

**NORTH BREVARD DEVELOPMENT DISTRICT
ECONOMIC INCENTIVE AGREEMENT AND INTERLOCAL AGREEMENT
PROJECT US 1 SANITARY SEWER**

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**NORTH BREVARD DEVELOPMENT DISTRICT
ECONOMIC INCENTIVE AGREEMENT
PROJECT US 1 SANITARY SEWER**

THIS ECONOMIC INCENTIVE GRANT AGREEMENT and INTERLOCAL AGREEMENT (the "Agreement") is made and entered into this ____ day of _____, 2021, by and between the following Parties: TRIMCOR CONSTRUCTION OF FLORIDA, LLC, a Florida Limited Liability Company (hereinafter called the "COMPANY"), and the NORTH BREVARD DEVELOPMENT DISTRICT (hereinafter called the "DISTRICT"), a dependent special district created by the Brevard County Board of County Commissioners, (hereinafter called the "COUNTY"), pursuant to Sections 125.045, Florida Statutes and Brevard County Ordinance No. 2011-16 and Ordinance No. 2011-18, and the CITY OF TITUSVILLE, a Florida municipal corporation (hereinafter called the "CITY").

RECITALS

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

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

WHEREAS, Ordinance No. 2011-16 and Ordinance No. 2011-18 authorizes the DISTRICT to grant economic incentives to businesses and development projects in accordance with the DISTRICT's economic development plan; and,

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

WHEREAS, the DISTRICT has adopted a written Economic Development Plan, approved by the COUNTY per Resolution No. 2012-113, which contains a strategic initiatives section permitting the DISTRICT to identify and participate in the development of infrastructure projects that are directly attributable to job creation and economic development, including public and/or public-private partnerships to improve, create or maintain infrastructure necessary to facilitate or maintain full time jobs in the DISTRICT area; and,

WHEREAS, the CITY has enacted Ordinance No. 15-2011 as amended by Ordinance No. 14-2013 (hereafter referred to as the City Tax Increment Ordinance) providing for the calculation of an annual tax increment value within the boundaries of the CITY and the use of that tax increment for economic development purposes, including the North Brevard Economic Development Zone, as created by Brevard County Ordinance 2011-16; and,

WHEREAS, on August 11, 2011, the City Council approved participation by the CITY in the North Brevard Economic Development Zone by Resolution No. 23-2011; and,

WHEREAS, pursuant to an Interlocal Agreement dated November 29, 2011, between the CITY, COUNTY and the DISTRICT, the DISTRICT shall annually submit to the CITY, for Council's review and approval, a proposed budget for the next fiscal year identifying how city funds will be utilized by the DISTRICT and for the purposes for which CITY funds will be budgeted and expended; and,

WHEREAS, in accordance with the Interlocal Agreement, the CITY agrees to annually review and approve the DISTRICT's budget concerning the expenditure of CITY funds and to transfer for deposit into the CITY account, within the DISTRICT Trust Fund, the dedicated increment value of ad valorem taxes determined under the CITY's tax increment ordinance; and,

WHEREAS, due to a sanitary sewer system that has reached maximum capacity to transport additional sewage north to a main trunk line on Knox McRae Drive, as well as an aging Lift Station 56 that was constructed in the 1960's, inadequate and lacking sanitary sewer infrastructure along a particular U.S. 1 corridor is limiting economic development opportunities for the public within the DISTRICT; and,

WHEREAS, over 465 acres with over 5,000 linear feet of road frontage on U.S. Highway 1 between State Road 405 and 5650 Washington Avenue is not served by sanitary sewer and lies next to the Indian River Lagoon; and,

WHEREAS, over 188.25 acres is inhibited from additional development in the area located at 5650 Washington Avenue north to the Titusville Wonderland Sanitary Station tie-in, which is known as Lift Station 56 and located at 4710 S. Washington Avenue; and,

WHEREAS, the extension of approximately 11,120 linear feet of the CITY sanitary sewer system and the construction of a new Lift Station 56 will allow for additional development of lands adjacent and near to the Indian River Lagoon; and,

WHEREAS, in November 2020, the East Central Florida Regional Planning Council performed an economic impact analysis of this project and determined that upwards of 600 new jobs, \$81 million in sales and \$44 million in personal income may be created as a result of commercial development once the sanitary sewer system project is completed in the aforementioned locations; and,

WHEREAS, the COMPANY has filed an application with the DISTRICT for participation in the DISTRICT's "Strategic Initiatives" program as the source of a grant, the proceeds of which will be used by the COMPANY as a reimbursement for monies the COMPANY plans to expend to construct a new Lift Station 56 and construct a force main from Lift Station 56 south some 11,120 linear feet to link up with the CITY sewer system south of State Road 405 to the benefit of the CITY; and,

WHEREAS, the CITY shall accept the sanitary sewer line and lift station after approval of the construction by the CITY and CITY shall maintain it forthwith; and,

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

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

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

WHEREAS, the DISTRICT finds and declares that this Grant serves a public purpose which includes promotion of economic development, job growth, and the future expansion of projects within the DISTRICT, as well as the County's expansion of the tax base, and,

WHEREAS, the CITY finds and declares that this Grant and use of funds serves a public purpose which includes promotion of economic development, as well as the health, safety and welfare of the public.

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

1. RECITALS

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

2. DEFINITIONS

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

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

2.3 "Project" means the project described in paragraph 3.1 of this Agreement.

