonstate entity for Federal program matching requirements.
2. In connection with the audit requirements addressed in Part II, paragraph 1, the Closing Fund Awardee shall ensure that the audit complies with the requirements of Section 215.97(8), Florida Statutes. This includes submission of a financial reporting package as defined by Section 215.97(2), Florida Statutes, and Chapters 10.550 (local governmental entities) or 10.650 (nonprofit and for-profit organizations), Rules of the Auditor General.
3. If the Closing Fund Awardee expends less than \$500,000 in state financial assistance in its fiscal year (for fiscal years ending September 30, 2004 or thereafter), an audit conducted in accordance with the provisions of Section 215.97, Florida Statutes, is not required. In the event that the Closing Fund Awardee expends less than \$500,000 in state financial assistance in its fiscal year and elects to have an audit conducted in accordance with the provisions of Section 215.97, F.S., the cost of the audit must be paid from the non-state entity's resources (i.e., the cost of such an audit must be paid from the Closing Fund Awardee's resources obtained from other than State entities).
4. For information regarding the Florida Single Audit Act, including the Florida Catalog of State Financial Assistance (CSFA), the Closing Fund Awardee should access the website for the Florida Department of Financial Services located at <https://apps.fldfs.com/fsaa/> for assistance. In addition to the above website, the following websites may be accessed for additional information: The Florida Legislature's website <http://www.leg.state.fl.us/> and the Florida Auditor General's website <http://www.state.fl.us/audgen>.

PART III: OTHER AUDIT REQUIREMENTS: Not applicable.

PART IV: REPORT SUBMISSION

1. Copies of reporting packages for audits conducted in accordance with OMB Circular A-133, as revised, and required by PART I of this agreement shall be submitted, when required by Section .320 (d), OMB Circular A-133, as revised, by or on behalf of the Closing Fund Awardee directly to each of the following:

A. DEO at each of the following address:

Electronic copies (preferred): Audit@deo.myflorida.com

or

Paper (hard copy):

Department Economic Opportunity
MSC # 130, Caldwell Building
107 East Madison Street
Tallahassee, Florida 32399-4126

- B. The Federal Audit Clearinghouse designated in OMB Circular A-133, as revised (the number of copies required by Sections .320 (d)(1) and (2), OMB Circular A-133, as revised, should be submitted to the Federal Audit Clearinghouse), at the following address:

<http://harvester.census.gov/fac/collect/ddeindex.html>

- C. Other Federal agencies and pass-through entities in accordance with Sections .320 (e) and (f), OMB Circular A-133, as revised.

2. Pursuant to Section .320 (f), OMB Circular A-133, as revised, the Closing Fund Awardee shall submit a copy of the reporting package described in Section .320 (c), OMB Circular A-133, as revised, and any management letter issued by the auditor, to DEO at each of the following addresses:

Electronic copies (preferred): Audit@deo.myflorida.com

or

Paper (hard copy):

Department Economic Opportunity
MSC # 130, Caldwell Building
107 East Madison Street
Tallahassee, Fl. 32399-4126

3. Copies of financial reporting packages required by PART II of this agreement shall be submitted by or on behalf of the Closing Fund Awardee directly to each of the following:

A. DEO at each of the following address:

Electronic copies (preferred): Audit@deo.myflorida.com

or

Paper (hard copy):

Department Economic Opportunity
MSC # 130, Caldwell Building
107 East Madison Street
Tallahassee, Florida 32399-4126

B. The Auditor General's Office at the following address:

Auditor General
Local Government Audits/342
Claude Pepper Building, Room 401
111 West Madison Street
Tallahassee, FL 32399-1450

Email Address: flaudgen_localgovt@aud.state.fl.us

4. Copies of reports or the management letter required by Part III of this agreement shall be submitted by or on behalf of the recipient directly to:
 - A. DEO at each of the following addresses: N/A
5. Any reports, management letter, or other information required to be submitted to DSBD pursuant to this agreement shall be submitted timely in accordance with OMB Circular A-133, Florida Statutes, and Chapters 10.550 (local governmental entities) or 10.650 (nonprofit and for-profit organizations), Rules of the Auditor General, as applicable.
6. The Closing Fund Awardee, when submitting financial reporting packages to DSBD for audits done in accordance with OMB Circular A-133 or Chapters 10.550 (local governmental entities) or 10.650 (nonprofit and for-profit organizations), Rules of the Auditor General, should indicate the date that the reporting package was delivered to the Closing Fund Awardee in correspondence accompanying the reporting package.

