

Economic Development Agreement

between

The City of Jacksonville

and

PROJECT OMEGA

Economic Development Agreement

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- Exhibit A - Community Service Commitment
- Exhibit B - Annual Survey
- Exhibit C - Job Report

DRAFT
ECONOMIC DEVELOPMENT AGREEMENT

This **ECONOMIC DEVELOPMENT AGREEMENT** (this "Agreement") is made this ___ day of _____, 2016 (the "Effective Date"), between the **CITY OF JACKSONVILLE**, a municipal corporation and a political subdivision of the State of Florida (the "City") and **PROJECT OMEGA**, a _____ company (the "Company").

Article 1.
PRELIMINARY STATEMENTS

1.1 The Project.

The Company proposes to locate a financial services operation to an as of yet undetermined location within the City (the "Project Parcel") which will serve as a client service delivery center. The creation of jobs pursuant to Article 6 hereof and the obligations of the Company under this Agreement are collectively referred to herein as the "Project." The proposed Project includes proposed construction and/or renovation on the Project Parcel. The Project is expected to represent an estimated total Capital Investment of \$5,950,000 by the Company.

1.2 Authority.

The City Council has authorized execution of this Agreement pursuant to City Resolution 2016-_____-A (the "Resolution").

1.3 City Determination.

The City has determined that the Project is consistent with the goals of the City in that the Project will, among other things:

- (a) create 450 New Jobs (defined below) with an average annual salary of \$49,340;
- (b) recruit a targeted industry business to the City;
- (c) generate significant new ad valorem taxes, including significant new tax revenues for the public school system;
- (d) create induced and indirect job effects which will have a positive impact on local small businesses; and
- (e) promote and encourage private Capital Investment of \$5,950,000.

1.4 **Coordination by City.**

The City hereby designates the Economic Development Officer of the OED or his or her designee to be the Project Coordinator who will, on behalf of the City, coordinate with the Company and administer this Agreement according to the terms and conditions contained herein and in the Exhibit(s) attached hereto and made a part hereof. It shall be the responsibility of the Company to coordinate all project related activities and all matters under this Agreement with the designated Project Coordinator, unless otherwise stated herein. Notwithstanding the foregoing or any other statements herein to the contrary, the OED is an office of the City and has no separate liability under this Agreement.

1.5 **Maximum Indebtedness.**

The maximum indebtedness of the City for all fees, reimbursable items or other cost pursuant to this Agreement shall not exceed the sum of FOUR HUNDRED FIFTY THOUSAND AND NO/100 DOLLARS (\$450,000.00).

1.6 **Availability of Funds.**

The City's obligations under this Agreement are contingent upon availability of lawfully appropriated funds for the Project and this Agreement.

**Article 2.
DEFINITIONS**

As used in this Agreement, the following terms shall have the meaning set opposite each:

2.1 **Capital Investment.**

Money invested by a company to purchase items that may normally be capitalized by a company in the normal conduct of its business.

2.2 **City Council.**

The body politic, as the same shall be from time to time constituted, charged with the duty of governing the City.

2.3 **Company.**

Project Omega, a _____ company.

2.4 **Full-Time Equivalent Job.**

A job, or combination of jobs, in which the employee, or combination of employees, works for the Company at least 35 hours per week.

2.5 **Improvements.**

All of the improvements that are incorporated into the Project on the Project Parcel, as defined in Section 1.1 hereof.

2.6 **Metropolitan Statistical Area.**

Duval, Clay, St. Johns, Nassau and Baker Counties.

2.7 **New Jobs.**

Permanent Jobs new to the City and the State with an average annual salary of \$49,340.

2.8 **OED.**

The Office of Economic Development and any successor to its duties and authority.

2.9 **Permanent Jobs.**

Full-time equivalent jobs created by the Company or Related Companies at the Project Parcel to be maintained for a minimum of two years.

2.10 **Related Companies**

Any entities related to the Company that are authorized to create jobs under the State Agreement.

2.11 **State.**

The State of Florida.

2.12 **State Agreement.**

The QTI tax refund agreement and Florida Flex Training Grant agreement to be entered into between the Company and the State in connection with the creation of 450 New Jobs in the City by the Company or the Related Companies.

Other capitalized terms not defined in this Article shall have the meanings assigned to them elsewhere in this Agreement.

Article 3.
APPROVALS; PERFORMANCE SCHEDULES

3.1 Performance Schedule.

The Company and the City have jointly established the following dates for the performance of each party's respective obligations under this Agreement (herein called the "Performance Schedule"):

Job Creation Schedule		
Year	Jobs Created	Date Created By
1	75	12/31/16
2	100	12/31/17
3	125	12/31/18
4	<u>150</u>	12/31/19
Total	450	

The City and the Company have approved this Performance Schedule. By the execution hereof, and subject to the terms of this Agreement, the Company hereby agrees to undertake and complete the job creation in accordance with this Agreement and the Performance Schedule, and to comply with all of the Company's obligations set forth herein.