2.4 "Incentive Start Date" shall mean the date upon which the construction of Phase One (1) is commenced.

2.5 "Project Site" shall mean the area where the sanitary sewer line and lift station improvements shall be constructed as shown in Exhibit "A" from Titusville Lift Station 56 at 4710 S. Washington Avenue, Titusville, Florida running south along U.S. 1 to connect to a CITY sanitary sewer line on the southwest side of the intersection of State Road 405 and U.S. 1. It is anticipated that the sewer line will be placed in the Florida Department of

Transportation right-of-way. The lift station improvements shall be placed adjacent to the current lift station, so that the current station can continue operating while construction occurs.

3. PARTY OBLIGATIONS

3.1 Project Description and Company Obligations. The COMPANY agrees and commits to undertake the Project described in general below:

a. Prior to commencing work.

(i) COMPANY shall not execute any work under this grant until this grant agreement has been executed by the DISTRICT, CITY, and COMPANY; and approved by the COUNTY, as set forth on the signature pages to this grant.

(ii) Prior to commencing any work, COMPANY shall have a continuous color audio-video recording and narrative made along the entire length and width of the Project area(s) during a time of good visibility to serve as a record of the site's pre-construction conditions. COMPANY shall provide one (1) copy to the CITY, which upon provision to CITY, shall become the property of CITY.

(iii) Prior to commencing construction, all necessary easements, right of way, permits and licenses must be obtained by COMPANY, as further discussed below.

b. Overview. The COMPANY will acquire the necessary property rights and permissions and construct a pressurized sewer line from Lift Station 56 to a connection near Columbia Boulevard, subject to all requirements of the CITY, including the installation of an adequately sized pipe to serve this area, as depicted in Exhibit "D", at maximum build-out. Further COMPANY will replace the CITY's Lift Station 56, subject to all requirements of the CITY. COMPANY shall furnish all labor, materials, plans and drawings, equipment, machinery, tools, apparatus and transportation. Upon completion of the project, COMPANY will donate through a Bill of Sale, the entirety of the line and lift station, at no additional cost, to the CITY to be connected to the public sanitary sewer system. As further detailed in section 3.3 of this Agreement, the project shall be reimbursed according to four thresholds, but COMPANY may construct thresholds II and III simultaneously or in any order. Threshold I shall be the Planning Development & Engineering Section. Threshold II shall be construction of the complete pressurized sewer line. Threshold III shall be replacement of Lift Station 56, including the proper abandonment of Lift Station 56 and construction of a new Lift Station 56. Threshold IV shall be the transfer of all property interests from the COMPANY to the CITY. All work shall be completed by the end of calendar year 2023.

c. Real Property Interests. The intent of this grant is that all construction of the sanitary sewer line shall occur in the Florida Department of Transportation right-of-way, subject to the COMPANY obtaining all necessary approvals, easements, and permitting

from FDOT to construct said sewer in the right-of-way. COMPANY shall not commence construction prior to obtaining the necessary real property interests and permits on all parcels of land that make up the project. To the extent that small portions of the project, such as the property where the new lift station will be constructed, are not in the FDOT right-of-way, COMPANY shall immediately inform CITY and DISTRICT. COMPANY shall endeavor to obtain the necessary property interests, subject to review and approval of the easement or deed language by the CITY, from property owners at no cost to the CITY. All necessary real property interests must be obtained prior to completion of Threshold I and prior to any COMPANY construction on the sanitary sewer line or lift station. COMPANY will convey fee simple title or easements, as required by and in a form acceptable to CITY, for the land for the new lift station to the CITY prior to completion of Threshold I, and to the extent possible, all permits will be obtained in both the name of the COMPANY and the CITY. If the necessary property interests, from FDOT or private parties, are not obtained on all parcels within one year of the date of this grant's execution, this grant is void. CITY shall not accept a sanitary sewer line where COMPANY has not obtained the proper real property interests underlying the line (FDOT permit, easement or fee simple ownership).

d. Donation of Line and Lift Station. Upon satisfactory construction of the project, COMPANY shall donate the sanitary sewer line, lift station and any real property interests or permits necessary for the line and lift station to CITY, and shall execute and deliver to CITY all deeds, bills of sale, permits or other documents in a form acceptable to the CITY, as necessary to convey ownership to the CITY.

e. Plans and Drawings. COMPANY shall submit proposed engineering plans to the CITY for review and approval prior to beginning any work. During the work performed for Threshold I, COMPANY will ensure the DISTRICT and CITY receive a copy of the plans and drawings that they have authority to use at no additional charge. During the work performed for Threshold IV, COMPANY will provide as-built drawings to the CITY.

f. Cost. COMPANY shall be responsible for and shall pay all costs of the project. COMPANY shall be reimbursed by DISTRICT pursuant to the terms of the Economic Incentive, further detailed below.

g. Performance, Payment and Maintenance Bonds. COMPANY shall be responsible for providing a performance and payment bond to the DISTRICT and CITY in an amount of 125 percent of the total cost of construction of all improvements, as security for the faithful performance and payment of all COMPANY's obligations under this grant agreement. The Bond shall remain in effect at least until one year after the date when final payment becomes due, except as provided otherwise by laws or regulations. All bonds shall be issued as provided in Exhibits B and C, except as otherwise prescribed by laws or regulations, and shall be executed by such sureties as are named in the current list of "Companies Holding Certificates of Authority as Acceptable Sureties on Federal Bonds and as Acceptable Reinsuring Companies" as published in Circular 570 (amended)

by Audit Staff, Bureau of Government Financial Operations, U.S. Treasury Department and A.M. Best rated A VIII or better. COMPANY shall also provide a Maintenance Bond in the amount of 25 percent of the total amount of the improvements, including change orders, to the CITY as part of the requirement for reimbursement of Threshold IV. The maintenance bond shall remain in force for a minimum of two (2) years from the date of final acceptance of the project by the CITY, and shall be consistent with all City code requirements. The bonds serve as a protection to the CITY and DISTRICT against losses resulting from latent defects in materials or improper performance of work under this Grant Agreement, which may appear or be discovered during that period. The bond signed by an agent must be accompanied by a certified copy of the power of attorney.

