

**PROJECT AGREEMENT**  
**BY AND AMONG**  
**THE CITY OF FOLEY, ALABAMA,**  
**BALDWIN COUNTY, ALABAMA**  
**AND**  
**ROHR, INC.**  
**(PROJECT TURBINE)**

## **PROJECT AGREEMENT**

**THIS PROJECT AGREEMENT** (the "Agreement") is made and entered into by and among the **CITY OF FOLEY, ALABAMA** (the "City"), **BALDWIN COUNTY, ALABAMA** (the "County") and **ROHR, INC.**, a Delaware corporation (the "Company"), effective as of the date on which all of the Parties shall have signed this Agreement (the "Effective Date"). The City, the County and the Company are each a "Party" to this Agreement and are collectively referred to as the "Parties".

### **RECITALS**

**WHEREAS**, the Company wishes to develop, expand and equip an existing manufacturing facility (the "Facility") in the City and the County, wherein the Company will design, manufacture and service aerospace and defense products, systems and components, and wherein the Company is expected to employ, in addition to its current seven hundred ninety-eight (798) full-time employees, at least two hundred sixty (260) new full-time employees, earning an average hourly wage of at least twenty six dollars (\$26.00), exclusive of fringe benefits, with a total capital investment in developing, expanding and equipping the Facility estimated to be thirty million three hundred thousand dollars (\$30,300,000) (the "Project");

**WHEREAS**, the Alabama Jobs Act (the "Act") was passed by the Alabama State Legislature in its 2015 General Session, and signed by the Governor on April 3, 2015, and by its terms became effective on July 2, 2015 and is codified in Section 40-18-370, et seq. of the Code of Alabama;

**WHEREAS**, the Secretary of Commerce of the State of Alabama (the "Secretary") has found, and submitted to the Governor, a certification to the effect that the Project has a qualifying North American Industrial Classification System Code ("NAICS Code") of 336413 (Other Aircraft Parts and Auxiliary Equipment

Manufacturing) and will employ at least fifty (50) new employees, and therefore meets the definition of a Qualifying Project under the Act;

**WHEREAS**, the Secretary has recommended to the Governor that the Company be designated as an Approved Company under the Act;

**WHEREAS**, in reliance on the information provided by the Secretary, the Governor has made the necessary findings for the Project to be a Qualifying Project and the Company to be an Approved Company under the Act;

**WHEREAS**, in reliance on the Company's representations of the capital investment by the Company, employment and wage levels, and the expansion, performance and operation of the Project as described herein, and in consideration of the economic impact, the increased tax revenues, and other benefits to be received by the City, the County and their respective citizens, the City and the County have committed to make available to the Company certain incentives in the manner and amounts described herein, subject to applicable State and Federal laws.

**NOW, THEREFORE**, in consideration for the mutual promises and covenants contained herein and for other valuable consideration, the receipt, adequacy, and sufficiency of which is hereby acknowledged, the Parties enter into this Agreement on the following terms and conditions.

1. **Scope of Agreement.** This Agreement fully sets out the complete agreement of the Parties. This Agreement includes the facts, averments, and representations set forth in the Recitals, as well as all exhibits, attachments, or appendices attached hereto or referenced herein, all of which are hereby incorporated by reference.
2. **Definitions.** For the purposes of this Agreement, the following terms shall have the meanings set forth in this Section:

Act shall mean the Alabama Jobs Act (Alabama Act No. 2015-27) as codified in Section 40-18-370, et seq. of the Code of Alabama.

Actual Average Hourly Wage shall be computed by the following formula: cash compensation for all Project Employees for the applicable Reporting Year divided by hours worked by all Project Employees in the same Reporting Year. For purposes of computing the Actual Average Hourly Wage, cash compensation shall include overtime pay and bonuses but shall not include Fringe Benefits.

Agreement shall have the meaning set forth in the first paragraph of this agreement.

Approved Company shall mean any company determined by the Secretary and the Governor to meet the criteria provided in Section 40-18-373 of the Code of Alabama.

Capital Investment shall have the meaning as provided in the Act.

Capital Investment Target shall have the meaning set forth in Subsection 3(b) of this Agreement.

Capital Investment Target Date shall have the meaning set forth in Subsection 3(b) of this Agreement.

Cash Jobs Maintenance Period shall be the five (5) year period beginning with the first Reporting Year after the Company reaches the Yearly Average Target.

