

**PALM BEACH COUNTY  
BOARD OF COUNTY COMMISSIONERS**

**AGENDA ITEM SUMMARY**

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<b>Meeting Date:</b>	<b>September 9, 2008</b>	<input type="checkbox"/> Consent	<input checked="" type="checkbox"/> Regular
		<input type="checkbox"/> Workshop	<input type="checkbox"/> Public Hearing
<b>Department:</b>	<b>Administration</b>		
<b>Submitted By:</b>	<b>Economic Development Office</b>		

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**I. EXECUTIVE BRIEF**

**Motion and Title: Staff Recommends Motion to:** **A) Adopt** a Resolution supporting Biotest Pharmaceuticals Corporation for Florida's Qualified Target Industry Tax Refund Program; and **B) Approve** the Job Growth Incentive Grant Agreement as the required 20% QTI local match in the amount of \$40,000 for the creation of 50 jobs in Palm Beach County at an average annual salary of \$56,706, excluding benefits; **C) Approve** a budget transfer of \$40,000 from the General Fund contingency reserve to the Economic Development Job Growth Incentive Fund (JGI); and **D) Approve** a Budget Amendment of \$40,000 to the Economic Development Office fund to recognize and appropriate the transfer of funds from the General Fund Contingency Reserve.

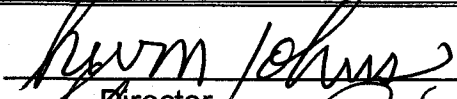
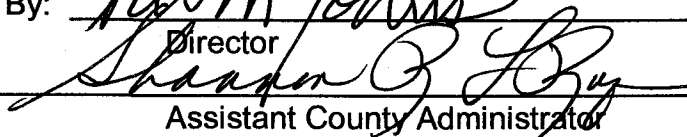
**Summary:** Biotest Pharmaceuticals Corporation, located in Boca Raton, was established in December 2007. The Parent Company, Biotest AG, is headquartered in Dreieich, Germany. Biotest AG purchased the existing building and assets from Nabi Biopharmaceuticals. Biotest Pharmaceuticals Corporation develops and manufactures pharmaceutical and biotherapeutic products with a specialization in immunology. The project involves increasing their capacity for plasma protein production by reconfiguring and renovating their existing manufacturing facility in Boca Raton. The JGI Agreement requires that the company create 50 full time jobs by December 31, 2011, with an average salary of \$56,706, excluding benefits; and maintain jobs for an additional twenty four months. The JGI incentive is recommended at \$800 per job or \$40,000. The company is in good financial condition and based on the documents reviewed, the company has the financial stability to perform under the conditions of the proposed Job Growth Incentive Grant. Biotest Pharmaceuticals is a local biotechnology business with strong international connections. Biotest Pharmaceuticals' creation of 50 jobs is projected to generate \$6 million in Gross Regional Product by 2011, using the Regional Economic Model Inc.

Biotest Pharmaceuticals has filed a Qualified Target Industry (QTI) Tax Refund program application with Enterprise Florida. It is anticipated that the State will award up to \$200,000. The QTI requires a 20% local match. The 20% match will be achieved using the JGI. District 4 (DW)

**Background and Policy Issues:** The BCC did not allocate funds in the 2007-2008 budget for JGI, and directed staff to bring qualified companies to the BCC for consideration. Palm Beach County, Enterprise Florida, Inc., and the State's Office of Tourism, Trade & Economic Development (OTTED) utilize the QTI Program to support relocation/expansion business projects. Each incentive dollar matched by the County leverages five dollars from the State. The State of Florida requires that a local government adopt and provide a Resolution to Enterprise Florida, Inc. in order for the State to proceed further with a Qualified Target Industry Tax Refund Application. Biotest Pharmaceuticals may later apply for an Ad Valorem Tax Exemption.

- Attachments:**
1. QTI Resolution
  2. JGI Grant Agreement (3)
  3. Budget Amendment
  4. Budget Transfer

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<b>Recommended By:</b>		<b>8-7-08</b>
	Director	Date
<b>Approved By:</b>		<b>8-11-08</b>
	Assistant County Administrator	Date

**II. FISCAL IMPACT ANALYSIS**

**A. Five Year Summary of Fiscal Impact:**

Fiscal Years	2008	2009	2010	2011	2012
Capital Expenditures	0	0	0	0	0
Operating Costs	40,000	0	0	0	0
External Revenues	0	0	0	0	0
Program Income (PBC)	0	0	0	0	0
In-Kind Match (PBC)	0	0	0	0	0
<b>NET FISCAL IMPACT</b>	<b>\$40,000 *</b>	=	=	=	=
<b># ADDITIONAL FTE POSITIONS (Cumulative)</b>	<b>0</b>	=	=	=	=

Is Item Included In Current Budget? Yes \_\_\_ No x  
 Budget Account No: Fund 1539 Department 764 Unit 1132 Object 8201  
 Reporting Category

**B. Recommended Sources of Funds/Summary of Fiscal Impact:**

\* Source for \$40,000 is a budget transfer from the General Fund to the JGI Program Budget Account Line 1539-764-1132-8201. The State of Florida requires that a local government adopt and provide a Resolution to Enterprise Florida, Inc. in order for the State to proceed further with a Qualified Target Industry (QTI) Tax Refund Program application.

**C. Departmental Fiscal Review:**

*[Signature]* 6/25/08  
 Economic Development

**III. REVIEW COMMENTS**

**A. OFMB Fiscal and/or Contract Administration Comments:**

*[Signature]* 8-18-08  
 vo OFMB  
 01/12  
 JD  
 STB

*[Signature]* 7/18/08  
 Contract Administration  
 11/7/08  
 This Contract complies with our contract review requirements.  
 8/22/08

**B. Legal Sufficiency:**

*[Signature]* 8/28/08  
 Assistant County Attorney

The effective date is not waivable.

**C. Other Department Review:**

\_\_\_\_\_  
 Department Director

**This summary is not to be used as a basis for payment.**

**Maggie Smith**

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**From:** Theresa Fleites [TFleites@biotestpharma.com]  
**Sent:** Tuesday, July 15, 2008 4:33 PM  
**To:** Maggie Smith  
**Subject:** RE: August 19th and new contract language RESENT TO REQUEST CONFIRMATION

These changes are satisfactory to Biotest Pharmaceuticals.

Thanks, Maggie for your help with hti.s

Terry

**From:** Maggie Smith [mailto:MASmith@pbcgov.org]  
**Sent:** Tuesday, July 15, 2008 3:22 PM  
**To:** Theresa Fleites  
**Cc:** Maggie Smith  
**Subject:** August 19th and new contract language RESENT TO REQUEST CONFIRMATION  
**Importance:** High

Theresa,

see attached revisions which were requested during our internal review here, along with the revised salary you requested.

The attached revise Board agenda item language, and the resolution and **contract are also revised by deleting the language struck out on pages 1 and 2:**  
**Newly created and/or relocated jobs**

I trust that these changes are satisfactory to your firm. I will need to know that these changes are satisfactory for the company, and that I can attach company signature page to the revised contracts. So, please confirm by email that the revised contract is satisfactory for the company's signature. **I will need a copy of your email confirming that it is OK by the company to continue processing the revised contract.**

I hope that you will be able to attend the August 19<sup>th</sup> meeting: let me know either way.

Maggie  
561-355-6607

**Maggie Smith**

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**From:** Maggie Smith  
**Sent:** Tuesday, July 15, 2008 11:47 AM  
**To:** Sandra Smith L.  
**Cc:** Maggie Smith  
**Subject:** RE: Biotest agenda item  
**Attachments:** Biotest BCC Agenda Item.doc; Biotest JGI Agreement.doc; Biotest QTI resolution.doc; Biotest BCC August 10 mts.doc

Ok Sandy. See attached:

Please note that the salary has been revised downward from \$61,00 to \$56,706 at the company's request, and the BDB supplied an updated JGI application for the file. Shannon has not yet been advised of this.

Also, the Budget Amendment and Budget Transfer are not included in these files, only w/ the hard copy. Our scanner is broken.

**From:** Sandra Smith L.  
**Sent:** Tuesday, July 15, 2008 11:19 AM  
**To:** Maggie Smith  
**Subject:** RE: Biotest agenda item

OK. But I should see a draft of the revised before Kevin signs. Email it to me. Thank you.

**From:** Maggie Smith  
**Sent:** Tuesday, July 15, 2008 11:00 AM  
**To:** Sandra Smith L.  
**Subject:** RE: Biotest agenda item

Will do Sandy. I am waiting for Kevin's sign off before I bring it to you.

**From:** Sandra Smith L.  
**Sent:** Tuesday, July 15, 2008 10:15 AM  
**To:** Maggie Smith  
**Subject:** RE: Biotest agenda item

Let me have the revised version of the Biotest item for Shannon's review. Thank you. Loretta has the original.

**From:** Maggie Smith  
**Sent:** Tuesday, July 15, 2008 7:54 AM  
**To:** Sandra Smith L.  
**Subject:** RE: Biotest agenda item

I was out yesterday Sandy. I have the revised draft and will hand carry down revisions to Loretta today, and will send copy by email to Joan, cc Kevin and Shannon.

## JOB GROWTH INCENTIVE GRANT AGREEMENT

**THIS AGREEMENT** is made as of the \_\_\_\_\_ day of \_\_\_\_\_, [date to be entered by Clerk of the Circuit Court] by and between Palm Beach County, a political subdivision of the State of Florida, by and through its Board of County Commissioners, hereinafter referred to as COUNTY, and **Biotest Pharmaceuticals Corporation**, [ ] an individual, [ ] a partnership, [X] corporation authorized to do business in the State of Florida, hereinafter referred to as COMPANY, whose Federal I.D. number is provided on Exhibit "A" as **26-1251037**, which is attached hereto and made a part hereof.

### WITNESSETH:

**WHEREAS**, it is the policy of the COUNTY to encourage and stimulate economic growth in Palm Beach County by either attracting new businesses to Palm Beach County or by assisting local expanding businesses within Palm Beach County that would otherwise expand elsewhere; and

**WHEREAS**, the creation of new full time employment opportunities for residents of Palm Beach County and the tax revenues resulting from business relocation or expansion within Palm Beach County is beneficial to the local economy; and

**WHEREAS**, the State of Florida has determined that counties may expend funds to attract and retain business enterprises, and that the use of public funds toward the achievement of such economic development goals constitutes a public purpose; and

**WHEREAS**, the COUNTY has determined that offering a Job Growth Incentive (JGI) Grant Program encourages either existing businesses to remain and/or expand or new businesses to establish a facility in Palm Beach County and thereby create employment opportunities for the residents of Palm Beach County; and

**WHEREAS**, the COUNTY has established an Economic Development Fund; and

**WHEREAS**, the average annual wage for COMPANY'S newly created jobs will meet or exceed the average salary level in Palm Beach County or the applicable industry average wage when the COUNTY provides a JGI Grant Agreement to COMPANY; and

**WHEREAS**, the COUNTY has determined that COMPANY is eligible to receive a JGI Grant Agreement based on the Criteria of the JGI Grant Program, as amended; and

**WHEREAS**, the COUNTY finds and declares that it is in the public's best interests to award a JGI Grant Agreement to COMPANY pursuant to the terms of this Agreement.

**NOW, THEREFORE**, in consideration of the promises and mutual covenants hereinafter contained, the parties agree as follows:

### PART I

#### RECITALS

**Recitals.** The foregoing recitals are correct and true at the time of execution of this Agreement and are incorporated herein.

### PART II

#### ELIGIBILITY

**Minimum Criteria.** The conditions precedent to COMPANY being eligible to obtain any JGI Grant Program (hereafter a "Grant") funds whatsoever from the COUNTY include:

- A. **Site.** COMPANY'S business operations in Palm Beach County shall be at the site described on Exhibit "A", which is attached hereto and made a part hereof.
- B. **Minimum Jobs & Salary.** COMPANY shall create jobs in Palm Beach County:
  - (1) At least **fifty (50)** new full time or equivalent jobs (minimum of 2,080 hours annually) must be created in Palm Beach County;
  - (2) The new jobs must be created in Palm Beach County following the commencement date of this Agreement, within the performance period and at the average annual salary as set forth in PART X of this Agreement to satisfy the **minimum conditions to obtain any funds whatsoever.**

PART III.

**GRANT AMOUNT**

**Grant Maximum Amount.** COMPANY shall be eligible to receive Grant payments of up to **\$40,000.00** which shall be payable in accordance with the terms of this Agreement.

PART IV

**COMMENCEMENT DATE & GRANT TERM**

**Grant Timeframes.** COMPANY shall be obligated to:

- A. **Commencement Date.** This Agreement shall commence on the **1st** day of **June 2008** and end on the **30th** day of **June 2014**.
- B. **Term: 73 months.** The term of this Agreement shall be for **seventy three (73)** months, from the commencement date of this Agreement, and consisting of the performance, maintenance, and final verification periods as set forth in Paragraphs "C", "D" and "E" below and until the expiration date of the Letter of Credit as provided for in PART XI of this Agreement. However, the only circumstance whereby the term of this Agreement and the Letter of Credit may expire prior to the end of the **seventy third (73rd)** month are set forth in PARTS XI and XII of this Agreement.
- C. **Performance Period: 43 months.** COMPANY shall have **forty three (43)** months (**June 1, 2008 through December 31, 2011**) from the commencement date of this Agreement to fulfill the obligations set forth hereinafter relating to job creation.
- D. **Maintenance Period: 24 months.** COMPANY shall be obligated to maintain such jobs for an additional **twenty-four (24)** months (**January 1, 2012 through December 31, 2013**) from the date the COMPANY provides the COUNTY with audited verification of compliance by COMPANY with the agreed upon performance standards of this Agreement, and COUNTY after its review of this performance audit has determined that COMPANY has satisfactorily complied with its obligations under this Agreement.
- E. **Final Verification Period: 6 months.** This Agreement shall provide an additional **six (6)** months (**January 1, 2014 – June 30, 2014**) immediately following the maintenance period to enable COMPANY to comply with the provisions of PARTS XI and XII of this Agreement.

PART V.

**NEW JOBS**

**New Jobs.** The conditions for COMPANY to obtain the maximum amount of Grant funds from the COUNTY include:

- A. **Job Performance & Period.** COMPANY shall create **fifty (50)** full time jobs or equivalent jobs (minimum of 2,080 hours annually) in Palm Beach County, within **forty-three 43** months (by **December 31, 2011**) of the commencement date of this Agreement.
- B. **Job Advertising.** In addition to COMPANY'S normal advertisement of job positions, COMPANY shall undertake extensive advertising of the job openings in Palm Beach County to provide sufficient notice to Palm Beach County's residents concerning the availability of COMPANY'S new positions. The advertising regarding the new jobs at COMPANY'S facility in Palm Beach County must be county-wide, include Hispanic and Minority news venues, and not be limited to a single advertisement. Proof of advertising shall be provided to the COUNTY in conformity with the Notice section of this Agreement and within **thirty (30)** days of the date of advertising; and
- C. **Job Availability & Competition.** COMPANY shall mail the job description for all new job hires (as those job descriptions are being created and made available) to:
  - (1) Workforce Alliance, Inc.  
Main Office: 2051 Martin Luther King Blvd., Suite 302, Riviera Beach, FL 33404  
Attention: Executive Director
  - (2) The Glades Workforce Development Center  
Glades Office: 557 SW 16<sup>th</sup> St., Belle Glade, FL 33430  
Attention: Chairperson
- D. **Transportation to & from Job Location.** COMPANY shall provide the following information to assist individuals in Palm Beach County who are hired:

- (1) The bus stop closest to COMPANY'S office;
- (2) The Tri-Rail stop number closest to COMPANY'S office;
- (3) Information about COMPANY'S car pool program (if one exists); and
- (4) Directions to COMPANY'S office from Interstate 95.