3.2 Approval of Agreement.

By the execution hereof, the parties certify as follows:

- (a) Company certifies that
 - (i) the execution and delivery hereof has been approved by all parties whose approval is required under the terms of the governing documents creating the particular Company entity;
 - (ii) this Agreement does not violate any of the terms or conditions of such governing documents and the Agreement is binding upon the Company to the extent provided herein and enforceable against it in accordance with its terms;
 - (iii) the person or persons executing this Agreement on behalf of the Company are duly authorized and fully empowered to execute the same for and on behalf of the Company;
 - (iv) the Company and each entity composing the Company is duly authorized to transact business in the State of Florida and has received all necessary

permits and authorizations required by appropriate governmental agencies as a condition to doing business in the State of Florida; and

- (v) to the actual knowledge of the Company, the Company and its business operations are in substantial compliance with all material federal, state and local laws applicable to this Agreement.

(b) The City certifies that

- (i) the execution and delivery hereof has been approved by all parties whose approval is required pursuant to all applicable laws;
- (ii) the execution and delivery hereof is binding upon the City to the extent provided herein and enforceable against it in accordance with its terms; and
- (iii) the person or persons executing this Agreement on behalf of the City are duly authorized and fully empowered to execute the same for and on behalf of the City

Article 4. QTI REFUND

4.1 QTI Local Portion of State Grant Program.

The Company plans to apply for the maximum amount of Qualified Target Industries tax refund incentive with High Impact incentive available pursuant to Section 288.106-107, Florida Statutes (the “QTI Refunds”). The City’s obligation shall be limited to City funding up to \$450,000 of “local financial support”, or such lesser amount as shall equal 20% of the QTI Refunds finally approved and actually paid by the State; provided, however, that the City shall have no obligation to provide “local financial support” for the New Jobs if the average wage of those New Jobs is less than 90 percent of the average wage described in Section 1.3(a) of this Agreement or for any New Jobs for which the employee filling such New Job resides outside the Metropolitan Statistical Area. Total State and City QTI Refunds are expected to be up to \$2,250,000, or \$5,000 per New Job.

4.2 Reduction of QTI Refunds.

The QTI Refunds program has a built-in clawback related to both the number of jobs and actual wages. The QTI Refunds will be made annually based on the actual number of New Jobs created (provided, however, that the amount of the QTI Refunds shall be based on a maximum of 450 New Jobs created) and only after verification of the average wages actually paid and the amount of state and local taxes actually paid. Therefore, the refund payments will not be made until verification that the Company has achieved its contractual obligations. This verification

will be performed each year during the term of the QTI Refunds program by the State of Florida who will then request the local match. The City will contribute to the State its local match during the applicable fiscal year which begins October 1st.

If the Company or its Related Companies fails to create, collectively, 450 New Jobs at an average wage level of at least the amount specified in the State Agreement and within the timeframe set forth by the State Agreement, the City's annual payments will be adjusted downward on the same terms as the State adjustment described in Section 288.106(6)(e), Florida Statutes, as the same may be amended from time to time. Currently, Section 288.106(6)(e), Florida Statutes, states:

(e) A prorated tax refund, less a 5-percent penalty, shall be approved for a qualified target industry business if all other applicable requirements have been satisfied and the business proves to the satisfaction of the department that:

1. It has achieved at least 80 percent of its projected employment; and
2. The average wage paid by the business is at least 90 percent of the average wage specified in the tax refund agreement, but in no case less than 115 percent of the average private sector wage in the area available at the time of certification, or 150 percent or 200 percent of the average private sector wage if the business requested the additional per-job tax refund authorized in paragraph (3)(b) for wages above those levels. The prorated tax refund shall be calculated by multiplying the tax refund amount for which the qualified target industry business would have been eligible, if all applicable requirements had been satisfied, by the percentage of the average employment specified in the tax refund agreement which was achieved, and by the percentage of the average wages specified in the tax refund agreement which was achieved.

Notwithstanding anything to the contrary in this Agreement, both the City and the Company agree that the City's obligation to make payments under the QTI Refunds program is dependent solely upon the level of funding by the State of the State's portion of the applicable QTI Refunds. Should the State not pay its portion of the QTI Refunds under the Company's agreement with the State, the City shall have no obligation to make payments under this Agreement.

4.3 **Further disclaimer.**

The QTI Refunds shall not be deemed to constitute a debt, liability, or obligation of the City or of the State of Florida or any political subdivision thereof within the meaning of any constitutional or statutory limitation, or a pledge of the faith and credit or taxing power of the City or of the State of Florida or any political subdivision thereof, but shall be payable solely from the funds provided therefor in this Article 4. The City shall not be obligated to pay the QTI Refunds or any installment thereof except from the non-ad valorem revenues or other legally

available funds provided for that purpose, and neither the faith and credit nor the taxing power of the City or of the State of Florida or any political subdivision thereof is pledged to the payment of the QTI Refunds or any installment thereof. The Company, or any person, firm or entity claiming by, through or under the Company, or any other person whomsoever, shall never have any right, directly or indirectly, to compel the exercise of the ad valorem taxing power of the City or of the State of Florida or any political subdivision thereof for the payment of the QTI Refunds or any installment of either.