h. Sub-contracting. COMPANY may sub-contract the work involved under this contract, obtaining multiple bids before selecting said sub-contractor. COMPANY shall remain, at all times, liable for the proper performance and completion of all work and other services that are subject to this grant, including supervision and administration of all such sub-contracted personnel, firms and companies, and including any errors or omissions by said sub-contractors. All work must be completed by properly licensed and certified contractors for their respective work. The COMPANY shall, without additional compensation, correct or revise any errors, omissions or other deficiencies in its designs, drawings, specifications, reports, and other services performed by subcontractor.

i. Material Warranties. COMPANY shall warrant its work for a period of two (2) years after the project is transferred to the CITY. For all major items which list for more than \$10,000, COMPANY shall submit to CITY during Threshold IV, a warranty from the product manufacturer, which is concurrent with COMPANY's maintenance bond, unless otherwise specified, commencing at the time of final acceptance by CITY of the project. In the event that the COMPANY is unwilling to provide a two (2) year warranty commencing at the time of CITY acceptance, COMPANY shall obtain from the manufacturer, a five (5) year warranty for the pumps, and a two (2) year warranty for all other materials, commencing at the time of equipment delivery to the job site. Any warranty from the manufacturer shall not relieve COMPANY of its two (2) year warranty starting at the time of CITY's acceptance of the project. The COMPANY's Maintenance Bond shall cover all necessary labor, and materials resulting from faulty or inadequate design, improper assembly or erection, defective workmanship and materials, leakage, breakage, or other failure of all equipment and components furnished by the COMPANY.

j. All dimensions of the work must be in strict accordance with all applicable city codes, state and federal regulations, and in strict accordance with the plans and specifications as approved by the CITY and in compliance with the terms of any grants obtained for the funding of this Project. Any exceptions or modifications to the plans and specifications must be authorized and approved by the CITY, in writing, prior to commencement of the work. In the event that the COMPANY discovers any apparent error or discrepancy in the plans and specifications, or other design criteria, the

COMPANY shall immediately call upon the CITY for an interpretation and decision, and such decision shall be final.

k. The CITY shall have the right to make periodic inspections of the work to ensure that the work is being performed in accordance with this Agreement and the plans and specifications. The COMPANY shall provide access to the property upon which the work is being performed for the purpose of performing these inspections. If significant deviations from the approved plans and specifications are observed, then the agency finding the deviations shall inform the COMPANY in writing and the COMPANY shall use due diligence to have the contractor correct the defective work.

l. Should the COMPANY be notified, during the progress of the work, that subsurface or latent conditions have been discovered at the site materially differing from those shown on the drawings or indicated in the plans and specifications approved by the CITY, the CITY shall be called immediately to such conditions before the work continues. The CITY shall thereupon promptly investigate the conditions, and if it is found that they do so materially differ, the work shall be suspended until any necessary alteration(s) in the design, plans and specifications has been approved by the CITY.

3.2 CITY Obligations

a. The Parties agree that the "Interlocal Agreement Between the City of Titusville, the North Brevard Economic Development District and Brevard County Relating to the Financing of Public Improvements at Miracle City Mall Redevelopment Project (hereinafter the Mall Project) represented authorization from the CITY for the DISTRICT to use CITY tax increment funding to assist the DISTRICT in making the debt service payments, on debt obligations of the CITY in connection with the Mall project, should it need to do so, without going back to the CITY for authorization. As such, the Parties agree that if in a given year, the DISTRICT experiences a shortfall in making the payments to the CITY for the Mall Project, the DISTRICT shall use that year's CITY tax increment funding as the first priority to remedy the shortfall, over other uses of CITY tax increment funding, including this grant.

b. The CITY approves a DISTRICT grant of up to \$2,224,295.00 from the CITY's portion of the tax increment funding (TIF) provided to the Zone, and up to an additional \$225,000 pursuant to paragraph 3.3(g). In the event that CITY tax increment funding revenues are not as high as forecasted, and a shortfall occurs, the DISTRICT shall fund the shortfall from the COUNTY portion of the TIF, and then seek reimbursement from the CITY portion of the TIF, as CITY TIF becomes available. In such case, the Parties agree that it remains the priority to use CITY TIF to fund any shortfalls necessary to fund the Mall Project. In no event shall CITY's funding obligations under this Agreement extend beyond the CITY's TIF provided to the Zone.

c. All work required under this section shall meet CITY requirements, and be approved and accepted by the CITY and all pertinent permitting agencies.

d. All construction shall meet the CITY's requirements and, upon inspection and approval by the CITY, COMPANY shall transfer ownership of the pressurized sewer line, lift station and all associated easements, if any, to the CITY. CITY shall accept the transfer of said donated line and associated property/permit interests, and maintain said line going forward. The date of the Bill of Sale shall indicate the date of final acceptance. Said transfer of ownership shall be recorded in the official records of Brevard County, Florida and CITY shall pay any necessary recording costs.

e. The CITY as the owner of the maintenance bond, and co-owner of the payment and performance bond, will be responsible for monitoring the project's progress, and any necessary interface with the Surety.