This information shall either be posted on COMPANY'S web site or provided to individuals who are hired.

PART VI.  
**DEFINITIONS**

**Definitions.** The new jobs as set forth in this Agreement shall be:

- A. **New Job.** A full time or equivalent job (minimum of 2,080 hours annually) that is created in Palm Beach County which adds to Palm Beach County's total job base, adds incrementally to COMPANY'S payroll, results in a net increase in the number of COMPANY'S employees, and involves only a new employee working on-site at COMPANY'S facility that is located in Palm Beach County. A full time equivalent job may include permanent salaried, part-time, leased employees, and contractors and subcontractors. Excludes an employee on COMPANY'S payroll of a COMPANY facility located in a county adjacent to the borders of Palm Beach County who transferred to COMPANY'S facility in Palm Beach County.
- B. **Relocating Employee.** A full time or equivalent employee identified on COMPANY'S payroll who relocates to Palm Beach County. Excludes an employee on COMPANY'S payroll of a COMPANY facility located in a county adjacent to the borders of Palm Beach County who transferred to COMPANY'S facility in Palm Beach County.
- C. **Equivalent Job.** An equivalent job shall mean any two or more part-time jobs whose sum total scheduled hours, inclusive of vacation and holidays, generates 2,080 hours annually.

PART VII.  
**AWARD PER JOB & SALARY**

**Amount Per Job & Wage.** As a further condition precedent to obtaining the Grant's base amount of **\$800.00 per job created** from COUNTY, COMPANY shall pay an average salary per annum equal to or greater than **\$56,706.00 (excluding benefits)** for all of those COMPANY employees that must be created in Palm Beach County pursuant to this Agreement.

PART VIII.  
**JOB PERFORMANCE & AUDIT**

**Performance Audit.**

- A. **Independent Audit.** Prior to receiving any Grant funds, COMPANY shall provide written audited verification at its sole cost and expense, satisfactory to COUNTY in its sole discretion, of compliance by COMPANY with all agreed upon performance standards set forth in this Agreement.
  - (1) This performance audit must be conducted by an independent Certified Public Accountant (CPA).
  - (2) The CPA must **examine** COMPANY'S statements/schedules for the new jobs created and the average annualized salary for those jobs at the facility located in Palm Beach County, and express a written **opinion**. The examination must be conducted in accordance with standards established by the American Institute of Certified Public Accountants.
  - (3) The CPA's report will include examining evidence supporting COMPANY'S schedules of new jobs and average annualized salary of the new jobs.
  - (4) The accuracy of the number, hire dates and average annual salaries (excluding benefits) of all current employee transfers and/or all local hires in Palm Beach County as represented by COMPANY shall be verified by this independent audit by the CPA to the COUNTY'S satisfaction.
  - (5) The CPA's report must identify two (2) average annual salaries for the new jobs based on the auditor's examination of the new jobs according to:
    - a) **All New Jobs.** Identify the average annualized salary for all new jobs. Include all exempt and non-exempt employees and all officers/corporate executives that will represent the total number of new full time jobs to be created/relocated in Palm Beach County.
    - b) **Low and Mid Echelon New Jobs Only.** Identify the average salary per annum of the new exempt and non-exempt employees only; **exclude** from these calculations the average annual salary of the officers and senior corporate executives which are included in A(5)(a) above.
  - (6) The audit may be performed in conjunction with other auditing services.
  - (7) A report by an independent CPA that is a review or agreed-upon procedures report on COMPANY'S representations is unacceptable to the COUNTY.

- (8) This performance audit must be submitted to the COUNTY (attn: Palm Beach County Economic Development Office) within forty five months (45) months (by February 28, 2012 of the commencement date of this Agreement.
  - (9) COMPANY will be informed by the COUNTY when the COUNTY has made the determination that there are deficiencies with the audit and/or invoice documentation. Under these circumstances, the audit and invoice documentation cannot be processed pending COMPANY resolving the identified deficiencies.
  - (10) Upon receipt by the COUNTY from COMPANY of the appropriate audited and/or invoiced documentation, processing of the audit and invoices may proceed.
- B. Audit & Invoice Submittal. The COMPANY may submit such performance audit and seek reimbursement for eligible expenses hereunder at any time following the commencement date hereof, upon satisfaction of the performance standards set forth hereinabove.
  - C. Remittance. The COUNTY shall remit payment to COMPANY of the sum due hereunder within sixty (60) days of the COUNTY'S receipt of written audited verification as required hereunder, the COUNTY having completed its review of the audited report, and the COUNTY having determined that COMPANY has satisfactorily complied with the terms of this Agreement.
  - D. Inspection. Upon ten (10) business days notice and at any time during normal business hours and as often as the COUNTY deems necessary, there shall be made available by COMPANY to the COUNTY for examination, all its records with respect to all matters covered by this Agreement. The COUNTY reserves the right to require copies of such records and/or to conduct an inspection of COMPANY'S records regarding performance measures at any time for any period covered by this Agreement.
  - E. Automatic Termination. This Agreement shall automatically terminate, thereby relieving the parties hereto of any liability or obligations hereunder, if COMPANY fails to submit this performance audit to the COUNTY by the end of the forty fifth (45th) month following the commencement date of this Agreement (by February 28, 2012).

#### PART IX.

#### REIMBURSEMENT TERMS

**Eligible Reimbursables.** The Grant funds available under this Agreement will be provided only for reimbursement of expenses associated with COMPANY'S physical move, relocation to and/or expansion in Palm Beach County as set forth on Exhibit "B". To be eligible for reimbursement, such expenses must be:

- A. Date of Expenditure. Incurred not more than forty three (43) months following the commencement date of this Agreement (**June 1, 2008 through December 31, 2011**).
- B. Exhibit "B". In compliance with the requirements set forth on Exhibit "B".

#### **Request Reimbursement.**

- A. Total Grant Amount. All eligible "Out-of-Pocket" expenses incurred directly by COMPANY will be reimbursed up to an amount not to exceed the Grant maximum amount set forth in this Agreement.
- B. Total New Jobs. All reimbursement amounts shall not exceed the Grant's award per job, multiplied by the number of applicable jobs as verified by the Performance Audit, and as set forth in this Agreement.
- C. Payment Schedule. All requests for payment of "Out-of-Pocket" expenses eligible for reimbursement under the terms of this Agreement must be received no later than the expiration of the forty-three (43rd) month following the commencement date of this Agreement (by **December 31, 2011**).
- D. Invoices & Documentation. All requests for reimbursement shall include, in addition to the performance audit required by this Agreement, copies of paid receipts, canceled invoices, or other documentation acceptable to the Palm Beach County Office of Financial Management & Budget and the Finance Department of the Clerk of the Circuit Court, and shall be sufficient to adequately describe the expenses and establish that the expense was actually incurred directly by COMPANY.

#### PART X.

#### BREACH OF AGREEMENT

The COMPANY must fully comply with the job and salary guarantees as set forth in this Agreement.

- A. An audit of the COMPANY must show that the COMPANY created at least fifty (50) full time equivalent (F.T.E.) positions at an average annual salary that does not fall below \$56,706.00 (excluding benefits);



If the minimum full time equivalent positions and/or salaries fall below the minimum, as required by this Agreement, the COMPANY shall be considered by the COUNTY to have **breached this Agreement and the Agreement shall terminate**. In the event of termination, COMPANY agrees that it shall, within 60 days of the date of termination, make restitution to the COUNTY the per job grant award paid by the COUNTY to COMPANY for each position not maintained as required by this Agreement.

PART XI.  
LETTER OF CREDIT

**Provision of Letter of Credit.**

- A. **Review & Acceptance.** COMPANY shall provide to the COUNTY a clean, irrevocable Letter of Credit that the COUNTY must review, and that the COUNTY finds acceptable at its sole discretion and in accordance with the COUNTY'S PPM: CW-F-055, for the maximum grant amount of this Agreement or for an amount less than the total amount of grant funds in the event COMPANY seeks reimbursement for an amount less than the maximum grant amount.
- B. **Payment.** The Letter of Credit shall be provided to the COUNTY at the time COMPANY seeks payment pursuant to this Agreement or in the event grant funds are committed pursuant to PART XIII (Local Match Commitment) of this Agreement at the time the State of Florida requests payment, whichever occurs first.
- C. **Term.** The Letter of Credit shall remain in effect until the COUNTY has determined that COMPANY has fully satisfied both the job performance and maintenance period obligations as set forth in this Agreement. In order for the COUNTY to be provided sufficient time to complete its review and to determine whether COMPANY is in full compliance with COMPANY'S obligations as set forth in this Agreement, the Letter of Credit shall remain in effect **until June 30, 2014.**
- D. **Automatic Termination.** This Agreement shall automatically terminate, thereby relieving the parties hereto of any liability or obligations hereunder, if COMPANY fails to submit an acceptable Letter of Credit to the COUNTY at the time COMPANY seeks payment pursuant to this Agreement, with the Letter of Credit to remain in effect for the total period set forth in PART XI (C) above.
- E. **Release.** Upon the COUNTY having determined that COMPANY has satisfactorily complied with the terms of this Agreement, the COUNTY shall notify the financial institution that issued the Letter of Credit and COMPANY that the Letter of Credit is considered released. The COUNTY may release the Letter of Credit prior to the end date of the **Letter of Credit (until June 30, 2014)** contingent on the COUNTY having been provided verification acceptable to the COUNTY that COMPANY has satisfied its job performance and maintenance obligations prior to the end date identified for complying with such obligations in this Agreement.

PART XII.  
JOB MAINTENANCE & REPORT

**Maintenance Agreed-upon Procedures Report.** Additional conditions:

- A. **Maintenance Period.** COMPANY shall maintain each position created in Palm Beach County, and at the average salary per annum required by this Agreement or at the number of full time jobs and wage level verified by the performance audit:
  - (1) Until the expiration of the **sixty-seventh (67th)** month (by **December 31, 2013**) following the commencement date of this Agreement; or
  - (2) If COMPANY submitted its performance audit at anytime within the performance period of this Agreement prior to the expiration of the **forty-third (43rd)** month following the commencement date of this Agreement, the additional **twenty four (24)** months of job maintenance under this Agreement shall commence as set forth in Paragraph "B" below. In the event that the maintenance period commences prior to **December 31, 2011**, it is understood that COMPANY can complete performance of all of its obligations hereunder prior to the expiration of the Agreement term.
- B. **Commencement of Maintenance Period.** The **twenty-four (24)** months of job and salary maintenance shall commence as of the compliance by COMPANY with the terms of this Agreement. In the event that the COUNTY subsequently determines that the performance audit is deficient, the commencement of the maintenance period shall be extended until the deficiencies are corrected.
- C. **Independent CPA.** COMPANY shall provide the COUNTY with an agreed-upon procedures report from an independent CPA regarding COMPANY'S representations that it has maintained the positions created in or relocated to Palm Beach County and at the required wage level during the maintenance period. The CPA report shall be prepared in accordance with standards established by the American Institute of Certified Public Accountants. The report shall be submitted on the CPA's letterhead, shall be satisfactory to the COUNTY in its

sole discretion, and shall identify the procedures performed to assist the COUNTY in determining whether COMPANY is in compliance with the terms of this Agreement.

- D. **Report Submittal.** COMPANY, at its sole cost and expense, shall provide this Maintenance Report to the COUNTY (i.e., to the Palm Beach County Economic Development Office) no later than the end of the sixty-ninth (69th) month (by February 28, 2014) following the commencement date of this Agreement or no later than sixty (60) days following the expiration of the twenty-four (24) months of job maintenance.
- E. **Restitution.** Within sixty (60) days from the date this audit is submitted to the COUNTY, COMPANY agrees to make restitution to the COUNTY, the per job grant award paid by the COUNTY to COMPANY, for each position not maintained in accordance with the conditions set forth hereinabove. This restitution payment to the COUNTY shall be to the "Palm Beach County Board of County Commissioners" for said Grant.
- F. **Inspection.** Upon ten (10) business days notice and at any time during normal business hours and as often as the COUNTY deems necessary, there shall be made available by COMPANY to the COUNTY for examination, all its records with respect to all matters covered by this Agreement. The COUNTY reserves the right to require copies of such records and/or to conduct an inspection of COMPANY'S records regarding performance requirements at any time for any period covered by this Agreement.

#### PART XIII.

##### LOCAL MATCH COMMITMENT

**Qualified Target Industry Tax Refund Program.** *In the event* COMPANY enters into an agreement with the State of Florida to receive State tax refunds pursuant to the State of Florida Qualified Target Industry Tax Refund Program as set forth in Chapter 288, Florida Statutes, as may be amended (hereinafter referred to as QTI), the following shall apply:

- A. **Maximum Match Amount.** Any Grant funds provided for under this Agreement may be used by COUNTY as reimbursement toward the required QTI local match of up to 20%, with the total match amount of COUNTY not to exceed the total Grant amount of this Agreement.
- B. **Payment Request & Letter of Credit.** COMPANY shall provide to COUNTY a clean, irrevocable Letter of Credit at the time the State of Florida requests the local match payment pursuant to PART XI (Letter of Credit) of this Agreement. The State of Florida's payment schedule for COMPANY'S expansion project differs from the COUNTY'S schedule. In order for the COUNTY to make timely payments to the State of Florida, a letter of credit is required from the COMPANY, based on the yearly payout amounts and schedule required by the State of Florida attached as Exhibit C.
- C. **Payment Procedure.** The Grant funds paid by COUNTY on behalf of COMPANY as part of the required QTI local match, and as provided for under this Agreement, shall be paid directly by COUNTY to the State of Florida Economic Development Trust Fund in accordance with the QTI Program.
- D. **QTI Commitment Nullified.** If COMPANY does not satisfy all of its QTI contractual obligations with the State of Florida, which results in the termination of the QTI agreement, but complies fully with its Grant commitments with COUNTY, the COMPANY shall be entitled to seek reimbursement of expenditures of funds pursuant to this Agreement. However, any funds that may have been provided by COUNTY to the State of Florida toward the QTI match shall be subtracted from the Grant maximum amount set forth in this Agreement.

#### PART XIV.

##### GENERAL CONDITIONS

**Obligation & Annual Appropriation.** The COUNTY'S obligation to pay under this Agreement is contingent upon annual appropriation for its purpose by the COUNTY.

**Employee: Bona Fide.** COMPANY warrants that it has not employed or retained any company or person, other than a bona fide employee working solely for 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 COMPANY, any fee, commission, percentage, gift, or any other consideration contingent upon or resulting from the award or making of this Agreement.