Article 5.
FLORIDA FLEX TRAINING GRANT

5.1 FF Training Funds.

The OED will assist the Company, at no cost to the City, in applying for State of Florida quick response training funds in an estimated amount of \$2,300 per employee, up to an estimated total of \$1,035,000 (the "FFT Funds"). The FFT Funds are to be funded entirely by the State, with no City contribution.

Article 6.
JOB CREATION AND COMMUNITY SERVICE COMMITMENT

6.1 Job Creation or Retention Activities.

The Project will result in the creation of at least 450 New Jobs with an average annual salary of \$49,340 (for a total of at least 450 Permanent Jobs) within the City in accordance with the Performance Schedule. Creation of the New Jobs will be calculated based on the State's determinations under the State Agreement.

An "employee" of Company means any person employed by Company within the City or by any temporary employment agency or employee leasing company (or other similar third-party employer) or through a union agreement or co-employment under professional employer organization agreement to fill a Permanent Job position made available by Company within the City. It is acknowledged and agreed that any of the New Jobs may be filled, in Company's discretion, by persons employed by Company or its Related Companies or by persons employed by any employee leasing company (or similar third party employer), through union agreement or co-employment under professional employer organization agreement selected by Company or its Related Companies. The parties acknowledge and agree that it may be necessary for Company or its Related Companies or any such third-party employer to commence the recruitment, interviewing, consideration, selection and training of prospective employees to fill such New Jobs, or to hire employees, in sufficient time to commence its operations as soon as possible after completion of the Project. In the event that notwithstanding the City's best efforts, the Company or its Related Companies or any such third-party employer found or finds it necessary to recruit, interview, consider, select or train any persons, or fill any New Jobs to be created in the City as a result of this Agreement, before execution of this Agreement or the State Agreement, such New

Jobs shall not be considered or deemed to lose their status as New Jobs created in the City as a result of the Project and such persons shall not be considered or deemed to lose their status as persons, or, in applicable cases, low and moderate income persons, to which such New Jobs have been made available or who hold such New Jobs.

Notwithstanding any provision in this Agreement to the contrary, the re-hiring of any person by the Company who was previously employed by the Company in Duval County, Florida, during any part of the twelve (12) month period immediately preceding the execution of this Agreement, shall not fulfill the conditions of or qualify as a Full-Time Equivalent Job, New Job, or Permanent Job and shall therefore not be counted in any formula or computation towards any QTI reimbursement or refund. For the purposes of this section, the term "Company" shall include any parent, holding or subsidiary company of the Company, or any other business related by virtue of a merger, purchase, or acquisition by the Company.

The Company shall provide to the OED prior to March 1 of each year this Agreement is in effect the annual reporting forms in the format of, and containing at a minimum the information on, Exhibit C. The jobs requirement will be assessed a minimum of three times by the OED for potential reimbursement purposes and to determine compliance with the 450 person permanent job maintenance requirement:

- (a) beginning on the earlier to occur of (i) the date on which Company provides written notice to the OED that the required number of full-time equivalent permanent jobs have been created or (ii) December 31st, of 2016, and
- (b) on the date that is one year after the assessment in subsection 6.1(a) above, and
- (c) on the date that is two years after the assessment in subsection 6.1(a) above.

6.2 Community Service Commitment.

The Company has actively participated in the community service activities more particularly described on Exhibit A attached hereto. The Company agrees that, during the term of this Agreement, the Company shall continue to participate in community service activities of the type set forth on Exhibit A.

Article 7. REPORTING

7.1 Reporting.

On an annual basis, and prior to March 1 each year this Agreement is in effect, the Company shall submit reports to the OED regarding the number of New Jobs that have been created by Company or its Related Companies within the City, the Company's Community Service Activities and all other activities affecting the implementation of this Agreement,

including a narrative summary of progress on the Project. Samples of the general forms of these reports are attached hereto as **Exhibit B** (the “Annual Survey”) and **Exhibit C** (the “Job Report”).

The Company’s obligation to submit such reports shall continue until the Company has complied with all of the terms of this Agreement concerning the Project, the QTI Refunds and associated employment.

Within thirty (30) days following the written request of the City, the Company shall provide the City with such additional information reasonably requested by the City provided the same is reasonably necessary for determining the Company’s compliance with the terms of this Agreement.

