

9652-08

**Economic Development Agreement**

**between**

**The City of Jacksonville**

**and**

**MACQUARIE HOLDINGS (U.S.A.) INC. AND  
MACQUARIE GLOBAL SERVICES (USA) LLC**

**Economic Development Agreement**

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Exhibits:

- Exhibit A - Description of the Project Parcel
- Exhibit B - Community Service Commitment
- Exhibit C - Annual Survey
- Exhibit D - Job Report

## ECONOMIC DEVELOPMENT AGREEMENT

This ECONOMIC DEVELOPMENT AGREEMENT (this "Agreement") is made this 11 day of Dec, 2015 (the "Effective Date"), between the CITY OF JACKSONVILLE, a municipal corporation and a political subdivision of the State of Florida (the "City") and MACQUARIE HOLDINGS (U.S.A.) INC., a Delaware corporation, and MACQUARIE GLOBAL SERVICES (USA) LLC, a Delaware limited liability (collectively, the "Company").

### Article 1. PRELIMINARY STATEMENTS

#### 1.1 The Project.

The Company proposes to lease and improve an office facility located at a to be determined site located within Duval County, Florida, as more particularly described on Exhibit A attached hereto (the "Project Parcel") which will serve as office space. The creation of jobs pursuant to Article 7 hereof and the obligations of the Company under this Agreement are collectively referred to herein as the "Project." The proposed Project includes improvements in the amount of \$2,200,000 on the Project Parcel. The Project is expected to represent an estimated total Capital Investment of \$3,100,000 by the Company.

#### 1.2 Authority.

The City Council has authorized execution of this Agreement pursuant to City Resolution 2015-446-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 123 New Jobs (defined below) with an average annual salary of \$64,356;
- (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 \$3,100,000.

#### 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 THREE HUNDRED NINETY-THREE THOUSAND SIX HUNDRED AND NO/100 (\$393,600.00).

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.**

Macquarie Holdings (U.S.A.) Inc., a Delaware corporation, and Macquarie Global Services (USA) LLC, a Delaware limited liability 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 **Metropolitan Statistical Area.**

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

2.6 **New Jobs.**

Permanent Jobs new to the City and the State with an average annual salary of \$64,356.

2.7 **OED.**

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

2.8 **Permanent Jobs.**

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

2.9 **Related Companies**

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

2.10 **State.**

The State of Florida.

2.11 **State Agreement.**

The QTI tax refund agreement to be entered into between the Company and the State in connection with the creation of 123 New Jobs in the City by the Company.

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"):

<b>Job Creation Schedule</b>		
<b>Year</b>	<b>Jobs Created</b>	<b>Date Created By</b>
1	86	12/31/16
2	37	12/31/17
<b>Total</b>	<b>123</b>	

3.2 **Approval of Agreement.**


By the execution hereof, the parties certify as follows:

\_\_\_\_\_  
Company's Initials

- (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 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) the Company, its business operations, and each person or entity composing the Company are in compliance with all federal, state and local laws.
- (b) The City certifies that the execution and delivery hereof is binding upon the City to the extent provided herein and enforceable against it in accordance with its terms.

**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 bonus 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 \$147,600 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 the Resolution 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 \$738,000, or \$6,000 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

123 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 its local match during the applicable fiscal year which begins October 1<sup>st</sup>.

If the Company fails to create 123 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 office 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.**  
**CITY TRAINING GRANT**

**5.1 City Training Grant; Amount.**

Company is committed to hiring and training a minimum of 123 New Jobs at the Project Parcel. The City shall make a City Training Grant to Company in an amount not to exceed \$246,000, calculated based upon a maximum of 123 new employees being hired that fulfill the New Jobs requirements, with a total City Training Grant of \$2,000 per each employee hired and trained (the "CT Grant"), payable during calendar years 2016, 2017 and 2018. The City's obligation to make the CT Grant is subject to the terms and conditions of this Agreement.

