

FIN
20-423

Amended and Restated Economic Development Agreement

between

The City of Jacksonville

and

United Parcel Service, Inc.

Economic Development Agreement

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- Exhibit A - Description of the Project Parcel
- Exhibit B - Improvements
- Exhibit C - JSEB Reporting Form
- Exhibit D - Annual Survey
- Exhibit E - Job Report

AMENDED AND RESTATED ECONOMIC DEVELOPMENT AGREEMENT

This **ECONOMIC DEVELOPMENT AGREEMENT** (this "Agreement") is made this ___ day of _____, 2020 (the "Effective Date"), between the **CITY OF JACKSONVILLE**, a municipal corporation and a political subdivision of the State of Florida (the "City") and **UNITED PARCEL SERVICE, INC.**, an Ohio corporation (the "Company").

Article 1. PRELIMINARY STATEMENTS

1.1 The Project.

(a) The City and Company previously entered into that certain Economic Development Agreement dated May 19, 2017, City Contract number #9652-34 (the "Agreement"), as authorized by Resolution 2016-700-A, pursuant to which the Company anticipated making a Capital Investment of \$196,000,000 to expand and renovate its existing facility at 4420 Imeson Road, Jacksonville, Florida as more particularly described on Exhibit A attached hereto (the "Project Parcel"), which will serve as a distribution facility. The Agreement authorized a REV Grant to the Company upon substantial completion of the Project in the amount of \$4,300,000. The Company is in compliance with the terms and conditions of the Agreement, and has invested approximately \$173,000,000 in the Project (as defined in the Agreement) as of the Effective Date hereof. After further evaluation and analysis, the Company proposes to invest an additional \$138,000,000 at the Project Parcel, for a combined total of \$334,000,000 of Capital Investment in the Project, defined below. Accordingly, the City and Company have agreed to amend and restate the Agreement in its entirety, in order to reflect the expanded scope and financial investment in the Project, increase job creation requirements from 10 to 240, and to increase the maximum amount of the REV Grant from \$4,300,000 to \$6,800,000, with such other revisions as set forth herein. The improvements described on Exhibit B attached hereto (the "Improvements") located or to be located on the Project Parcel, the creation of jobs pursuant to Article 6 hereof and the obligations of the Company under this Agreement are collectively referred to herein as the "Project."

1.2 Authority.

The City Council has authorized execution of this Agreement pursuant to City Resolution 2020-___-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) increase capital investment in the Northwest Jacksonville Area (the "Target Area");
- (b) support sustainable job growth by retaining 1,246 Permanent Jobs (defined below);
- (c) create 240 New Jobs (defined below) with an average annual salary of \$50,000;

- (d) generate significant new ad valorem taxes, including significant new tax revenues for the public school system;
- (e) help meet the overall community goal of business development and growth in North Jacksonville/Downtown Jacksonville;
- (f) create induced and indirect job effects which will have a positive impact on local small businesses; and
- (g) promote and encourage private Capital Investment in an amount that is expected to be approximately \$334,000,000.

1.4 **Jacksonville Small and Emerging Business Program.**

As more fully described in City Ordinance 2004-602-E, the City has determined that it is important to the economic health of the community that whenever a company receives incentives from the City, that company provides contracting opportunities to the maximum extent possible to small and emerging businesses in Duval County as described in Section 8.1.

1.5 **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.

1.6 **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 SIX MILLION EIGHT HUNDRED THOUSAND AND NO/ 100 DOLLARS (\$6,800,000.00).

1.7 **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 **Base Year.**

The base year for purposes of this Agreement shall be the 2016 tax year.

2.2 **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.

2.3 **City Council.**

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

2.4 **Company.**

United Parcel Service, Inc., an Ohio corporation.

2.5 **Completion of Construction.**

The substantial completion of the Improvements as reasonably certified by the Company to the City, on or before December 31, 2024.

2.6 **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.

2.7 **Improvements.**

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

2.8 **Metropolitan Statistical Area.**

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

2.9 **New Jobs.**

Permanent Jobs new to the City and the State with an average annual salary of \$50,000 and maintained until 12/31/2025.

2.10 **OED.**

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

2.11 **Permanent Jobs.**

Full-time equivalent jobs created by the Company at the Project Parcel to be maintained for the duration of the REV Grant (defined below).