- A. **Non-discrimination.** COMPANY agrees that no person shall on the grounds of race, color, disability, national origin, religion, age, familial status, sex or sexual orientation be excluded from the benefits of, or be subjected to discrimination under, any activity carried out by the performance of this Agreement. Upon receipt of evidence of such discrimination, the COUNTY shall have the right to terminate this Agreement.
- B. **Low-income Residents & Local Businesses.** To the greatest extent feasible,
  - (1) Low-income residents shall be given opportunities for training and employment; and

- (2) Eligible business concerns located in or owned in substantial part by persons residing in Palm Beach County shall be awarded contracts in connection with this Grant.

**Worker's Compensation & Employer's Liability.** COMPANY shall agree to maintain Worker's Compensation Insurance & Employers Liability in accordance with Florida Statute Chapter 440 for all jobs set forth in this Agreement.

**Convicted Vendor List.** As provided in F.S. 287.132-133, by entering into this Agreement or performing any work in furtherance hereof, COMPANY certifies that it, and its affiliates who will perform hereunder, have not been placed on the Convicted Vendor List maintained by the State of Florida Department of Management Services within thirty-six (36) months immediately preceding the date of execution of this Agreement by the COUNTY. This notice is required by F.S. 287.133(3)(a).

Florida Department of Management Services, Division of Purchasing  
4050 Esplanade Way, Tallahassee, FL 32399-0950  
(850) 488-8440

[http://dms.myflorida.com/dms/purchasing/convicted\\_suspended\\_discriminatory\\_vendor\\_lists/convicted\\_vendor\\_list](http://dms.myflorida.com/dms/purchasing/convicted_suspended_discriminatory_vendor_lists/convicted_vendor_list)

**Successors & Assigns.** The COUNTY and COMPANY each binds itself and its partners, successors, executors, administrators and assigns to the other party and to the partners, successors, executors, administrators and assigns of such other party, in respect to all covenants of this Agreement. Except as above, neither the COUNTY nor COMPANY shall assign, sublet, convey or transfer its interest in this Agreement without the prior written consent of the other. Nothing herein shall be construed as creating any personal liability on the part of any officer or agent of the COUNTY, nor shall it be construed as giving any rights or benefits hereunder to anyone other than the COUNTY and COMPANY. In the event that the COUNTY determines that COMPANY is in violation of this paragraph, the COUNTY shall have the right to terminate this Agreement and to seek restitution of the funds paid by the COUNTY to COMPANY.

**Name or Location Change.** In the event COMPANY implements a change to the name of COMPANY or the location of COMPANY within or outside Palm Beach County, COMPANY must immediately provide the COUNTY with written verification regarding said change to the name and/or location of COMPANY upon it becoming official.

**Material Change of Circumstances.** COMPANY shall immediately notify the COUNTY of any material change of circumstances of COMPANY'S business operations in Palm Beach County. For the purposes hereof, material change of circumstance shall include, but not be limited to, the failure of COMPANY to diligently and actively pursue fulfillment of the terms hereof, the sale or transfer of COMPANY'S assets for the benefit of creditors, the suspension, closing or cessation of operation of COMPANY, voluntary or involuntary bankruptcy or an assignment for the benefit of COMPANY'S creditors. In the event of a material change of circumstances, the COUNTY shall have the right to terminate this Agreement, whereupon the COUNTY shall have no further obligation to COMPANY under this Agreement.

**Entire Agreement Between Parties.** The COUNTY and COMPANY agree that this Agreement sets forth the entire agreement between the parties, and that there are no promises or understandings other than those stated herein. None of the provisions, terms and conditions contained in this Agreement may be added to, modified, superseded or otherwise altered, except by written instrument executed by the parties hereto.

**Performance: Time & Liability.** The parties expressly agree that time is of the essence in this Agreement and the failure by a party to complete performance within the time specified, or within a reasonable time if no time is specified herein, shall, at the option of the other party without liability, in addition to any other rights or remedies, relieve the other party of any obligation to accept such performance.

**Invalid or Unenforceable Terms.** If any term or provision of this Agreement, or the application thereof to any person or circumstances shall, to any extent, be held invalid or unenforceable, the remainder of this Agreement, or the application of such terms or provision, to persons or circumstances other than those as to which it is held invalid or unenforceable, shall not be affected, and every other term and provision of this Agreement shall be deemed valid and enforceable to the extent permitted by law.

**Defaults.** The occurrence of any one or more of the following events shall constitute a Default hereunder:

- A. Vacating, abandoning, or closing COMPANY'S business.
- B. Relocating COMPANY'S business outside Palm Beach County.
- C. The failure of COMPANY to observe or perform any of the terms, covenants, conditions, obligations, or provisions of this Agreement to be observed or performed by COMPANY

where such failure continues for a period of thirty (30) days after written notice thereof from the COUNTY to COMPANY; provided, however, that if the nature of COMPANY'S default is such that more than thirty (30) days are reasonably required for its cure, then COMPANY shall not be deemed to be in default if COMPANY commenced such cure within said thirty (30) day period and thereafter diligently pursues such cure to completion.

- D. (i) The making by COMPANY of any general assignment, or general arrangement for the benefit of creditors; (ii) the filing by or against COMPANY of a petition to have the COMPANY adjudged bankrupt or a petition for reorganization or arrangement under any law relating to bankruptcy (unless, in the case of a petition filed against COMPANY, the same is dismissed within sixty (60) days); (iii) the appointment of a trustee or receiver to take possession of substantially all of COMPANY'S assets where possession is not restored to COMPANY within thirty (30) days; or (iv) the attachment, execution or other judicial seizure of substantially all of COMPANY'S assets located within Palm Beach County where such seizure is not discharged within thirty (30) days.
- E. The discovery by the COUNTY that any financial statement relating to this Agreement given to the COUNTY was materially false.
- F. A breach of Agreement as referenced in PART X. B.

**Remedies.** In the event of a Default by COMPANY, the COUNTY may at any time thereafter terminate this Agreement. In such event, the COUNTY shall be entitled to recover immediately upon demand from COMPANY or any party joining in or consenting to this Agreement, all sums paid by the COUNTY to COMPANY pursuant to this Agreement.

**Law & Remedy.** This Agreement shall be governed by the laws of the State of Florida. Any and all legal action necessary to enforce the Agreement shall be held in Palm Beach County. No remedy herein conferred upon any party is intended to be exclusive of any other remedy, and each and every such remedy shall be cumulative and shall be in addition to every other remedy given hereunder or now or hereafter existing at law or in equity or by statute or otherwise. No single or partial exercise by any party of any right, power, or remedy hereunder shall preclude any other or further exercise thereof.

**Indemnification & Hold Harmless.** COMPANY agrees to protect, defend, reimburse, indemnify and hold the COUNTY, its agents, its employees and elected officers and each of them, free and harmless at all times from and against any and all claims, liability, expenses, losses, costs, fines and damages, including attorney's fees, and causes of action of every kind and character against and from the COUNTY which arise out of this Agreement. COMPANY recognizes the broad nature of this indemnification and hold harmless clause, and voluntarily makes this covenant and expressly acknowledges the receipt of good and valuable consideration provided by the COUNTY in support of this clause in accordance with the laws of the State of Florida. This Paragraph shall survive the termination of the Agreement.

**Notice.** All notices required in this Agreement shall be sent by certified mail, return receipt requested, and if sent to the COUNTY shall be mailed to:

Kevin Johns, Director  
Palm Beach County Economic Development Office  
P.O. Box 1989 (10th floor)  
West Palm Beach, Florida 33402-1989

With a copy to:

Dawn Wynn, Assistant County Attorney  
County Attorney's Office  
301 N. Olive Ave (6<sup>th</sup> floor)  
West Palm Beach, FL 33401

And if sent to the COMPANY shall be mailed to (to be completed by COMPANY prior to execution):

Biotest Pharmaceuticals  
5800 Park of Commerce Blvd., N.W.  
Boca Raton, FL 33487

IN WITNESS WHEREOF, the Board of County Commissioners of Palm Beach County, Florida has made and executed this Agreement on behalf of Palm Beach County, and COMPANY has hereunto set its hand the day and year above written.

ATTEST:  
SHARON R. BOCK,  
CLERK & COMPTROLLER

PALM BEACH COUNTY, FLORIDA  
BY ITS BOARD OF COUNTY  
COMMISSIONERS:

By: \_\_\_\_\_  
Deputy Clerk

By: \_\_\_\_\_  
Addie L. Greene, Chair

APPROVED AS TO TERMS  
AND CONDITIONS:

APPROVED AS TO FORM  
AND LEGAL SUFFICIENCY:

By: [Signature]  
Director, Economic Development

By: [Signature]  
County Attorney

WITNESS FOR COMPANY:

COMPANY:

Maggie Smith  
Signature  
M SMITH  
Name (type or print)  
Sr Planner  
Title

Biotest Pharmaceuticals  
Company Name  
[Signature]  
Signature  
Jordan Sigel  
Name (type or print)  
SVP FINANCE & CFO  
Title

N/A

COMPANY SEAL  
(Seal must be identical to COMPANY name.  
If seal is unavailable, COMPANY must draw  
seal. If not applicable, write N/A.)

**EXHIBIT "A"**

**JOB GROWTH INCENTIVE GRANT AGREEMENT  
BETWEEN PALM BEACH COUNTY AND  
BIOTEST PHARMACEUTICALS**

**COMPANY IDENTIFICATION AND INFORMATION:**

JGI Application date: April 18, 2008

Letter of Intent date: N/A

**BIOTEST PHARMACEUTICALS**

Existing Headquarters: 5800 Park of Commerce Blvd., N.W.  
Boca Raton, FL 33487  
561-989-5560

Proposed Site: same as above

Products/services involving  
COMPANY'S facilities  
in Palm Beach County:

Biotest Pharmaceuticals Corporation develops and manufactures pharmaceutical and biotherapeutic products with a specialization in immunology. The company plans to increase plasma protein production by reconfiguring an existing plant through a projected \$16.1 million capital expenditure over 3 years.

.....  
**BIOTEST PHARMACEUTICALS**

Business: Type: Corporation  
Date: September 10, 2007  
State: Delaware

State of Florida: Status: Active  
Registration Date: December 10, 2007  
(registered with the Division of Corporations,  
Florida Department of State, in order to conduct  
business operations within the State of Florida)

Federal ID number: 26-1251037

.....  
**BIOTEST PHARMACEUTICALS CORPORATION**

Company History: The COMPANY Biotest Pharmaceuticals is a wholly owned subsidiary of Biotest AG headquartered in Dreieich, Germany. In December 2007, Biotest AG purchased the existing buildings and assets from Nabi, and began operations as Biotest Pharmaceuticals.

.....

**EXHIBIT "B"**

**JOB GROWTH INCENTIVE GRANT AGREEMENT  
BETWEEN PALM BEACH COUNTY AND  
BIOTEST PHARMACEUTICALS**

**ELIGIBLE REIMBURSABLES:**

The grant funds of this Agreement may be used to reimburse COMPANY for the following expenses associated with the expansion and/or relocation of COMPANY in Palm Beach County. Invoices submitted for reimbursement must be accompanied by copies of canceled checks, with the front and back sides of the canceled checks copied.

1. **Payment of Impact Fees and Special Assessments**
  - (a) Impact fees assessed by the COUNTY include fees for roads, parks, fire-rescue, libraries, law enforcement, and public buildings.
  - (b) Impact fees assessed by local governments and special assessments by special districts.
2. **Land Improvement Costs**
  - (a) Off-site land improvements.
  - (b) Road improvements.
  - (c) Construction of recreational facilities open to the public.
  - (d) Reimbursement for any government required dedications.
  - (e) Water and sewer connection fees.
  - (f) Telecommunication connection fees and costs.
  - (g) Infrastructure design and construction plan preparation.
  - (h) Drainage facilities in conjunction with new roadway construction or on-site improvements.
  - (i) Construction of new curbs, curb cuts, medians, shoulders and sidewalks.
  - (j) Relocating utilities to accommodate new roadway construction.
  - (k) Facade redevelopment in eligible community redevelopment agency or downtown development authority designated areas subject to prior approval of all governing bodies.
  - (l) Landscaping and road beautification costs.
  - (m) All fees and dedications required by entities other than the COUNTY are subject to prior approval by the Palm Beach County Economic Development Office.
  - (n) County permitting, licensing, or other approval costs associated with land improvement.
3. **Environmental Compliance**
  - (a) Costs associated with design and installation of equipment needed for compliance with existing federal, state, and local environmental standards.
  - (b) Costs associated with asbestos removal.
4. **Leasehold Improvements**
  - (a) Costs of improvements to leased property required by expansion or relocation, including wiring and other installation costs involving communication and computer systems.
5. **Construction and Renovation Costs**
  - (a) Costs of constructing or renovating the real property for which COMPANY must possess title, with such costs directly related to the expansion or relocation.
  - (b) Architect, design and technical fees associated with the expansion or relocation.
6. **Employee Hiring and Training**
  - (a) Costs associated with providing for employee hiring and training, such as advertising, job fairs, and reasonable hotel and transportation costs for employee recruitment and training. All out of town travel by trainers and trainees (new employees) directly necessitated by the expansion or relocation must be fully documented and will be reimbursed in accordance with the provisions of Florida Statute, Chap. 112, Part I, 112.061; [www.leg.state.fl.us](http://www.leg.state.fl.us) (Statutes & Constitution).
7. **Relocating Company Assets**
  - (a) Costs associated with relocation of company assets required by expansion or relocation.
8. **Day Care**
  - (a) Improvement costs associated with establishing a COMPANY sponsored day care facility for children of employees filling new jobs, with facility physically located on or adjacent to site of relocation or expansion project.
9. **Local Match for State Tax Refund Program**
  - (a) Up to 20% of State Tax refund subject to State Law and procedures established pursuant to the Job Growth Incentive Grant Program.

**EXHIBIT "C"**

**JOB GROWTH INCENTIVE GRANT AGREEMENT  
BETWEEN PALM BEACH COUNTY AND  
BIOTEST PHARMACEUTICALS**

**JOB CREATION SCHEDULE**

Below is the State of Florida's projected job creation schedule and payment schedule. The information was given to the COUNTY by Enterprise Florida, Inc. (EFI), for Biotest Pharmaceuticals expansion project in Palm Beach County. Enterprise Florida is the public-private partnership responsible for leading Florida's statewide economic development efforts. Enterprise Florida works with a statewide network of regional and local economic development organizations to continually improve Florida's business climate and ensure its global competitiveness.

Biotest Pharmaceuticals must adhere to the following schedule:

Create 50 new full time jobs by 12/31/11

**Total:** 50 new full time jobs created by 12/31/11

**PROJECTED LOCAL MATCH PAYMENT SCHEDULE:**

The job creation schedule leads to the following QTI local match payment requirements by the COUNTY:

By approximately 12/31/11: \$40,000

**PLEASE NOTE:** THE INFORMATION LISTED ABOVE IS THE APPROXIMATE DATES AND AMOUNTS BY WHICH THE COUNTY WILL BE REQUESTED TO PAY THE RESPECTIVE AMOUNTS. THE OFFICIAL CREATION AND LOCAL MATCH SCHEDULES WILL BE ISSUED BY THE OFFICE OF TOURISM, TRADE, AND ECONOMIC DEVELOPMENT (OTTED), ONCE THE QTI HAS BEEN APPROVED BY THE STATE.



