CAO FORM
04/03/18

RESOLUTION NO. R-19-070

A RESOLUTION OF THE BOARD OF COUNTY COMMISSIONERS OF MANATEE COUNTY, FLORIDA, REGARDING ECONOMIC DEVELOPMENT; AUTHORIZING ECONOMIC DEVELOPMENT INCENTIVES PURSUANT TO FLORIDA STATUTE 125.045 FOR "PROJECT FALCON" FOR FISCAL YEARS 2019-2020 THROUGH 2023-2024; PROVIDING FINDINGS; APPROVING ECONOMIC DEVELOPMENT INCENTIVES; APPROVING THE FORM OF A FUNDING AGREEMENT; AUTHORIZING THE EXECUTION OF A FUNDING AGREEMENT; PROVIDING THAT INCENTIVES ARE SUBJECT TO AVAILABALITY OF FUNDS; PROVIDING FOR SEVERABILITY AND PROVIDING AN EFFECTIVE DATE.

WHEREAS, Florida Statute 125.045 (the "Act") provides that the County may expend public funds to attract and retain business enterprises, and the use of public funds toward the achievement of such economic development goals constitutes a public purpose, including expending public funds to make grants to private enterprises for the expansion of businesses existing in the community or the attraction of new businesses to the community; and

WHEREAS, a business has applied for economic development incentives for a project to locate in the County within the meaning of the Act, and the project has been designated "Project Falcon" (hereinafter, the "Project"); and

WHEREAS, the Project is a Headquarters employer that pays in excess of 200% of the average Manatee County annual wage; and

WHEREAS, the Project will expand a facility in Manatee County and will create 85 new jobs over the next five years; and

WHEREAS, expansion of the tax base and growth of higher paying jobs is vital to maintaining economic diversity and improving quality of life in Manatee County; and

WHEREAS, the Manatee County Board of County Commissioners wishes to provide financial incentives for the Project to locate in Manatee County as authorized pursuant to the Act.

NOW, THEREFORE, BE IT RESOLVED BY THE BOARD OF COUNTY COMMISSIONERS OF MANATEE COUNTY, FLORIDA, AS FOLLOWS:

SECTION 1. FINDINGS. The Board hereby makes the following findings:

A. The recitals set forth above are true and correct;

B. Providing economic development incentives for the Project serves a valid public purpose

pursuant to the Act; and

C. It is in the best interest of County, and furthers the purposes of the Act, to approve economic development incentives for the Project, and to approve the form of, and authorize the execution of, a funding agreement for such economic development incentives.

SECTION 2. APPROVAL OF ECONOMIC DEVELOPMENT INCENTIVES. Based on the findings set forth above, the Board hereby approves the following economic development incentives for the Project:

A. If the Project meets the local Economic Development Incentive ("EDI") Grant program criteria for creation of a minimum of five, (5) and a maximum of eighty-five (85) quality jobs, the Project may receive EDI for locating in Manatee County in an amount not to exceed:

EDI	**$255,000**

The total extent of Manatee County's participation shall not exceed $255,000 for the EDI Grant. The participation shown above shall be subject to the Project's employment requirements and annual appropriations in the County budget each fiscal year.

B. If the Project meets the ("EDI") Grant program criteria for creation of a minimum of 5 quality jobs, the Project may receive Multi-modal Transportation Impact Fee Incentive ("MTIFI") for locating in Manatee County in an amount estimated to be:

MTIFI	**$135,240**

The MTIFI is estimated to be $135,240, and shall not exceed $202,860.

The actual amount of the MTIFI shall be determined when building permits are approved for construction, and shall be based on the current Manatee County impact fee schedule set forth in Chapter 11 of the Manatee County Land Development Code. The Board of County Commissioners authorizes the County Administrator or the Director of Redevelopment and Economic Opportunity to approve the amount of the actual MTIFI to be paid at the time applicant receives certificate of occupancy or certificate of completion for construction activities. Based on the company's average annual wage of 200%, the incentive will be calculated at 100%.

All economic development incentives approved pursuant to this Section shall be subject to the terms and conditions of, and provided in accordance with, a funding agreement ("Funding Agreement") to be executed between the County and the Project owner in accordance with this Resolution and the Act.