**5.2 Payment of CT Grant.**

The City's obligation to pay the CT Grant to the Company is conditioned upon the Company or the State providing the OED with evidence reasonably satisfactory to the City that the Company has received a QRT payment in full related to an employee's training. Such evidence shall include, but not be limited to, the reports and related documentation required to be submitted by the Company to the State of Florida, Workforce Florida, Inc. in connection with the Company's QRT Grant. Such reports shall include: (i) a summary of training provided to new employees; (ii) the total funds transferred to Company by City in connection with the CT Grant; (iii) the total program costs paid from funds made available by City pursuant to the CT Grant; and (iv) name and number of individuals hired and trained. Within sixty (60) days upon completion of training, or within sixty (60) days of the expiration or earlier termination of this Agreement, Company shall also submit a final program and budget report to City in connection with the CT Grant, consistent with the requirements of the QRT Grant.

The City will pay the CT Grant to the Company on an installment basis within sixty (60) days after the OED receives satisfactory evidence and documentation to verify the hiring and completed training of the CT Grant eligible employees.

**5.3 Further disclaimer.**

The CT Grant 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 5. The City shall not be obligated to pay the CT Grant 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 CT Grant or any installment thereof. The Company, and 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 CT Grant or any installment thereof.

**Article 6.**  
**QUICK RESPONSE TRAINING GRANT**

**6.1 QRT 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 \$282,900 (the "QRT Funds"). The QRT Funds are to be funded entirely by the State, with no City contribution.

**Article 7.**  
**JOB RETENTION/CREATION**

**7.1 Job Creation or Retention Activities.**

The Project will result in the creation of at least 123 New Jobs with an average annual salary of \$64,356 (for a total of at least 123 Permanent Jobs) at the Project Parcel 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 to fill a Permanent Job position made available by Company at the Project Parcel. 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. The parties acknowledge and agree that it may be necessary for Company 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 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, company under common control with 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 D**. The jobs requirement will be assessed a minimum of three times by the OED for potential reimbursement purposes and to determine compliance with the 123 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 , or (ii) December 31, 2017, and
- (b) on the date that is one year after the assessment in subsection 7.1(a) above, and
- (c) on the date that is two years after the assessment in subsection 7.1(a) above.

To afford the residents of the City a reasonable opportunity to compete for the jobs to be created as a result of this Agreement, the Company shall undertake an initial, one-time advertisement for said jobs and all positions to be filled as a result of openings created by promotions. Said advertising shall be in newspapers and periodicals, including the following: Florida Star, the Free Press, and the Florida Times-Union.

**Article 8.**  
**COMMUNITY SERVICE COMMITMENT**

**8.1 Community Service Commitment.**

The Company has actively participated in the community service activities more particularly described on **Exhibit B** 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 B**.

**Article 9.**  
**REPORTING**

**9.1 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 at the Project Parcel, 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 C** (the "Annual Survey") and **Exhibit D** (the "Job Report"); however the City reserves the right to request specific data that may vary from the forms attached.

The Company shall submit training reports and other reports in connection with the CT Grant, as set forth in Section 5 of this Agreement.

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 the CT Grant and associated employment.

Within thirty (30) days following the request of the City, the Company shall provide the City with additional information requested by the City.

**Article 10.**  
**DEFAULTS AND REMEDIES**

**10.1 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 in connection with the Agreement and any other agreement between the City and the Company related to the Project, or (iii) any document provided to the City relating to the Project (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, incorrect or misleading in any material respect any statement or information contained in any of the documents described in clauses (i) – (iii) above or causes such document to contain an untrue, incorrect or misleading 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 the QTI Refunds and CT Grant, 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 CT Grant 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 forty-five calendar days, Company shall have a total of 60 days in which to cure such default, so long as Company has commenced and is diligently proceeding to cure such default within the initial 45-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.