Change of Control shall have the meaning of either:

- i. The acquisition by any "Person" (as the term "person" is used for the purposes of Section 13(d) or 14(d) of the Securities Exchange Act of 1934, as amended (the "Exchange Act")) of direct or indirect beneficial ownership (within the meaning of Rule 13d-3 promulgated under the Exchange Act) of 50% or more of the combined voting power of the then-outstanding securities of the Company entitled to vote in the election of directors, or
- ii. The consummation of a merger, consolidation, reorganization, statutory share exchange, or similar form of corporate transaction involving the Company, the sale or other disposition of all or substantially all of the Company's assets.

City Cash Incentive shall have the meaning set forth in Subsection 4(b) of this Agreement.

County Cash Incentive shall have the meaning set forth in Subsection 5(b) of this Agreement.

Commence Construction or Commencement of Construction shall mean physical work is being performed daily, using appropriate equipment and manpower to develop, expand and equip the Facility and install necessary infrastructure to accomplish the objectives of the Project.

Commence Operations or Commencement of Operations shall mean that the Company is designing, manufacturing and servicing aerospace and defense products, systems and components at the Facility in greater quantities than prior to completion of the Project.

Company shall have the meaning set forth in the first paragraph of this Agreement. "Company" shall include any approved Related Company for purposes of achieving any jobs, capital investment or wage requirements.

Effective Date shall have the meaning set forth in the first paragraph of this Agreement.

Eligible Employee shall mean a person who both (i) meets the definition of Full-Time Employee in this Section, and (ii) satisfies the definition of Employee as provided in the Act.

Facility shall have the meaning set forth in the Recitals of this Agreement.

Force Majeure Event shall mean any matter outside the control of the Company (excluding unfavorable economic conditions), including acts of God, acts of terrorism, extreme weather, and the failure of any governmental entity to timely issue, upon proper submission and documentation by the Company, any permit required to Commence Construction, to complete the Project or to Commence Operations, including without limitation tax exemption certificates, building permits, certificates of occupancy and environmental permits.

Fringe Benefits shall include, but are not limited to, health insurance, retirement, life insurance, workmen's compensation, unemployment compensation, and FICA taxes.

Full-Time Employee shall mean a person that is either (i) being paid directly by the Company for not less than thirty-six (36) hours per week, is employed at the Facility, and who the Company identifies as its employee to the U.S. Internal Revenue Service or the Alabama Department of Revenue or the Alabama Department of Industrial Relations on returns or reports filed with the

foregoing, including but not limited to, IRS Form 941, (ii) an employee of a direct contractor of the Company who is paid by the Company's direct contractor for working at the Facility for not less than thirty-six (36) hours per work week, and/or (iii) a person working under a contract with the Company for working at the Facility for not less than thirty-six (36) hours per work week. Notwithstanding the above, the term "Full-Time Employee" shall not include an unskilled temporary employee, an employee of a temporary personnel agency or a worker performing construction work on buildings or other structures which are intended to be part of the Project.

Governor shall mean the Governor of the State of Alabama.

Jobs Target shall have the meaning set forth in Subsection 3(c) of this Agreement.

Jobs Target Date shall have the meaning set forth in Subsection 3(c) of this Agreement.

Minimum Average Hourly Wage shall have the meaning set forth in Subsection 3(c) of this Agreement.

NAICS Code shall mean a North American Industrial Classification System Code.

Placed-in-Service Date shall mean the date of issuance of a Certificate of Occupancy by the City of Foley or any other governmental body with jurisdiction and the authority to do so or, if no Certificate of Occupancy is required, Commencement of Operations as defined in this Agreement.

Project shall have the meaning set forth in the Recitals.

Project Employees shall mean new Full-Time Employees created by the Project. No existing employee of the Company, or any affiliate thereof, employed in the State either as of the Effective Date or at the time hired and transferred to work at the Facility (a "Transferred Employee") shall constitute a Project Employee, except to the extent that the Company certifies to the State with respect to such Transferred Employee that it has not eliminated the Transferred Employee's previous position and that a new employee has been hired to fill substantially the same job and in the same pay category as that held by the Transferred Employee. All Project Employees shall be eligible to receive any Fringe Benefit provided by the employer.

Qualifying Project shall mean any project to be undertaken by an Approved Company that satisfies Section 40-18-372 of the Code of Alabama.