2.12 **State.**

The State of Florida.

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"):

Year	New Jobs Created	Date Created By
1	60	12/31/21
2	60	12/31/22
3	60	12/31/23
4	60	12/31/24
Total	<u>240</u>	

Start of Construction – on or before December 31, 2016

Completion of Construction – on or before December 31, 2024

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

3.2 Approval of Agreement.

By the execution hereof, the parties certify as follows:

- (a) The 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 Company;
 - (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 and its business operations at the Project Parcel are in substantial compliance with all applicable federal, state and local laws.
- (b) The City certifies that the execution and delivery hereof has been authorized by the City Council and all other required parties, is binding upon the City to the extent provided herein and is enforceable against it in accordance with its terms.

Article 4.
REV GRANT

4.1 Recapture Enhanced Value Program; Amount.

The City shall make a Recapture Enhanced Value grant (“REV Grant”) to the Company, in a total amount not to exceed \$6,800,000, partially payable beginning in fiscal year 2022 for tax year 2021 (the “Initial Year”) and ending after a term of five (5) years, but not later than fiscal year 2026 for tax year 2025 (the “Final Year”), except in the case of a pending proceeding before the City Value Adjustment Board, Circuit Court, or otherwise that could change the amount of the Annual Project Revenues that the Company was obligated to pay for that tax year and upon which the REV Grant payment would be based, all as more fully described below in this Article 4.

4.2 Payments of REV Grant.

The REV Grant shall be paid by the City to the Company by check, in annual installments determined in accordance with Section 4.3, due and payable on or before May 15 of each calendar year, commencing May 15 of the Initial Year and ending May 15 of the Final Year, or when the maximum amount of the REV Grant shall have been paid to the Company, whichever occurs first. The City shall have no liability for any REV Grant in excess of the amount stated in Section 4.1 or after payment of the final installment due May 15 of the Final Year, and, except as expressly provided in this Agreement, the REV Grant payments as determined pursuant to Section 4.3 shall not be subject to reduction or repayment.

4.3 Determination of Annual Installments of REV Grant.

The amount of each annual installment of the REV Grant shall be the sum which is equal to: 50% of the “Annual Project Revenues” (as defined and determined in this Section 4.3) received by the City during the twelve (12) month period ended April 1 preceding the due date of such annual installment. For the purposes of this Agreement, “Annual Project Revenues” means the amount of all municipal and county ad valorem taxes, exclusive of any amount from any City debt service millage (i.e., bond) or Business Improvement District (“BID”) millage existing or enacted pursuant to State or local law, actually paid by any taxpayer for that tax year (net of any discount pursuant to Section 197.162, Florida Statutes, or any successor provision, actually taken by the taxpayer) during such period with respect to all real property and tangible personal property comprising the Project, less the amount of all municipal and county ad valorem taxes that would have been levied or imposed on the Project for

that tax year using the assessed value for the Base Year, which for the purpose of this Agreement shall be \$26,452,110.00 exclusive of any debt service millage. The foregoing references to ad valorem taxes shall be deemed to include any other municipal or county taxes, or other municipal or county fees or charges in the nature of or in lieu of taxes, that may hereafter be levied or imposed on the Company with respect to real property or tangible personal property comprising the Project, in lieu of or in substitution for the aforesaid taxes and which are levied or imposed for general municipal or county purposes or shall be available for the City's general fund, but not including stormwater or garbage fees or assessments.

By April 1 of each calendar year, commencing April 1, Initial Year and ending April 1, Final Year, the Company shall give written notice to the City of the amount of county ad valorem taxes paid during the preceding twelve (12) month period ending April 1, quantified by real property and tangible personal property amounts. If, by April 1 of any year, the Company has failed to give notice of taxes paid during the preceding twelve (12) month period, the Company shall not be eligible for a REV Grant payment for that year. Provided, however, that if the Company provides timely notice in future years, the Company shall be eligible for a REV Grant payment based on the Annual Projected Revenues in such future year's notice.