SECTION 3. APPROVAL OF FUNDING AGREEMENT. The Board hereby approves the form of the Funding Agreement substantially in the form attached hereto as Exhibit "A".

SECTION 4. AUTHORIZATION TO EXECUTE. The County Administrator and the Director of Redevelopment and Economic Opportunity are hereby authorized and directed to execute, deliver, amend

and accept the Funding Agreement consistently with this Resolution and the incentives approved in Section 1 hereof, substantially in the form attached hereto, with such insubstantial changes, insertions and omissions, and such exhibits thereto, as may be approved by the County Administrator or the Director of Redevelopment and Economic Opportunity, the execution thereof being conclusive evidence of such approval.

SECTION 5. INCENTIVES SUBJECT TO AVAILABALITY OF FUNDS. The economic development incentives for the Project authorized pursuant to this Resolution are subject to the budgeting and appropriation of legally available funds by the Board in each fiscal year for such purpose.

SECTION 6. SEVERABILITY. If any section, sentence, clause or other provision of this Resolution shall be held to be invalid or unconstitutional by a court of competent jurisdiction, such invalidity or unconstitutionality shall not be construed as to render invalid or unconstitutional the remaining sections, sentences, clauses or provisions of this Resolution.

SECTION 7. EFFECTIVE DATE. This Resolution shall take effect immediately upon its adoption.

ADOPTED WITH A QUORUM PRESENT AND VOTING THIS THE 18th DAY OF JUNE, 2019.

MANATEE COUNTY, FLORIDA
BOARD OF COUNTY COMMISSIONERS

By:_____
Stephen R. Jonsson
Chairperson

ATTEST: ANGELINA COLONNESO
CLERK OF THE CIRCUIT
COURT AND COMPTROLLER

By:_____
Deputy Clerk

EXHIBIT "A"
FORM OF FUNDING AGREEMENT

CAO FORM
04/03/18

FUNDING AGREEMENT
for
ECONOMIC DEVELOPMENT INCENTIVES

PROJECT NAME: FALCON

MANATEE COUNTY, FLORIDA
COMPANY

THIS FUNDING AGREEMENT FOR ECONOMIC DEVELOPMENT INCENTIVES ("Agreement") is made and entered into by and between MANATEE COUNTY, a political subdivision of the State of Florida (hereinafter "County"), and Project Falcon

WHEREAS, Florida Statute 125.045 (the "Act") provides that the County may expend public funds to attract and retain business enterprises, and the use of public funds toward the achievement of such economic development goals constitutes a public purpose, including expending public funds to make grants to private enterprises for the expansion of businesses existing in the community or the attraction of new businesses to the community; and

WHEREAS, pursuant to the Act, the County has established an Economic Development Incentive Grant Program for those businesses that create a minimum of five (5) quality jobs in targeted industries paying at least 100% of the average annual Manatee County wage, unless company meets criteria for customized incentive; and

WHEREAS, Company has applied for economic development incentives for a project to locate in the County within the meaning of the Act; and

WHEREAS, the County's Board of County Commissioners adopted Resolution R-19-070 on June 18, 2019, a copy of which is attached hereto as Exhibit "A" (the "Resolution"), approving Company (identified therein as "Project Falcon") (hereinafter, the "Project") as a locally qualified target industry for economic development incentives; and

WHEREAS, the Resolution R-19-070 provides $255,000 for participation with Company for economic development incentives based on job creation; and

WHEREAS, the Resolution R-19-070 provides an estimated $135,240 for participation with Company for a multi-modal transportation impact fee incentive; and

WHEREAS, Company is a expanding facility for Manatee County and will create 85 new jobs in

Manatee County paying at least 200% of the average annual wage; and

WHEREAS, the Resolution approves and authorizes the execution of a funding agreement between the County and Company to provide economic development incentives for the Project; and

WHEREAS, pursuant to and in accordance with the Act and the Resolution, the County and Company wish to enter into this Agreement to provide economic development incentives for the Project, subject to the terms and conditions set forth herein.