3.3 Economic Incentive.

For the purpose of inducing the COMPANY to implement the Project, the DISTRICT agrees to provide an economic development incentive grant to the COMPANY through a reimbursement of funds injected into the Project by the COMPANY as four thresholds are met. The DISTRICT's total reimbursement will not exceed \$2,224,295.00 and up to, but not exceeding, an additional \$225,000 pursuant to paragraph 3.3(g). The payout schedule shall be contingent, as specified below.

a. **Threshold I.** The DISTRICT will reimburse the COMPANY for 100 percent of the projected Threshold I Planning, Development & Engineering costs, up to but not exceeding \$224,625.00, provided that the COMPANY meets the following requirements to DISTRICT:

- (i) Execution of this Agreement between the DISTRICT, the COMPANY, and the CITY; and
- (ii) Proof of receipt of all necessary permitting from all appropriate regulatory bodies, including but not limited to, the CITY and any necessary Florida Department of Transportation (FDOT) permits to construct the line in FDOT right-of-way; and
- (iii) Proof that COMPANY has acquired any other necessary property interests required to complete the project within one (1) year of the execution date of this Agreement; and
- (iv) Receipt by the DISTRICT and CITY of a performance bond of 125 percent of the total cost of construction of all improvements; and
- (v) Receipt by the DISTRICT and CITY of copies of final approved plans with provision that said plans may be utilized by the DISTRICT and CITY at no additional cost; and

- (vi) Receipt by the DISTRICT of all COMPANY invoices verifying expenditures and evidence of payment of all costs by COMPANY to contractors/sub-contractors for Threshold I.

b. In the event that COMPANY declines to proceed beyond Threshold I, then upon Threshold I's completion DISTRICT will reimburse COMPANY for the Threshold I costs. Additionally, upon request, COMPANY shall convey, transfer, and deliver all plans and permits to another entity, as directed by DISTRICT and CITY.

c. **Threshold II – Laying all Sewer Pipe.** Threshold II involves laying all the sewer pipe (approximately 11,120 linear feet) and any associated underground facilities necessary to furnish sanitary sewage removal. Upon certification by the CITY that the sewer line is substantially complete, and upon receipt by the CITY of FDEP clearance, COMPANY shall submit contractor invoices verifying expenditures of up to but not exceeding \$1,114,550.00 for installation of approximately 11,120 linear feet of sewer pipe and associated facilities. Substantial completion is defined as that point in the construction where all essential elements of the work are sufficiently complete in conformance with the requirements that the pipe may be used for its intended purpose. Items that affect operational integrity and function of the project must be capable of continuous use. The DISTRICT will reimburse COMPANY for 90 percent of the projected Threshold II costs, up to but not exceeding \$1,003,095.00, provided the following events have occurred:

- (i) Receipt of all necessary permitting/inspections and approvals from all appropriate regulatory bodies to permit the lift station to operate, including a certificate of substantial completion from the CITY, and certification of FDEP clearance and acceptance; and
- (ii) Evidence that no construction liens are currently filed on the land; and
- (iii) Receipt by the DISTRICT of all contractor invoices verifying expenditures and evident of payment of all costs by Company to contractors/sub-contractors for Threshold II.

d. **Remainder of Threshold II grant.** Upon completion of Threshold IV, DISTRICT will reimburse COMPANY for up to but not exceeding \$111,455.00, which is the 10 percent of the projected cost for Threshold II that was retained.

e. **Threshold III – Construction of New Lift Station 56.** Threshold III involves the proper abandonment of Lift Station 56 and completion of construction of a new Lift Station 56. The DISTRICT will retain 10 percent and reimburse COMPANY for 90 percent of the projected costs of Threshold III, up to but not exceeding \$796,608.00, provided the following events have occurred:

(i) Receipt of all necessary permitting/inspections and approvals from all appropriate regulatory bodies to permit the lift station to operate, including a certificate of substantial completion from the CITY, and certification of FDEP clearance and acceptance; and

(ii) Evidence that no construction liens are currently filed on the land; and

(iii) Receipt by the DISTRICT of all contractor invoices verifying expenditures and evident of payment of all costs by Company to contractors/sub-contractors for Threshold III. Proper abandonment shall be defined within the final approved plans.

f. **Threshold IV.** Upon COMPANY's (i) completed transfer to the CITY of the sewer line, the lift station, and any underlying property rights obtained by COMPANY to install the sewer line, including all required Bills of Sale, (ii) acceptance of the same by the CITY, (iii) provision of as-built drawings; (iv) COMPANY's provision of the maintenance bond to the CITY and (v) provision to CITY of any manufacturer warranties, the DISTRICT will reimburse COMPANY for the remaining Threshold II and III funds, up to but not exceeding \$199,967.00.

g. **Contingency Grant.** The Parties recognize that in the course of the construction, construction costs of this project may be higher than anticipated. If such circumstance arises, the Parties agree that pursuant to this paragraph, COMPANY may request additional contingency grant(s), and that the DISTRICT may approve such contingency grant(s) without seeking further approvals from either the CITY or COUNTY for the increased grant amount, as long as the total of all such contingency grant(s) approved by the DISTRICT does not exceed \$225,000.00. Upon approval by DISTRICT, in order for this grant to be paid, COMPANY must provide the documentation required for the applicable threshold. For example, if the request for a contingency grant is related to laying the sewer pipe, COMPANY must meet the Threshold II requirements before that portion of the contingency grant will be paid.

