

**Charlotte County Board Of County Commissioners
Agenda Item Summary**

Item Number: I- 1

1 DEPARTMENT MAKING REQUEST

Economic Development

2 MEETING DATE

12/9/2014 9:00:00 AM

3 REQUESTED MOTION/ACTION

Request approval and execution of the attached Program Agreement with Aviation Partners Group.

4 AGENDA

Consent

5 IS THIS ITEM BUDGETED (IF APPLICABLE) - Yes

Budget Action

No action needed. Funding from the Economic Incentive Reserve approved in the FY14/15 budget process.

Financial Impact Summary Statement

Funding for this expenditure comes from the General Fund Economic Incentive Reserve.

Detailed Analysis Attached - No

Budget Officer-

6 BACKGROUND (Why is this Action Necessary, and What Action will be accomplished)

The EDI Ordinance #2010-074 requires that all projects approved for County incentives, including providing local financial support to State incentive programs, complete and execute a Program Agreement which details the scope of the project and incentives, includes performance measurement criteria, project commitments, timing and remedial actions for non performance.

The \$10,000 EDI incentive as well as the \$14,000 committed for a local match to the QTI program have been encumbered within the economic development incentive fund.

ATTACHMENTS:

Name:

Description:

Type:

[APG_EconomicDevelopmentIncentiveAgreement - signed.pdf](#) Program Agreement

Backup
Material

**ECONOMIC DEVELOPMENT INCENTIVE CODE
PROGRAM AGREEMENT**

THIS ECONOMIC DEVELOPMENT INCENTIVE CODE PROGRAM AGREEMENT (the "**Agreement**") is made and entered into as of the "**Effective Date**" (as defined hereinafter), by and between CHARLOTTE COUNTY, a political subdivision of the State of Florida, whose mailing address is 18500 Murdock Circle, Port Charlotte, Florida 33948-1094 ("**County**") and AVIATION PARTNERS GROUP, INC., a Florida corporation, whose mailing address is 28260 Airport Road, Unit 114, Punta Gorda, Florida 33982 ("**Company**").

RECITALS

WHEREAS, County finds that the expansion and the enhancement of the economy of Charlotte County serves a public purpose; and,

WHEREAS, County finds that providing economic incentives to certain qualified businesses improves purchasing power and the general prosperity throughout Charlotte County as a result of the increase, maintenance and expansion of jobs, wage levels and employee benefits; and,

WHEREAS, Section 125.045 *Florida Statutes* authorizes public funds to be expended and the conveyance of land for the attraction and retention of business activities; and,

WHEREAS, pursuant to Section 125.045 *Florida Statutes*, County enacted the Charlotte County Economic Development Incentive Program (the "**Program**") which is codified at Chapter 1-7, Article V, Section 1-7-61 through Section 1-7-69, of the Code of Laws and Ordinances of Charlotte County (the "**EDI Code**"); and,

WHEREAS, the Program provides incentives for job development and incentives for capital investment to companies that meet certain Program requirements; and

WHEREAS, Company has applied to participate in the Program and County has accepted Company as a Program participant; and,

WHEREAS, Section 1-7-68 of the EDI Code requires County and Company to enter into a program agreement as a condition of Company's participation in the Program that sets forth certain rights and duties of County and the Company in connection with Company's participation in the Program; and,

WHEREAS, the Company is currently participating in a State Qualified Target Industry incentive program, which requires the creation of the same total number of jobs over the same period of time as the Program; and,

WHEREAS, the Company is required to report detailed financial and business operation information regarding the jobs created to the State, pursuant to the State-administered Qualified Target Industry program agreement, prior to receiving State tax incentives; and,

NOW THEREFORE, for and in consideration of the mutual promises contained herein, and other good and valuable consideration, the receipt and adequacy whereof is hereby acknowledged by County and Company, intending to be legally bound, hereby agree as follows:

1. RECITALS.

The recitals of fact set forth above are true and correct and are hereby incorporated into and made a part of this Agreement.

2. DEFINITIONS.

As used in this Agreement, the following words and terms shall have the meanings as provided by Section 1-7-64 of the EDI Code.

3. AUTHORITY.

Company warrants and represents to County that Company has all requisite lawful authority to enter into and perform this Agreement, and that the individual executing this Agreement on behalf of Company has the authority to bind Company. The authority of the individual executing this Agreement on behalf of Company shall be evidenced by written approvals, authorizations, resolutions, or such other documentation as reasonably required by counsel for County.