Article 8. DEFAULTS AND REMEDIES

8.1 General.

A default shall consist of the breach of any covenant, agreement, representation, provision, or warranty contained in (i) this Agreement (including, but not limited to, any failure to meet the reporting requirements described herein), (ii) the documents executed by the Company in connection with this Agreement (collectively, the “Documents”). A default shall also exist if any event occurs or information becomes known which, in the reasonable judgment of the City, makes untrue or incorrect in any material respect any statement or information contained in any of the documents described in clauses (i) – (ii) above or causes such document to contain an untrue or incorrect statement of material fact or to omit to state a material fact necessary to make the statements therein, in light of the circumstances under which they were made, not misleading.

If any such default or breach occurs under this Agreement, the City may refuse to pay any portion of its share of the QTI Refunds, and may refuse to assist Company in obtaining the QTI Refunds, and additionally, may at any time or from time to time proceed to protect and enforce all rights available to the City under this Agreement by suit in equity, action at law or by any other appropriate proceeding whether for specific performance of any covenant or agreement contained in this Agreement, or damages, or other relief, or proceed to take any action authorized or permitted under applicable laws or regulations, including, but not limited to, terminating this Agreement. The City shall not act upon a default until it has given the Company written notice of the default and 15 business days within which to cure the default; provided, however, that the City may withhold any portion of the QTI Refunds immediately upon the occurrence of a default and throughout any notice or cure period. However, if any default cannot reasonably be cured within the initial 15 business days, Company shall have a total of 45 days in which to cure such default, so long as Company has commenced and is diligently proceeding to cure such default within the initial 15-day period. Notwithstanding the foregoing, Company shall immediately and automatically be in default, and the City shall not be required to give Company any notice or

opportunity to cure such default (and thus the City shall immediately be entitled to act upon such default), upon the occurrence of any of the following:

- (a) The entry of a decree or order by a court having jurisdiction in the premises adjudging the Company or any guarantor (“Guarantor”) of Company’s obligations hereunder or under the Documents, a bankrupt or insolvent, or approving as properly filed a petition seeking reorganization, arrangement, adjustment or composition of or in respect of the Company or Guarantor under the United States Bankruptcy Code or any other applicable federal or state law, or appointing a receiver, liquidator, custodian, assignee, or sequestrator (or other similar official) of the Company or Guarantor or of any substantial part of its property, or ordering the winding up or liquidation of its affairs, and the continuance of any such decree or order unstayed and in effect for a period of 90 consecutive days; and
- (b) The institution by Company or Guarantor of proceedings to be adjudicated a bankrupt or insolvent, or the consent by it to the institution of bankruptcy or insolvency proceedings against it, or the filing by it of a petition or answer or consent seeking reorganization or relief under the United States Bankruptcy Code or any other similar applicable federal or state law, or the consent by it to the filing of any such petition or to the appointment of a receiver, liquidator, custodian, assignee, trustee or sequestrator (or other similar official) of the Company or Guarantor or of any substantial part of its property, or the making by it of an assignment for the benefit of creditors, or the admission by it in writing of its inability to pay its debts generally as they become due.

8.2 Specific Defaults.

Additionally, for any of the specific events of default described in this Section 8.2 below, the parties agree that the City’s damages recoverable from the Company shall include, but not be limited to, the following:

- (a) The built-in clawback of the QTI Refunds which is described in detail in Section 4.2 hereof; and

The maximum combined repayment due under this Section 8.2 shall not exceed the total amount of the QTI Refunds actually paid to the Company under this Agreement.

Article 9. ASSIGNMENT PROVISIONS

9.1 Assignment; Limitation on Conveyance.

The Company agrees that until payment in full of the QTI Refunds, it shall not, without the prior written consent of the City, assign, transfer or convey this Agreement or any provision

hereof. If any such prohibited assignment, transfer or conveyance is made, the obligation of the City to pay any further amounts under the QTI Refunds shall immediately terminate.

Article 10.
GENERAL PROVISIONS

10.1 Non-liability of City Officials; Non-liability of Company Partners.

No member, official or employee of the City shall be personally liable to the Company or to any Person with whom the Company shall have entered into any contract, or to any other Person, in the event of any default or breach by the City, or for any amount which may become due to the Company or any other Person under the terms of this Agreement. No partner, officer, director, shareholder, employee or agent of the Company shall be personally liable to the City or any other Person with whom the City shall have entered into an agreement, in the event of any default or breach by the Company, or for any amounts which may become due to the City or any other Person under the terms of this Agreement. Notwithstanding any other provision contained in this Agreement to the contrary, the City shall look only to the assets of the Company for the satisfaction of any liability of the Company under this Agreement, it being expressly understood and agreed that any partner, officer, director, shareholder, member, employee or agent of the Company as an individual shall not be held personally liable for such obligations and the City shall not pursue satisfaction of any judgment it may obtain against the Company against the assets of any individual partner, officer, director, shareholder, member, employee or agent of the Company.

10.2 Force Majeure.

No party to this Agreement shall be deemed in default hereunder where such a default is based on a delay in performance as a result of war, insurrection, strikes, lockouts, riots, floods, earthquakes, fires, casualty, acts of God, acts of public enemy, epidemic, quarantine restrictions, freight embargo, shortage of labor or materials, interruption of utilities service, lack of transportation, severe weather and other acts or failures beyond the reasonable control or without the control of any party; provided, however, that the extension of time granted for any delay caused by any of the foregoing shall not exceed the actual period of such delay, and in no event shall any of the foregoing excuse any financial liability of a party.