PART V: RECORD RETENTION

1. The Closing Fund Awardee shall retain sufficient records demonstrating its compliance with the terms of this agreement for a period of five (5) years from the date the audit report is issued, or five (5) state fiscal years after all reporting requirements are satisfied and final payments have been received, whichever period is longer, and shall allow DSBD or its designee, CFO, or Auditor General access to such records upon request. In addition, if any litigation, claim, negotiation, audit, or other action involving the records has been started prior to the expiration of the controlling period as identified above, the records shall be retained until completion of the action and resolution of all issues which arise from it, or until the end of the controlling period, whichever is longer. The Closing Fund Awardee shall ensure that audit working papers are made available to DSBD, or its designee, CFO, or Auditor General upon request for a period of five (5) years from the date the audit report is issued, unless extended in writing by DSBD.

**Exhibit A
Attachment 1**

FEDERAL RESOURCES AWARDED TO THE CLOSING FUND Awardee PURSUANT TO THIS AGREEMENT CONSIST OF THE FOLLOWING:

Federal Program: none

COMPLIANCE REQUIREMENTS APPLICABLE TO THE FEDERAL RESOURCES AWARDED PURSUANT TO THIS AGREEMENT ARE AS FOLLOWS:

Federal Program: none

STATE RESOURCES AWARDED TO THE RECIPIENT PURSUANT TO THIS AGREEMENT CONSIST OF THE FOLLOWING:

MATCHING RESOURCES FOR FEDERAL PROGRAMS:

Federal Program: none

SUBJECT TO SECTION 215.97, FLORIDA STATUTES:

State Project: AWARDED BY DEPARTMENT OF ECONOMIC OPPORTUNITY, DIVISION OF STRATEGIC BUSINESS:						
State Program Number	Funding Source	State Fiscal Year	CSFA Number	CSFA Title or Funding Source Description	Funding Amount	State Appropriation Category
14-00190	QACF	2013/2014	40.008	Quick Action Closing Fund	\$600,000	100259
Total Award					\$600,000	

COMPLIANCE REQUIREMENTS APPLICABLE TO STATE RESOURCES AWARDED PURSUANT TO THIS AGREEMENT ARE AS FOLLOWS:

For each program identified above, the recipient shall comply with the program requirements described in the Florida Catalog of State Financial Assistance (CSFA) [<https://apps.fldfs.com/fsaa/catalog.aspx>]. The purposes for which the funds are to be used are limited to those consistent with the Closing Fund Awardee's Project commitments specified in this Agreement. Any match required is clearly indicated in this Agreement.

NOTE: Section .400(d) of OMB Circular A-133, as revised, and Section 215.97(5), Florida Statutes, require that the information about Federal Programs and State Projects included in Exhibit 1 be provided to the recipient.

EXHIBIT B

EXHIBIT B

Raytheon Company

Criteria for Measuring the Achievement of Performance Conditions Under the Quick Action Closing Fund Agreement

Calculations/Documentation for Project Jobs and Project Wage, and Documentation of Capital Investment

The annual performance certification, as authorized in Section 7 of this Agreement, must be made on an application form provided by DSBD and must include the information and documentation as specified in this Exhibit.

Section I of this Exhibit defines the Performance Certification Period. Sections II, III, and IV explain the methods that will to be used to determine the number of **Project Jobs**, the **Average Annual Wage (AAW)** of those Project Jobs, and the **documentation required** for jobs and wages. Section V discusses capital investment requirements, including documentation.

The Closing Fund Awardee must maintain all related forms and supporting documentation, and make these materials available to DSBD as required in Sections 7 and 15 of this Agreement.

Section I. PERFORMANCE CERTIFICATION PERIOD

Performance Certification Period -- The first Performance Certification Period is defined as the period from the Effective Date until December 31 of the year in which the first new Project Jobs are scheduled pursuant to Section 5 of this Agreement.