Related Company shall mean a legal entity that is under at least fifty percent (50%) common ownership, management or control with the Company. Approved Related Companies under this Agreement are listed in Exhibit A attached hereto.

Reporting Year shall mean each 365-day period of the Cash Jobs Maintenance Period. The Reporting Year begins on the first day of the calendar quarter following the Company's notification to the Secretary of employing at least fifty (50) Project Employees, but no later than January 1, 2018.

Secretary shall mean the Secretary of Commerce of the State of Alabama.

Significant Economic Event shall mean any reduction in staffing levels at the Company's Facility resulting from one or more events, excluding a Force

Majeure Event, beyond the Company's reasonable control, including but not limited to macroeconomic events and financial crises that could reasonably be expected to have a material adverse effect on market demand for the Company's (i) original equipment or goods, or (ii) maintenance, repair and overhaul services.

State shall mean the State of Alabama.

Transferred Employee shall mean an existing employee of the Company, or any affiliate thereof, employed in the State either as of the Effective Date or at the time such employee is hired and transferred to work at the Facility.

Yearly Average shall be calculated on an annual basis for each applicable Reporting Year. The Yearly Average shall be calculated by adding the total number of Full-Time Employees working at the Facility on the 15<sup>th</sup> day of each month in the applicable Reporting Year and dividing that sum by twelve (12).

Yearly Average Target shall mean a Yearly Average of at least one thousand thirty two (1,032) Full-Time Employees (one hundred percent (100%) of the current seven hundred ninety eight (798) Full-Time Employees and ninety percent (90%) of the two hundred sixty (260) Project Employees).

**3. The Company's Commitments, Representations and Warranties.** In consideration of the City and the County providing the incentives described herein, the Company makes the following commitments to the City and the County:

- (a) The Company acknowledges that the citizens of the City and the County anticipate the prompt receipt of substantial economic benefit to the local and state economies in return for the incentives granted under this Agreement. The Company shall Commence Construction of the Facility

not later than July 31, 2016, and the Company shall Commence Operations at the Facility not later than July 31, 2017.

- (b) In furtherance of this Project, not later than December 31, 2017 (the "Capital Investment Target Date"), the Company's total Capital Investment in the Facility is estimated to be thirty million three hundred thousand dollars (\$30,300,000) (the "Capital Investment Target").
- (c) Not later than December 31, 2019 (the "Jobs Target Date"), the Company shall employ at least two hundred sixty (260) new Full-Time Employee positions ("Project Employees"), earning an average hourly wage of at least twenty six dollars (\$26.00) (the "Minimum Average Hourly Wage"), exclusive of Fringe Benefits, and maintain total employment of one thousand fifty eight (1,058) Full-Time Employees (the "Jobs Target").
- (d) The Company shall give good-faith consideration to Alabama-based contractors and vendors and Alabama residents to provide products and services in developing, expanding, equipping and operating the Project. Contractors and vendors selected by the Company shall be in good standing, licensed and qualified to do business in Alabama, all in accordance with Alabama law. The Parties acknowledge that selection of contractors and vendors for the Project shall be at the sole discretion of the Company.
- (e) The Company shall give good-faith consideration for employment at the Project to qualified Alabama residents, subject in all cases to the Company's then usual and customary hiring policies.
- (f) The Company is a going concern, is financially solvent and shall make available adequate funding to complete the development, expansion and

equipping of the Project and conduct the Company's business at the Facility.

- (g) The Company is in good standing, licensed, and qualified to do business in Alabama, all in accordance with Alabama law, and shall remain licensed, qualified, in good standing and in compliance with all Alabama laws applicable to its operations throughout the duration of this Agreement including any applicable employment and immigration laws.
- (h) By signing this Agreement, the Company affirms, for the duration of this Agreement, that it will not violate federal immigration law or knowingly employ, hire for employment, or continue to employ an unauthorized alien within the State. Furthermore, if the Company is found to be in violation of this provision it shall be deemed in breach of the Agreement and shall be responsible for all damages resulting therefrom. On or before the Effective Date, the Company has provided documentation evidencing its participation in the E-Verify program.
- (i) The Company is not prohibited from consummating the transaction contemplated in this Agreement by any law, regulation, agreement, instrument, restriction, order, or judgment.
- (j) The Company has the legal power and authority to enter into this Agreement and to make the respective commitments made in this Agreement. To the extent that (i) any authorization, approval, resolution or consent of the Company's board of directors, officers, managers, trustees or any other persons is required under either the Company's organizational and/or governing documents or otherwise is required by law and (ii) any authorization, approval or consent of any governmental authority, body, or agency or third party is required for the Company to enter into this