10.3 Notices.

All notices to be given hereunder shall be in writing and personally delivered or sent by registered or certified mail, return receipt requested, or delivered by an air courier service utilizing return receipts to the parties at the following addresses (or to such other or further addresses as the parties may designate by like notice similarly sent) and such notices shall be deemed given and received for all purposes under this Agreement three (3) business days after the date same are deposited in the United States mail if sent by registered or certified mail, or the

date actually received if sent by personal delivery or air courier service, except that notice of a change in address shall be effective only upon receipt.

(a) the City:

Economic Development Officer
Office of Economic Development
117 West Duval Street, Suite 275
Jacksonville, Florida 32202

With a copy to:

City of Jacksonville
Office of the General Counsel
City Hall-St. James Building
117 West Duval Street, Suite 480
Jacksonville, Florida 32202

(b) The Company:

With a copy to:

and to:

10.4 **Time.**

Time is of the essence in the performance by any party of its obligations hereunder.

10.5 **Entire Agreement.**

This Agreement constitutes the entire understanding and agreement between the parties and supersedes all prior negotiations and agreements between them with respect to all or any of the matters contained herein.

10.6 **Amendment.**

This Agreement may be amended by the parties hereto only upon the execution of a written amendment or modification signed by the parties. Notwithstanding the foregoing, the Economic Development Officer of the OED is authorized on behalf of the City to approve, in his or her sole discretion, any “technical” changes to this Agreement. Such “technical” changes include without limitation non-material modifications to legal descriptions and surveys, ingress and egress, easements and rights of way, performance schedules (provided that no performance schedule may be extended for more than one year unless required to align the Performance Schedule with any changes to performance schedules set forth in the State Agreement), and design standards, as long as such modifications do not involve any increased financial obligation or liability to the City.

10.7 **Waivers.**

Except as otherwise provided herein, all waivers, amendments or modifications of this Agreement must be in writing and signed by all parties. Any failures or delays by any party in insisting upon strict performance of the provisions hereof or asserting any of its rights and remedies as to any default shall not constitute a waiver of any other default or of any such rights or remedies. Except with respect to rights and remedies expressly declared to be exclusive in this Agreement, the rights and remedies of the parties hereto are cumulative, and the exercise by any party of one or more of such rights or remedies shall not preclude the exercise by it, at the same or different times, of any other rights or remedies for the same default or any other default by any other party.

10.8 **Indemnification.**

Company, including its employees, agents and subcontractors, shall indemnify, hold harmless and defend the City from and against any loss, claim, action, damage, injury, liability, cost, and expense of whatsoever kind or nature (including without limitation attorneys’ fees and costs) related to any demands, suits and actions of any kind brought against the City or other damages or losses incurred or sustained, as a result of a breach by the Company of its obligations under this Agreement. This indemnification shall survive the termination of this Agreement. The term “City” as used in this Section 10.8 shall include all officers, board members, City Council members, employees, representatives, agents, successors and assigns of the City, as applicable.

10.9 **Severability.**

The invalidity, illegality or unenforceability of any one or more of the provisions of this Agreement shall not affect any other provisions of this Agreement, but this Agreement will be construed as if such invalid, illegal or unenforceable provision had never been contained herein.

10.10 Compliance with State and Other Laws.

In the performance of this Agreement, the Company must comply with any and all applicable federal, state and local laws, rules and regulations, as the same exist and may be amended from time to time. Such laws, rules and regulations include, but are not limited to, Chapter 119, Florida Statutes (the Public Records Act) and Section 286.011, Florida Statutes, (the Florida Sunshine Law). If any of the obligations of this Agreement are to be performed by a subcontractor, the provisions of this Section shall be incorporated into and become a part of the subcontract.

10.11 Non-Discrimination Provisions.

In conformity with the requirements of Section 126.404, *Ordinance Code*, the Company represents that it has adopted and will maintain a policy of non-discrimination against employees or applicants for employment on account of race, religion, sex, color, national origin, age or handicap, in all areas of employment relations, throughout the term of this Agreement. The Company agrees that, on written request, it will permit reasonable access to its records of employment, employment advertisement, application forms and other pertinent data and records, by the Executive Director of the Human Rights Commission, or successor agency or commission, for the purpose of investigation to ascertain compliance with the nondiscrimination provisions of this Chapter 126, Part 4 of the *Ordinance Code*, *provided however*, that the Company shall not be required to produce for inspection records covering periods of time more than one (1) year prior to the day and year first above written. The Company agrees that, if any of its obligations to be provided pursuant to this Agreement are to be performed by a subcontractor, the provisions of this Section 10.11 shall be incorporated into and become a part of the subcontract.