#### 10.2 Specific Defaults.

Additionally, for any of the specific events of default described in this Section 10.2 below, the parties agree that the City's damages recoverable from the Company shall include, but not be limited to, the following:

- (a) in the event reporting requirements are not met in the time period specified in Article 9 of this Agreement, the City will be entitled to withhold the annual installment of the CT Grant QTI Grant for any year during which any reporting requirements are not met.
- (b) failure of Company to provide training reports, even where no actual expenditures or training has occurred, will entitle the City to withhold any CT Grant payments that were then due. Failure to provide a training report when due shall be a material default and grounds for termination of the CT Grant at the discretion of City.
- (c) in the event the Company fails to create 123 New Jobs at no less than 90 percent of the average wage described in the Resolution, and to maintain the jobs for at least two consecutive years from the date Company first reports those jobs in writing to the OED, the Company will repay the City \$1,200 per job below the 123 person new job creation target. Calculation of job creation and retention will be determined based on the State's calculations under the State Agreement;
- (d) in the event he Company fails to create a minimum of 50 New Jobs by December 31, 2017 at no less than 90 percent of the average wage described in the

Resolution and to maintain such jobs for at least two consecutive years from the date Company first reports those jobs in writing to the OED, the Company will repay the entirety of the CT Grant previously paid to Company, and the CT Grant shall terminate.

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

The maximum combined repayment due under this Section 10.2 shall not exceed the total amount of the QTI Refunds and CT Grant actually paid to the Company under this Agreement.

### **10.3 Performance Schedule Default.**

In the event the Company fails to complete the Project in accordance with the Performance Schedule set forth in Section 3.1, the City shall not be obligated to pay any portion of the QTI Refunds and CT Grant.

## **Article 11.**

### **ANTI-SPECULATION AND ASSIGNMENT PROVISIONS**

#### **11.1 Assignment; Limitation on Conveyance.**

The Company agrees that, until the latest of payment in full of the QTI Refunds and payment in full of the CT Grant, it shall not, without the prior written consent of the City, which shall not be unreasonably conditioned, withheld or delayed, 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 and the CT Grant shall immediately terminate.

## **Article 12.**

### **GENERAL PROVISIONS**

#### **12.1 Non-liability of City Officials.**

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.

#### **12.2 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 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.

12.3 **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:

12.4 **Time.**

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

12.5 **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.

**12.6 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 (but only to the extent required to align the City's 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.

**12.7 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.

**12.8 Indemnification.**

Company shall indemnify, hold harmless and defend the City from and against, without limitation, any loss, claim, suit, action, damage, injury, liability, fine, penalty, cost, and expense of whatsoever kind or nature (including without limitation court, investigation and defense costs and reasonable expert and attorneys' fees and costs) related to any suits and actions of any kind brought against the City or other damages or losses incurred or sustained, or claimed to have been incurred or sustained, by any person or persons arising out of or in connection with: (i) any breach of any representation or warranty of Company contained or provided in connection with this Agreement; (ii) any breach or violation of any covenant or other obligation or duty of Company under this Agreement or under applicable law; (iii) any negligent act, error or omission, recklessness or intentionally wrongful conduct on the part of Company or those under its control that causes injury (whether mental or corporeal) to persons (including death) or damage to property, whether arising out of or incidental to Company's performance under this Agreement or relating to the Project, except to the extent cause by the sole negligence of the City. Nothing contained in this paragraph shall be construed as a waiver, expansion or alteration of the City's sovereign immunity beyond the limitations stated in Section 768.28, Florida Statutes.

This indemnification shall survive the expiration or termination (for any reason) of this Agreement and remain in full force and effect. The scope and terms of the indemnity obligations herein described are separate and apart from, and shall not be limited by any insurance provided



pursuant to this Agreement or otherwise. The term "City" as used in this Section 12.8 shall include all City's members, officers, officials, employees and agents.

12.9 **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.

12.10 **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.

12.11 **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 12.11 shall be incorporated into and become a part of the subcontract.

12.12 **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.

12.13 **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*.

12.14 **Conflict of Interest.**

The parties 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.

12.15 **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.

12.16 **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.

12.17 **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.

12.18 **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.

12.19 **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

12.20 **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.