NOW, THEREFORE, in consideration of the mutual covenants and conditions contained herein, the County and Company agree as follows:

Article I
COVENANTS AND OBLIGATIONS

1.1 Incorporation. The recitals set forth above are true and correct and are incorporated herein in their entirety.

1.2 Business Maintenance and Continuing Performance Condition Requirement. Pursuant to representations made by Company in its application for economic development incentives, Company shall:

a. Expand the Facility in Manatee County:

b. Create 85 permanent full-time new jobs.

c. Compensate all permanent full-time employees at an average wage of eighty-one thousand five hundred forty-four Dollars ($81,544);

1.3 Information and Reporting. Pursuant to the Act, Company shall provide the following information:

a. Company shall submit One (1) original and Two (2) copies of the following by April 30th annually in the billing year immediately following previous job creation year as outlined in the schedule below for the duration of the Agreement which will commence on June 18, 2019 and end on September 20, 2024:

i. Invoice requesting payment for number of jobs created per the Resolution;

ii. W-9 (Request for Taxpayer Identification Number and Certification)

iii. Documentation of net annual employees to include:

- Employee roster showing number of permanent full-time employees on beginning of job creation year with employee identifying number, average

annual wage of at least $81,544 for the duration of the Agreement for Company employees (Total W-2 wages for all listed employees divided by total number of employees; for purposes of calculating the average wage, W-2 wages should be annualized for employees hired after January 1st), and job title.

- Employee roster showing number of permanent full-time employees on December 31st of job creation year with employee identifying number, average annual wage of at least $81,544 for the term of the Agreement for Company employees (Total W-2 wages for all listed employees divided by total number of employees; for purposes of calculating the average wage, W-2 wages should be annualized for employees hired after January 1st), and job title, showing new hires.

b. Company shall prepare and submit all necessary additional information and reports as requested, to assure compliance with the provisions of this Agreement, the Act and any other State law or local regulation.

c. County shall have the right to obtain and review any information or records pertaining to this Agreement. Company shall make information and records available during a mutually agreed upon time.

d. Required information and documentation shall be submitted to the County's representative:

Redevelopment & Economic Opportunity Department
Manatee County Government
1112 Manatee Av W, Ste. 300
Bradenton, FL 34205

1.4 Public Records. The Company shall comply with the provisions of Chapter 119, Florida Statutes applicable to this Agreement as the same may be limited or construed by other applicable law. It is expressly understood that County may terminate this Agreement for the Company's refusal to comply with the applicable provisions of Chapter 119, Florida Statutes. In the event that the Company receives a request for a "public record" (as such term is defined in Section 119.011, Florida Statutes) in connection with this Agreement, the Company shall provide notice to County of such request as soon as practicable after the Company's receipt of such request. If the Company submits records to County that are confidential and exempt from public disclosure as trade secrets pursuant to Section 288.075(3), Florida Statutes or proprietary confidential business information pursuant to Section 288.075(4), Florida Statutes, such records shall be marked accordingly by the Company prior to submittal to County. In the event that County's claim of exemption asserted in response to the Company's assertion of confidentiality is challenged in a court of law, the Company shall defend the County against such claim, assume and be responsible for all fees, costs and expenses in connection with such challenge.

1.5 Compliance with Program Requirements. Company shall comply with all requirements of the Act, the Resolution and any policies and procedures enacted by the Board from time to time related

to the economic development incentives provided hereunder.

1.6 Indemnification. The Company shall indemnify, defend, keep and save harmless, County, its agents, officials and employees, against all claims, liabilities, judgments, costs, attorney's fees and other expenses incurred in connection with this Agreement, and if any judgment shall be rendered against the County in any action arising out of the performance of this Agreement or those projects undertaken by the Company shall, at its expense, satisfy and discharge same. The indemnity hereunder shall continue until such times as any and all claims arising under this Agreement have been finally settled, regardless of when such claims are made.

1.7 Authorized Representative. The Company's Click here to enter text.is designated as the representative authorized to act on behalf of the Company on matters related to this Agreement.