4. DEFAULT TRIGGERS & SPECIFIC REMEDIES

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

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

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

4.4 The COMPANY shall be in default if it fails to acquire and convey to CITY all of the necessary real property interests prior to beginning construction. In such case, DISTRICT shall be released from any obligation to pay the grant for Thresholds II, III and IV. If payments have been made, upon DISTRICT request, the COMPANY shall return the grant funds for Thresholds II, III and IV within 30 days.

4.5 The COMPANY shall be in default if it fails to complete any Threshold. In such circumstance, the DISTRICT will reimburse the COMPANY for any Threshold for which it qualifies for reimbursement and COMPANY shall transfer ownership of all such personal property, plans, and permits (hereinafter Project Property) for which COMPANY has been reimbursed, to CITY or its designee. In such circumstance, the Parties agree that the performance bond may be utilized to complete the project. If the COMPANY is partially through a threshold and does not qualify for the full threshold reimbursement at the time of default, the COMPANY agrees it shall transfer ownership of Project Property to CITY or its designee, for which personal property the DISTRICT agrees is useful for completion of the project, and for which the Parties have agreed and executed a bill of sale. The COMPANY shall transfer remaining Project Property to DISTRICT's designated third party.

5. REMEDIES

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

5.2 Unless otherwise extended in writing by the DISTRICT, the COMPANY's failure to meet all terms and conditions of this agreement by the end of calendar year 2023 shall release the DISTRICT of all obligations created under this Agreement.

5.3 If the COMPANY makes a request in writing, prior to the expiration of the time period indicated in Section 5.2, to extend the time period for up to an additional 12 months, the DISTRICT will consider the request but is not required to grant an extension.

5.4 The DISTRICT's remedies for default by the COMPANY shall include, but shall not be limited to, a claim for reimbursement under the terms specified in this Agreement, if any funds have been extended by the DISTRICT to the COMPANY.

5.5 The City shall have all the rights and remedies available at law and as set forth within this Agreement. The CITY's remedy for default shall also include, but shall not be limited to, a transfer to the CITY of ownership of the permits relating to all work, and

COMPANY shall transfer all rights to any engineering documents and plans relating to the work, as well as any property rights relating to the project.

6. TERM AND TERMINATION

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

6.1.1 Expiration of the maintenance bonds after two (2) years of satisfactory completion of the project;

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

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

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

6.1.5 In the event of 6.1.2, 6.1.3 or 6.1.4, the Parties agree that, upon CITY or DISTRICT request, COMPANY will transfer or assign all permits and easements to the CITY or its designee.

6.2 Section 4, 5, and 6 shall expressly survive termination or expiration of this Agreement to the extent necessary to fully comply with the repayment provisions of this agreement.

6.3 Termination or expiration of this Agreement shall not affect any other rights of either Party which may have vested or accrued up to the date of such termination or expiration.

7. ATTORNEY'S FEES AND EXPENSES

Should either Party prosecute any action in connection with this Agreement for collection of payments due under this Agreement or the enforcement of performance or observance of any obligation or agreement herein contained, each Party shall bear its own attorney's fees and costs, including expert witness fees, if any. BOTH PARTIES AGREE TO WAIVE ANY RIGHT TO JURY TRIAL.

8. NOTICES AND ADMINISTRATORS

8.1 All notices required or permitted under this Agreement and any written consents or approvals required hereunder shall be in writing and are in effect upon receipt. Notices shall be transmitted either by personal hand delivery; United States Postal Service (USPS), certified mail return receipt requested; or, overnight express mail delivery. E-mail and facsimile transmission may be used if the notice is also transmitted by one of the

preceding forms of delivery. The addresses set forth below for the respective Parties shall be the places where notices shall be sent, unless prior written notice of change of address is given.

8.2 The Parties' designated representatives and their respective addresses for purposes of this Agreement are as follows:

Juston Trimback
TRIMCOR CONSTRUCTION OF FLORIDA, LLC
3517 Retail Drive
Phenix City AL 36869
Phone: (334) 480-4001
E-mail: trimback@trimcor.com

Troy Post, Executive Director
NORTH BREVARD ECONOMIC DEVELOPMENT ZONE
P.O. Box 399
Titusville, FL 32781
Phone: 321-621-4713
E-mail: troy.post@brevardfl.gov

Scott, Larese City Manager
City of Titusville
555 South Washington Ave.
Titusville, Florida 32796
Email: Scott.Larese@titusville.com

9. BINDING EFFECTS AND ASSIGNMENT

9.1 This Agreement may not be assigned by COMPANY to any other legal entity or person without the prior written consent of the DISTRICT and only upon satisfactory terms providing for the completion of the Project, which will not be unreasonably withheld.

9.2 This Agreement shall be binding upon the successors and assigns of the Parties to the extent such assignment has been consented to by the DISTRICT.

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

10.1 This Agreement shall be governed by, interpreted and construed in accordance with the laws of the State of Florida. Venue in any litigation arising out of this agreement shall be Brevard County, Florida in the state court with jurisdiction. COMPANY consents and waives any objection or defenses relating to Florida state court having jurisdiction over any dispute or claim arising out of this agreement and consents to process being

served upon its Florida registered agent. COMPANY expressly waives removal of any claim or action arising under this agreement to federal court.