For the second and subsequent claim years, the Performance Certification Period is January 1 to December 31 of the applicable claim year.

Section II. PROJECT JOB DEFINITIONS AND DETERMINATION The following definitions and procedures must be used in determining and reporting the number of Project Jobs dedicated to the Closing Fund project. **Project Jobs must work at the project location(s).**

A. Definitions:

1. Project Job – A “Project Job” for purposes of this Agreement means a full-time salaried employee, or a Full-Time Equivalent (FTE) employee defined as working 35 paid hours a week, performing tasks directly related to the products or services of the certified Closing Fund project. Project Jobs may include positions obtained from a temporary employment agency or employee leasing company, through a union agreement, or co-employment under a professional employer organization agreement that result directly from a project in this state. In tabulating hours worked, any paid leave an employee takes during the pay period, such as vacation or sick leave, may be included.
2. Leased Employees– Leased employees may be counted toward a Closing Fund Awardee’s jobs requirement if: they are under the direct supervision of the Closing Fund

Business; they work with the Closing Fund Awardee's employees at the project site a minimum of 35 hours per week; and are engaged to meet an on-going labor requirement directly resulting from the project. The actual wages earned and time worked by leased employees at Project location(s) must be fully documented to the satisfaction of DSBD.

Independent Contractors meeting the above criteria of leased employees may also be counted towards a Closing Fund Awardee's job requirement so long as the actual wages paid, excluding expenses, by the Closing Fund Awardee are documented on a form 1099 Miscellaneous Income to the individual person. Payments made to LLCs or other business entities (identified on the 1099 with an FEIN) do not qualify as Project Jobs as they relate to the "fee-for-service" arrangement described below.

Employees of a business (other than a Subsidiary Closing Fund Awardee or an Affiliate Closing Fund Awardee) that has entered into a fee-for-service contract with the Closing Fund Awardee in which the primary purpose of the contract is to perform services rather than to provide employees are not eligible project employees are not eligible project employees. Although any determination will ultimately depend on the facts and circumstances of the arrangement, examples of fee-for-service contracts in which the service providers' employees are generally not considered project jobs include, but are not limited to, mail-room services, janitorial and landscaping services, food-service providers, accounting services provided by independent certified public accounting firms and legal services provided by law firms.

3. Base Jobs – Base Jobs are those positions paid directly or indirectly by the Closing Fund Awardee during the 12 months prior to the Approval Date. The Base Job number is important because it is subtracted from the total Project Jobs associated with the Closing Fund Awardee's project to calculate the net-new Project Jobs. The number of Base Jobs is often established by the Closing Fund Awardee and DSBD prior to execution of the Closing Fund Agreement, and may be documented by the Closing Fund Awardee's RT-6 filings to the Florida Department of Revenue, or by other employment documentation submitted to DSBD by the Closing Fund Awardee. Once the number of Base Jobs is set, that number is used for all Performance Certifications associated with the Closing Fund Awardee.
4. New Project Job – Project Jobs may be counted as **new** if they are created on or after the Date of Certification or other date specified in this Agreement, **and only if** they result in a net increase in Project Jobs associated with the Closing Fund project during the claim period, unless otherwise specified in this Agreement.

Jobs are **not** counted as new if they are moved from an Affiliate or Subsidiary in Florida (including a business related by virtue of a merger, purchase, or any form of acquisition) to the Closing Fund Awardee; from another Florida location of the Closing Fund Awardee to a Project location; or from any other Florida business unit of the Closing Fund Awardee unless the relocated positions are back-filled. The Closing Fund Awardee must provide evidence to DSBD's satisfaction of any such back-filled positions.

Finally, no temporary construction jobs involved with the construction of facilities for the project; temporary or seasonal jobs associated with cyclical business activities or to substitute for permanent employees on a leave of absence; nor any jobs that were previously included in any approved application for incentives under Sections 288.107, 288.1045 or 288.106 of the Florida Statutes, or incentive grants under Section 288.1088

of the Florida Statutes may be included as new jobs for the project covered by this Agreement.