Agreement and make the commitments contained in this Agreement, any such authorizations, approvals, and consents have been duly obtained in accordance with applicable law and procedures. Upon request by the City or the County reasonable documentation of the foregoing authority and action shall be provided by the Company to the City or the County, as applicable. The Company's legal counsel, upon request, shall furnish an opinion of counsel to the City or the County in a form reasonably satisfactory to the City or the County, as applicable, as to the matters set forth in Subsections 3(g) and 3(i), and any other matters described herein requested by the City or the County. Further, upon request of the City or the County, the Company's accountants and other representatives shall furnish an opinion as to the matters described herein.

- (k) Notwithstanding anything in this Agreement to the contrary, in the event the Company shall fail to meet the commitments set forth in Subsection 3(a), (b) or (c) by the deadline set forth therein due to the occurrence of a Force Majeure Event, such delay shall not immediately result in a default or grounds for termination of this Agreement by the City and the County. In such an event, the Company shall give the City and the County written notice containing a description of the Force Majeure Event in question, an explanation of how the Company anticipates such event will affect the Company's performance under the Agreement, what actions the Company plans to undertake in order to address the conditions caused by the Force Majeure Event and an estimate of how long the Company anticipates the Force Majeure Event will delay the Company in meeting its commitments under the Agreement. Provided that the Company is using good faith efforts to meet its commitments despite the delay caused by the Force Majeure Event, the City and the County will give the Company a reasonable period of time to address such conditions before the Company shall be considered in default under the Agreement.

- (l) Notwithstanding anything in this Agreement to the contrary, if the Company fails to meet the commitments set forth in: (i) Subsection 3(a), (b) or (c); or (ii) the Cash Jobs Maintenance Period due to the occurrence of a Significant Economic Event, the Company may provide the City and County written notice describing the Significant Economic Event, together with an explanation of how the Company anticipates such event will affect the Company's performance under the Agreement, the estimated duration of the event, and any remedial actions the Company plans to undertake to mitigate the effects the Significant Economic Event. In such case, the City and County will consider such information and surrounding circumstances and, each in its sole and reasonable discretion, may elect to delay the exercise of any of their rights or remedies hereunder so long as the Company undertakes commercially reasonable efforts to meet its commitments and, to the extent practicable, mitigate the effects of the Significant Economic Event. Further, the County or City may elect, each in its sole and reasonable discretion and as to incentives provided by it under this Agreement, to make adjustments to the Company's commitments in romanettes (i) and (ii) to reflect any change in circumstances arising from a Significant Economic Event.

#### **4. Commitments of the City.**

- (a) In consideration of the Company developing, expanding and equipping the Facility and conducting the business operations as described in the Recitals to this Agreement and the economic benefit to the State and local community to be realized from that operation, the City shall, subject to the provisions of the Act, make available to the Company the incentives as provided in this Section.

- (b) The City shall make available one million five hundred thousand dollars (\$1,500,000), with \$500,000 payable on or before October 31, 2016, \$500,000 payable on or before December 30, 2016, and \$500,000 payable on or before October 31, 2017 (the "City Cash Incentive") to reimburse the Company for capital expenses incurred by the Company in developing, expanding, and equipping (excluding existing equipment) the Project.

**5. Commitments of the County.**

- (a) In consideration of the Company developing, expanding and equipping the Facility and conducting the business operations as described in the Recitals to this Agreement and the economic benefit to the State and local community to be realized from that operation, the County shall, subject to the provisions of the Act, make available to the Company the incentives as provided in this Section.
- (b) The County shall make available one million five hundred thousand dollars (\$1,500,000), with \$750,000 payable on or before September 30, 2016, and \$750,000 payable on or before December 30, 2016 (the "County Cash Incentive") to reimburse the Company for capital expenses incurred by the Company in developing, expanding, and equipping (excluding existing equipment) the Project.

**6. Disbursements of the City Cash Incentive and the County Cash Incentive.**

- (a) Payment of the City Cash Incentive and the County Cash Incentive shall be disbursed by reimbursement to the Company. It shall be the responsibility of the Company to provide satisfactory evidence that all of the conditions preceding such payment as established by the terms of this Agreement or by law have been satisfied.