4. GENERAL.

County and Company acknowledge that County has accepted Company as a Program participant. County and Company hereby agree to discharge and perform their respective obligations set forth in the EDI Code, as supplemented by this Agreement. Subject to the limitations in the EDI Code and this Agreement and Company's performance of its obligations in the EDI Code and this Agreement, Company shall be eligible to receive Incentives, provided that the availability of Program funds may limit the amount of Incentives available to Company.

5. TERM.

(A) The term of this Agreement shall commence on the Effective Date, and shall end upon disbursement of the final 2019-2020 incentive payment described herein, or until terminated as provided herein.

(B) County, in County's sole discretion, may terminate this Agreement. County shall give Company written notice of termination. The termination shall become effective at the end of the Period that encompasses the date of the notice of termination. Company hereby expressly acknowledges that the availability of funds may determine whether or not this Agreement is terminated by County. The termination of this Agreement shall not discharge Company's obligations in this Agreement including those set forth in Paragraphs 4, 6 and 8.

(C) Company acknowledges that it may have continuing obligations to the County pursuant to Section 1-7-65 of the EDI Code extending beyond the termination of this Agreement.

6. RECORDS.

(A) Annual Reporting. The County Economic Development Office Director, or authorized designee, will be responsible for monitoring and tracking the Company's performance and achievement of the required employment levels through records obtained from the State of Florida that relate to the Company's performance and achievement of the required employment levels in the State-administered Qualified Target Industry program agreement. The County Economic Development Office Director, or authorized designee, will be responsible for annually obtaining adequate documentation to confirm and verify performance and achievement of the required employment levels prior to disbursement of funds on an annual basis. In the event that the County Economic Development Office Director, or authorized designee, is unable to obtain adequate documentation to confirm and verify performance and achievement of the required employment levels from the State, Company shall provide documentation directly to County after receipt of a request for documentation.

(B) Records and Audit. Company will keep, and upon request provide to County, or its agents, records verifying the Quality Jobs and other information provided to the State pursuant to the Qualified Target Industry program agreement. This Agreement is subject to Company allowing County access to Company's files to review all of Company's books and records that are necessary to confirm Company's performance of its duties under the EDI Code and this Agreement. Company agrees that any Incentives paid or credited to Company that County subsequently determines to be unfounded or invalid shall be immediately repaid to County by Company. Company acknowledges that Florida law provides that any Incentives paid or credited that are found to be unlawful by a court of competent jurisdiction must immediately be repaid to County. Nothing set forth in this Agreement shall negate the legislative authority of

County's Board of County Commissioners to duly consider and take appropriate action upon all matters required to come before it or hearing and determination relative to this Agreement.

7. PAYMENT OF INCENTIVES.

(A) Incentives. The Incentives shall be paid to Company in accordance with the terms of this Agreement and the EDI program. The amount of Incentives owed to Company shall be determined upon County's review of Company's performance pursuant to paragraph 6. Company shall be entitled to receive those Incentives based on the rates listed in Section 1-7-65 of the EDI program for the entire term of this Agreement. Company shall be entitled to receive employment incentives based on the creation of ten (10) full-time jobs at an average annual wage of Forty-Six Thousand, Four Hundred and Thirty-Four Dollars (\$46,434.00), which is 150% of the Charlotte County Average Annual Wage. The proposed incentive package for which the company is eligible pursuant to the EDI Code total is Ten Thousand Dollars (\$10,000), the eligibility, performance criteria, and payment schedule of which are detailed in "Exhibit A", attached hereto and made part of this Agreement

(B) Outstanding Governmental Fees, Assessments or Other Amounts Due. In the event that Governmental fees, assessments, or other amounts are outstanding at such times that Company becomes eligible for Incentives, Incentives shall be funded in the form of set-offs.

(C) No Outstanding Governmental Fees, Assessments, or Other Amounts Due. In the event that no Governmental fees, assessments, or other amounts are outstanding at such times that Company becomes eligible for Incentives, Incentives shall be funded, after the jobs have been created and verified, in the form of direct compensation.

8. DEFAULT.

Either party shall be in default if it violates any term or provision of this Agreement. In the event Company fails to fulfill any term or condition in this Agreement, Company shall repay County the Incentives related to such condition. Company's remedy for a default by County shall be a claim for the sums to which County has become obligated hereby. Such claims shall not include consequential or special damages or any other amount exceeding the agreed incentive installment.

