

II. FISCAL IMPACT ANALYSIS

A. Five Year Summary of Fiscal Impact:

Fiscal Years	2012	2013	2014	2015	2016
Capital Expenditures					
Operating Costs	\$100,000				
External Revenues	(\$100,000)				
Program Income					
In-Kind Match (County)					
NET FISCAL IMPACT	-0-				

# ADDITIONAL FTE POSITIONS (Cumulative)	-0-				
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Is Item Included In Current Budget? Yes x No


Budget Account No.:

Fund 1101 Dept 143 Unit 1431 Object 8201 Program Code/Period BG176/GY07.

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

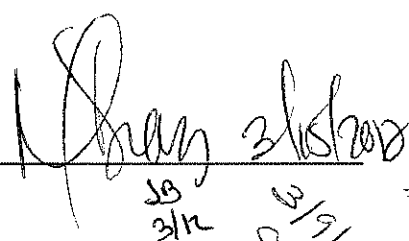
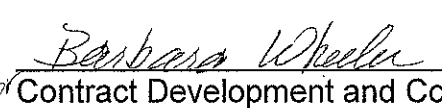
Approval of the Agreement will provide \$100,000 in CDBG funds to Oxygen Development, L.L.C.

C. Departmental Fiscal Review:

 3-9-12
 Shairette Major, Fiscal Manager I

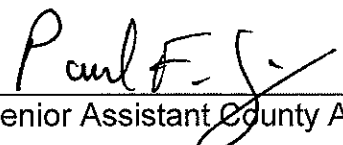
III. REVIEW COMMENTS

A. OFMB Fiscal and/or Contract Development and Control Comments:

OFMB  3/8/12
 3-16-12
 for Contract Development and Control

B. Legal Sufficiency:

This Contract complies with our contract review requirements.


 Senior Assistant County Attorney

C. Other Department Review:

Department Director



Oxygen Development LLC – 1525 S. Congress Avenue, Palm Springs, FL 33406
Location Map

AGREEMENT BETWEEN PALM BEACH COUNTY

AND

OXYGEN DEVELOPMENT, L.L.C.

THIS AGREEMENT entered into this _____ day of _____, _____, by and between Palm Beach County (hereinafter referred to as the "COUNTY"), a political subdivision of the State of Florida, for the use and benefit of its Community Development Block Grant Program, and Oxygen Development, L.L.C., a Limited Liability Company duly organized and authorized to do business in the State of Florida, having its principal office at 1441 W. Newport Center Drive, Deerfield Beach, FL 33442 and its Federal Tax Identification Number as 010715094, hereinafter referred to as the "COMPANY."

WHEREAS, Palm Beach County has entered into an Agreement with the United States Department of Housing and Urban Development for a grant for the execution and implementation of a Community Development Block Grant Program in certain areas of Palm Beach County, pursuant to Title I of the Housing and Community Development Act of 1974 (as amended); and

WHEREAS, Palm Beach County, in accordance with the Annual Action Plan, and Oxygen Development, L.L.C. desire to provide the activities specified in Part II of this Agreement; and

WHEREAS, Palm Beach County desires to engage Oxygen Development, L.L.C. to implement such undertakings of the Community Development Block Grant Program.

NOW, THEREFORE, in consideration of the mutual promises and covenants herein contained, it is agreed as follows:

PART I
DEFINITION AND PURPOSE

A. DEFINITIONS

- (1) "COUNTY" means Palm Beach County.
- (2) "CDBG" means the Community Development Block Grant Program and / or Palm Beach County Economic Development Set-Aside Program.
- (3) "DES" means Palm Beach County Department of Economic Sustainability.
- (4) "COMPANY" means Oxygen Development, L.L.C.
- (5) "DES Approval" means the written approval of the DES Director or his designee.
- (6) "U.S. HUD" means the Secretary of the U.S. Department of Housing and Urban Development or a person authorized to act on its behalf.
- (7) "Low and moderate income persons" means the definition set by U.S. HUD.
- (8) "Held by" means the definition set by U.S. HUD.

B. PURPOSE

The purpose of this Agreement is to state the covenants and conditions under which the COMPANY will implement the Scope of Services set forth within this Agreement. At least fifty-one percent (51%) of the jobs created through this Agreement must be held by low and moderate income persons.

PART II

SCOPE OF SERVICES, ELIGIBLE ACTIVITIES AND NATIONAL OBJECTIVE

A. SCOPE OF SERVICES

The COMPANY shall, in a satisfactory and proper manner as determined by DES, perform the tasks outlined in Exhibit "A" and submit invoices using the cover sheet in Exhibit "B", both of which are attached hereto and made a part hereof.

B. NATIONAL OBJECTIVE AND ELIGIBLE ACTIVITIES

The Project is being carried out as assistance provided to a private for profit business, activities determined to be **Special Economic Development Activity**, 24 Code of Federal Regulations (CFR) 570.203(b). The COMPANY certifies that the eligible activities carried out under this Agreement will satisfy a National Objective by agreeing to hire fifty-one percent (51%) of the COMPANY's new employees from the **low and moderate income labor pool and from Palm Beach County CDBG Program Jurisdiction**, as described in the scope of work in Exhibit "A", and as defined in 24 CFR 570.208.