The foregoing paragraph shall only apply during the term of this Agreement and shall not survive the expiration or earlier termination of this Agreement.

10.12 Contingent Fees Prohibited.

In conformity with Section 126.306, *Ordinance Code*, the Company warrants that it has not employed or retained any company or person, other than a bona fide employee working solely for the Company, to solicit or secure this Agreement, and that it has not paid or agreed to pay any person, company, corporation, individual or firm, other than a bona fide employee working solely for the Company, any fee, commission, percentage, gift, or any other consideration, contingent upon or resulting from the award or making of this Agreement. For the breach or violation of these provisions, the City shall have the right to terminate this Agreement without liability and, at its discretion, to deduct from the contract price, or otherwise recover, the full amount of such fee, commission, percentage, gift or consideration.

10.13 **Ethics.**

The Company represents that it has reviewed the provisions of the Jacksonville Ethics Code, as codified in Chapter 602, *Ordinance Code*, and the provisions of the Jacksonville Purchasing Code, as codified in Chapter 126, *Ordinance Code*.

10.14 **Conflict of Interest.**

The City will follow the provisions of Section 126.110, *Ordinance Code* with respect to required disclosures by public officials who have or acquire a financial interest in a bid or contract with the City, to the extent the parties are aware of the same.

10.15 **Public Entity Crimes Notice.**

In conformity with the requirements of Section 126.104, *Ordinance Code* and Section 287.133, Florida Statutes, the Parties agree as follows:

The parties are aware and understand that a person or affiliate who has been placed on the State of Florida Convicted Vendor List, following a conviction for a public entity crime, may not submit a bid on a contract to provide any goods or services to a public entity; may not submit a bid on a contract with a public entity for the construction or repair of a public building or public work; may not submit bids on leases of real property to a public entity; may not be awarded or perform work as a contractor, supplier, subcontractor, or consultant under a contract with any public entity; and may not transact business with any public entity, in excess of \$35,000.00, for a period of thirty-six (36) months from the date of being placed on the Convicted Vendor List.

10.16 **Survival.**

Any obligations and duties that by their nature extend beyond the expiration or termination of this Agreement shall survive the expiration or termination of this Agreement and remain in effect. Without limiting the foregoing, all obligations for the payment of fees or other sums accruing up to the expiration or termination of this Agreement and all provisions relating to the City's right to conduct an audit shall survive the expiration or termination of this Agreement.

10.17 **Incorporation by Reference.**

All exhibits and other attachments to this Agreement that are referenced in this Agreement are by this reference made a part hereof and are incorporated herein.

10.18 **Order of Precedence.**

In the event of any conflict between or among the provisions of this Agreement and those of any exhibit attached hereto or of any amendment, the priority, in decreasing order of precedence shall be: 1) any fully executed amendment; 2) provisions in this Agreement; and 3) exhibits to this Agreement.

10.19 **Counterparts.**

This Contract may be executed in several counterparts, each of which shall be deemed an original, and all of such counterparts together shall constitute one and the same instrument

10.20 **Independent Contractor.**

In the performance of this Agreement, the Company will be acting in the capacity of an independent contractor and not as an agent, employee, partner, joint venturer or association of the City. The Company and its employees or agents shall be solely responsible for the means, method, technique, sequences and procedures utilized by the Company in the performance of this Agreement.

10.21 **Retention of Records/Audit**

The Company agrees:

- (a) To establish and maintain books, records and documents (including electronic storage media) sufficient to reflect the employment at the Project during the term of this Agreement, including New Jobs and Permanent Jobs, wages paid to employees at the Project during the term of this Agreement, taxes paid for which a QTI payment is sought and QTI refunds received by the Company under this Agreement (collectively the "Required Records").
- (b) To retain the Required Records for a period of six (6) years after completion of the date of final payment by the City under this Agreement, including auditable records pertaining to jobs filled by third-party employers. If an audit has been initiated and audit findings have not been resolved at the end of six (6) years, the records shall be retained until resolution of the audit findings or any litigation which may be based on the terms of this Agreement, at no additional cost to the City.
- (c) Upon demand, at no additional cost to the City, to facilitate the duplication and transfer of Required Records demonstrating the Company's performance of its obligations to create and retain New Jobs in accordance with this Agreement during the required retention period.
- (d) Subject to legal restrictions on the disclosure of personal information, that the Required Records shall be subject to inspection, review, copying (as provided in Section 10.21(c) above) or audit by personnel duly authorized by the City, provided any such inspection shall be made during the Company's normal business hours and upon not less than thirty (30) days prior written notice during the required retention period.