## JOB GROWTH INCENTIVE GRANT AGREEMENT

**THIS AGREEMENT** is made as of the \_\_\_\_ day of \_\_\_\_\_, [date to be entered by Clerk of the Circuit Court] by and between Palm Beach County, a political subdivision of the State of Florida, by and through its Board of County Commissioners, hereinafter referred to as COUNTY, and **Biotest Pharmaceuticals Corporation**, [ ] an individual, [ ] a partnership, [X] corporation authorized to do business in the State of Florida, hereinafter referred to as COMPANY, whose Federal I.D. number is provided on Exhibit "A" as **26-1251037**, which is attached hereto and made a part hereof.

### WITNESSETH:

**WHEREAS**, it is the policy of the COUNTY to encourage and stimulate economic growth in Palm Beach County by either attracting new businesses to Palm Beach County or by assisting local expanding businesses within Palm Beach County that would otherwise expand elsewhere; and

**WHEREAS**, the creation of new full time employment opportunities for residents of Palm Beach County and the tax revenues resulting from business relocation or expansion within Palm Beach County is beneficial to the local economy; and

**WHEREAS**, the State of Florida has determined that counties may expend funds to attract and retain business enterprises, and that the use of public funds toward the achievement of such economic development goals constitutes a public purpose; and

**WHEREAS**, the COUNTY has determined that offering a Job Growth Incentive (JGI) Grant Program encourages either existing businesses to remain and/or expand or new businesses to establish a facility in Palm Beach County and thereby create employment opportunities for the residents of Palm Beach County; and

**WHEREAS**, the COUNTY has established an Economic Development Fund; and

**WHEREAS**, the average annual wage for COMPANY'S newly created jobs will meet or exceed the average salary level in Palm Beach County or the applicable industry average wage when the COUNTY provides a JGI Grant Agreement to COMPANY; and

**WHEREAS**, the COUNTY has determined that COMPANY is eligible to receive a JGI Grant Agreement based on the Criteria of the JGI Grant Program, as amended; and

**WHEREAS**, the COUNTY finds and declares that it is in the public's best interests to award a JGI Grant Agreement to COMPANY pursuant to the terms of this Agreement.

**NOW, THEREFORE**, in consideration of the promises and mutual covenants hereinafter contained, the parties agree as follows:

### PART I

#### RECITALS

**Recitals.** The foregoing recitals are correct and true at the time of execution of this Agreement and are incorporated herein.

### PART II

#### ELIGIBILITY

**Minimum Criteria.** The conditions precedent to COMPANY being eligible to obtain any JGI Grant Program (hereafter a "Grant") funds whatsoever from the COUNTY include:

- A. **Site.** COMPANY'S business operations in Palm Beach County shall be at the site described on Exhibit "A", which is attached hereto and made a part hereof.
- B. **Minimum Jobs & Salary.** COMPANY shall create jobs in Palm Beach County:
  - (1) At least **fifty (50)** new full time or equivalent jobs (minimum of 2,080 hours annually) must be created in Palm Beach County;
  - (2) The new jobs must be created in Palm Beach County following the commencement date of this Agreement, within the performance period and at the average annual salary as set forth in PART X of this Agreement to satisfy the **minimum conditions to obtain any funds whatsoever.**

PART III.

**GRANT AMOUNT**

**Grant Maximum Amount.** COMPANY shall be eligible to receive Grant payments of up to **\$40,000.00** which shall be payable in accordance with the terms of this Agreement.

PART IV

**COMMENCEMENT DATE & GRANT TERM**

**Grant Timeframes.** COMPANY shall be obligated to:

- A. **Commencement Date.** This Agreement shall commence on the **1st** day of **June 2008** and end on the **30th** day of **June 2014**.
- B. **Term: 73 months.** The term of this Agreement shall be for **seventy three (73)** months, from the commencement date of this Agreement, and consisting of the performance, maintenance, and final verification periods as set forth in Paragraphs "C", "D" and "E" below and until the expiration date of the Letter of Credit as provided for in PART XI of this Agreement. However, the only circumstance whereby the term of this Agreement and the Letter of Credit may expire prior to the end of the **seventy third (73rd)** month are set forth in PARTS XI and XII of this Agreement.
- C. **Performance Period: 43 months.** COMPANY shall have **forty three (43)** months (**June 1, 2008 through December 31, 2011**) from the commencement date of this Agreement to fulfill the obligations set forth hereinafter relating to job creation.
- D. **Maintenance Period: 24 months.** COMPANY shall be obligated to maintain such jobs for an additional **twenty-four (24)** months (**January 1, 2012 through December 31, 2013**) from the date the COMPANY provides the COUNTY with audited verification of compliance by COMPANY with the agreed upon performance standards of this Agreement, and COUNTY after its review of this performance audit has determined that COMPANY has satisfactorily complied with its obligations under this Agreement.
- E. **Final Verification Period: 6 months.** This Agreement shall provide an additional **six (6)** months (**January 1, 2014 – June 30, 2014**) immediately following the maintenance period to enable COMPANY to comply with the provisions of PARTS XI and XII of this Agreement.

PART V.

**NEW JOBS**

**New Jobs.** The conditions for COMPANY to obtain the maximum amount of Grant funds from the COUNTY include:

- A. **Job Performance & Period.** COMPANY shall create **fifty (50)** full time jobs or equivalent jobs (minimum of 2,080 hours annually) in Palm Beach County, within **forty-three 43** months (by **December 31, 2011**) of the commencement date of this Agreement.
- B. **Job Advertising.** In addition to COMPANY'S normal advertisement of job positions, COMPANY shall undertake extensive advertising of the job openings in Palm Beach County to provide sufficient notice to Palm Beach County's residents concerning the availability of COMPANY'S new positions. The advertising regarding the new jobs at COMPANY'S facility in Palm Beach County must be county-wide, include Hispanic and Minority news venues, and not be limited to a single advertisement. Proof of advertising shall be provided to the COUNTY in conformity with the Notice section of this Agreement and within **thirty (30)** days of the date of advertising; and
- C. **Job Availability & Competition.** COMPANY shall mail the job description for all new job hires (as those job descriptions are being created and made available) to:
  - (1) Workforce Alliance, Inc.  
*Main Office:* 2051 Martin Luther King Blvd., Suite 302, Riviera Beach, FL 33404  
*Attention:* Executive Director
  - (2) The Glades Workforce Development Center  
*Glades Office:* 557 SW 16<sup>th</sup> St., Belle Glade, FL 33430  
*Attention:* Chairperson
- D. **Transportation to & from Job Location.** COMPANY shall provide the following information to assist individuals in Palm Beach County who are hired:

- (1) The bus stop closest to COMPANY'S office;
- (2) The Tri-Rail stop number closest to COMPANY'S office;
- (3) Information about COMPANY'S car pool program (if one exists); and
- (4) Directions to COMPANY'S office from Interstate 95.

This information shall either be posted on COMPANY'S web site or provided to individuals who are hired.

PART VI.  
**DEFINITIONS**

**Definitions.** The new jobs as set forth in this Agreement shall be:

- A. **New Job.** A full time or equivalent job (minimum of 2,080 hours annually) that is created in Palm Beach County which adds to Palm Beach County's total job base, adds incrementally to COMPANY'S payroll, results in a net increase in the number of COMPANY'S employees, and involves only a new employee working on-site at COMPANY'S facility that is located in Palm Beach County. A full time equivalent job may include permanent salaried, part-time, leased employees, and contractors and subcontractors. Excludes an employee on COMPANY'S payroll of a COMPANY facility located in a county adjacent to the borders of Palm Beach County who transferred to COMPANY'S facility in Palm Beach County.
- B. **Relocating Employee.** A full time or equivalent employee identified on COMPANY'S payroll who relocates to Palm Beach County. Excludes an employee on COMPANY'S payroll of a COMPANY facility located in a county adjacent to the borders of Palm Beach County who transferred to COMPANY'S facility in Palm Beach County.
- C. **Equivalent Job.** An equivalent job shall mean any two or more part-time jobs whose sum total scheduled hours, inclusive of vacation and holidays, generates 2,080 hours annually.

PART VII.  
**AWARD PER JOB & SALARY**

**Amount Per Job & Wage.** As a further condition precedent to obtaining the Grant's base amount of **\$800.00 per job created** from COUNTY, COMPANY shall pay an average salary per annum equal to or greater than **\$56,706.00 (excluding benefits)** for all of those COMPANY employees that must be created in Palm Beach County pursuant to this Agreement.

PART VIII.  
**JOB PERFORMANCE & AUDIT**

**Performance Audit.**

- A. **Independent Audit.** Prior to receiving any Grant funds, COMPANY shall provide written audited verification at its sole cost and expense, satisfactory to COUNTY in its sole discretion, of compliance by COMPANY with all agreed upon performance standards set forth in this Agreement.
  - (1) This performance audit must be conducted by an independent Certified Public Accountant (CPA).
  - (2) The CPA must **examine** COMPANY'S statements/schedules for the new jobs created and the average annualized salary for those jobs at the facility located in Palm Beach County, and express a written **opinion**. The examination must be conducted in accordance with standards established by the American Institute of Certified Public Accountants.
  - (3) The CPA's report will include examining evidence supporting COMPANY'S schedules of new jobs and average annualized salary of the new jobs.
  - (4) The accuracy of the number, hire dates and average annual salaries (excluding benefits) of all current employee transfers and/or all local hires in Palm Beach County as represented by COMPANY shall be verified by this independent audit by the CPA to the COUNTY'S satisfaction.
  - (5) The CPA's report must identify two (2) average annual salaries for the new jobs based on the auditor's examination of the new jobs according to:
    - a) **All New Jobs.** Identify the average annualized salary for all new jobs. Include all exempt and non-exempt employees **and** all officers/corporate executives that will represent the total number of new full time jobs to be created/relocated in Palm Beach County.
    - b) **Low and Mid Echelon New Jobs Only.** Identify the average salary per annum of the new exempt and non-exempt employees only; **exclude** from these calculations the average annual salary of the officers and senior corporate executives which are included in A(5)(a) above.
  - (6) The audit may be performed in conjunction with other auditing services.
  - (7) A report by an independent CPA that is a review or agreed-upon procedures report on COMPANY'S representations is unacceptable to the COUNTY.

- (8) This performance audit must be submitted to the COUNTY (attn: Palm Beach County Economic Development Office) within forty five months (45) months (by **February 28, 2012** of the commencement date of this Agreement.
  - (9) COMPANY will be informed by the COUNTY when the COUNTY has made the determination that there are deficiencies with the audit and/or invoice documentation. Under these circumstances, the audit and invoice documentation cannot be processed pending COMPANY resolving the identified deficiencies.
  - (10) Upon receipt by the COUNTY from COMPANY of the appropriate audited and/or invoiced documentation, processing of the audit and invoices may proceed.
- B. Audit & Invoice Submittal. The COMPANY may submit such performance audit and seek reimbursement for eligible expenses hereunder at any time following the commencement date hereof, upon satisfaction of the performance standards set forth hereinabove.
  - C. Remittance. The COUNTY shall remit payment to COMPANY of the sum due hereunder within sixty (60) days of the COUNTY'S receipt of written audited verification as required hereunder, the COUNTY having completed its review of the audited report, and the COUNTY having determined that COMPANY has satisfactorily complied with the terms of this Agreement.
  - D. Inspection. Upon ten (10) business days notice and at any time during normal business hours and as often as the COUNTY deems necessary, there shall be made available by COMPANY to the COUNTY for examination, all its records with respect to all matters covered by this Agreement. The COUNTY reserves the right to require copies of such records and/or to conduct an inspection of COMPANY'S records regarding performance measures at any time for any period covered by this Agreement.
  - E. Automatic Termination. This Agreement shall automatically terminate, thereby relieving the parties hereto of any liability or obligations hereunder, if COMPANY fails to submit this performance audit to the COUNTY by the end of the forty fifth (45th) month following the commencement date of this Agreement (by **February 28, 2012**).

#### PART IX.

#### REIMBURSEMENT TERMS

**Eligible Reimbursables.** The Grant funds available under this Agreement will be provided only for reimbursement of expenses associated with COMPANY'S physical move, relocation to and/or expansion in Palm Beach County as set forth on Exhibit "B". To be eligible for reimbursement, such expenses must be:

- A. Date of Expenditure. Incurred not more than forty three (43) months following the commencement date of this Agreement (**June 1, 2008 through December 31, 2011**).
- B. Exhibit "B". In compliance with the requirements set forth on Exhibit "B".

#### **Request Reimbursement.**

- A. Total Grant Amount. All eligible "Out-of-Pocket" expenses incurred directly by COMPANY will be reimbursed up to an amount not to exceed the Grant maximum amount set forth in this Agreement.
- B. Total New Jobs. All reimbursement amounts shall not exceed the Grant's award per job, multiplied by the number of applicable jobs as verified by the Performance Audit, and as set forth in this Agreement.
- C. Payment Schedule. All requests for payment of "Out-of-Pocket" expenses eligible for reimbursement under the terms of this Agreement must be received no later than the expiration of the forty-three (43rd) month following the commencement date of this Agreement (by **December 31, 2011**).
- D. Invoices & Documentation. All requests for reimbursement shall include, in addition to the performance audit required by this Agreement, copies of paid receipts, canceled invoices, or other documentation acceptable to the Palm Beach County Office of Financial Management & Budget and the Finance Department of the Clerk of the Circuit Court, and shall be sufficient to adequately describe the expenses and establish that the expense was actually incurred directly by COMPANY.

#### PART X.

#### BREACH OF AGREEMENT

The COMPANY must fully comply with the job and salary guarantees as set forth in this Agreement.

- A. An audit of the COMPANY must show that the COMPANY created at least fifty (50) full time equivalent (F.T.E.) positions at an average annual salary that does not fall below **\$56,706.00 (excluding benefits)**;

If the minimum full time equivalent positions and/or salaries fall below the minimum, as required by this Agreement, the COMPANY shall be considered by the COUNTY to have **breached this Agreement and the Agreement shall terminate**. In the event of termination, COMPANY agrees that it shall, within 60 days of the date of termination, make restitution to the COUNTY the per job grant award paid by the COUNTY to COMPANY for each position not maintained as required by this Agreement.