Except as provided below, within thirty (30) days of receipt of said notice, City shall provide the Company with a calculation as to the annual REV Grant. If the Company does not give written notice to the City of its objection to the City's calculation within thirty (30) days after its receipt thereof, the City's calculation shall be considered acceptable. Except as provided below, the City shall make payment of the REV Grant by the later of May 15th of each calendar year or thirty (30) days after City's receipt of notification by the Company that it is in agreement with the City's annual calculation. In the event of a disagreement as to the calculation, the City shall make payment of the amount not in dispute and the parties shall negotiate in good faith any disputed amount.

The foregoing dates for the Company to provide written notice to the City of the amount of municipal and county ad valorem taxes paid during the preceding twelve (12) month period and the City to provide the REV Grant calculation and make the REV Grant payment shall be extended if on either of such dates the Company has a pending proceeding before the City Value Adjustment Board, Circuit Court, or otherwise that could change the amount of the Annual Project Revenues that the Company was obligated to pay for that tax year and upon which the REV Grant payment would be based. In that event, the dates that the Company is to provide written notice to the City of the amount of county ad valorem taxes paid during the preceding twelve (12) month period shall be extended until 30 days after any such proceeding has been finally resolved (including any appeals) and any adjustment to the Annual Project Revenues for that tax year has been made and paid and the date that the City is required to provide the REV Grant calculation to the Company shall be extended until 30 days after the date that the Company notifies the City of the final resolution of such proceeding. Such notice from Company to the City shall include (i) a copy of any final order or final judgment or other evidence of the resolution of such proceeding that sets forth any change to the assessed value of the Property upon which the Annual Project Revenues are based for that tax year, and (ii) the amount of the adjusted Annual Project Revenues paid by the Company.

4.4 **Further disclaimer.**

The REV 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 4. The City shall not be obligated to pay the REV 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 REV Grant or any installment thereof. The City shall have no obligation to construct, equip, maintain or repair the Project and shall have no, and this Agreement shall not be deemed to create, any lien, security interest or other encumbrance on the Project. 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 REV Grant or any installment of either.

Article 5.
FLORIDA FLEX GRANT

The OED will assist the Company, at no cost to the City, in applying for State of Florida Flex Training Grant funds in such amounts as approved by the State (the "FFG Grant"). The FFG Grant funds are to be funded entirely by the State, with no City contribution.

Article 6.
JOB RETENTION/CREATION

6.1 Job Creation or Retention Activities.

The Project will result in the retention of at least 1,246 Permanent Jobs through payment of the final installment of the REV Grant and the creation of at least 240 New Jobs with an average annual salary of \$50,000 (for a total of at least 1,486 Permanent Jobs) at the Project Parcel in accordance with the Performance Schedule. The employees filling the 240 New Jobs must reside within the Metropolitan Statistical Area.

An "employee" of the Company means any person employed by the Company at the Project Parcel or by any employee leasing company (or other similar third-party employer) to fill a Permanent Job position made available by the Company at the Project Parcel. It is acknowledged and agreed that any of the New Jobs may be filled, in the Company's discretion, by persons employed by the Company or by persons employed by any employee leasing company selected by the Company. The parties acknowledge and agree that it may be necessary for the Company or any such third-party employer to commence the recruitment, interviewing, consideration, selection and training of prospective employees to fill such New Jobs, or to hire employees, in sufficient time to commence its operations as soon as possible after completion of the Project. In the event that notwithstanding the City's best efforts, the Company or any such third-party employer found or finds it necessary to recruit, interview, consider, select or train any persons, or fill any New Jobs to be created in the City as a result of this Agreement, before execution of this Agreement, 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 reimbursement or refund in connection with this Agreement. For the purposes of this Section 6.1, the term "Company" shall include any parent, holding or subsidiary company of the Company, or any other business related by virtue of a merger, purchase, or acquisition by the Company.

The Company shall provide to the OED prior to March 1 of each year this Agreement is in effect the annual reporting forms in the format of, and containing at a minimum the information on, **Exhibit E**. The jobs requirement will be assessed annually throughout the term of the REV Grant by the OED for potential reimbursement purposes and to determine compliance with the 1,486 person Permanent Job maintenance requirement.

Article 7. THE DEVELOPMENT

7.1 Scope of Development.

- (a) The Company shall construct and develop or cause to be constructed and developed, in substantial compliance with the times set forth in the Performance Schedule, all Improvements which the Company is obligated to construct and develop under the Performance Schedule and this Agreement.
- (b) The Company shall construct all Improvements in accordance with all applicable building and permitting codes.