12.21 **Retention of Records/Audit**

The Company agrees:

- (a) To establish and maintain books, records and documents (including electronic storage media) sufficient to reflect all income and expenditures of funds provided by the City under this Agreement.
- (b) To retain all client records, financial records, supporting documents, statistical records, and any other documents (including electronic storage media) pertinent to this Agreement 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 any records or documents during the required retention period.
- (d) To assure that these records shall be subject at all reasonable times to inspection, review, copying, or audit by personnel duly authorized by the City.
- (e) At all reasonable times for as long as records are maintained, to allow persons duly authorized by the City full access to and the right to examine any of the Company's contracts and related records and documents, regardless of the form in which kept.
- (f) To ensure that all related party transactions are disclosed to the City.
- (g) To include the aforementioned audit, inspections, investigations and record keeping requirements in all subcontracts and assignments.
- (h) To permit persons duly authorized by the City to inspect and copy any records, papers, documents, facilities, goods and services of the Company which are

relevant to this Agreement, and to interview any employees and subcontractor employees of the Company to assure the City of the 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 request for development by the Company of a corrective action plan where appropriate. The Company hereby agrees to timely correct all deficiencies identified in the corrective action plan.

- (i) If the result of any audit by the City establishes that the number of New Jobs, number of Permanent Jobs, or amount of private capital investment has been overstated by five percent (5%) or more, the entire expense of the audit shall be borne by the Company.
- (j) Additional monies due as a result of any audit or annual reconciliation shall be paid within forty-five (45) days of date of the City's invoice.
- (k) Should the annual reconciliation or any audit reveal 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 forty-five (45) days from the date of receipt of written notice from the City, then, in addition to any other remedies available to the City, the City may terminate this Agreement, solely at its option, by written notice to the Company.

#### 12.22 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.

#### 12.23 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.

#### 12.24 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.

**12.25 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.

**12.26 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.

**12.27 Further Assurances.**

Company will, on request of the City,

- (a) promptly correct any defect, error or omission herein or in any document executed in connection herewith (collectively the "Project Documents");
- (b) execute, acknowledge, deliver, procure, record or file such further instruments and do such further acts deemed necessary, desirable or proper by the City to carry out the purposes of the Project Documents and to identify and subject to the liens of the Project Documents any property intended to be covered thereby, including any renewals, additions, substitutions replacements, or appurtenances to the subject property;
- (c) execute, acknowledge, deliver, procure, file or record any documents or instruments deemed necessary, desirable or proper by the City to protect the liens or the security interest under the Project Documents against the rights or interests of third persons; and
- (d) provide such certificates, documents, reports, information, affidavits and other instruments and do such further acts deemed necessary, desirable or proper by the City to carry out the purposes of the Project Documents.

**12.28 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.

**12.29 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.

**12.30 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.

**12.31 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.

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

ATTEST:

CITY OF JACKSONVILLE

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

By: Sam E. Mousa  
Date: \_\_\_\_\_



WITNESS:

MACQUARIE HOLDINGS (U.S.A.) INC.,  
a Delaware corporation

Sophia Miraya  
Print Name: Sophia Miraya

By: Kathleen Hahn  
Name: KATHLEEN HAHN  
Its: VICE-PRESIDENT  
Date: 9/1/2015

Ronald J. Rehk  
Print Name: RONALD J. REHK

Sam E. Mousa  
Chief Administrative Officer  
For: Mayor Lenny Curry  
Under Authority of:  
Executive Order No. 2015-05

Macquarie Group Legal  
Commercial  
New York  
Approved for  
Signature  
Christine Rivera  
Date: 27 Nov 2015

WITNESS:

[Signature]  
Print Name: Sophia Minaya

[Signature]  
Print Name: Ronald J. Rakl

MACQUARIE GLOBAL SERVICES (USA)  
LLC,  
a Delaware limited liability company

By: [Signature]  
Name: KATHLEEN HARTN  
Its: \_\_\_\_\_  
Date: 9/1/2015

FORM APPROVED:

[Signature]  
Office of the General Counsel

G:\Gov't Operations\USawyer\OED\_Development Agreements\Project Post\EDA Proj. Post (OGC) v6.docx

Macquarie Group Legal  
Commercial  
New York  
Approved  
Signature  
Christine Rivera  
Date: 27 AUG 2015

**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 # 9652-08 *11/10*

Contract Encumbrance Data Sheet follows immediately.