PART XI.  
**LETTER OF CREDIT**

**Provision of Letter of Credit.**

- A. **Review & Acceptance.** COMPANY shall provide to the COUNTY a clean, irrevocable Letter of Credit that the COUNTY must review, and that the COUNTY finds acceptable at its sole discretion and in accordance with the COUNTY'S PPM: CW-F-055, for the maximum grant amount of this Agreement or for an amount less than the total amount of grant funds in the event COMPANY seeks reimbursement for an amount less than the maximum grant amount.
- B. **Payment.** The Letter of Credit shall be provided to the COUNTY at the time COMPANY seeks payment pursuant to this Agreement or in the event grant funds are committed pursuant to PART XIII (Local Match Commitment) of this Agreement at the time the State of Florida requests payment, whichever occurs first.
- C. **Term.** The Letter of Credit shall remain in effect until the COUNTY has determined that COMPANY has fully satisfied both the job performance and maintenance period obligations as set forth in this Agreement. In order for the COUNTY to be provided sufficient time to complete its review and to determine whether COMPANY is in full compliance with COMPANY'S obligations as set forth in this Agreement, the Letter of Credit shall remain in effect **until June 30, 2014.**
- D. **Automatic Termination.** This Agreement shall automatically terminate, thereby relieving the parties hereto of any liability or obligations hereunder, if COMPANY fails to submit an acceptable Letter of Credit to the COUNTY at the time COMPANY seeks payment pursuant to this Agreement, with the Letter of Credit to remain in effect for the total period set forth in PART XI (C) above.
- E. **Release.** Upon the COUNTY having determined that COMPANY has satisfactorily complied with the terms of this Agreement, the COUNTY shall notify the financial institution that issued the Letter of Credit and COMPANY that the Letter of Credit is considered released. The COUNTY may release the Letter of Credit prior to the end date of the **Letter of Credit (until June 30, 2014)** contingent on the COUNTY having been provided verification acceptable to the COUNTY that COMPANY has satisfied its job performance and maintenance obligations prior to the end date identified for complying with such obligations in this Agreement.

PART XII.  
**JOB MAINTENANCE & REPORT**

**Maintenance Agreed-upon Procedures Report.** Additional conditions:

- A. **Maintenance Period.** COMPANY shall maintain each position created in Palm Beach County, and at the average salary per annum required by this Agreement or at the number of full time jobs and wage level verified by the performance audit:
  - (1) Until the expiration of the **sixty-seventh (67th)** month (by **December 31, 2013**) following the commencement date of this Agreement; or
  - (2) If COMPANY submitted its performance audit at anytime within the performance period of this Agreement prior to the expiration of the **forty-third (43rd)** month following the commencement date of this Agreement, the additional **twenty four (24)** months of job maintenance under this Agreement shall commence as set forth in Paragraph "B" below. In the event that the maintenance period commences prior to **December 31, 2011**, it is understood that COMPANY can complete performance of all of its obligations hereunder prior to the expiration of the Agreement term.
- B. **Commencement of Maintenance Period.** The **twenty-four (24)** months of job and salary maintenance shall commence as of the compliance by COMPANY with the terms of this Agreement. In the event that the COUNTY subsequently determines that the performance audit is deficient, the commencement of the maintenance period shall be extended until the deficiencies are corrected.
- C. **Independent CPA.** COMPANY shall provide the COUNTY with an agreed-upon procedures report from an independent CPA regarding COMPANY'S representations that it has maintained the positions created in or relocated to Palm Beach County and at the required wage level during the maintenance period. The CPA report shall be prepared in accordance with standards established by the American Institute of Certified Public Accountants. The report shall be submitted on the CPA's letterhead, shall be satisfactory to the COUNTY in its

sole discretion, and shall identify the procedures performed to assist the COUNTY in determining whether COMPANY is in compliance with the terms of this Agreement.

- D. Report Submittal. COMPANY, at its sole cost and expense, shall provide this Maintenance Report to the COUNTY (i.e., to the Palm Beach County Economic Development Office) no later than the end of the sixty-ninth (69th) month (by February 28, 2014) following the commencement date of this Agreement or no later than sixty (60) days following the expiration of the twenty-four (24) months of job maintenance.
- E. Restitution. Within sixty (60) days from the date this audit is submitted to the COUNTY, COMPANY agrees to make restitution to the COUNTY, the per job grant award paid by the COUNTY to COMPANY, for each position not maintained in accordance with the conditions set forth hereinabove. This restitution payment to the COUNTY shall be to the "Palm Beach County Board of County Commissioners" for said Grant.
- F. Inspection. Upon ten (10) business days notice and at any time during normal business hours and as often as the COUNTY deems necessary, there shall be made available by COMPANY to the COUNTY for examination, all its records with respect to all matters covered by this Agreement. The COUNTY reserves the right to require copies of such records and/or to conduct an inspection of COMPANY'S records regarding performance requirements at any time for any period covered by this Agreement.

#### PART XIII.

#### LOCAL MATCH COMMITMENT

Qualified Target Industry Tax Refund Program. *In the event* COMPANY enters into an agreement with the State of Florida to receive State tax refunds pursuant to the State of Florida Qualified Target Industry Tax Refund Program as set forth in Chapter 288, Florida Statutes, as may be amended (hereinafter referred to as QTI), the following shall apply:

- A. Maximum Match Amount. Any Grant funds provided for under this Agreement may be used by COUNTY as reimbursement toward the required QTI local match of up to 20%, with the total match amount of COUNTY not to exceed the total Grant amount of this Agreement.
- B. Payment Request & Letter of Credit. COMPANY shall provide to COUNTY a clean, irrevocable Letter of Credit at the time the State of Florida requests the local match payment pursuant to PART XI (Letter of Credit) of this Agreement. The State of Florida's payment schedule for COMPANY'S expansion project differs from the COUNTY'S schedule. In order for the COUNTY to make timely payments to the State of Florida, a letter of credit is required from the COMPANY, based on the yearly payout amounts and schedule required by the State of Florida attached as Exhibit C.
- C. Payment Procedure. The Grant funds paid by COUNTY on behalf of COMPANY as part of the required QTI local match, and as provided for under this Agreement, shall be paid directly by COUNTY to the State of Florida Economic Development Trust Fund in accordance with the QTI Program.
- D. QTI Commitment Nullified. If COMPANY does not satisfy all of its QTI contractual obligations with the State of Florida, which results in the termination of the QTI agreement, but complies fully with its Grant commitments with COUNTY, the COMPANY shall be entitled to seek reimbursement of expenditures of funds pursuant to this Agreement. However, any funds that may have been provided by COUNTY to the State of Florida toward the QTI match shall be subtracted from the Grant maximum amount set forth in this Agreement.

#### PART XIV.

#### GENERAL CONDITIONS

Obligation & Annual Appropriation. The COUNTY'S obligation to pay under this Agreement is contingent upon annual appropriation for its purpose by the COUNTY.

Employee: Bona Fide. COMPANY warrants that it has not employed or retained any company or person, other than a bona fide employee working solely for 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 COMPANY, any fee, commission, percentage, gift, or any other consideration contingent upon or resulting from the award or making of this Agreement.

- A. Non-discrimination. COMPANY agrees that no person shall on the grounds of race, color, disability, national origin, religion, age, familial status, sex or sexual orientation be excluded from the benefits of, or be subjected to discrimination under, any activity carried out by the performance of this Agreement. Upon receipt of evidence of such discrimination, the COUNTY shall have the right to terminate this Agreement.
- B. Low-income Residents & Local Businesses. To the greatest extent feasible,
  - (1) Low-income residents shall be given opportunities for training and employment; and

- (2) Eligible business concerns located in or owned in substantial part by persons residing in Palm Beach County shall be awarded contracts in connection with this Grant.

**Worker's Compensation & Employer's Liability.** COMPANY shall agree to maintain Worker's Compensation Insurance & Employers Liability in accordance with Florida Statute Chapter 440 for all jobs set forth in this Agreement.

**Convicted Vendor List.** As provided in F.S. 287.132-133, by entering into this Agreement or performing any work in furtherance hereof, COMPANY certifies that it, and its affiliates who will perform hereunder, have not been placed on the Convicted Vendor List maintained by the State of Florida Department of Management Services within thirty-six (36) months immediately preceding the date of execution of this Agreement by the COUNTY. This notice is required by F.S. 287.133(3)(a).

Florida Department of Management Services, Division of Purchasing  
4050 Esplanade Way, Tallahassee, FL 32399-0950  
(850) 488-8440

[http://dms.myflorida.com/dms/purchasing/convicted\\_suspended\\_discriminatory\\_vendor\\_lists/convicted\\_vendor\\_list](http://dms.myflorida.com/dms/purchasing/convicted_suspended_discriminatory_vendor_lists/convicted_vendor_list)

**Successors & Assigns.** The COUNTY and COMPANY each binds itself and its partners, successors, executors, administrators and assigns to the other party and to the partners, successors, executors, administrators and assigns of such other party, in respect to all covenants of this Agreement. Except as above, neither the COUNTY nor COMPANY shall assign, sublet, convey or transfer its interest in this Agreement without the prior written consent of the other. Nothing herein shall be construed as creating any personal liability on the part of any officer or agent of the COUNTY, nor shall it be construed as giving any rights or benefits hereunder to anyone other than the COUNTY and COMPANY. In the event that the COUNTY determines that COMPANY is in violation of this paragraph, the COUNTY shall have the right to terminate this Agreement and to seek restitution of the funds paid by the COUNTY to COMPANY.

**Name or Location Change.** In the event COMPANY implements a change to the name of COMPANY or the location of COMPANY within or outside Palm Beach County, COMPANY must immediately provide the COUNTY with written verification regarding said change to the name and/or location of COMPANY upon it becoming official.

**Material Change of Circumstances.** COMPANY shall immediately notify the COUNTY of any material change of circumstances of COMPANY'S business operations in Palm Beach County. For the purposes hereof, material change of circumstance shall include, but not be limited to, the failure of COMPANY to diligently and actively pursue fulfillment of the terms hereof, the sale or transfer of COMPANY'S assets for the benefit of creditors, the suspension, closing or cessation of operation of COMPANY, voluntary or involuntary bankruptcy or an assignment for the benefit of COMPANY'S creditors. In the event of a material change of circumstances, the COUNTY shall have the right to terminate this Agreement, whereupon the COUNTY shall have no further obligation to COMPANY under this Agreement.

**Entire Agreement Between Parties.** The COUNTY and COMPANY agree that this Agreement sets forth the entire agreement between the parties, and that there are no promises or understandings other than those stated herein. None of the provisions, terms and conditions contained in this Agreement may be added to, modified, superseded or otherwise altered, except by written instrument executed by the parties hereto.

**Performance: Time & Liability.** The parties expressly agree that time is of the essence in this Agreement and the failure by a party to complete performance within the time specified, or within a reasonable time if no time is specified herein, shall, at the option of the other party without liability, in addition to any other rights or remedies, relieve the other party of any obligation to accept such performance.

**Invalid or Unenforceable Terms.** If any term or provision of this Agreement, or the application thereof to any person or circumstances shall, to any extent, be held invalid or unenforceable, the remainder of this Agreement, or the application of such terms or provision, to persons or circumstances other than those as to which it is held invalid or unenforceable, shall not be affected, and every other term and provision of this Agreement shall be deemed valid and enforceable to the extent permitted by law.

**Defaults.** The occurrence of any one or more of the following events shall constitute a Default hereunder:

- A. Vacating, abandoning, or closing COMPANY'S business.
- B. Relocating COMPANY'S business outside Palm Beach County.
- C. The failure of COMPANY to observe or perform any of the terms, covenants, conditions, obligations, or provisions of this Agreement to be observed or performed by COMPANY.

where such failure continues for a period of thirty (30) days after written notice thereof from the COUNTY to COMPANY; provided, however, that if the nature of COMPANY'S default is such that more than thirty (30) days are reasonably required for its cure, then COMPANY shall not be deemed to be in default if COMPANY commenced such cure within said thirty (30) day period and thereafter diligently pursues such cure to completion.

- D. (i) The making by COMPANY of any general assignment, or general arrangement for the benefit of creditors; (ii) the filing by or against COMPANY of a petition to have the COMPANY adjudged bankrupt or a petition for reorganization or arrangement under any law relating to bankruptcy (unless, in the case of a petition filed against COMPANY, the same is dismissed within sixty (60) days); (iii) the appointment of a trustee or receiver to take possession of substantially all of COMPANY'S assets where possession is not restored to COMPANY within thirty (30) days; or (iv) the attachment, execution or other judicial seizure of substantially all of COMPANY'S assets located within Palm Beach County where such seizure is not discharged within thirty (30) days.
- E. The discovery by the COUNTY that any financial statement relating to this Agreement given to the COUNTY was materially false.
- F. A breach of Agreement as referenced in PART X. B.

**Remedies.** In the event of a Default by COMPANY, the COUNTY may at any time thereafter terminate this Agreement. In such event, the COUNTY shall be entitled to recover immediately upon demand from COMPANY or any party joining in or consenting to this Agreement, all sums paid by the COUNTY to COMPANY pursuant to this Agreement.

**Law & Remedy.** This Agreement shall be governed by the laws of the State of Florida. Any and all legal action necessary to enforce the Agreement shall be held in Palm Beach County. No remedy herein conferred upon any party is intended to be exclusive of any other remedy, and each and every such remedy shall be cumulative and shall be in addition to every other remedy given hereunder or now or hereafter existing at law or in equity or by statute or otherwise. No single or partial exercise by any party of any right, power, or remedy hereunder shall preclude any other or further exercise thereof.

**Indemnification & Hold Harmless.** COMPANY agrees to protect, defend, reimburse, indemnify and hold the COUNTY, its agents, its employees and elected officers and each of them, free and harmless at all times from and against any and all claims, liability, expenses, losses, costs, fines and damages, including attorney's fees, and causes of action of every kind and character against and from the COUNTY which arise out of this Agreement. COMPANY recognizes the broad nature of this indemnification and hold harmless clause, and voluntarily makes this covenant and expressly acknowledges the receipt of good and valuable consideration provided by the COUNTY in support of this clause in accordance with the laws of the State of Florida. This Paragraph shall survive the termination of the Agreement.

**Notice.** All notices required in this Agreement shall be sent by certified mail, return receipt requested, and if sent to the COUNTY shall be mailed to:

Kevin Johns, Director  
Palm Beach County Economic Development Office  
P.O. Box 1989 (10th floor)  
West Palm Beach, Florida 33402-1989

With a copy to:

Dawn Wynn, Assistant County Attorney  
County Attorney's Office  
301 N. Olive Ave (6<sup>th</sup> floor)  
West Palm Beach, FL 33401

And if sent to the COMPANY shall be mailed to (to be completed by COMPANY prior to execution):

Biotest Pharmaceuticals  
5800 Park of Commerce Blvd., N.W.  
Boca Raton, FL 33487



IN WITNESS WHEREOF, the Board of County Commissioners of Palm Beach County, Florida has made and executed this Agreement on behalf of Palm Beach County, and COMPANY has hereunto set its hand the day and year above written.

ATTEST:  
SHARON R. BOCK,  
CLERK & COMPTROLLER

PALM BEACH COUNTY, FLORIDA  
BY ITS BOARD OF COUNTY  
COMMISSIONERS:

By: \_\_\_\_\_  
Deputy Clerk

By: \_\_\_\_\_  
Addie L. Greene, Chair

APPROVED AS TO TERMS  
AND CONDITIONS:

APPROVED AS TO FORM  
AND LEGAL SUFFICIENCY:

By: *Kenneth Johns*  
Director, Economic Development

By: \_\_\_\_\_  
County Attorney

WITNESS FOR COMPANY:

COMPANY:

*Maggie Smith*  
Signature  
M Smith  
Name (type or print)  
S. Panner  
Title

Biotest Pharmaceuticals

Company Name  
*[Signature]*  
Signature  
Jordan Siegel  
Name (type or print)  
SVP Finance & CFO  
Title

N/A

COMPANY SEAL

(Seal must be identical to COMPANY name.  
If seal is unavailable, COMPANY must draw  
seal. If not applicable, write N/A.)