7.2 Cost of Development.

Except as otherwise set forth in this Agreement, the Company shall pay the cost of constructing and developing the Improvements at no cost to the City.

7.3 Approval by Other Governmental Agencies.

All of the parties' respective rights and obligations under this Agreement are subject to and conditioned upon approval of the Project and all Project Documents by such other governmental agencies, whether state, local or federal, as have jurisdiction and may be required or entitled to approve them. Notwithstanding any provision of this Agreement to the contrary, the City does not guarantee approval of this Agreement or any aspect of the Project by any government authorities and agencies that are independent of the City.

7.4 Authority of OED to Monitor Compliance.

During all periods of design and construction, the Economic Development Officer of the OED and the City's Director of Planning and Development shall have the authority to monitor compliance by the Company with the provisions of this Agreement and the Project Documents. Insofar as practicable, the OED shall coordinate such monitoring and supervising activity with those undertaken by the City so as to minimize duplicate activity. To that end, during the period of construction and with not less than

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24 hours prior notice to the Company, representatives of the City shall have the right of access to the Project Parcel and to every structure on the Project Parcel during normal construction hours, subject in all events to the safety and security policies of the Company. A representative of the Company shall accompany all such inspections.

7.5 Timing of Completion.

The Project Improvements shall be completed substantially in accordance with the terms of this Agreement and the Performance Schedule, subject to the force majeure provisions of Section 12.2 hereof.

7.6 Construction and Operation Management.

Except as otherwise expressly provided herein, the Company shall have discretion and control, free from interference, interruption or disturbance, in all matters relating to the management, development, redevelopment, construction and operation of the Project, provided that the same shall, in any event, conform to and comply with the terms and conditions of this Agreement, and all applicable state and local laws, ordinances and regulations (including without limitation, applicable zoning, subdivision, building and fire codes). The Company shall retain all rights to contest in good faith the applicability of all such state and local laws, ordinances and regulations to the Project and to seek any waivers and exceptions with respect thereto. The Company's discretion, control and authority with respect thereto shall include, without limitation, the following matters:

- (a) the construction and design of the Project, subject to the express terms and conditions of this Agreement;
- (b) the selection, approval, hiring and discharge of engineers, architects, contractors, subcontractors, professionals and other third parties (collectively the "Vendors") on such terms and conditions as the Company deems appropriate; provided however, that to the extent that the City furnishes to the Company the names and identities of Jacksonville-based Vendors, including without limitation Jacksonville-based minority Vendors, and to the extent that Company has the need to enter into contracts with Vendors outside of persons employed by Company or companies affiliated with or controlled by Company or its principals, then Company agrees to include all such Jacksonville-based Vendors in the process established by Company, if any, for obtaining bids for any of the Improvements;
- (c) the negotiation and execution of contracts, agreements, easements and other documents with third parties, in form and substance satisfactory to Company; and
- (d) the preparation of such budgets, cost estimates, financial projections, statements, information, and reports as the Company deems appropriate.

**Article 8.
JSEB PROGRAM**

8.1 Jacksonville Small and Emerging Businesses (JSEB) Program.

The Company, in further recognition of and consideration for the public funds provided to assist the Company pursuant to this Agreement, hereby acknowledges the importance of affording to small

and emerging vendors and contractors the full and reasonable opportunity to provide materials and services. Therefore, the Company hereby agrees as follows:

- (a) The Company shall obtain from the City's Procurement Division the list of certified Jacksonville Small and Emerging Businesses ("JSEB"), and shall exercise good faith, in accordance with Municipal Ordinance Code Sections 126.608 et seq., to enter into contracts with City certified JSEBs to provide materials or services in an aggregate amount of not less than \$1,360,000, which amount represents 20% of the City's maximum contribution to the Project with respect to the development activities or operations of the Project over the term of this Agreement.
- (b) The Company shall submit JSEB report(s) regarding the Company's actual use of City certified JSEBs on the Project, (i) on the date of any request for City funds which are payable prior to the Completion of Construction, and (ii) upon Completion of Construction. The form of the report to be used for the purposes of this section is attached hereto as Exhibit C (the "JSEB REPORTING FORM").