To request reimbursement for costs incurred for developing, expanding and equipping the Project, the Company shall submit to the City and to the County, as applicable, a request for payment for the City Cash Incentive and the County Cash Incentive in the same form in Exhibit B addressed to City Administrator, Foley City Hall, 407 E. Laurel Avenue, Foley, AL 36535, for the City and County Administrator, 111 Blackburn Avenue, Bay Minette, AL 36507, for the County. The request shall be accompanied by supporting documentation demonstrating to the reasonable satisfaction of the City or the County, as applicable that the expenditures for which reimbursement is sought were incurred only for the developing, expanding and equipping of the Project. Payments to an affiliate of the Company shall not be eligible for reimbursement unless such expenditures are for costs incurred by the affiliate to an unrelated third party or parties in one or more arm's length transactions for the development, expansion and equipping of the Project. In such case, documentation of payments by the affiliate to the third party shall also be provided.

(b) Upon request, the Company must provide the City and the County the following documents or information:

- i. Certificate in a form acceptable to the City or the County, as applicable, of the Project Architect, Engineer, or other person(s) certifying that the work, materials, and labor for which the Company is requesting reimbursement (1) conformed substantially to the plans and specifications for the Project, (2) are items which the Company has previously identified to the City or the County, as applicable, as being necessary to the developing, expanding and equipping of the

Project, and (3) have been incorporated into, or installed at, the Project;

- ii. Release by any third party, including but not limited to a contractor, supplier, or other entity that may be specified by the City or the County of claims against the City or the County;
- iii. All approvals required by statute or regulation before the expanded Facility can be occupied and before Commencement of Operations, including but not limited to a Certificate of Occupancy, permits, and licenses; and
- iv. Such other documentation as is reasonably deemed necessary by the City or the County to establish that the reimbursement will be for costs incurred for the developing, expanding and equipping of the Project.

**7. Annual Compliance during the Cash Jobs Maintenance Period.**

- (a) Not later than forty-five (45) days following the Placed-in-Service Date, at the earliest, or the Capital Investment Target Date, at the latest, the Company shall furnish to the City and the County a certificate, certified as to the accuracy of the facts stated therein by an executive officer of the Company, certifying the Capital Investment made at the Facility. The Company's certification shall be supported by a third-party Certification of Capital Investment substantially in the form attached hereto as Exhibit C.
- (b) Not later than forty-five (45) days following the last day of each Reporting Year and/or at such other times as the City or the County may request, the

Company shall furnish to the City and the County a certificate, certified as to the accuracy of the facts stated therein by an executive officer of the Company, certifying (i) the Yearly Average number in Full-Time Employees at the Facility, and (iii) the amount of the total payroll, exclusive of Fringe Benefits, paid to Project Employees at the Facility during the applicable Reporting Year.

- (c) The City or the County may require the Company to provide such other documentation permitted under the Act or which the City or the County, as applicable, deems necessary to confirm the Company's certification.

**8. Recapture of the City Cash Incentive and the County Cash Incentive.**

- (a) The Company acknowledges that the City Cash Incentive offered by the City is based, in part, on the estimated economic impact that will be realized from the Capital Investment incurred in the Project and additional payroll and jobs created by the Project, and that those benefits are justified only if the Company fulfills its commitments as described herein. In consideration thereof, the Company agrees to the following provisions for recapture by the City of the City Cash Incentive.
- (b) In the event that the Company does not meet the Yearly Average Target by the Jobs Target Date, all City Cash Incentive funds received by the Company shall, upon written demand by the City, be remitted to the City by the Company within thirty (30) days after the Company receives such written demand from the City.
- (c) For any year of the Cash Jobs Maintenance Period in which the Yearly Average is less than the Yearly Average Target, the Company shall pay to the City six thousand four hundred ten dollars and twenty six cents

(\$6,410.26) for each Full-Time Employee, or fraction thereof, less than the Yearly Average Target. Payment of this amount shall be remitted within thirty (30) days after written demand by the City.