1.8 Payment of Incentives. Subject to Company's performance of its obligations under this Agreement, the County shall pay economic development incentives to Company in accordance with the following provisions:

a. Job creation, billing and payment schedule will be as follows for the duration of this Agreement:

Job Creation Year	Billing Year	Manatee County Payment
06/18/2019-12/31/2019	FY 2019-2020	$ 15,000
01/01/2020-12/31/2020	FY 2020-2021	$ 30,000
01/01/2021-12/31/2021	FY 2021-2022	$ 30,000
01/01/2022-12/31/2022	FY 2022-2023	$ 30,000
01/01/2023-12/31/2023	FY 2023-2024	$ 30,000
		$ 255,000

b. As the Economic Development Incentive ("EDI") for the Project, County shall reimburse Company $3,000 per job created according to the projected schedule set forth above. Net new permanent full-time jobs created shall be maintained for a period of five (5) years. There is no penalty if the maximum number of jobs to be created annually is not met, however Company will only be paid EDI for the actual number of jobs created annually. Company may request a modification to the reimbursement schedule so long as it does not exceed the time period and amount approved in Resolution R-19-070. The request shall be in written form to the Manatee County Redevelopment & Economic Opportunity Department, and shall state specific reasons for modification request. Approval shall be provided in written form prior to submittal of Company's request for reimbursement. The County Administrator or designee is authorized to execute amendments to this agreement for such modifications. The total amount paid to Company shall not exceed $255,000 for the period identified above.

c. Multi-modal Transportation Impact Fee Incentive ("MTIFI") eligibility is 100% based on

Manatee County's average annual wage of 200%. County shall remit an amount estimated to be $135,240, and shall not exceed $202,860 to the Manatee County Building and Development Services Department on behalf of the Company. Such payment shall constitute the MTIFI for the Project. The actual amount shall be determined when building permits are approved and based on the current Manatee County impact fee schedule set forth in Chapter 11 of the Manatee County Land Development Code. The County Administrator or designee shall approve the amount of the actual MTIFI to be paid at the time Company makes application for certificate of occupancy (C.O.) or certificate of completion for expansion construction activities. Payment shall be made upon receipt of a completed invoice in the form attached hereto as Exhibit "B", and all required documentation attached.

1.5 County Revocation.

a. In the event Company fails to satisfy the business maintenance and continuing performance conditions set forth in Section 1.2 of this Agreement or fails to comply with the Act, the County may, upon thirty (30) days written notice to Company, revoke the economic development incentives provided hereunder, or take such other action with respect to the economic development incentives as it deems appropriate.

b. If it is determined that for any year within the duration of this Agreement, Company was not entitled to receive all or a portion of such economic development incentives, Company shall reimburse the County all such economic development incentives for which it was not eligible, plus annual interest at the maximum rate allowed by law.

c. This Section shall survive termination of this Agreement.

1.6 Assignment Estoppel. The rights and privileges granted pursuant to the Resolution and this Agreement are not assignable or transferable without written consent of the County Administrator or designee.

1.7 Binding Effect and Effectiveness; Representations and Warranties.

a. Subject to the specific provisions of this Agreement, this Agreement shall be binding upon and inure to the benefit of and be enforceable by the parties and their respective successors, notwithstanding changes in corporate or other governance.

b. Company represents and warrants to the County that as of the date hereof and throughout the term of this Agreement:

i. Company is a for profit corporation, duly organized under the laws of the State of Florida, maintains a place of business within the State of Florida, and is validly existing and is doing business in the State of Florida as Headquarters company.

ii. Company has the power and authority to own its properties and assets and to carry on its business as now being conducted and has the power and authority to execute and perform this Agreement.

iii. This Agreement (a) is the lawful, valid and binding agreement of Company in its corporate name enforceable against Company in accordance with its terms; (b) does not violate any order of any court or other agency of government binding on Company, the charter documents of Company or any provision of any indenture, agreement or other instrument to which Company is a party; and (c) does not conflict with, result in a breach of, or constitute an event of default, or an event which, with notice or lapse of time, or both, would constitute an event of default, under any material indenture, agreement or other instrument to which Company in its corporate name is a party;

iv. Company has not received written notice of any action having been filed against Company that challenges the validity of this Agreement or Company's right and power to enter into and perform this Agreement; and

v. The Signatory hereto has the authority to execute this Agreement and to bind Company to the terms and conditions set forth herein.