**Article 9.
REPORTING; SITE VISITS**

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 the Company at the Project Parcel 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 D (the "Annual Survey") and Exhibit E (the "Job Report"); however the City reserves the right to request specific data relating to the REV Grant, the Project and the associated employment required in order to confirm the Company's compliance with its covenants hereunder that may vary from the forms attached.

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 REV 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.

9.2 Site Visits.

For so long as City has any payment obligations to Company pursuant to this Agreement, Company shall permit representatives from the City's OED and other designated City personnel, to monitor compliance by Company with the provisions of this Agreement. With prior notice to Company, representatives of City shall have the right to tour the Project and access Company's records and employees related to the Project and this Agreement, during normal business hours, provided, however, that Company shall have the right to have a representative of Company present during any such inspection.

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 REV Grant 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 REV 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 15 business days, The Company shall have a total of 45 business days in which to cure such default, so long as The Company has commenced and is diligently proceeding to cure such default within the initial 15-day period. Notwithstanding the foregoing, The Company shall immediately and automatically be in default, and the City shall not be required to give The 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 the 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 be:

- (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 REV Grant for any year during which any reporting requirements are not met.
- (b) in the event the Company fails to maintain the 1,246 Permanent Jobs through payment of the final installment of the REV Grant and 240 New Jobs with an average annual salary of \$50,000 in accordance with the Performance Schedule, the REV Grant will be reduced proportionately. Calculated on an annual basis utilizing the Company's annual jobs report, any shortfall in the Permanent Jobs retention requirement will result in a proportionate reduction in that year's REV Grant. For example, a 10 percent job shortfall in the initial year of the REV Grant would result in a 10 percent reduction in the REV Grant attributed to that tax year and payable on or before May 15 of the following year;
- (c) if, by December 31, 2023, the Company fails to invest at least \$300,000,000 of private Capital Investment in the Project, the REV Grant will be terminated and the Company will repay the City the entire amount of the REV Grant that has been previously paid to the Company.
- (d) in the event the Company sells, leases or otherwise transfers the Project or Project Parcel (the "Sale") during the term of the REV Grant to a party other than to an affiliate of the Company or in connection with a sale/leaseback transaction, the remaining balance of the REV Grant will be terminated.

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

Article 11. ANTI-SPECULATION AND ASSIGNMENT PROVISIONS

11.1 **Purpose.**

The Company represents and agrees that its undertakings pursuant to this Agreement are for the purpose of developing the Project Parcel pursuant to this Agreement, and not for speculation in land holding. The Company further recognizes, in view of the importance of the development of the Project Parcel to the general health and welfare of the City and that the qualifications, financial strength and identity of the principal shareholders and executive officers of the Company are of particular concern to the City.

11.2 Assignment; Limitation on Conveyance.

The Company agrees that, until the later of (a) Completion of the Project, or (b) payment in full of the REV Grant, it shall not, without the prior written consent of the City, assign, transfer or convey (i) the Project or any portion thereof, (ii) the Project Parcel or any portion thereof, or this Agreement, or any portion thereof, except to an affiliate of the Company. If any such prohibited assignment, transfer or conveyance is made, the obligation of the City to pay any further amounts under the REV 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, pandemic, 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 such 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:

Aadarsha Basavarajurs
UPS East Region Tax Director & Global Tax Credits & Incentives Coordinator
United Parcel Service
55 Glenlake Parkway NE
Atlanta, GA 30328

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 (provided that no performance schedule may be extended for more than one year without City Council approval), 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.

The 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 the Company contained or provided in connection with this Agreement; (ii) any breach or violation of any covenant or other obligation or duty of the Company under this Agreement or under applicable law; (iii) any negligent act, error or omission, recklessness or intentionally wrongful conduct on the part of the 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 the Company's performance under this Agreement, except to the extent caused 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 and remain in full force and effect for a period of five years following the expiration or termination (for any reason) of this Agreement. 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. The Company shall retain all rights to contest in good faith the applicability of all such federal, state and local laws, ordinances and regulations to the Project and to seek any waivers and exceptions with respect thereto.

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 Agreement, *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. A counterpart signed and/or delivered electronically shall be valid for all purposes.