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

11. MODIFICATION

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

12. SURVIVAL

All covenants, agreements, representations, warranties and endowments made relating to repayment by the COMPANY in the event of the COMPANY's default shall expire upon the termination of this Agreement unless any claim or claims made under this Agreement by the DISTRICT is provided prior to expiration of the Agreement.

13. FURTHER ASSURANCES

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

14. RELATIONSHIP OF THE PARTIES

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

15. PROMOTION OF ECONOMIC INCENTIVES

As to those matters not covered by a lawful confidentiality agreement, with the consent of the COMPANY, the DISTRICT may issue news releases, public announcements, advertisements, or other forms of publicity concerning its efforts in connection with this Agreement. The DISTRICT shall also be permitted to erect signage during the construction phase of the Project, indicating that the Project was assisted with the promise of financial help from the DISTRICT.

16. PUBLIC RECORDS DISCLOSURES

16.1 The COMPANY agrees and understands that Florida has broad public disclosure laws, and that any written communications with the COMPANY, to include emails, email addresses, a copy of this contract, and any supporting documentation related to this Agreement are subject to public disclosure upon request, unless otherwise exempt or confidential under Florida Statute.

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

Upon a request for public records related to this Agreement, the COMPANY will forward any such request to the DISTRICT. The DISTRICT will respond to any public records request. Upon request, the COMPANY will provide access or electronic copies of any pertinent public records related to this Agreement to the DISTRICT within a reasonable time at a cost that does not exceed the cost provided in Chapter 119, Florida Statutes. Upon completion of the Agreement, COMPANY will transfer, at no cost, to the DISTRICT, any public records in its possession.

IF THE COMPANY HAS QUESTIONS REGARDING THE APPLICATION OF CHAPTER 119, FLORIDA STATUTES, TO THE COMPANY'S DUTY TO PROVIDE PUBLIC RECORDS RELATING TO THIS AGREEMENT, CONTACT THE CUSTODIAN OF PUBLIC RECORDS AT THE DISTRICT, MR. TROY POST, TROY.POST@BREVARDFL.GOV, 400 SOUTH STREET, TITUSVILLE, FLORIDA 32780, or 321-264-5205.

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

17. COMPANY'S WARRANTIES/REPRESENTATIONS AND INDEMNIFICATION

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

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

17.3 To the extent permitted by law, other than the COMPANY's claims arising out of a default by the DISTRICT, COMPANY shall indemnify and hold DISTRICT harmless for any

claims or actions of any nature resulting from or arising out of this agreement, including, but not limited to, actions arising out of the construction or operation of its facilities. However, the COMPANY shall not be liable and will have no duty to defend the DISTRICT for the negligent or intentional acts of the DISTRICT, its employees or agents.

18. SEVERABILITY

If any provision of this Agreement shall be held to be invalid, illegal or unenforceable by a court or other tribunal of competent jurisdiction, the validity, legality, and enforceability of the remaining provisions shall not in any way be affected or impaired thereby. The Parties shall use their best efforts to rehabilitate and replace the unenforceable provision or provisions of this Agreement with lawful terms and conditions approximating the original intent of the Parties.

19. ENTIRE AGREEMENT, CONSTRUCTION, AND DUPLICATE AGREEMENTS

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

20. SCRUTINIZED COMPANIES.

- a. The COMPANY certifies that it and its subcontractors are not on the Scrutinized Companies that Boycott Israel List. Pursuant to Section 287.135, Florida Statutes, the DISTRICT may immediately terminate this Grant at its sole option if the COMPANY or its subcontractors are found to have submitted a false certification; or if the COMPANY, or its subcontractors are placed on the Scrutinized Companies that Boycott Israel List or is engaged in a boycott of Israel during the term of this Contract.
- b. As this Grant is for more than one million dollars, the COMPANY further certifies that it and its subcontractors are also not on the Scrutinized Companies with Activities in Sudan, Scrutinized Companies with Activities in the Iran Petroleum Energy Sector List, or engaged with business operations in Cuba or Syria as identified in Section 287.135, Florida Statutes.
- c. Pursuant to Section 287.135, Florida Statutes, the DISTRICT may immediately terminate this Contract at its sole option if the COMPANY, its affiliates, or its subcontractors are found to have submitted a false certification; or if the COMPANY, its affiliates, or its subcontractors are placed on the Scrutinized Companies that Boycott the Scrutinized Companies with Activities in Sudan List, or Scrutinized Companies with Activities in the Iran Petroleum Energy Sector List, or engaged with business operations in Cuba or Syria during the term of the contract.
- d. The COMPANY agrees to observe the above requirements for applicable subcontracts entered into for the performance of work under this contract.

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

21. INSURANCE.

The CONTRACTOR, at its own expense, shall keep in force and at all times maintain during the term of this Contract:

- a. General Liability Insurance: General Liability Insurance issued by responsible insurance companies and in a form acceptable to the DISTRICT, with combined single limits of not less than One Million Dollars (\$1,000,000) for Bodily Injury and Property Damage per occurrence.
- b. Automobile Liability Insurance: Automobile Liability coverage shall be in the minimum amount of One Million Dollars (\$1,000,000) combined single limits for Bodily injury and Property Damage per accident.
- c. Worker's Compensation Coverage: Full and complete Workers' Compensation Coverage, as required by State of Florida law, shall be provided.
- d. Insurance Certificate: The CONTRACTOR shall provide the DISTRICT with Certificates of Insurance on all policies of insurance and renewals thereof in a form(s) acceptable to the DISTRICT. The DISTRICT shall be notified in writing of any reduction, cancellation or substantial change of policy or policies at least thirty (30) days prior to the effective date of said action. All insurance policies shall be issued by responsible companies who are acceptable to the DISTRICT and licensed and authorized under the laws of the State of Florida.