- (d) Notwithstanding anything contained herein to the contrary, the maximum recapture amount of the City Cash Incentive that the City may recover from the Company will be the portion of the City Cash Incentive actually received by the Company from the City hereunder.
- (e) The right of the City to recapture the City Cash Incentive shall survive the termination of this Agreement.
- (f) The maximum recapture amount payable to the City for any year of the Cash Jobs Maintenance Period shall be reduced by any recapture amount paid to the City with respect to the City Cash Incentive in any prior year of the Cash Jobs Maintenance Period.
- (g) The Company acknowledges that the County Cash Incentive offered by the County is based, in part, on the estimated economic impact that will be realized from the Capital Investment incurred in the Project and additional payroll and jobs created by the Project, and that those benefits are justified only if the Company fulfills its commitments as described herein. In consideration thereof, the Company agrees to the following provisions for recapture by the County of the County Cash Incentive.
- (h) In the event that the Company does not meet the Yearly Average Target by the Jobs Target Date, all County Cash Incentive funds received by the Company shall, upon written demand by the County, be remitted to the County by the Company within thirty (30) days after the Company receives such written demand from the County.

- (i) For any year of the Cash Jobs Maintenance Period in which the Yearly Average is less than the Yearly Average Target, the Company shall pay to the County six thousand four hundred ten dollars and twenty six cents (\$6,410.26) for each Full-Time Employee, or fraction thereof, less than the Yearly Average Target. Payment of this amount shall be remitted within thirty (30) days after written demand by the County.
- (j) Notwithstanding anything contained herein to the contrary, the maximum recapture amount of the County Cash Incentive that the County may recover from the Company will be the portion of the County Cash Incentive actually received by the Company from the County hereunder.
- (k) The right of the County to recapture the County Cash Incentive shall survive the termination of this Agreement.
- (l) The maximum recapture amount payable to the County for any year of the Cash Jobs Maintenance Period shall be reduced by any recapture amount paid to the County with respect to the County Cash Incentive in any prior year of the Cash Jobs Maintenance Period.

**9. Grounds for Termination of the Obligation of the City or County.** The obligations of the City or County hereunder may be terminated by the City or County upon the occurrence of any of the following events:

- (a) Failure of the Company to timely pay all amounts required under Section 8 as a result of Company's failure to maintain any jobs or wage target as required by the terms of this Agreement.

- (b) Failure of the Company to file any certificate required by the terms of this Agreement. After the first such failure, the City or the County, as applicable, shall provide thirty (30) days written notice and an opportunity to cure before declaring a default.
- (c) The determination by the City or the County that any representations made by the Company or its agents to induce the City or the County, or any agency or subdivision thereof, to offer the City Cash Incentive and/or the County Cash Incentive to the Company are not true in any material respect.
- (d) Failure of the Company to Commence Operations at the Facility by July, 31, 2017.
- (e) A Change of Control of the Company that occurs without the consent of the City and the County, which consent the City and the County shall not unreasonably withhold, before the expiration of the Cash Jobs Maintenance Period. In the event of a termination due to a Change of Control, all funds paid by the City or County to the Company under Sections 4 and 5 shall be immediately due and payable by the Company to the City and the County, as applicable.

**10. Costs and Expenses.** Each Party agrees to pay its own costs and expenses incurred in connection with the proposals, responses, and negotiation of the transactions contemplated herein, including all costs and expenses incurred in connection with the preparation of any studies or reports, surveys, or approvals for this Agreement or otherwise.

**11. Assignment.** Absent the consent of the City and the County, which shall not be withheld unreasonably, this Agreement is not assignable, except that the

Company shall have the right at any time to assign all its rights and obligations in and to the Project and to transfer this Agreement or any part thereof to any financially solvent affiliate of the Company that agrees to assume assigned obligations of the Company in and to the Project; and if so assigned, the Company shall continue to be responsible for the performance of the obligations of the assignee under this Agreement unless specifically excused therefrom by the City and the County to be expressed in writing and signed by an authorized representative of the City and the County.

**12. Section Titles and Headings.** The section titles and headings are for convenience only and do not define, modify, or limit any of the terms and provisions hereof.

**13. Survival of Representations and Warranties.** The representations, warranties, and covenants made by each of the Parties hereto and contained herein shall survive the performance of any obligations to which such representations, warranties, and covenants relate.

**14. Waivers.** Waiver of any of the obligations of any Party under this Agreement will be effective only when stated in writing and signed by the waiving Party. No delay or omission to exercise any right or power by any Party shall be construed to be a waiver. In the event any provision is waived by a Party, such waiver shall not be deemed to waive any other provision. To the extent that any Party's performance is subject to any regulatory or approvals, that Party or those Parties shall have no obligation to perform and shall not be liable for non-performance, unless and until such regulatory or governing body approves or authorizes such performance, or such approval of the qualified electors is obtained; provided, however, all Parties affected shall use their best reasonable efforts to secure such approval or authorization.