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 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, including but not limited to the City Council auditors.
- (e) At all reasonable times for as long as records are maintained, to allow persons duly authorized by the City, including but not limited to the City Council auditors, full access to and the right to examine any of the Company's contracts entered into in connection with this Agreement 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 of this Agreement.
- (h) To permit persons duly authorized by the City, including but not limited to the City Council auditors, 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 ten percent (10%) 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 thirty (30) 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 in accordance with Section 10.2 within thirty (30) 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.
- (l) Notwithstanding anything else contained herein, the Company may restrict access to any records, papers, documents that contain trade secrets, unless and until the City signs a confidentiality agreement providing to the Company assurances deemed adequate by the Company that such records, papers, documents will be kept confidential by the City.

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 the 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 the Company and the Company's successors and assigns, and shall inure to the benefit of the City and its successors and assigns. However, the Company shall not assign, transfer or encumber its rights or obligations hereunder or under any document executed in connection herewith, other than to an affiliate of the Company, 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, religion, color, age, disability, sex or national origin.

12.27 **Further Assurances.**

The Company will, on request of the City,

- (a) promptly amend any document executed in connection herewith (collectively the "**Project Documents**") in order to correct any defect, error or omission herein identified by the parties hereto;

- (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 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 its rights and 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 and this Agreement.

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. The 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.

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

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

ATTEST:

CITY OF JACKSONVILLE

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

By: _____
Lenny Curry, Mayor
Date: _____

WITNESS:

UNITED PARCEL SERVICE, INC., an Ohio
corporation

Print Name: _____

By: _____

Name: _____

Print Name: _____

Its: _____

Date: _____

FORM APPROVED:

Office of the General Counsel

GC-#1364959-v4-United_Parcel_Service_(UPS)_Amended_and_Restated_EDA_-_2020.doc

Encumbrance and funding information for internal City use:

Account..... _____

Amount.....\$ _____

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 Agreement. Actual encumbrance[s] shall be made by subsequent purchase order[s], as specified in said Contract.

Director of Finance
City Contract # _____

Contract Encumbrance Data Sheet follows immediately.

LIST OF EXHIBITS

Exhibit A Description of the Project Parcel

Exhibit B Improvements

Exhibit C JSEB Reporting Form

Exhibit D Annual Survey

Exhibit E Job Report

Exhibit A
Description of Project Parcel

A parcel of land located in Duval County, Florida, having a real estate i.d. # of 003444-1110, and located generally at 4420 Imeson Road, Jacksonville, Florida 32219.

Exhibit B
Improvements

Project will include an additional 373,960 square feet of space and an increase facility's package sorting capacity. The upgrade would include improving existing sortation equipment to the latest technologies, improvements/expansion to our employee parking, trailer staging, office, and mezzanine levels.

Exhibit D

Annual Survey 2020

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 (904) 255-5447 or email your questions to OEDFinance@coj.net. Send completed form to: City of Jacksonville, Office of Economic Development, Finance and Compliance, 117 West Duval Street, Suite 275, Jacksonville, FL 32202, Fax: (904) 630-1019, Email: OEDFinance@coj.net.

Company name: _____

Mailing Address: _____

Primary Contact Name: _____

Primary Contact Title: _____

Phone: _____ Email: _____

Signature: _____ Reporting Date: _____

As of 12/31/2020:

I. EMPLOYMENT INFORMATION

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

II. CAPITAL INVESTMENT INFORMATION

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

III. ASSESSED PROPERTY VALUE

Assessed Value of Property on 2019	
------------------------------------	--

Exhibit E

Job Report 2020

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 (904) 255-5447 or email your questions to OEDFinance@coj.net. Send completed form to: City of Jacksonville, Office of Economic Development, Finance and Compliance, 117 West Duval Street, Suite 275, Jacksonville, FL 32202, Fax: (904) 630-1019, Email: OEDFinance@COJ.NET.

Company name: _____

Mailing Address: _____

Primary Contact Name: _____

Primary Contact Title: _____

Phone: _____ Email: _____

Signature*: _____ Reporting Date: _____

Print Name: _____

This form should be completed to document all jobs located at the project location as required in the Agreement. The first page of this form must be completed. The second page can either be completed with all required information or a report can be run from the company's HR system. Employees listed on this form must be on the Company's payroll as of December 31, 2020. The OED reserves the right to audit the Company's records to verify the information included on this form.

*By signing this 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. (Please include a signature from a Vice President or higher ranking officer or in the case of an LLC, a manager or managing member.)