\_\_\_\_\_  
Company's Initials



**LIST OF EXHIBITS**

- Exhibit A Description of the Project Parcel**
- Exhibit B Community Service Commitment**
- Exhibit C Annual Survey**
- Exhibit D Job Report**

**Exhibit A**  
**Description of Project Parcel**

A to be determined site to be located in Duval County, Florida.

**Exhibit B**  
**Community Service Commitment**

The Company is very involved in non-profit activities in each of the communities it has a presence. Below is a summary of its 2015 impact on the non-profit community and some of the organizations it is currently partnering with:

**FY 2015 Impact - Staff Volunteering and Giving**

Hours Volunteered: 8,500 (Global – 33,500)

No. Non-Profit Organizations Supported: 429 (Global - 1300)

Total Giving\*: \$3.63M (Global – \$18.4M)

\*includes staff donations and matching (\$2.96M) direct grants (\$610,000), balance is staff participation awards and grants

Some of the organizations the Company currently works with, include: Global Foodbanking Network, America Needs You, Muscular Dystrophy Association and Doctors without Borders.

**EXHIBIT C**

**Annual Survey**



Directions: Please complete the form below as it relates to the project for which you received City or State assistance.

Should you have any questions, please call Cynthia Solomon at (904) 630-1019.

**2015 Annual Survey**

Send completed form to:

OED- Finance and Compliance  
c/o Cynthia Solomon  
117 W. Duval Street, Suite 275  
Jacksonville, FL 32202  
Fax (904) 630-1019  
e-mail: csolomon@coj.net

**I. GENERAL INFORMATION**

Company Name: \_\_\_\_\_  
Mailing Address: \_\_\_\_\_  
\_\_\_\_\_  
Primary Contact Name: \_\_\_\_\_  
Primary Contact Title: \_\_\_\_\_  
Phone: \_\_\_\_\_  
E-mail: \_\_\_\_\_

**II. EMPLOYMENT INFORMATION**

As of 12/31/2015:

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: \_\_\_\_\_ %

**III. CAPITAL INVESTMENT INFORMATION**

Project to date as of 12/31/15:

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

\_\_\_\_\_  
Company's Initials

**IV. ASSESSED PROPERTY VALUE**

Assessed Value of Property on 2015 Duval County  
Property Tax Bill:

Real Property	[7] _____
Personal Property	[8] _____
Total of [7] and [8]	\$ _____

**EXHIBIT D  
Jobs Report**



Send completed form to:  
OED- Finance and Compliance  
c/o Cynthia Solomon  
117 W. Duval Street, Suite 275  
Jacksonville, FL 32202  
Fax (904) 630-1019  
e-mail: csolomon@coj.net

Company Name: \_\_\_\_\_

Reporting Date: \_\_\_\_\_ Job Reported: \_\_\_\_\_

This form should be completed to document all jobs located at the project location as required in the Agreement. The top half of this form must be completed. The bottom half can either be completed with all required information or a report can be run from the company's HR system. Additionally a UCT-6 form for the fourth quarter of the year must accompany this form. Employees listed on this form must be on the Company's payroll as of December 31. The OED reserves the right to audit the Company's records to verify the information included on this form and the accompanying UCT-6 form.

I hereby certify that the information in this Job Report and any accompanying documents is true and correct to the best of my knowledge, information and belief. (At least one signature to be from a Vice President or higher ranking officer or in the case of an LLC, a manager or managing member.)

Contact Name: \_\_\_\_\_ Contact Name: \_\_\_\_\_  
Contact Title: \_\_\_\_\_ Contact Title: \_\_\_\_\_

Name	Social Security #	Employee's City of Residence	Title	Full-time (FT)/		Benefits? (Y/N)
				Part-time (PT)?		
John Doe	123-45-XXXX	Jacksonville	Manager	FT		Y

Average Wage: \$ \_\_\_\_\_  
(of all employees listed)

\_\_\_\_\_  
Company's Initials