**EXHIBIT "A"**

**JOB GROWTH INCENTIVE GRANT AGREEMENT  
BETWEEN PALM BEACH COUNTY AND  
BIOTEST PHARMACEUTICALS**

**COMPANY IDENTIFICATION AND INFORMATION:**

JGI Application date: April 18, 2008

Letter of Intent date: N/A

**BIOTEST PHARMACEUTICALS**

Existing Headquarters: 5800 Park of Commerce Blvd., N.W.  
Boca Raton, FL 33487  
561-989-5560

Proposed Site: same as above

Products/services involving  
COMPANY'S facilities  
in Palm Beach County:

Biotest Pharmaceuticals Corporation develops and manufactures pharmaceutical and biotherapeutic products with a specialization in immunology. The company plans to increase plasma protein production by reconfiguring an existing plant through a projected \$16.1 million capital expenditure over 3 years.

**BIOTEST PHARMACEUTICALS**

Business: Type: Corporation  
Date: September 10, 2007  
State: Delaware

State of Florida: Status: Active  
Registration Date: December 10, 2007  
(registered with the Division of Corporations,  
Florida Department of State, in order to conduct  
business operations within the State of Florida)

Federal ID number: 26-1251037

**BIOTEST PHARMACEUTICALS CORPORATION**

Company History: The COMPANY Biotest Pharmaceuticals is a wholly owned subsidiary of Biotest AG headquartered in Dreiech, Germany. In December 2007, Biotest AG purchased the existing buildings and assets from Nabi, and began operations as Biotest Pharmaceuticals.

**EXHIBIT "B"**

**JOB GROWTH INCENTIVE GRANT AGREEMENT  
BETWEEN PALM BEACH COUNTY AND  
BIOTEST PHARMACEUTICALS**

**ELIGIBLE REIMBURSABLES:**

The grant funds of this Agreement may be used to reimburse COMPANY for the following expenses associated with the expansion and/or relocation of COMPANY in Palm Beach County. Invoices submitted for reimbursement must be accompanied by copies of canceled checks, with the front and back sides of the canceled checks copied.

1. **Payment of Impact Fees and Special Assessments**
  - (a) Impact fees assessed by the COUNTY include fees for roads, parks, fire-rescue, libraries, law enforcement, and public buildings.
  - (b) Impact fees assessed by local governments and special assessments by special districts.
2. **Land Improvement Costs**
  - (a) Off-site land improvements.
  - (b) Road improvements.
  - (c) Construction of recreational facilities open to the public.
  - (d) Reimbursement for any government required dedications.
  - (e) Water and sewer connection fees.
  - (f) Telecommunication connection fees and costs.
  - (g) Infrastructure design and construction plan preparation.
  - (h) Drainage facilities in conjunction with new roadway construction or on-site improvements.
  - (i) Construction of new curbs, curb cuts, medians, shoulders and sidewalks.
  - (j) Relocating utilities to accommodate new roadway construction.
  - (k) Facade redevelopment in eligible community redevelopment agency or downtown development authority designated areas subject to prior approval of all governing bodies.
  - (l) Landscaping and road beautification costs.
  - (m) All fees and dedications required by entities other than the COUNTY are subject to prior approval by the Palm Beach County Economic Development Office.
  - (n) County permitting, licensing, or other approval costs associated with land improvement.
3. **Environmental Compliance**
  - (a) Costs associated with design and installation of equipment needed for compliance with existing federal, state, and local environmental standards.
  - (b) Costs associated with asbestos removal.
4. **Leasehold Improvements**
  - (a) Costs of improvements to leased property required by expansion or relocation, including wiring and other installation costs involving communication and computer systems.
5. **Construction and Renovation Costs**
  - (a) Costs of constructing or renovating the real property for which COMPANY must possess title, with such costs directly related to the expansion or relocation.
  - (b) Architect, design and technical fees associated with the expansion or relocation.
6. **Employee Hiring and Training**
  - (a) Costs associated with providing for employee hiring and training, such as advertising, job fairs, and reasonable hotel and transportation costs for employee recruitment and training. All out of town travel by trainers and trainees (new employees) directly necessitated by the expansion or relocation must be fully documented and will be reimbursed in accordance with the provisions of Florida Statute, Chap. 112, Part I, 112.061; [www.leg.state.fl.us](http://www.leg.state.fl.us) (Statutes & Constitution).
7. **Relocating Company Assets**
  - (a) Costs associated with relocation of company assets required by expansion or relocation.
8. **Day Care**
  - (a) Improvement costs associated with establishing a COMPANY sponsored day care facility for children of employees filling new jobs, with facility physically located on or adjacent to site of relocation or expansion project.
9. **Local Match for State Tax Refund Program**
  - (a) Up to 20% of State Tax refund subject to State Law and procedures established pursuant to the Job Growth Incentive Grant Program.

**EXHIBIT "C"**

**JOB GROWTH INCENTIVE GRANT AGREEMENT  
BETWEEN PALM BEACH COUNTY AND  
BIOTEST PHARMACEUTICALS**

**JOB CREATION SCHEDULE**

Below is the State of Florida's projected job creation schedule and payment schedule. The information was given to the COUNTY by Enterprise Florida, Inc. (EFI), for Biotest Pharmaceuticals expansion project in Palm Beach County. Enterprise Florida is the public-private partnership responsible for leading Florida's statewide economic development efforts. Enterprise Florida works with a statewide network of regional and local economic development organizations to continually improve Florida's business climate and ensure its global competitiveness.

Biotest Pharmaceuticals must adhere to the following schedule:

Create 50 new full time jobs by 12/31/11

**Total:** 50 new full time jobs created by 12/31/11

**PROJECTED LOCAL MATCH PAYMENT SCHEDULE:**

The job creation schedule leads to the following QTI local match payment requirements by the COUNTY:

By approximately 12/31/11: \$40,000

**PLEASE NOTE:** THE INFORMATION LISTED ABOVE IS THE APPROXIMATE DATES AND AMOUNTS BY WHICH THE COUNTY WILL BE REQUESTED TO PAY THE RESPECTIVE AMOUNTS. THE OFFICIAL CREATION AND LOCAL MATCH SCHEDULES WILL BE ISSUED BY THE OFFICE OF TOURISM, TRADE, AND ECONOMIC DEVELOPMENT (OTTED), ONCE THE QTI HAS BEEN APPROVED BY THE STATE.

**JOB GROWTH INCENTIVE GRANT AGREEMENT**

**THIS AGREEMENT** is made as of the \_\_\_\_\_ day of \_\_\_\_\_, [date to be entered by Clerk of the Circuit Court] by and between Palm Beach County, a political subdivision of the State of Florida, by and through its Board of County Commissioners, hereinafter referred to as COUNTY, and **Biotest Pharmaceuticals Corporation**, [ ] an individual, [ ] a partnership, [X] corporation authorized to do business in the State of Florida, hereinafter referred to as COMPANY, whose Federal I.D. number is provided on Exhibit "A" as **26-1251037**, which is attached hereto and made a part hereof.

**WITNESSETH:**

**WHEREAS**, it is the policy of the COUNTY to encourage and stimulate economic growth in Palm Beach County by either attracting new businesses to Palm Beach County or by assisting local expanding businesses within Palm Beach County that would otherwise expand elsewhere; and

**WHEREAS**, the creation of new full time employment opportunities for residents of Palm Beach County and the tax revenues resulting from business relocation or expansion within Palm Beach County is beneficial to the local economy; and

**WHEREAS**, the State of Florida has determined that counties may expend funds to attract and retain business enterprises, and that the use of public funds toward the achievement of such economic development goals constitutes a public purpose; and

**WHEREAS**, the COUNTY has determined that offering a Job Growth Incentive (JGI) Grant Program encourages either existing businesses to remain and/or expand or new businesses to establish a facility in Palm Beach County and thereby create employment opportunities for the residents of Palm Beach County; and

**WHEREAS**, the COUNTY has established an Economic Development Fund; and

**WHEREAS**, the average annual wage for COMPANY'S newly created jobs will meet or exceed the average salary level in Palm Beach County or the applicable industry average wage when the COUNTY provides a JGI Grant Agreement to COMPANY; and

**WHEREAS**, the COUNTY has determined that COMPANY is eligible to receive a JGI Grant Agreement based on the Criteria of the JGI Grant Program, as amended; and

**WHEREAS**, the COUNTY finds and declares that it is in the public's best interests to award a JGI Grant Agreement to COMPANY pursuant to the terms of this Agreement.

**NOW, THEREFORE**, in consideration of the promises and mutual covenants hereinafter contained, the parties agree as follows:

**PART I**

**RECITALS**

**Recitals.** The foregoing recitals are correct and true at the time of execution of this Agreement and are incorporated herein.

**PART II**

**ELIGIBILITY**

**Minimum Criteria.** The conditions precedent to COMPANY being eligible to obtain any JGI Grant Program (hereafter a "Grant") funds whatsoever from the COUNTY include:

- A. **Site.** COMPANY'S business operations in Palm Beach County shall be at the site described on Exhibit "A", which is attached hereto and made a part hereof.
- B. **Minimum Jobs & Salary.** COMPANY shall create jobs in Palm Beach County:
  - (1) At least **fifty (50)** new full time or equivalent jobs (minimum of 2,080 hours annually) must be created in Palm Beach County;
  - (2) The new jobs must be created in Palm Beach County following the commencement date of this Agreement, within the performance period and at the average annual salary as set forth in PART X of this Agreement to satisfy the **minimum conditions to obtain any funds whatsoever.**

PART III.

**GRANT AMOUNT**

**Grant Maximum Amount.** COMPANY shall be eligible to receive Grant payments of up to **\$40,000.00** which shall be payable in accordance with the terms of this Agreement.

PART IV

**COMMENCEMENT DATE & GRANT TERM**

**Grant Timeframes.** COMPANY shall be obligated to:

- A. **Commencement Date.** This Agreement shall commence on the **1st** day of **June 2008** and end on the **30th** day of **June 2014**.
- B. **Term: 73 months.** The term of this Agreement shall be for **seventy three (73)** months, from the commencement date of this Agreement, and consisting of the performance, maintenance, and final verification periods as set forth in Paragraphs "C", "D" and "E" below and until the expiration date of the Letter of Credit as provided for in PART XI of this Agreement. However, the only circumstance whereby the term of this Agreement and the Letter of Credit may expire prior to the end of the **seventy third (73rd)** month are set forth in PARTS XI and XII of this Agreement.
- C. **Performance Period: 43 months.** COMPANY shall have **forty three (43)** months (**June 1, 2008 through December 31, 2011**) from the commencement date of this Agreement to fulfill the obligations set forth hereinafter relating to job creation.
- D. **Maintenance Period: 24 months.** COMPANY shall be obligated to maintain such jobs for an additional **twenty-four (24)** months (**January 1, 2012 through December 31, 2013**) from the date the COMPANY provides the COUNTY with audited verification of compliance by COMPANY with the agreed upon performance standards of this Agreement, and COUNTY after its review of this performance audit has determined that COMPANY has satisfactorily complied with its obligations under this Agreement.
- E. **Final Verification Period: 6 months.** This Agreement shall provide an additional **six (6)** months (**January 1, 2014 – June 30, 2014**) immediately following the maintenance period to enable COMPANY to comply with the provisions of PARTS XI and XII of this Agreement.

PART V.

**NEW JOBS**

**New Jobs.** The conditions for COMPANY to obtain the maximum amount of Grant funds from the COUNTY include:

- A. **Job Performance & Period.** COMPANY shall create **fifty (50)** full time jobs or equivalent jobs (**minimum of 2,080 hours annually**) in Palm Beach County, within **forty-three (43)** months (by **December 31, 2011**) of the commencement date of this Agreement.
- B. **Job Advertising.** In addition to COMPANY'S normal advertisement of job positions, COMPANY shall undertake extensive advertising of the job openings in Palm Beach County to provide sufficient notice to Palm Beach County's residents concerning the availability of COMPANY'S new positions. The advertising regarding the new jobs at COMPANY'S facility in Palm Beach County must be county-wide, include Hispanic and Minority news venues, and not be limited to a single advertisement. Proof of advertising shall be provided to the COUNTY in conformity with the Notice section of this Agreement and within **thirty (30)** days of the date of advertising; and
- C. **Job Availability & Competition.** COMPANY shall mail the job description for all new job hires (as those job descriptions are being created and made available) to:
  - (1) Workforce Alliance, Inc.  
*Main Office:* 2051 Martin Luther King Blvd., Suite 302, Riviera Beach, FL 33404  
*Attention:* Executive Director
  - (2) The Glades Workforce Development Center  
*Glades Office:* 557 SW 16<sup>th</sup> St., Belle Glade, FL 33430  
*Attention:* Chairperson
- D. **Transportation to & from Job Location.** COMPANY shall provide the following information to assist individuals in Palm Beach County who are hired:

- (1) The bus stop closest to COMPANY'S office;
- (2) The Tri-Rail stop number closest to COMPANY'S office;
- (3) Information about COMPANY'S car pool program (if one exists); and
- (4) Directions to COMPANY'S office from Interstate 95.

This information shall either be posted on COMPANY'S web site or provided to individuals who are hired.

PART VI.  
**DEFINITIONS**

**Definitions.** The new jobs as set forth in this Agreement shall be:

- A. **New Job.** A full time or equivalent job (minimum of 2,080 hours annually) that is created in Palm Beach County which adds to Palm Beach County's total job base, adds incrementally to COMPANY'S payroll, results in a net increase in the number of COMPANY'S employees, and involves only a new employee working on-site at COMPANY'S facility that is located in Palm Beach County. A full time equivalent job may include permanent salaried, part-time, leased employees, and contractors and subcontractors. Excludes an employee on COMPANY'S payroll of a COMPANY facility located in a county adjacent to the borders of Palm Beach County who transferred to COMPANY'S facility in Palm Beach County.
- B. **Relocating Employee.** A full time or equivalent employee identified on COMPANY'S payroll who relocates to Palm Beach County. Excludes an employee on COMPANY'S payroll of a COMPANY facility located in a county adjacent to the borders of Palm Beach County who transferred to COMPANY'S facility in Palm Beach County.
- C. **Equivalent Job.** An equivalent job shall mean any two or more part-time jobs whose sum total scheduled hours, inclusive of vacation and holidays, generates 2,080 hours annually.

PART VII.  
**AWARD PER JOB & SALARY**

**Amount Per Job & Wage.** As a further condition precedent to obtaining the Grant's base amount of **\$800.00 per job created** from COUNTY, COMPANY shall pay an average salary per annum equal to or greater than **\$56,706.00 (excluding benefits)** for all of those COMPANY employees that must be created in Palm Beach County pursuant to this Agreement.