- (e) To disclose to the City all transactions between the Company and any entity controlled by or under control with the Company regarding the hiring and retention of employees for New Jobs and Permanent Jobs.
- (f) To include the aforementioned audit, inspections, investigations and record keeping requirements in all contracts with any temporary employment agency, employee leasing company or similar third party employer relating to this Agreement and that are entered into by the Company after the Effective Date.
- (g) To permit, for as long as Required Records are required by this Agreement to be maintained, at reasonable times and upon reasonable advance notice, persons duly authorized by the City to inspect and copy any Required Records, to visit the offices of the Company and to interview any employees, subcontractors or other third-party employees of the Company as necessary to substantiate satisfactory performance of the terms and conditions of this Agreement. Following such review, the City will deliver to the Company a written report of its findings, and the Company shall respond in writing to the City's report. The Company's response may, but shall not be required to, include a proposed corrective action plan where appropriate.
- (h) If the result of any audit by the City establishes that the Company overstated by more than five percent (5%) the number of New Jobs, number of Permanent Jobs, or the amount of private capital investment, then the entire expense of the audit shall be borne by the Company.
- (i) Additional monies due as a result of any audit or annual reconciliation shall be paid within thirty (30) days of date of the City's invoice.
- (j) Should the annual reconciliation or any audit establish that the Company has overstated the number of New Jobs, number of Permanent Jobs, or amount of private capital investment, and the Company does not make restitution within thirty (30) days from the date of receipt of written notice from the City, and then, in addition to any other remedies available to the City, the City may terminate this Agreement, solely at its option, upon not less than fifteen (15) days written notice to the Company (delivered following the expiration of the thirty (30) day period) unless during said fifteen (15) days the Company has made the required restitution.

10.22 **Non-merger.**

None of the terms, covenants, agreements or conditions set forth in this Agreement shall be deemed to be merged with any deed conveying title to the Project Parcel.

10.23 **Exemption of City.**

Neither this Agreement nor the obligations imposed upon the City hereunder shall be or constitute an indebtedness of the City within the meaning of any constitutional, statutory or charter provisions requiring the City to levy ad valorem taxes nor a lien upon any properties of the City. Payment or disbursement by the City of any loan or grant amount hereunder is subject to the availability of lawfully appropriated funds. If funds are not available pursuant to a lawful appropriation thereof by the City Council, this Agreement shall be void and the City shall have no further obligations hereunder.

10.24 **Confidentiality of Records.**

Except as set forth below, City agrees not to disclose any reports, records or other documentation of any kind provided to City in connection with this Agreement (collectively, the “Confidential Information”) to any third party except to City’s counsel, consultants, employees, directors and officers who need to access to such information in connection with the performance of their duties. Notwithstanding the foregoing, Company acknowledges and agrees that the City is subject to the Florida Public Records Act, Chapter 119, Florida Statutes (the “Public Records Act”) and to certain provisions of Chapter 286, Florida Statutes, relating to public meetings and inspection, disclosure and copying of records. Company also acknowledges and agrees that City has certain obligations to allow for inspection and copying of public records pursuant to Article I, Section 24 of the Constitution of the State of Florida (the “Constitution”, and together with the Public Records Act and the applicable parts of Chapter 286, Florida Statutes, the “Sunshine Laws”). City agrees not to disclose the Confidential Information as set forth herein, subject to the requirements of the Sunshine Laws, which requirements shall be superior to and shall supersede any confidentiality restrictions imposed on City hereunder.

10.25 **Parties to Agreement; Successors and Assigns.**

This is an agreement solely between the City and Company. The execution and delivery hereof shall not be deemed to confer any rights or privileges on any person not a party hereto. This Agreement shall be binding upon Company and Company’s successors and assigns, and shall inure to the benefit of the City and its successors and assigns. However, Company shall not assign, transfer or encumber its rights or obligations hereunder or under any document executed in connection herewith, without the prior written consent of the City, which consent may be withheld in the sole discretion of the City.

10.26 **Venue; Applicable Law.**

The rights, obligations and remedies of the parties specified under this Agreement shall be interpreted and governed in all respects by the laws of the State of Florida. All legal actions arising out of or connected with this Agreement must be instituted in the Circuit Court of Duval County, Florida, or in the Federal District Court for the Middle District of Florida, Jacksonville

Division. The laws of the State of Florida shall govern the interpretation and enforcement of this Agreement.

10.27 **Civil Rights.**

The Company agrees to comply with all of the terms and requirements of the Civil Rights Act of 1964, as amended, and the Civil Rights Act of 1968, as amended, and the antidiscrimination provisions of Chapter 126, Part 4, of the City Ordinance Code, and further agrees that in its operation under this Agreement it will not discriminate against anyone on the basis of race, color, age, disability, sex or national origin.

10.28 **Further Assurances.**

Company will, on reasonable request of the City,

- (a) promptly correct any defect, error or omission herein or in any document executed in connection herewith provided the same does not diminish the rights or increase the obligations of the Company hereunder (collectively the "Project Documents");
- (b) execute, acknowledge, deliver, procure, record or file such further instruments and do such further acts reasonably deemed necessary or proper by the City to carry out the purposes of the Project Documents; and
- (c) provide such certificates, documents, reports, information, affidavits and other instruments required by this Agreement and do such further acts reasonably deemed necessary or proper by the City to carry out the purposes of the Project Documents.