**15. Time is of the Essence.** The Parties acknowledge and agree that time is of the essence in the performance of their respective duties under this Agreement.

**16. Notices.** All notices required by or related to this Agreement shall be sent by United States Mail, first class postage affixed, addressed to the receiving Party as described below:

**To The Company:**

General Manager  
Rohr, Inc., Operating as UTC Aerospace  
Systems – Aerostructures  
1300 West Fern Avenue  
Foley, AL 36535-1568

With a copy to:

General Counsel  
Rohr, Inc., Operating as UTC Aerospace  
Systems – Aerostructures  
850 Lagoon Drive, mz 107-x  
Chula Vista, CA 91910-2098

**To the City:**

Mayor  
Foley City Hall  
407 E. Laurel Avenue  
Foley, AL 36535

With a copy to:

C. Britton Bonner, Esq.  
Adams and Reese LLP  
RSA Battle House Tower  
11 N. Water Street, Suite 23200  
Mobile, AL 36602

**To the County:**

Chairman  
Baldwin County Commission  
111 Blackburn Avenue  
Bay Minette, AL 36507

With a copy to:

C. Britton Bonner, Esq.  
Adams and Reese LLP  
RSA Battle House Tower  
11 N. Water Street, Suite 23200  
Mobile, AL 36602

or to such other address as the receiving Party shall have most recently forwarded to the sending Party pursuant to the provisions of this Section.

**17. Indemnification.** The Company shall release, save, hold harmless, and indemnify the City, the County and their elected officials, officers, employees, and agents (collectively, the "Indemnified Parties") from and against any and all third party claims arising from the performance of any obligation herein, or arising from or in connection with any activity of the Company or any of the Company's agents, contractors, or employees in connection with the Project, and from and against all costs, attorney fees, expenses, and liabilities incurred in the defense of any such claim or any action against the Indemnified Parties, or any of them individually, by reason of any such claim, and the Company, upon notice from the City or the County, as applicable, shall defend the same at the Company's expense by counsel satisfactory to the City or the County, as applicable. The foregoing indemnity obligation shall include, but is not limited to, indemnification of the Indemnified Parties against any claim for payment brought by any contractor, subcontractor, materialman, supplier, laborer, design professional, or the like in connection with work, labor, and/or materials supplied

in connection with the improvements of the Project. The foregoing indemnity obligation shall survive the expiration or earlier termination of this Agreement.

**18. Entire Agreement; Amendment.** This Agreement is the entire agreement and supersedes all prior and collateral communications and agreements of the Parties relating to the subject matter. This Agreement may be amended only by a written modification executed by each of the Parties' duly authorized representatives.

**19. Governing Law.** The governing law of this Agreement shall be the law of the State of Alabama, without regard to conflicts of law provisions. Without waiving sovereign immunity, the Parties agree that any dispute between the Parties for which judicial resolution in the state or federal court system is appropriate shall be resolved in the courts of the State of Alabama or Federal courts located within the State of Alabama.

(Remainder of Page Intentionally Left Blank)

**WHEREFORE**, the Parties hereto, intending to be legally bound by the provisions herein set forth, have caused this Agreement to be signed and delivered by their duly authorized representatives.

**ROHR, INC.**

By: \_\_\_\_\_ DATE \_\_\_\_\_

DRAFT

**CITY OF FOLEY**

By: \_\_\_\_\_  
Its:

\_\_\_\_\_  
DATE

DRAFT

**BALDWIN COUNTY**

By: \_\_\_\_\_  
Its:

\_\_\_\_\_  
DATE

DRAFT

**EXHIBIT A**

**APPROVED RELATED COMPANIES**

DRAFT

## APPROVED RELATED COMPANIES

1. Rohr Aero Services LLC, a Delaware limited liability company

Lori Gillette  
General Manager  
Rohr, Aero Services, LLC, Operating as UTC Aerospace  
Systems – Aerostructures  
111 Airport Drive  
Foley, AL 36535-1568  
Tel: (251) 952-3302  
E-mail: [lori.gillette@utas.utc.com](mailto:lori.gillette@utas.utc.com)