22. EMPLOYMENT ELIGIBILITY VERIFICATION (E-VERIFY)

- a. The COMPANY shall utilize the U.S. Department of Homeland Security's E-Verify system to verify the employment eligibility of all new employees hired by the COMPANY during the term of the contract. COMPANY shall provide acceptable evidence of their enrollment. Acceptable evidence shall include, but not be limited to, a copy of the fully executed E-Verify Memorandum of Understanding for the business.
- b. COMPANY shall expressly require any subcontractors performing work or providing services pursuant to this Contract to likewise utilize the U.S. Department of Homeland Security's E-Verify system to verify the employment eligibility of all new employees hired by the subcontractor during the term of this Contract.
- c. COMPANY agrees to maintain records of its participation and compliance with the provisions of the E-Verify program, including participation by its subcontractors as provided above, and to make such records available to the DISTRICT consistent with the terms of COMPANY's enrollment in the program. This includes maintaining a copy of proof of COMPANY's and any subcontractors' enrollment in the E-Verify Program.

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

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

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

g. DISTRICT will not intentionally award a publicly-funded contract to any COMPANY who knowingly employs unauthorized alien workers, constituting a violation of the employment provisions contained in 8 United States Code (USC) section 1324a(e)(section 274A(e) of the Immigration and Nationality Act (INA). The DISTRICT shall consider a COMPANY's intentional employment of unauthorized aliens as grounds for immediate termination of this contract.

23. PUBLIC ENTITY CRIMES.

A person or affiliate who has been placed on the convicted vendor list following a conviction for a public entity crime may not submit a bid, proposal, or reply on a contract to provide any goods or services to a public entity; may not submit a bid, proposal, or reply on a contract with a public entity for the construction or repair of a public building or public work; may not submit bids, proposals, or replies on leases of real property to a public entity; may not be awarded or perform work as a contractor under a contract with any public entity; and may not transact business with any public entity in excess of the threshold amount provided in section 287.017 for CATEGORY TWO for a period of 36 months following the date of being placed on the convicted vendor list.

24. CONFLICTS OF INTEREST.

No officers, members or employees of the DISTRICT, and no members of its governing body, and no other public official of the governing body of the locality or localities in which services for the facilities are situated or carried out, who exercises any functions or responsibilities in the review or approval of this Contract, shall participate in any decision relating to this Contract which affects their personal interest, or have any personal or pecuniary interest, direct or indirect, in this Contract or the proceeds of this Contract. The COMPANY covenants that it presently has no conflict of interest and shall not acquire any interest, direct or indirect, which shall conflict in any manner or degree with the performance of services required to be performed under this Agreement. The COMPANY further covenants that in the performance of this contract, no person having any such interest shall be employed by COMPANY.

25. COUNTERPARTS AND AUTHORITY

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

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

(Signature Page Follows)

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

Signed, Sealed and Delivered in the presence of:


Witness Amanda Milner

TRIMCOR CONSTRUCTION OF FLORIDA,
LLC("COMPANY")

By: 
Justin Trimback, President

8-16-2021
Date

NORTH BREVARD DEVELOPMENT
DISTRICT ("DISTRICT")

By: _____
George Mikitarian, Chair
As approved at meeting: _____

APPROVED AS TO LEGAL FORM:

By: _____
Assistant County Attorney for the District

CITY OF TITUSVILLE ("CITY")

By: _____
Dan Diesel, Mayor

As approved at meeting: _____

(Signature page continues on next page)

Whereas, all DISTRICT grants exceeding \$500,000 are required to be approved by the Brevard County Board of County Commissioners, the COUNTY has authorized its representative to sign solely to indicate that the COUNTY has approved the DISTRICT's grant amount, and has approved the DISTRICT, if DISTRICT determines it to be necessary, to authorize the additional contingency grant amount in paragraph 3.3(g) without further authorization from the COUNTY. The COUNTY is not a Party to this Grant.

ATTEST:

BREVARD COUNTY
BOARD OF COUNTY COMMISSIONERS

Rachel Sadoff, Clerk

By: _____
Rita Pritchett, Chair
As approved at meeting: _____

EXHIBIT A
MAP OF PROJECT

EXHIBIT B

PUBLIC CONSTRUCTION BOND

(Payment and Performance)

BY THIS BOND, We _____, having its principal place of business at _____, (____)____-____, herein called Principal, and _____, having its principal place of business at _____, (____)____-____, a corporation as Surety, are bound to the North Brevard Economic Development District, 400 South Street, Suite 1A, Titusville, FL 32780, and the City of Titusville, a Florida municipal corporation, 555 South Washington Avenue, Titusville, Florida 32796, collectively herein called Owner, in the sum of _____ (\$_____.00) for payment of which we bind ourselves, our heirs, personal representatives, successors, and assigns, jointly and severally.