B. Calculation of Project Jobs

The following methods will be used to determine the number of Project Jobs for each Performance Certification Period.

- (1) Monthly Head count of Salaried Project Jobs: Add the monthly totals of salaried full-time jobs and divide by the number of months.
- (2) Monthly Average of FTE Project Jobs: Add the hours worked each month by hourly employees and divide by 140 hours (*35 hours x 4 weeks*) to calculate the number of FTE Project Jobs. If the Closing Fund Awardee uses pay periods of less than one month, total all of the reported hours worked by the FTEs during the Performance Certification Period and divide by 1,820 (*35 hours x 52 weeks*) to determine the average FTE employment for the Period.
- (3) New Job Calculation – In order to avoid sanctions for the failure of the Closing Fund Awardee to satisfy its job creation obligations in accordance with Section 5(g)(1) of the Closing Fund Agreement, the number of Base Jobs plus the number of New Jobs created on or after the Approval Date is the net increase in jobs, and must be at least as great as the number of New Jobs specified in Section 5(g)(1) of this Agreement for the applicable Performance Certification Period.

EXAMPLES OF CALCULATIONS THAT DSBD WILL USE:

Example #1: If the Closing Fund Awardee is a brand-new-to-Florida business with **zero Base Jobs** and agrees to create 50 net-new jobs by December 31 of the first Performance Certification Period and an additional 65 net-new jobs by December 31 of the second Performance Certification Period, 80 net-new jobs the third Period, and 100 jobs the fourth and final Period (and final job-creation year), the claims will be evaluated as follows:

1. The claim evaluation for the first Performance Certification Period compares the average of actual employment for the months or pay periods within Claim Year 1 against the required number of jobs (50) scheduled in this Agreement. Since a Closing Fund Awardee typically has been in operation fewer than 12 months in the first Performance Certification Period, DSBD typically compares the December 1st-31st headcount or FTE count to the required number of jobs scheduled in the first phase pursuant to this Agreement.

DSBD will consider, at the request of the Closing Fund Awardee, calculating the number of net-new Project Jobs created by the business during all of the months the business was in operations during the first Performance Certification Period by adding the jobs created each month and dividing by the number of months.

2. The calculation in the second and subsequent Performance Certification Periods involving job creation will be done in one of two ways, as determined and documented by the Closing Fund Awardee:
 - Actual Monthly Average: Compare the average of actual employment for the second Performance Certification Period January 1 through December 31 against

the 115 cumulative Project Jobs scheduled for this period. **Example:** The Closing Fund Awardee added its 12 months of Project Jobs for a reported total of 1,400 jobs in Period #2. The 1,400 number is divided by 12 for an actual monthly average of 117 (rounded up) – greater than the scheduled number of new jobs.

- **Growth & Maintenance Method (“Option B”):** The Closing Fund Awardee first documents the actual number of confirmed Project Jobs associated with the project on December 31 of the applicable Performance Certification Period. Next, the Closing Fund Awardee calculates the actual monthly average of Project Jobs, and compares that to the total number of cumulative Project Jobs required for the applicable Performance Certification Period pursuant to the terms of this Agreement. If the confirmed December Project Jobs are at least equal to the number of total Project Jobs required during the applicable Performance Certification Period pursuant to this Agreement, **AND** if the actual monthly average of Project Jobs is at least equal to the number of required cumulative Project Jobs for the previous Performance Certification Period (demonstrating maintenance of the previous job creation requirements) pursuant to this Agreement, then the Closing Fund Awardee will be deemed to have satisfied the Project Job requirements in accordance with this Agreement.

Using the Example #1 numbers listed earlier, the Closing Fund Awardee with a zero-job base must have created 50 jobs during the first Performance Certification Period and 65 during the second Performance Certification Period. If the Closing Fund Awardee has maintained a cumulative monthly average of at least 50 total Project Jobs, and has 115 new jobs by December 31, then the Closing Fund Awardee will be deemed to have satisfied the Project Job requirements in accordance with this Agreement.