DRAFT

**EXHIBIT B**  
**REQUEST FOR PAYMENT**

DRAFT

**REQUEST FOR PAYMENT  
PURSUANT TO PROJECT AGREEMENT BY AND AMONG  
THE CITY OF FOLEY, ALABAMA,  
BALDWIN COUNTY, ALABAMA  
AND  
ROHR, INC.**

DATE: \_\_\_\_\_  
TO: \_\_\_\_\_  
WITH A COPY TO: \_\_\_\_\_  
FROM RECIPIENT: \_\_\_\_\_  
RE: PROJECT \_\_\_\_\_  
PROJECT AGREEMENT DATED: \_\_\_\_\_  
AMOUNT REQUESTED: \$ \_\_\_\_\_

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Pursuant to the Project Agreement for this Project, Recipient hereby requests payment in the amount specified above. Recipient certifies that all conditions for payment under the terms of the Project Agreement have been satisfied and that the expenditures for which reimbursement is being requested qualify for reimbursement under the Project Agreement and that each has been paid either directly by the Company or an affiliate of the Company. Submitted with this request for payment are invoices or other evidence of documentation of these costs and the payment thereof as specified in Section 6(a) of the Project Agreement.

**ROHR, INC.**

By: \_\_\_\_\_  
Title: \_\_\_\_\_

**EXHIBIT C**

**THIRD PARTY CAPITAL INVESTMENT CERTIFICATION**

DRAFT

# [INSERT ON CPA LETTERHEAD]

## INDEPENDENT ACCOUNTANTS' REPORT ON APPLYING AGREED-UPON PROCEDURES

We have performed the below described procedures (the "Agreed Upon Procedures") to verify the accounting records of \_\_\_\_\_ (the "Company") related to the Capital Investment in Project Turbine (the "Project"). These procedures were agreed upon by the Company and the the City and the County for the required review of the Company's accounting records in connection with the Project. The Company's management is responsible for the Company's accounting records and has represented to us that the Company's accounting records are accurate. The sufficiency of these procedures is solely the responsibility of the Company and the City and the County. This Agreed Upon Procedures engagement was conducted in accordance with attestation standards established by the American Institute of Certified Public Accountants.

Project Turbine is defined as the development, expansion and equipping of a manufacturing facility in Foley, Baldwin County, Alabama, wherein the Company will design, manufacture and service aerospace and defense products, systems and components.

We have been provided with schedules of the Capital Investment in the Project by the Company amounting to \$\_\_\_\_\_ (see the attached schedules of costs) and have been informed that these amounts have been expended on the Project. "Capital Investment" is defined as all costs and expenses incurred by the Company in connection with the acquisition, construction, installation and equipping of the Project, which are required to be capitalized for purposes of the federal income tax, determined without regard to any rule that permits expenditures properly chargeable to a capital account to be treated as current expenditures. To the extent that the Project involves the extraction of natural resources, the capital investment shall not include the costs of acquiring land, land

recording fees, architectural and engineering services, environmental studies and environmental mitigation.

Our procedures and findings relating to the accompanying schedules were as follows:

1. We verified the arithmetic accuracy of the schedules; no exceptions noted.
2. We examined a sample<sup>1</sup> of invoices and expenditures noting that the purchases and associated work performed was related to the Project and documented that the expenditures included in the reported Capital Investment met the definition of Capital Investment set forth above; no exceptions noted.
3. The earliest Capital Investment in the Project included in the schedules noted above occurred on or about \_\_\_\_\_ and the last Capital Investment noted in the schedules noted above occurred on or about \_\_\_\_\_.

This report is intended for the information and use by the Company and to verify (on a test basis) the accuracy of the information stated above concerning Capital Investment in the Project. Further, the results of the Agreed-Upon Procedures will be provided to the City and the County and we are aware that it will be relied upon by the City and the County for purposes of satisfying the requirements of the Project under Section 40-18-376 of the Code of Alabama.

We were not engaged to, and did not, conduct an audit, the objective of which would be the expression on an opinion on the accounting records. Accordingly, we do not express such an opinion. Had we performed additional procedures, other matters might have come to our attention that would have been reported to you.

Very truly yours,

[CPA name and title]

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<sup>1</sup> "Sample" is defined as (1) at least 10 invoices, and (2) invoices aggregating to at least 15% of the total Capital Investment in the Project.