PART VIII.  
**JOB PERFORMANCE & AUDIT**

**Performance Audit.**

- A. **Independent Audit.** Prior to receiving any Grant funds, COMPANY shall provide written audited verification at its sole cost and expense, satisfactory to COUNTY in its sole discretion, of compliance by COMPANY with all agreed upon performance standards set forth in this Agreement.
  - (1) This performance audit must be conducted by an independent Certified Public Accountant (CPA).
  - (2) The CPA must **examine** COMPANY'S statements/schedules for the new jobs created and the average annualized salary for those jobs at the facility located in Palm Beach County, and express a written **opinion**. The examination must be conducted in accordance with standards established by the American Institute of Certified Public Accountants.
  - (3) The CPA's report will include examining evidence supporting COMPANY'S schedules of new jobs and average annualized salary of the new jobs.
  - (4) The accuracy of the number, hire dates and average annual salaries (excluding benefits) of all current employee transfers and/or all local hires in Palm Beach County as represented by COMPANY shall be verified by this independent audit by the CPA to the COUNTY'S satisfaction.
  - (5) The CPA's report must identify two (2) average annual salaries for the new jobs based on the auditor's examination of the new jobs according to:
    - a) **All New Jobs.** Identify the average annualized salary for all new jobs. Include all exempt and non-exempt employees **and** all officers/corporate executives that will represent the total number of new full time jobs to be created/relocated in Palm Beach County.
    - b) **Low and Mid Echelon New Jobs Only.** Identify the average salary per annum of the new exempt and non-exempt employees only; **exclude** from these calculations the average annual salary of the officers and senior corporate executives which are included in A(5)(a) above.
  - (6) The audit may be performed in conjunction with other auditing services.
  - (7) A report by an independent CPA that is a review or agreed-upon procedures report on COMPANY'S representations is unacceptable to the COUNTY.

- (8) This performance audit must be submitted to the COUNTY (attn: Palm Beach County Economic Development Office) within forty five months (45) months (by **February 28, 2012**) of the commencement date of this Agreement.
  - (9) COMPANY will be informed by the COUNTY when the COUNTY has made the determination that there are deficiencies with the audit and/or invoice documentation. Under these circumstances, the audit and invoice documentation cannot be processed pending COMPANY resolving the identified deficiencies.
  - (10) Upon receipt by the COUNTY from COMPANY of the appropriate audited and/or invoiced documentation, processing of the audit and invoices may proceed.
- B. Audit & Invoice Submittal. The COMPANY may submit such performance audit and seek reimbursement for eligible expenses hereunder at any time following the commencement date hereof, upon satisfaction of the performance standards set forth hereinabove.
  - C. Remittance. The COUNTY shall remit payment to COMPANY of the sum due hereunder within sixty (60) days of the COUNTY'S receipt of written audited verification as required hereunder, the COUNTY having completed its review of the audited report, and the COUNTY having determined that COMPANY has satisfactorily complied with the terms of this Agreement.
  - D. Inspection. Upon ten (10) business days notice and at any time during normal business hours and as often as the COUNTY deems necessary, there shall be made available by COMPANY to the COUNTY for examination, all its records with respect to all matters covered by this Agreement. The COUNTY reserves the right to require copies of such records and/or to conduct an inspection of COMPANY'S records regarding performance measures at any time for any period covered by this Agreement.
  - E. Automatic Termination. This Agreement shall automatically terminate, thereby relieving the parties hereto of any liability or obligations hereunder, if COMPANY fails to submit this performance audit to the COUNTY by the end of the forty fifth (45th) month following the commencement date of this Agreement (by **February 28, 2012**).

#### PART IX.

#### REIMBURSEMENT TERMS

**Eligible Reimbursables.** The Grant funds available under this Agreement will be provided only for reimbursement of expenses associated with COMPANY'S physical move, relocation to and/or expansion in Palm Beach County as set forth on Exhibit "B". To be eligible for reimbursement, such expenses must be:

- A. Date of Expenditure. Incurred not more than forty three (43) months following the commencement date of this Agreement (**June 1, 2008 through December 31, 2011**).
- B. Exhibit "B". In compliance with the requirements set forth on Exhibit "B".

#### **Request Reimbursement.**

- A. Total Grant Amount. All eligible "Out-of-Pocket" expenses incurred directly by COMPANY will be reimbursed up to an amount not to exceed the Grant maximum amount set forth in this Agreement.
- B. Total New Jobs. All reimbursement amounts shall not exceed the Grant's award per job, multiplied by the number of applicable jobs as verified by the Performance Audit, and as set forth in this Agreement.
- C. Payment Schedule. All requests for payment of "Out-of-Pocket" expenses eligible for reimbursement under the terms of this Agreement must be received no later than the expiration of the forty-three (43rd) month following the commencement date of this Agreement (by **December 31, 2011**).
- D. Invoices & Documentation. All requests for reimbursement shall include, in addition to the performance audit required by this Agreement, copies of paid receipts, canceled invoices, or other documentation acceptable to the Palm Beach County Office of Financial Management & Budget and the Finance Department of the Clerk of the Circuit Court, and shall be sufficient to adequately describe the expenses and establish that the expense was actually incurred directly by COMPANY.

#### PART X.

#### BREACH OF AGREEMENT

The COMPANY must fully comply with the job and salary guarantees as set forth in this Agreement.

- A. An audit of the COMPANY must show that the COMPANY created at least fifty (50) full time equivalent (F.T.E.) positions at an average annual salary that does not fall below **\$56,706.00 (excluding benefits)**;



If the minimum full time equivalent positions and/or salaries fall below the minimum, as required by this Agreement, the COMPANY shall be considered by the COUNTY to have **breached this Agreement and the Agreement shall terminate**. In the event of termination, COMPANY agrees that it shall, within 60 days of the date of termination, make restitution to the COUNTY the per job grant award paid by the COUNTY to COMPANY for each position not maintained as required by this Agreement.

PART XI.  
**LETTER OF CREDIT**

**Provision of Letter of Credit.**

- A. **Review & Acceptance.** COMPANY shall provide to the COUNTY a clean, irrevocable Letter of Credit that the COUNTY must review, and that the COUNTY finds acceptable at its sole discretion and in accordance with the COUNTY'S PPM: CW-F-055, for the maximum grant amount of this Agreement or for an amount less than the total amount of grant funds in the event COMPANY seeks reimbursement for an amount less than the maximum grant amount.
- B. **Payment.** The Letter of Credit shall be provided to the COUNTY at the time COMPANY seeks payment pursuant to this Agreement or in the event grant funds are committed pursuant to PART XIII (Local Match Commitment) of this Agreement at the time the State of Florida requests payment, whichever occurs first.
- C. **Term.** The Letter of Credit shall remain in effect until the COUNTY has determined that COMPANY has fully satisfied both the job performance and maintenance period obligations as set forth in this Agreement. In order for the COUNTY to be provided sufficient time to complete its review and to determine whether COMPANY is in full compliance with COMPANY'S obligations as set forth in this Agreement, the Letter of Credit shall remain in effect **until June 30, 2014.**
- D. **Automatic Termination.** This Agreement shall automatically terminate, thereby relieving the parties hereto of any liability or obligations hereunder, if COMPANY fails to submit an acceptable Letter of Credit to the COUNTY at the time COMPANY seeks payment pursuant to this Agreement, with the Letter of Credit to remain in effect for the total period set forth in PART XI (C) above.
- E. **Release.** Upon the COUNTY having determined that COMPANY has satisfactorily complied with the terms of this Agreement, the COUNTY shall notify the financial institution that issued the Letter of Credit and COMPANY that the Letter of Credit is considered released. The COUNTY may release the Letter of Credit prior to the end date of the **Letter of Credit (until June 30, 2014)** contingent on the COUNTY having been provided verification acceptable to the COUNTY that COMPANY has satisfied its job performance and maintenance obligations prior to the end date identified for complying with such obligations in this Agreement.

PART XII.  
**JOB MAINTENANCE & REPORT**

**Maintenance Agreed-upon Procedures Report.** Additional conditions:

- A. **Maintenance Period.** COMPANY shall maintain each position created in Palm Beach County, and at the average salary per annum required by this Agreement or at the number of full time jobs and wage level verified by the performance audit:
  - (1) Until the expiration of the **sixty-seventh (67th)** month (by **December 31, 2013**) following the commencement date of this Agreement; or
  - (2) If COMPANY submitted its performance audit at anytime within the performance period of this Agreement prior to the expiration of the **forty-third (43rd)** month following the commencement date of this Agreement, the additional **twenty four (24)** months of job maintenance under this Agreement shall commence as set forth in Paragraph "B" below. In the event that the maintenance period commences prior to **December 31, 2011**, it is understood that COMPANY can complete performance of all of its obligations hereunder prior to the expiration of the Agreement term.
- B. **Commencement of Maintenance Period.** The **twenty-four (24)** months of job and salary maintenance shall commence as of the compliance by COMPANY with the terms of this Agreement. In the event that the COUNTY subsequently determines that the performance audit is deficient, the commencement of the maintenance period shall be extended until the deficiencies are corrected.
- C. **Independent CPA.** COMPANY shall provide the COUNTY with an agreed-upon procedures report from an independent CPA regarding COMPANY'S representations that it has maintained the positions created in or relocated to Palm Beach County and at the required wage level during the maintenance period. The CPA report shall be prepared in accordance with standards established by the American Institute of Certified Public Accountants. The report shall be submitted on the CPA's letterhead, shall be satisfactory to the COUNTY in its

sole discretion, and shall identify the procedures performed to assist the COUNTY in determining whether COMPANY is in compliance with the terms of this Agreement.

- D. Report Submittal. COMPANY, at its sole cost and expense, shall provide this Maintenance Report to the COUNTY (i.e., to the Palm Beach County Economic Development Office) no later than the end of the sixty-ninth (69th) month (by February 28, 2014) following the commencement date of this Agreement or no later than sixty (60) days following the expiration of the twenty-four (24) months of job maintenance.
- E. Restitution. Within sixty (60) days from the date this audit is submitted to the COUNTY, COMPANY agrees to make restitution to the COUNTY, the per job grant award paid by the COUNTY to COMPANY, for each position not maintained in accordance with the conditions set forth hereinabove. This restitution payment to the COUNTY shall be to the "Palm Beach County Board of County Commissioners" for said Grant.
- F. Inspection. Upon ten (10) business days notice and at any time during normal business hours and as often as the COUNTY deems necessary, there shall be made available by COMPANY to the COUNTY for examination, all its records with respect to all matters covered by this Agreement. The COUNTY reserves the right to require copies of such records and/or to conduct an inspection of COMPANY'S records regarding performance requirements at any time for any period covered by this Agreement.

#### PART XIII.

#### LOCAL MATCH COMMITMENT

**Qualified Target Industry Tax Refund Program.** *In the event* COMPANY enters into an agreement with the State of Florida to receive State tax refunds pursuant to the State of Florida Qualified Target Industry Tax Refund Program as set forth in Chapter 288, Florida Statutes, as may be amended (hereinafter referred to as QTI), the following shall apply:

- A. Maximum Match Amount. Any Grant funds provided for under this Agreement may be used by COUNTY as reimbursement toward the required QTI local match of up to 20%, with the total match amount of COUNTY not to exceed the total Grant amount of this Agreement.
- B. Payment Request & Letter of Credit. COMPANY shall provide to COUNTY a clean, irrevocable Letter of Credit at the time the State of Florida requests the local match payment pursuant to PART XI (Letter of Credit) of this Agreement. The State of Florida's payment schedule for COMPANY'S expansion project differs from the COUNTY'S schedule. In order for the COUNTY to make timely payments to the State of Florida, a letter of credit is required from the COMPANY, based on the yearly payout amounts and schedule required by the State of Florida attached as Exhibit C.
- C. Payment Procedure. The Grant funds paid by COUNTY on behalf of COMPANY as part of the required QTI local match, and as provided for under this Agreement, shall be paid directly by COUNTY to the State of Florida Economic Development Trust Fund in accordance with the QTI Program.
- D. QTI Commitment Nullified. If COMPANY does not satisfy all of its QTI contractual obligations with the State of Florida, which results in the termination of the QTI agreement, but complies fully with its Grant commitments with COUNTY, the COMPANY shall be entitled to seek reimbursement of expenditures of funds pursuant to this Agreement. However, any funds that may have been provided by COUNTY to the State of Florida toward the QTI match shall be subtracted from the Grant maximum amount set forth in this Agreement.

#### PART XIV.

#### GENERAL CONDITIONS

**Obligation & Annual Appropriation.** The COUNTY'S obligation to pay under this Agreement is contingent upon annual appropriation for its purpose by the COUNTY.

**Employee: Bona Fide.** COMPANY warrants that it has not employed or retained any company or person, other than a bona fide employee working solely for 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 COMPANY, any fee, commission, percentage, gift, or any other consideration contingent upon or resulting from the award or making of this Agreement.

- A. Non-discrimination. COMPANY agrees that no person shall on the grounds of race, color, disability, national origin, religion, age, familial status, sex or sexual orientation be excluded from the benefits of, or be subjected to discrimination under, any activity carried out by the performance of this Agreement. Upon receipt of evidence of such discrimination, the COUNTY shall have the right to terminate this Agreement.
- B. Low-income Residents & Local Businesses. To the greatest extent feasible,
  - (1) Low-income residents shall be given opportunities for training and employment; and

- (2) Eligible business concerns located in or owned in substantial part by persons residing in Palm Beach County shall be awarded contracts in connection with this Grant.

**Worker's Compensation & Employer's Liability.** COMPANY shall agree to maintain Worker's Compensation Insurance & Employers Liability in accordance with Florida Statute Chapter 440 for all jobs set forth in this Agreement.

**Convicted Vendor List.** As provided in F.S. 287.132-133, by entering into this Agreement or performing any work in furtherance hereof, COMPANY certifies that it, and its affiliates who will perform hereunder, have not been placed on the Convicted Vendor List maintained by the State of Florida Department of Management Services within thirty-six (36) months immediately preceding the date of execution of this Agreement by the COUNTY. This notice is required by F.S. 287.133(3)(a).

Florida Department of Management Services, Division of Purchasing  
4050 Esplanade Way, Tallahassee, FL 32399-0950  
(850) 488-8440

[http://dms.myflorida.com/dms/purchasing/convicted\\_suspended\\_discriminatory\\_vendor\\_lists/convicted\\_vendor\\_list](http://dms.myflorida.com/dms/purchasing/convicted_suspended_discriminatory_vendor_lists/convicted_vendor_list)

**Successors & Assigns.** The COUNTY and COMPANY each binds itself and its partners, successors, executors, administrators and assigns to the other party and to the partners, successors, executors, administrators and assigns of such other party, in respect to all covenants of this Agreement. Except as above, neither the COUNTY nor COMPANY shall assign, sublet, convey or transfer its interest in this Agreement without the prior written consent of the other. Nothing herein shall be construed as creating any personal liability on the part of any officer or agent of the COUNTY, nor shall it be construed as giving any rights or benefits hereunder to anyone other than the COUNTY and COMPANY. In the event that the COUNTY determines that COMPANY is in violation of this paragraph, the COUNTY shall have the right to terminate this Agreement and to seek restitution of the funds paid by the COUNTY to COMPANY.

**Name or Location Change.** In the event COMPANY implements a change to the name of COMPANY or the location of COMPANY within or outside Palm Beach County, COMPANY must immediately provide the COUNTY with written verification regarding said change to the name and/or location of COMPANY upon it becoming official.