3. Once the project enters the maintenance phase, the Project Jobs calculation will be a 12-month actual average of Project Jobs compared against the total Project Jobs required pursuant to this Agreement. Using the example business, by the end of the four-year job creation schedule, the Closing Fund Awardee must have created 295 jobs. In Performance Certification Period 5, the Closing Fund Awardee reports a total of 3,600 employees. Dividing that number by 12 equals 300 on average – greater than the 295 commitment.

Example #2: If the Closing Fund project (either a new or an expansion) is a business with 25 existing Base Jobs, using the job-creation schedule in Example #1 above, DSBD will calculate the number of Project Jobs as follows:

1. The claim evaluation for the first Performance Certification Period would subtract the 25 Base Jobs from the actual employment for the period December 1 through December 31 of Performance Certification Period 1 to calculate the net-new Project Jobs.
2. The calculation in the second and subsequent claim years involving job creation will be done in one of two ways:
 - **Actual Monthly Average:** Compare the average of actual employment for the second Performance Certification Period of January 1 through December 31 against the 140 cumulative Project Jobs scheduled for this period (25 Base Jobs plus the 115 new jobs). **Example:** The Closing Fund Awardee reported a total of 1,700 employees in Performance Certification Period 2. The 1,700 number is

divided by 12 for a monthly average of 142 (rounded up). Subtract the 25 Base Jobs, and the total is 117 – greater than the scheduled amount of new jobs.

- **Growth and Maintenance Method (“Option B”):** First, determine the actual number of confirmed Project Jobs associated with the Closing Fund project on December 31 of the applicable Performance Certification Period. Then, calculate the actual monthly average of Project Jobs, and compare that to the required total number of cumulative Project Jobs required for the applicable Performance Certification Period pursuant to the terms of this Agreement. If the confirmed December Project Jobs are at least equal to the number of total Project Jobs required during the applicable Performance Certification Period pursuant to the terms of this Agreement, **AND** if the actual monthly average of Project Jobs are at least equal to the number of required cumulative Project Jobs for the previous Performance Certification Period (demonstrating maintenance of the previous job creation requirements) pursuant to the terms of this Agreement, then the Closing Fund Awardee will be deemed to have met its agreement’s Project Job requirements.

3. Once the project enters the maintenance phase, the Project Jobs calculation will be a 12-month average of jobs compared against the total number of Project Jobs required pursuant to this Agreement for the applicable Performance Certification Period. Using the above example, by the end of four-year job creation schedule, the Closing Fund Awardee must have created and retained 295 jobs and maintained the 25 Base Jobs. In the Fifth Performance Certification Period, the Closing Fund Awardee reports total confirmed 3,900 employees; divide by 12 to get 325, then subtract the 25 Base Jobs, for an actual monthly average of 300 – greater than the 295 commitment.

Section III. AVERAGE ANNUAL WAGE (APW) DETERMINATION

A. **Definition** – In calculating the project’s AAW for new employees during the applicable Performance Certification Period, the following forms of compensation may be included for all Project Jobs as determined in Section II of this Exhibit:

- Wages;
- Salaries;
- Commissions;
- Bonuses;
- Advances given to an employee against future earnings;
- Vacation pay;
- Sick leave pay;
- Dismissal pay;
- Cash Prizes and Awards;
- Supplemental payments to make up the difference between regular pay and jury-duty pay or workers’ compensation benefits; and
- Payments to employees on leave while serving in the military.

Bonuses and other one-time salary boosters cannot be annualized.

Benefits may be included in the AAW 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, or can convert the benefit to cash within 12 months of receipt of the benefit.

Whichever method the Closing Fund Awardee uses to calculate its projects jobs – head count or FTE – also must be used to in its AAW calculation.

(B) Except in a situation as described in (C) below, the AAW for a Performance Certification Period must be determined in a manner consistent with the following procedure: actual wages, salaries and other payments (as listed in paragraph A above) for **Project Jobs** (as defined in Section II.A. of this Exhibit) for each pay period are added, then divided by the number of Project Jobs.

(C) If the First Performance Certification Period is less than 12 months, then the actual wages paid to Project Jobs in the **First Performance Certification Period only** may be annualized to calculate the annual average wage.

Example: A Closing Fund Awardee begins operations in May of its First Performance Certification Period, and has a steady buildup of hiring. DSBF would add actual wages of the employees on the payroll December 1st -31st and divide by the number of December employees, then multiply that average December wage by 12 to obtain the AAW.