THE CONDITIONS OF THIS BOND are that if Principal:

1. Performs the Contract entitled North Brevard Development District Economic Incentive Agreement and Interlocal Agreement Project US 1 Sanitary Sewer dated _____ between Principal and Owner for construction of the sanitary sewer project described in section 3.1 of that Agreement, the contract being made a part of this bond by reference, at the times and in the manner prescribed in the contract; and
2. Promptly makes payments to all claimants, as defined in Section 255.05(1), Florida Statutes, supplying Principal with labor, materials, or supplies, used directly or indirectly by Principal in the prosecution of the work provided for in the contract; and
3. Pays Owner all losses, damages, expenses, costs, and attorney's fees, including

appellate proceedings, that Owner sustains because of a default by Principal under the contract; and

4. Performs the guarantee of all work and materials furnished under the contract for the time specified in the contract, then this bond is void; otherwise it remains in full force.

Any action instituted by a claimant under this bond for payment must be in accordance with the notice and time limitation provisions in Section 255.05(2) and (10), Florida Statutes.

The Surety hereby stipulates and agrees that no change, extension of time, alteration or addition to the terms of project to be constructed shall in any way affect its obligations on this bond, and does hereby waive notice of any such changes, extensions, alterations, or additions.

Signed and sealed this _____ day of _____, 20__.

Witness:

(Principal) (Seal)

Its: _____
(Title)

Witness:

(Surety) (Seal)

Its _____
(Title)

CERTIFICATE AS TO CORPORATE PRINCIPAL

I, _____ certify that I am the Secretary of the Corporation named as Principal in the within bond; that _____ who signed the said bond on behalf of the Principal, was then _____ of said Corporation; that I know the Principal, and the Principal's signature hereto is genuine; and that said bond was duly signed, sealed, and attested for and in behalf of said Corporation by authority of its governing body.

_____(Seal)

Secretary

CERTIFICATE AS TO SURETY ATTORNEY-IN-FACT

STATE OF FLORIDA)

COUNTY OF)

Before me, a Notary Public, duly commissioned, qualified and acting, personally appeared _____ by means of [] physical presence or [] online notarization, who being by me first duly sworn upon oath, says that this individual is the Attorney-in-Fact, for the _____ and that said individual has been authorized by _____ to execute the foregoing bond on behalf of the Contractor named therein in favor of the North Brevard Economic Development District and the City of Titusville, Florida.

Subscribed and sworn to before me this _____ day of _____, 20____, A.D.

(Attach Power of Attorney)

Notary Public
State of Florida-at-Large

My Commission Expires: _____
My Commission Number is: _____

**EXHIBIT C
MAINTENANCE BOND**

STATE OF FLORIDA)

COUNTY OF)

KNOWN ALL MEN BY THESE PRESENTS that _____ as Principal, hereinafter called Contractor, and _____ as Surety, hereinafter called Surety, are held and firmly bound unto the City of Titusville, a Florida municipal corporation, 555 South Washington Avenue, Titusville, Florida 32796, as Obligee, hereinafter called Owner, in the amount of _____ Dollars (\$_____) for the payment whereof Contractor and Surety bind themselves, their heirs, executors, administrators, successors and assigns, jointly and severally, firmly by these presents.

WHEREAS, Contractor has by written agreement dated _____,

in accordance with Drawings and Specifications prepared by _____, which Contract is by reference made a part hereof and is hereinafter referred to as the Contract.

NOW, THEREFORE, THE CONDITIONS OF THIS OBLIGATION ARE SUCH, that if the Principal shall remedy any defects in the work due to faulty materials or workmanship, and pay for all damage to other work, person or property resulting therefrom, which shall appear within a period of two (2) years from the date of final acceptance of the work provided for in the Contract, then this obligation is to be void; otherwise to remain in full force and effect.

PROVIDED, HOWEVER, that Owner shall give notice of observed defects with reasonable promptness.

(Signature Page Follows)

IN WITNESS WHEREOF, the above bounded parties executed this instrument under their several seals, this ____ day of _____, 20____, A.D., the name and corporate seal of each corporate party being hereto affixed and these presents duly signed by its undersigned representative, pursuant to authority of its governing body.

WITNESS: (If Sole Ownership or Partnership, two (2) Witnesses required. If Corporation, Secretary only will attest and affix seal).

PRINCIPAL:

Signature of Authorized Officer (Affix Seal)

WITNESSES:

Name

Title

Business Address

City & State

(Signature Page Continues)

SURETY:

WITNESS:

Corporate Surety

Attorney-in-Fact (Affix Seal)

Business Address

City & State

Name of Local Insurance Agency

(Signature Page Continues)

CERTIFICATES AS TO CORPORATE PRINCIPAL

I, _____, certify that I am the Secretary of the Corporation named as Principal in the within Bond; that _____, who signed the said Maintenance Bond on behalf of the Principal, was then _____ of said Corporation; that I know his signature, and his signature hereto is genuine; and that said Bond was duly signed, sealed, and attested for and in behalf of said Corporation by authority of its governing body.

Secretary (Corporate Seal)

STATE OF _____

COUNTY OF _____

Before me, a Notary Public, duly commissioned, qualified and acting, appeared _____, by means of [] physical presence or [] online notarization, who being by me first duly sworn upon oath, says that he is the Attorney-in-Fact, for the _____, and that he has been authorized by _____ to execute the foregoing maintenance bond on behalf of the Contractor named therein in favor of the City of Titusville, a Florida municipal corporation.

Subscribed and sworn to before me this ____ day of _____, 20____, A.D.

(Attach Power of Attorney)

Notary Public

State of Florida-at-Large

My Commission Expires: _____

EXHIBIT D – Area to be Served