**Material Change of Circumstances.** COMPANY shall immediately notify the COUNTY of any material change of circumstances of COMPANY'S business operations in Palm Beach County. For the purposes hereof, material change of circumstance shall include, but not be limited to, the failure of COMPANY to diligently and actively pursue fulfillment of the terms hereof, the sale or transfer of COMPANY'S assets for the benefit of creditors, the suspension, closing or cessation of operation of COMPANY, voluntary or involuntary bankruptcy or an assignment for the benefit of COMPANY'S creditors. In the event of a material change of circumstances, the COUNTY shall have the right to terminate this Agreement, whereupon the COUNTY shall have no further obligation to COMPANY under this Agreement.

**Entire Agreement Between Parties.** The COUNTY and COMPANY agree that this Agreement sets forth the entire agreement between the parties, and that there are no promises or understandings other than those stated herein. None of the provisions, terms and conditions contained in this Agreement may be added to, modified, superseded or otherwise altered, except by written instrument executed by the parties hereto.

**Performance: Time & Liability.** The parties expressly agree that time is of the essence in this Agreement and the failure by a party to complete performance within the time specified, or within a reasonable time if no time is specified herein, shall, at the option of the other party without liability, in addition to any other rights or remedies, relieve the other party of any obligation to accept such performance.

**Invalid or Unenforceable Terms.** If any term or provision of this Agreement, or the application thereof to any person or circumstances shall, to any extent, be held invalid or unenforceable, the remainder of this Agreement, or the application of such terms or provision, to persons or circumstances other than those as to which it is held invalid or unenforceable, shall not be affected, and every other term and provision of this Agreement shall be deemed valid and enforceable to the extent permitted by law.

**Defaults.** The occurrence of any one or more of the following events shall constitute a Default hereunder:

- A. Vacating, abandoning, or closing COMPANY'S business.
- B. Relocating COMPANY'S business outside Palm Beach County.
- C. The failure of COMPANY to observe or perform any of the terms, covenants, conditions, obligations, or provisions of this Agreement to be observed or performed by COMPANY

where such failure continues for a period of thirty (30) days after written notice thereof from the COUNTY to COMPANY; provided, however, that if the nature of COMPANY'S default is such that more than thirty (30) days are reasonably required for its cure, then COMPANY shall not be deemed to be in default if COMPANY commenced such cure within said thirty (30) day period and thereafter diligently pursues such cure to completion.

- D. (i) The making by COMPANY of any general assignment, or general arrangement for the benefit of creditors; (ii) the filing by or against COMPANY of a petition to have the COMPANY adjudged bankrupt or a petition for reorganization or arrangement under any law relating to bankruptcy (unless, in the case of a petition filed against COMPANY, the same is dismissed within sixty (60) days); (iii) the appointment of a trustee or receiver to take possession of substantially all of COMPANY'S assets where possession is not restored to COMPANY within thirty (30) days; or (iv) the attachment, execution or other judicial seizure of substantially all of COMPANY'S assets located within Palm Beach County where such seizure is not discharged within thirty (30) days.
- E. The discovery by the COUNTY that any financial statement relating to this Agreement given to the COUNTY was materially false.
- F. A breach of Agreement as referenced in PART X. B.

**Remedies.** In the event of a Default by COMPANY, the COUNTY may at any time thereafter terminate this Agreement. In such event, the COUNTY shall be entitled to recover immediately upon demand from COMPANY or any party joining in or consenting to this Agreement, all sums paid by the COUNTY to COMPANY pursuant to this Agreement.

**Law & Remedy.** This Agreement shall be governed by the laws of the State of Florida. Any and all legal action necessary to enforce the Agreement shall be held in Palm Beach County. No remedy herein conferred upon any party is intended to be exclusive of any other remedy, and each and every such remedy shall be cumulative and shall be in addition to every other remedy given hereunder or now or hereafter existing at law or in equity or by statute or otherwise. No single or partial exercise by any party of any right, power, or remedy hereunder shall preclude any other or further exercise thereof.

**Indemnification & Hold Harmless.** COMPANY agrees to protect, defend, reimburse, indemnify and hold the COUNTY, its agents, its employees and elected officers and each of them, free and harmless at all times from and against any and all claims, liability, expenses, losses, costs, fines and damages, including attorney's fees, and causes of action of every kind and character against and from the COUNTY which arise out of this Agreement. COMPANY recognizes the broad nature of this indemnification and hold harmless clause, and voluntarily makes this covenant and expressly acknowledges the receipt of good and valuable consideration provided by the COUNTY in support of this clause in accordance with the laws of the State of Florida. This Paragraph shall survive the termination of the Agreement.

**Notice.** All notices required in this Agreement shall be sent by certified mail, return receipt requested, and if sent to the COUNTY shall be mailed to:

Kevin Johns, Director  
Palm Beach County Economic Development Office  
P.O. Box 1989 (10th floor)  
West Palm Beach, Florida 33402-1989

With a copy to:

Dawn Wynn, Assistant County Attorney  
County Attorney's Office  
301 N. Olive Ave (6<sup>th</sup> floor)  
West Palm Beach, FL 33401

And if sent to the COMPANY shall be mailed to (to be completed by COMPANY prior to execution):

Biotest Pharmaceuticals  
5800 Park of Commerce Blvd., N.W.  
Boca Raton, FL 33487

IN WITNESS WHEREOF, the Board of County Commissioners of Palm Beach County, Florida has made and executed this Agreement on behalf of Palm Beach County, and COMPANY has hereunto set its hand the day and year above written.

ATTEST:  
SHARON R. BOCK,  
CLERK & COMPTROLLER

PALM BEACH COUNTY, FLORIDA  
BY ITS BOARD OF COUNTY  
COMMISSIONERS:

By: \_\_\_\_\_  
Deputy Clerk

By: \_\_\_\_\_  
Addie L. Greene, Chair

APPROVED AS TO TERMS  
AND CONDITIONS:

APPROVED AS TO FORM  
AND LEGAL SUFFICIENCY:

By: *[Signature]*  
Director, Economic Development

By: \_\_\_\_\_  
County Attorney

WITNESS FOR COMPANY:

COMPANY:

*Maggie Smith*  
Signature  
M. Smith  
Name (type or print)  
S. Planner  
Title

Biotest Pharmaceuticals  
Company Name  
*[Signature]*  
Signature  
Jordan Siegel  
Name (type or print)  
SVP Finance & CFO  
Title

N/A

COMPANY SEAL  
(Seal must be identical to COMPANY name.  
If seal is unavailable, COMPANY must draw  
seal. If not applicable, write N/A.)

**EXHIBIT "A"**

**JOB GROWTH INCENTIVE GRANT AGREEMENT  
BETWEEN PALM BEACH COUNTY AND  
BIOTEST PHARMACEUTICALS**

**COMPANY IDENTIFICATION AND INFORMATION:**

JGI Application date: April 18, 2008

Letter of Intent date: N/A

**BIOTEST PHARMACEUTICALS**

Existing Headquarters: 5800 Park of Commerce Blvd., N.W.  
Boca Raton, FL 33487  
561-989-5560

Proposed Site: same as above

Products/services involving  
COMPANY'S facilities  
in Palm Beach County: Biotest Pharmaceuticals Corporation develops and  
manufactures pharmaceutical and biotherapeutic products  
with a specialization in immunology. The company plans to  
increase plasma protein production by reconfiguring an  
existing plant through a projected \$16.1 million capital  
expenditure over 3 years.

**BIOTEST PHARMACEUTICALS**

Business: Type: Corporation  
Date: September 10, 2007  
State: Delaware

State of Florida: Status: Active  
Registration Date: December 10, 2007  
(registered with the Division of Corporations,  
Florida Department of State, in order to conduct  
business operations within the State of Florida)

Federal ID number: 26-1251037

**BIOTEST PHARMACEUTICALS CORPORATION**

Company History: The COMPANY Biotest Pharmaceuticals is a wholly owned  
subsidiary of Biotest AG headquartered in Dreiech, Germany.  
In December 2007, Biotest AG purchased the existing  
buildings and assets from Nabi, and began operations as  
Biotest Pharmaceuticals.

**EXHIBIT "B"**

**JOB GROWTH INCENTIVE GRANT AGREEMENT  
BETWEEN PALM BEACH COUNTY AND  
BIOTEST PHARMACEUTICALS**

**ELIGIBLE REIMBURSABLES:**

The grant funds of this Agreement may be used to reimburse COMPANY for the following expenses associated with the expansion and/or relocation of COMPANY in Palm Beach County. Invoices submitted for reimbursement must be accompanied by copies of canceled checks, with the front and back sides of the canceled checks copied.

1. **Payment of Impact Fees and Special Assessments**
  - (a) Impact fees assessed by the COUNTY include fees for roads, parks, fire-rescue, libraries, law enforcement, and public buildings.
  - (b) Impact fees assessed by local governments and special assessments by special districts.
2. **Land Improvement Costs**
  - (a) Off-site land improvements.
  - (b) Road improvements.
  - (c) Construction of recreational facilities open to the public.
  - (d) Reimbursement for any government required dedications.
  - (e) Water and sewer connection fees.
  - (f) Telecommunication connection fees and costs.
  - (g) Infrastructure design and construction plan preparation.
  - (h) Drainage facilities in conjunction with new roadway construction or on-site improvements.
  - (i) Construction of new curbs, curb cuts, medians, shoulders and sidewalks.
  - (j) Relocating utilities to accommodate new roadway construction.
  - (k) Facade redevelopment in eligible community redevelopment agency or downtown development authority designated areas subject to prior approval of all governing bodies.
  - (l) Landscaping and road beautification costs.
  - (m) All fees and dedications required by entities other than the COUNTY are subject to prior approval by the Palm Beach County Economic Development Office.
  - (n) County permitting, licensing, or other approval costs associated with land improvement.
3. **Environmental Compliance**
  - (a) Costs associated with design and installation of equipment needed for compliance with existing federal, state, and local environmental standards.
  - (b) Costs associated with asbestos removal.
4. **Leasehold Improvements**
  - (a) Costs of improvements to leased property required by expansion or relocation, including wiring and other installation costs involving communication and computer systems.
5. **Construction and Renovation Costs**
  - (a) Costs of constructing or renovating the real property for which COMPANY must possess title, with such costs directly related to the expansion or relocation.
  - (b) Architect, design and technical fees associated with the expansion or relocation.
6. **Employee Hiring and Training**
  - (a) Costs associated with providing for employee hiring and training, such as advertising, job fairs, and reasonable hotel and transportation costs for employee recruitment and training. All out of town travel by trainers and trainees (new employees) directly necessitated by the expansion or relocation must be fully documented and will be reimbursed in accordance with the provisions of Florida Statute, Chap. 112, Part I, 112.061; [www.leg.state.fl.us](http://www.leg.state.fl.us) (Statutes & Constitution).
7. **Relocating Company Assets**
  - (a) Costs associated with relocation of company assets required by expansion or relocation.
8. **Day Care**
  - (a) Improvement costs associated with establishing a COMPANY sponsored day care facility for children of employees filling new jobs, with facility physically located on or adjacent to site of relocation or expansion project.
9. **Local Match for State Tax Refund Program**
  - (a) Up to 20% of State Tax refund subject to State Law and procedures established pursuant to the Job Growth Incentive Grant Program.

**EXHIBIT "C"**

**JOB GROWTH INCENTIVE GRANT AGREEMENT  
BETWEEN PALM BEACH COUNTY AND  
BIOTEST PHARMACEUTICALS**

**JOB CREATION SCHEDULE**

Below is the State of Florida's projected job creation schedule and payment schedule. The information was given to the COUNTY by Enterprise Florida, Inc. (EFI), for Biotest Pharmaceuticals expansion project in Palm Beach County. Enterprise Florida is the public-private partnership responsible for leading Florida's statewide economic development efforts. Enterprise Florida works with a statewide network of regional and local economic development organizations to continually improve Florida's business climate and ensure its global competitiveness.

Biotest Pharmaceuticals must adhere to the following schedule:

Create 50 new full time jobs by 12/31/11

**Total:** 50 new full time jobs created by 12/31/11

**PROJECTED LOCAL MATCH PAYMENT SCHEDULE:**

The job creation schedule leads to the following QTI local match payment requirements by the COUNTY:

By approximately 12/31/11: \$40,000

**PLEASE NOTE:** THE INFORMATION LISTED ABOVE IS THE APPROXIMATE DATES AND AMOUNTS BY WHICH THE COUNTY WILL BE REQUESTED TO PAY THE RESPECTIVE AMOUNTS. THE OFFICIAL CREATION AND LOCAL MATCH SCHEDULES WILL BE ISSUED BY THE OFFICE OF TOURISM, TRADE, AND ECONOMIC DEVELOPMENT (OTTED), ONCE THE QTI HAS BEEN APPROVED BY THE STATE.



2008-

1094

**BUDGET AMENDMENT**  
BOARD OF COUNTY COMMISSIONERS  
PALM BEACH COUNTY, FLORIDA

Fund 1539 Economic Development Fund

Advantage Document Numbers:  
BGEX  
BGRV

ACCT.NUMBER	ACCOUNT NAME	ADOPTED BUDGET	CURRENT BUDGET	INCREASE	DECREASE	ADJUSTED BUDGET	EXPENDED/ ENCUMBERED AS OF 6/23/08	REMAINING BALANCE
<b>Revenue</b>								
800-8000-8000	Tr fr General Fund 0001	1,779,845	1,703,538	40,000	0	1,743,538		
<b>Balances</b>		5,634,261	6,513,942	40,000	0	6,613,942		
<b>Expenditures</b>								
764-1132-8201	Contributions-Non Govts Agncs	0	40,000	40,000	0	80,000	0	80,000
<b>Total Appropriations &amp; Expenditures</b>		5,634,261	6,513,942	40,000	0	6,613,942		

**Economic Development**

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**INITIATING DEPARTMENT/DIVISION**

Administration/Budget Approval

OFMB Department - Posted

**Signatures**

*[Signature]*

*[Signature]*

**Date**

7.3.08

**By Board of County Commissioners**

**At Meeting of**

July 22, 2008

**Deputy Clerk to the Board of County Commissioners**

PO 7/3/08

2008 - 1093

BOARD OF COUNTY COMMISSIONERS  
PALM BEACH COUNTY, FLORIDA

BGEX 420 040908\*2475

BUDGET TRANSFER  
FUND 0001 General Fund

ACCOUNT NAME AND NUMBER	ORIGINAL BUDGET	CURRENT BUDGET	INCREASE	DECREASE	ADJUSTED BUDGET	EXPENDED/ ENCUMBERED AS OF 6/26/2008	REMAINING BALANCE
<b><u>EXPENDITURES</u></b>							
820-9100-9099 Trf to Economic Development Fund 1539	1,779,845	1,703,538	40,000	0	1,743,538	1,291,903	451,635
820-9900-9901 Contingency Reserve	20,000,000	18,391,503	0	40,000	18,351,503	0	18,351,503
<b>TOTALS</b>			40,000	40,000			

**Economic Development Office**  
**INITIATING DEPARTMENT/DIVISION**  
**Administration/Budget Department Approval**  
**OFMB Department - Posted**

**Signatures & Dates**

*[Signature]*  
Atwill/White 7.3.08

*[Signature]*  
7/3/08

**BY BOARD OF COUNTY COMMISSIONERS**  
**AT MEETING OF**  
July 22, 2008  
**Deputy Clerk to the**  
**Board of County Commissioners**