10.29 **Exhibits.**

In the event of a conflict between any provisions of this Agreement and any exhibit attached to or referenced in this Agreement, the provisions of this Agreement shall govern.

10.30 **Construction.**

All parties acknowledge that they have had meaningful input into the terms and conditions contained in this Agreement. Company further acknowledges that it has had ample time to review this Agreement and related documents with counsel of its choice. Any doubtful or ambiguous provisions contained herein shall not be construed against the party who drafted the Agreement. Captions and headings in this Agreement are for convenience of reference only and shall not affect the construction of this Agreement.

10.31 Further Authorizations.

The parties acknowledge and agree that the Mayor of the City, or his designee, and the City's Corporation Secretary, or their respective designees, are hereby authorized to execute any and all other contracts and documents and otherwise take all necessary action in connection with this Agreement and the Resolution.

10.32 Attorney's Fees.

Each party shall be responsible for its own attorneys' fees and costs in connection with any legal action related to this Agreement.

10.33 Consistency with Other QTI Refund Agreements.

Because the Company is a public accounting firm, it is subject to strict regulation of its independence as it relates to its audit clients. To comply with these regulations, the Company must identify and evaluate all of its direct and indirect business relationships with its audit clients. To assist the Company with its compliance efforts, the City hereby informs Company that to the best of its knowledge, on and as of the date of this Agreement, that (a) the City's funding of its portion of the QTI Refunds hereunder is consistent with "local financial support" of grants of tax refund incentive provided under Section 288.106-108, Florida Statutes to other qualifying businesses for other qualifying projects, and (b) the Agreement does not contain terms and conditions that are, in the aggregate, more favorable than those being offered by the City to similarly qualifying companies for similarly qualifying projects.

[Remainder of page left intentionally blank; signatures on following page.]

IN WITNESS WHEREOF, this Agreement is executed the day and year above written.

ATTEST:

CITY OF JACKSONVILLE

By: _____
James R. McCain, Jr.
Corporation Secretary

By: _____
Lenny Curry, Mayor
Date: _____

WITNESS:

PROJECT OMEGA,
a _____ company

Print Name: _____

Print Name: _____

By: _____
Name: _____
Its: _____
Date: _____

FORM APPROVED:

Office of the General Counsel

G:\Gov't Operations\USawyer\OED\Development Agreements\Project Omega\EDA\EDA Project Omega v6.doc

Encumbrance and funding information for internal City use:

Account..... _____

Amount.....\$ _____

This above stated amount is the maximum fixed monetary amount of the foregoing contract. It shall not be **encumbered** by the foregoing contract. It shall be encumbered by one (1) or more subsequently issued check request(s) that must reference the foregoing Contract. All financial examinations and funds control checking will be made at the time such check request(s) are issued.

In accordance with Section 24.103(e), of the *Ordinance Code* of the City of Jacksonville, I do hereby certify that there is an unexpended, unencumbered and unimpounded balance in the appropriation sufficient to cover the foregoing agreement; *provided however*, this certification is not nor shall it be interpreted as an encumbrance of funding under this Contract. Actual encumbrance[s] shall be made by subsequent check request[s], as specified in said Contract.

Director of Finance

City Contract # _____

Contract Encumbrance Data Sheet follows immediately.

LIST OF EXHIBITS

Exhibit A Community Service Commitment

Exhibit B Annual Survey

Exhibit C Job Report

EXHIBIT A

Community Service Commitment

Project Omega currently supports non-profit entities in all of the communities it has a presence, and is looking forward to following that practice in Jacksonville, FL.



EXHIBIT B
ANNUAL SURVEY 2016

Send completed form to City of Jacksonville
 Office of Economic Development
 Finance and Compliance
 117 West Duval Street, Suite 275
 Jacksonville, FL 32202
 Fax: (904) 630-1019
 Email: OEDFinance@COJ.NET

Please complete the form below as it relates to the project for which you may be entitled to receive City or State assistance. Should you have any questions, please call Tatiana Kazhuro, Financial Analyst at (904) 630-1906.

Company name: _____

Mailing Address: _____

Primary Contact Name: _____

Primary Contact Title: _____

Phone: _____ Email: _____

Signature: _____ Reporting Date: _____

Print Name: _____

AS OF DECEMBER 31, 2016

I. EMPLOYMENT INFORMATION

Number of Jobs at Project Site	[1]
Number of Jobs at Project Site before Project	[2]
Net New Jobs (subtract line [2] from line [1])	
Average Wage of New Employees (excluding benefits)	\$
Estimated cost of benefits as a percentage of Average Wage	%

II. CAPITAL INVESTMENT INFORMATION

Project Land Costs	[3] \$
Project Structure Costs	[4] \$
Project Equipment Costs	[5] \$
Other Capital Costs	[6] \$
Total Project Costs (sum [3] through [6])	\$