1.9 No General Obligation. Notwithstanding any other provisions of this Agreement, the obligations undertaken by the County under this Agreement shall not be construed to be or constitute general obligations, debts or liabilities of the County, the District or the State of Florida or any political subdivision thereof within the meaning of the Constitution and laws of the State of Florida. Such obligations are subject to the annual budgeting and appropriation of legally available funds by the County's Board of County Commissioners.

Article II
DURATION AND TERMINATION.

2.1 Effective Date. This Agreement shall take effect as of its date set forth above.

2.2 Termination. Unless terminated for cause in accordance with Section 2.3, this Agreement shall terminate on September 30, 2024.

2.3 Termination for Cause. This Agreement may be terminated by either party upon thirty (30) days written notice to the other party should either party fail substantially to perform in accordance with the terms of this Agreement.

Article III
AMENDMENTS; ENFORCEMENT

3. Enforcement. The parties to this Agreement shall have all legal and equitable remedies provided by Florida law for enforcement hereof.

Article IV
MISCELLANEOUS PROVISIONS

4.1 Validity. After consultation with their respective legal counsel, the County and Company each

represents and warrants to the other its respective authority and power under Florida law to enter into this Agreement, acknowledges the validity and enforceability of this Agreement, and waives any future right of defense based on claim of illegality, invalidity or unenforceability of any nature. The Company and the County each hereby represents, warrants and covenants to and with the other (i) that this Agreement has been validly approved by its respective governing body, and (ii) that this Agreement constitutes a legal, valid and binding contract enforceable against the respective party in accordance with the terms hereof (assuming the due authorization, execution and delivery hereof by the other party hereto).

4.2 **Force Majeure.** No party shall be liable for any failure to perform, or delay in the performance of, any obligation under this Agreement if such failure is caused directly by hurricane, tornado, fire, earthquake, civil commotion or failure or disruption of utility services, or other like cause beyond the reasonable control of the party obliged to perform.

4.3 **Ambiguities.** Both parties have been allowed equal input regarding the terms and wording of this Agreement and have had the benefit of consultation with legal counsel prior to its execution, such that all language herein shall be construed equally against the parties, and no language shall be construed strictly against its drafter.

4.4 **Headings.** The headings or captions of sections or paragraphs used in this Agreement are for convenience of reference only and are not intended to define or limit their contents, nor are they to affect the construction of or to be taken into consideration in interpreting this Agreement.

4.5 **Severability.** The provisions of this Agreement are declared by the parties to be severable.

4.6 **Governing Law; Venue.** This Agreement shall be governed by and construed in accordance with laws of the State of Florida. Any action filed regarding this Agreement shall be filed in Manatee County, Florida, or if in Federal Court, the Middle District of Florida, Tampa Division.

4.7 **Full Agreement.** This Agreement contains the entire agreement of the parties with respect to the matters addressed herein. Previous agreements and understandings of the parties, with respect to such matters are null and void and of no effect

4.8 **Notices.** All notices, elections, requests and other communications hereunder shall be in writing and shall be deemed given in the following circumstances: when personally delivered; or three (3) business days after being deposited in the United States Mail, postage prepaid, certified or registered; or the next business day after being deposited with a recognized overnight mail or courier delivery service; or when transmitted by facsimile or telecopy transmission, with receipt acknowledged upon transmission; and addressed as follows (or to such other person or at such other address, of which any party hereto shall give written notice as provided herein):

If to County: Redevelopment & Economic Opportunity Dept.
Manatee County Administration Center
1112 Manatee Avenue, Ste. 300
Bradenton, Florida 34205
Facsimile: (941)742-5848

With copies to: Manatee County Attorney's Office
1112 Manatee Avenue West, Suite 969
Bradenton, Florida 34205
Attention: County Attorney
Facsimile: (941)749-3089

If to Company: _____
_____
_____
_____
_____
_____

In all cases, notices shall be deemed delivered to a party only upon delivery of copies to the persons indicated above in the same manner as for the party being notified. The Company may request a change of address by written notification to the Director of Redevelopment and Economic Opportunity.

[signature page to follow]

WHEREFORE, the County and Company have executed this Agreement as of the date and year first above written.

MANATEE COUNTY, FLORIDA,
a political subdivision of the State of Florida

By: Board of County Commissioners

By:_____
County Administrator or designee

[COMPANY], a _____

By:_____
_____