Section IV. EMPLOYMENT AND WAGE DOCUMENTATION

Documentation to support jobs and wage data must be submitted along with the claim application.

Excel spreadsheets, in electronic format, must be submitted with the claim application. The spreadsheet must include the following information:

- Name of each employee;
- A unique identifying employee number (not the Social Security Number);
- The hire date of the employee;
- If applicable, the relocation date of the employee, and relocation from where;
- If applicable, the termination date of the employee;
- Simple job description of each employee (CEO, Engineer, IT technician, Foreman, etc.); and
- **Actual** wages paid (monthly, bi-weekly, or some other pay period).

Please see the attached Excel spreadsheet template.

If you choose to submit a password-protected Excel spreadsheet, please provide the password in a separate email to the Compliance Analyst assigned to your claim.

Also, please do not embed cell formulas or other mathematical calculations in the Excel spreadsheet you submit.

In addition, the Closing Fund Awardee should clearly explain, as a part of the Performance Certification submission, how the information it is submitting may be different from the information submitted for unemployment compensation purposes. For example, it might be the case that the business has a number of part-time workers and therefore the unemployment compensation information overstates the number of full-time equivalent employees and understates the average wage. Or, it may be the case that the Closing Fund Awardee is a part of a larger or statewide reporting unit and the Closing Fund Awardee cannot be identified within the information submitted for unemployment compensation purposes. A situation such as this should be clearly explained in the documentation.

Section V. DOCUMENTATION OF CAPITAL INVESTMENT

Capital investment is an integral requirement of Closing Fund projects. DSBD accepts as capital investment so-called “hard” costs (such as acquisition of land, buildings, and equipment) and “soft” costs (such as eligible capitalized labor, architectural and engineering services, and document printing and mailing costs).

Eligible capital investment expenditures are those that are ordered/invoiced and paid for on or after the Date of Certification.

Closing Fund Awardees must provide DSBD with an electronic spreadsheet listing the capital investment item, vendor, invoice number, date ordered/invoiced, price, date paid, and check number or other unique identifier of the method of payment. DSBD may select and highlight items listed on this spreadsheet, and return it to the Closing Fund Awardee to provide copies of invoices, canceled checks, debit slips, or other payment documentation.

Closing Fund Awardees are expected to maintain all records of their capital investment purchases.

EXHIBIT C

EXHIBIT D

EXHIBIT D

Subsidiary Closing Fund Awardees

[illegible]

EXHIBIT E

EXHIBIT E

FORM OF JOINDER

This Joinder, dated as of _____ (this "Joinder"), is to that certain Quick Action Closing Fund Agreement (the "Closing Fund Agreement"), by and between the Division of Strategic Business Development of the Florida Department of Economic Opportunity ("DSBD") and Raytheon Company, a Delaware corporation (the "Company"). Capitalized terms used herein but not otherwise defined shall have the meanings set forth in the Closing Fund Agreement.

1. Agreement to be Bound. _____ (the "Affiliate Closing Fund Awardee") is an Affiliate and wishes to become an Affiliate Closing Fund Awardee pursuant to Section 4(c) of the Closing Fund Agreement. The Affiliate Closing Fund Awardee acknowledges that it has received and reviewed a complete copy of the Closing Fund Agreement. The Affiliate Closing Fund Awardee agrees that upon execution of this Joinder, the Affiliate Closing Fund Awardee shall become a party to the Closing Fund Agreement and shall be fully bound by, and subject to, all of the covenants, terms and conditions of the Closing Fund Agreement and shall be deemed a Closing Fund Awardee for all purposes thereof and entitled to all the rights, and subject to all obligations, incidental thereto.

2. Governing Law. This Joinder and the rights of the parties hereunder shall be interpreted in accordance with the laws of the State of Florida, and all rights and remedies shall be governed by such laws without regard to principles of conflicts of laws.

IN WITNESS WHEREOF, the Affiliate Closing Fund Awardee has executed this Joinder as of the date first written above.

AFFILIATE CLOSING FUND AWARDEE:

By: _____

Name:

Title: