

MEMORANDUM OF AGREEMENT

THIS MEMORANDUM OF AGREEMENT (“**Agreement**”) is made and entered into by and between ESCAMBIA COUNTY (“**County**”), a political subdivision of the State of Florida, acting by and through its duly authorized Board of County Commissioners (“**BOCC**”), and NAVY FEDERAL CREDIT UNION (“**NFCU**”), a federally chartered credit union, (County and NFCU at times referred to herein individually as a “**Party**” and collectively as the “**Parties**”).

WITNESSETH:

WHEREAS, pursuant to §125.045, Florida Statutes, the Legislature has declared it to be in the public interest to facilitate the growth and creation of business enterprises and, to that end, has conferred certain powers and duties upon the governing body of the County to enhance and expand economic activity within Escambia County; and

WHEREAS, the County is authorized to engage in activities conducive to such economic promotion, including, but not limited to, conveying real property; and

WHEREAS, on January 29, 2019, the County acquired an approximately 640-acre parcel (commonly referred to as “**Outlying Landing Field 8**” or “**OLF-8**”) located in the Beulah area, pursuant to a Land Exchange Agreement with the United States Department of the Navy; and

WHEREAS, on or about December 10, 2015, the Parties entered into an *Economic Development Incentive Fund Program Agreement* (“**Program Agreement**”) wherein NFCU anticipated creating additional full-time jobs in Escambia County over a term of ten years; and

WHEREAS, NFCU desires to purchase approximately 98 acres of the OLF-8 property to further expand its campus and pursuant to Resolution 2019-42, the Board of County Commissioners found that allowing so serves the County’s economic development purposes; and

WHEREAS, County and NFCU entered into that certain *Contract for Sale and Purchase* effective as of May 31, 2019, as amended by that certain *First Amendment to Contract for Sale and Purchase* effective as of July 25, 2019 (the *Contract for Sale and Purchase*, as amended by the *First Amendment to Contract for Sale and Purchase*, referred to herein as the “**Contract**”) regarding NFCU’s acquisition of a portion of the OLF-8 property (as more particularly set forth therein)(such portion of the OLF-8 property referred to herein as the “**Property**”); and

WHEREAS, pursuant to the Contract, as a condition precedent to County’s obligation to proceed to closing on the sale of the Property to NFCU, NFCU and County will enter into a separate agreement at closing regarding the creation of 300 additional full-time jobs on NFCU’s Heritage Oaks campus (the “**Condition Precedent**”); and

WHEREAS, the County has determined that it is in the best interest of the public to convey the Property subject to the conditions set forth in the Contract in order to facilitate economic development and promote a stable economy by maximizing the creation of jobs with wages higher than the Escambia County median income.

NOW, THEREFORE, in consideration of the foregoing and in full satisfaction of the Condition Precedent, the Parties set forth the following agreements and understandings:

1. **Recitals.** The recitals set forth above are true and correct and are incorporated into this Agreement.

2. **Job Creation.**

2.1 **Baseline Jobs.** The Parties have determined that for purposes of this Agreement, NFCU has _____ *[number to be inserted at or before closing of the transaction contemplated by the Contract, and will be based upon the occupancy report for the Heritage Oaks campus generated by NFCU as of COB two (2) days prior to such closing]* local full-time employees at NFCU's Heritage Oaks campus in Escambia County (the "**Baseline Jobs**").

2.2 **Additional New Jobs.** Within three (3) years of the Effective Date, NFCU shall create 300 additional full-time jobs at its Heritage Oaks campus ("**Additional New Jobs**"), resulting in NFCU's combined Baseline Jobs and Additional New Jobs of at least _____ *[number to be inserted at or before closing of the transaction contemplated by the Contract —sum of Baseline Jobs + 300]* full-time employees, having an overall average annual gross salary of at least \$49,500.00 (including bonuses, overtime, annual leave, sick leave, and any other similar payments, but excluding non-cashable employee benefits). The Parties acknowledge and agree that the Additional New Jobs shall not include any existing jobs subsequently transferred to the Heritage Oaks campus from NFCU's Pace Boulevard or Milton off-site locations.

2.3 **Maintenance of Additional New Jobs.** NFCU shall maintain the Additional New Job(s) for a period of not less than three (3) years after the creation of the respective Additional New Job(s). Without limiting the foregoing, the Parties expressly acknowledge and agree that in no event will the creation and maintenance of the Additional New Jobs be determined or tied to any specific individual, position, or job title.

2.4 **Documentation.** The Parties acknowledge and agree that NFCU's submittal of the documentation provided to County under the Program Agreement shall be sufficient to document the Additional New Jobs created and maintained under this Agreement. The number of Additional New Jobs created and maintained during the Term pursuant to this Agreement shall be determined based upon the difference between the number of jobs listed on NFCU's quarterly unemployment reports and the number of Baseline Jobs. It is understood and agreed that the 300 Additional New Jobs created and maintained pursuant to this Agreement shall not qualify as Additional Project Jobs under the Program Agreement and will not be eligible for annual incentive grant funding.

2.5 **Penalty.** If NFCU fails to create at least 300 Additional New Jobs at its Heritage Oaks campus, or fails to maintain the Additional New Job(s) at its Heritage Oaks campus for a period of not less than three (3) years after the creation of the respective Additional New Job(s), then NFCU may be required by the County to repay a pro-rata portion of the

Annual Grant(s) payable to NFCU pursuant to the terms of the Program Agreement. In lieu of repayment, the County may elect to deduct said amount from any subsequent Annual Grant payment paid by the County pursuant to the terms of the Program Agreement. The total amount that may be required to be repaid by NFCU (or deducted by County) for NFCU failing to create and maintain the Additional New Jobs shall not exceed the sum of \$300,000.

2.6 Additional Documentation. NFCU agrees to provide such additional documentation and information as may be reasonably necessary to support the County's Triumph Gulf Coast, Inc. Trust Fund Grant Application. Notwithstanding anything contained herein to the contrary, in no event shall NFCU ever be required to provide specific employee-identifiable data, including without limitation, any employees' names, employee numbers, social security numbers, individual salary data, and/or job titles.

3. Recreational Facilities. NFCU plans to use a portion of the Property for construction of recreational facilities, the nature and location of which will be in NFCU's discretion. The design and construction of these recreational facilities will be paid for by NFCU. NFCU will at all times retain title to and remain responsible for the maintenance of these recreational facilities. NFCU will allow public access to some (or certain portions) of the recreational facilities on the Property once constructed, as designated by NFCU, and subject to NFCU's reasonable conditions and limitations. NFCU reserves the right to modify or restrict public access to the designated recreational facilities (or modify any conditions or limitations related to such access). County and NFCU acknowledge and agree that nothing herein shall be construed to create or require a dedication, deed restriction, public easement, or encumbrance of any kind or nature relating to the Property.

4. Term. The term ("Term") of this Agreement will commence on the date last executed (the "Effective Date") and will continue for a term of six (6) years or until the expiration of the three (3) year maintenance period following the creation of the 300th Additional New Job, whichever may occur earlier.

5. Notices. Any notice, request or other deliveries required to be given hereunder shall be deemed given if sent by registered or certified mail, or overnight delivery service, postage prepaid, addressed to the following addresses:

Escambia County, Florida
Attn.: Janice Gilley, County Administrator
221 Palafox Place, Suite 420
Pensacola, Florida 32502

Navy Federal Credit Union
Attn.: Kara Cardona, SVP GPO
5550 Heritage Oaks Drive
Pensacola, Florida 32526

6. No Agency; No Delegation. Neither Party shall be considered an agent of, or acting on behalf of, the other Party. Nothing contained in this Agreement shall be construed to create any fiduciary relationship between the Parties, during or after the performance of this Agreement. Neither Party shall have the authority to bind the other Party to any obligation whatsoever to any third party without the express, specific written consent of the other.

7. **Records.** The parties acknowledge that this Agreement and any related financial records, audits, reports, plans, correspondence, and other documents may be subject to disclosure to members of the public pursuant to Chapter 119, Florida Statutes, as amended. In the event a party fails to abide by the provisions of Chapter 119, Florida Statutes, the other party may, without prejudice to any right or remedy and after giving that party, seven (7) days written notice, during which period the party fails to allow access to such documents, terminate this Agreement.

8. **Assignment.** This Agreement, or any interest herein, shall not be assigned, transferred or otherwise encumbered, under any circumstances, by the Parties, without prior written consent of the other Party.

9. **Amendments.** This Agreement may be amended only in writing signed by each of the Parties hereto or their successors and assigns.

10. **Severability.** If any clause, provision, or section of this Agreement is held to be illegal or invalid by any court, the invalidity of the clause, provision, or section shall not affect any of the remaining clauses, provisions, or sections, and this Agreement shall be construed and enforced as if the illegal or invalid clause, provision, or section had not been contained in it.

11. **Integration.** This Agreement constitutes the entire agreement between the Parties and supersedes all prior negotiations, writings, agreements, or other understandings between the Parties with respect to the subject matter of this Agreement.

12. **Counterparts.** This Agreement may be executed in any number of counterparts, each of which shall be deemed to be an original, and all of which together shall constitute but one and the same instrument.

13. **Governing Law and Venue.** This Agreement will be governed by the laws of the State of Florida and venue for any litigation or dispute resolution proceeding will be in Escambia County, Florida without regard to its conflict of law rules.

[signatures on the following page]

IN WITNESS WHEREOF, the Parties hereto have caused this Agreement to be executed through their duly authorized signatories on the respective dates under each signature.

ESCAMBIA COUNTY FLORIDA, a political subdivision of the State of Florida acting by and through its duly authorized Board of County Commissioners

By: _____
Steven Barry, Chairman

Date: _____

BCC Approved: _____

ATTEST: Pam Childers
Clerk of the Circuit Court

By: _____
Deputy Clerk
(Seal)

NAVY FEDERAL CREDIT UNION, a federally chartered credit union

By: _____

Title: _____

Date: _____