9. NOTICES.

All notices shall be in writing and shall be served either personally or by certified mail, return receipt requested, to the parties at the

addresses listed below or to such other address as either party hereto shall from time to time designate to the other party by notice in writing as herein provided.

If to County:

Tom Patton
Economic Development Director
18501 Murdock Circle, Suite 502
Port Charlotte, Florida 33948

If to Company:

Boris Nekrasov, President and CEO
AVIATION PARTNERS GROUP, INC.
28260 Airport Road, Unit 114
Punta Gorda, Florida 33982

10. INDEMNIFICATION.

In consideration of ten dollars (\$10.00), the receipt and sufficiency of which is hereby acknowledged, Company shall indemnify, save and hold harmless, and have a duty to defend County and all of its officers, agents, employees and volunteers from all suits, actions, claims, demands and liability of any nature whatsoever arising out of, because of, or due to the breach of this Agreement by Company or its officers, subcontractors, agents, employees or volunteers, or due to any negligent act, or occurrence of omission or commission of Company, its officers, subcontractors, agents, employees or volunteers.

11. MISCELLANEOUS.

Nothing in this Agreement nor any act of Company or County shall be deemed or construed by Company or County or any third party to create a relationship of principal and agent, partnership, joint venture or of any other association whatsoever between Company and County. This Agreement is not assignable. Subject to the limitation set forth in the preceding sentence, this Agreement shall bind the respective heirs, executors and successors of Company and County. This Agreement supersedes all prior written or oral agreements and negotiations respecting this matter. This Agreement may not be changed or modified except by a written instrument signed by both Company and County. This Agreement shall be governed by the laws of the State of Florida. Venue shall be in Charlotte County, Florida. The headings herein contained are for the purposes of identification only and shall not be considered in construing this Agreement.

12. EFFECTIVE DATE.

The "**Effective Date**" shall be the date that County executes this Agreement.

IN WITNESS WHEREOF, County and Company have made and executed this Agreement as of the Effective Date.

CHARLOTTE COUNTY BOARD OF
COUNTY COMMISSIONERS

By _____
Kenneth W. Doherty, Chairman

Date: _____, 2014

APPROVED AS TO FORM AND
LEGAL SUFFICIENCY:

Janette Knowlton, County Attorney

Witnesses:

AVIATION PARTNERS GROUP, INC.

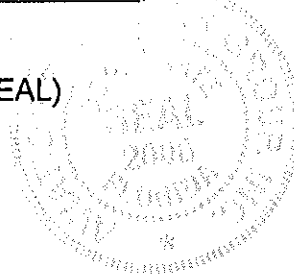
Ann Marano
Signature
Ann Marano
Print Name

By: _____
Print Name: Boris Nekrasov
Title: President and CEO

Mary L. McDevitt
Signature
Mary L. McDevitt
Print Name:

Date: 11/12, 2014

(CORPORATE SEAL)



"Exhibit A"

Local Monetary Incentive

The Company commits to hire ten (10) new full-time employees by December 31, 2015 and has committed to pay an average wage of Forty-Six Thousand, Four Hundred and Thirty-Four Dollars (\$46,434.00), which is 150% of the Charlotte County average wage. A total monetary incentive shall be paid in the amount of Ten Thousand Dollars (\$10,000) in four (4) annual installments of Two Thousand Five Hundred Dollars (\$2,500) in the fiscal years 2016-2017; 2017-2018; 2018-2019; and 2019-2020.

The Company must maintain the initial level of employment, which has been determined to be eighteen (18) full-time employees in the State of Florida, as well as the additional ten (10) full-time positions in Charlotte County for the entire Term of this Agreement. In the event that the Company does not maintain the employment levels set forth herein, the Company shall be obligated to pay back to the County the total incentive package per employee provided at a rate of \$1,000 per job not created and maintained for the duration of the Agreement.

Proof of achievement of the employment levels shall be obtained by the County Economic Development Office Director, or authorized designee, on an annual basis. The Company may only be entitled to receive the annual payment after confirmation that the State of Florida has received documentation supporting the Company's right to receive incentives, and has authorized that year's incentive pursuant to the State-administered Qualified Target Industry program agreement.