PART III

COMPENSATION, TIME OF PERFORMANCE, METHOD AND CONDITIONS OF PAYMENT

A. MAXIMUM COMPENSATION

The COMPANY agrees to accept as full payment for services rendered pursuant to this Agreement the actual amount of budgeted, eligible, and DES Director or designee-approved expenditures and encumbrances made by the COMPANY under this Agreement. Said services shall be performed in a manner satisfactory to DES. In no event shall the total compensation or reimbursement to be paid hereunder exceed the maximum and total authorized sum of One Hundred Thousand Dollars (\$100,000). This Agreement shall commence on the March 20, 2012 and end on March 19, 2013. During this timeframe, the COMPANY must use the CDBG funding awarded, in accordance with Exhibit "A." In addition, the grant award shall be payable in accordance with the terms of this Agreement and the eligible expenses outlined in Exhibit "A." Any funds not expended by the expiration date of this Agreement shall automatically revert to the COUNTY.

B. TIME OF PERFORMANCE

The effective date of this Agreement and all rights and duties designated hereunder are contingent upon the timely release of funds for this project under HUD grant number B-07-UC-12-0004. The effective date shall be the March 20, 2012, and the services of the COMPANY shall be undertaken and completed in light of the purposes of this Agreement. In any event, all services required hereunder shall be completed by the COMPANY by March 19, 2013.

C. METHOD OF PAYMENT

The COUNTY agrees to reimburse the COMPANY for all budgeted costs permitted by Federal, State, and COUNTY guidelines. In no event shall the COUNTY provide advance funding to the COMPANY or any subcontractor hereunder.

Requests by the COMPANY for reimbursements shall be accompanied by proper documentation of expenditures and should, to the maximum extent possible, be submitted to DES for approval no later than thirty (30) days after the date of payment by the COMPANY. Payment shall be made by the Palm Beach County Finance Department upon proper presentation of invoices and reports approved by the COMPANY and DES. Proof of payment and originals of invoices, receipts, or other evidence of indebtedness shall be considered proper documentation. When original documents cannot be presented, the COMPANY must adequately justify their absence, in writing, and furnish copies. Invoices will not be honored if received by the Palm Beach County Department of Economic Sustainability later than forty-five (45) days after the expiration date of this Agreement, nor will any invoices be honored that predate the effective date of this Agreement. Each invoice

submitted to DES for reimbursement must be submitted using the Letterhead Stationary format as identified in Exhibit "B".

D. CONDITIONS ON WHICH PAYMENT IS CONTINGENT

(1) IMPLEMENTATION OF PROJECT ACCORDING TO REQUIRED PROCEDURES

The COMPANY shall implement this Agreement in accordance with applicable Federal, State, and COUNTY laws, ordinances and codes, and amendments and additions thereto as may from time to time be made. The Federal, State, and COUNTY laws, ordinances and codes are minimal regulations which may be supplemented by more restrictive guidelines set forth by DES. No reimbursements will be made without evidence of the appropriate insurance required by this Agreement on file with DES. No payments for multi-funded projects will be made until a cost allocation plan has been approved by the DES Director or designee.

Should a project receive additional funding after the commencement of this Agreement, the COMPANY shall notify DES in writing within thirty (30) days of receiving notification from the funding source and submit a cost allocation plan for approval by the DES Director or designee within forty-five (45) days of said notification.

(2) FINANCIAL ACCOUNTABILITY

The COUNTY may have a financial systems analysis and/or an audit of the COMPANY or any of its subcontractors performed by an independent auditing firm employed by the COUNTY or by the County Internal Audit Department at any time the COUNTY deems necessary to determine if the project is being managed in accordance with Federal, State, and COUNTY requirements.

(3) SUBCONTRACTS

Any work or services subcontracted hereunder shall be specifically by written contract, written agreement, or purchase order and shall be subject to each provision of this Agreement. Proper documentation in accordance with COUNTY, State, and Federal guidelines and regulations must be submitted by the COMPANY to DES and approved by DES prior to execution of any subcontract hereunder. In addition, all subcontracts shall be subject to Federal, State, and COUNTY laws and regulations. This includes ensuring that all consultant Agreements and fee schedules meet the minimum standards as established by Palm Beach County and U.S. HUD. Agreements for architecture, engineering, survey, and planning shall be negotiated fixed fee Agreements. All additional services shall have prior written approval with support documentation detailing categories of persons performing work plus hourly rates including benefits, number of drawings required, and all items that justify the "Fixed Fee Agreement." Reimbursables will be at cost.

None of the work or services covered by this Agreement, including but not limited to consultant work or services, shall be subcontracted or reimbursed without prior written approval of the DES Director or his designee.

(4) PURCHASING

All purchases of goods and services, including capital equipment, shall be made by purchase order or by a written Agreement. The COMPANY will be required to secure up to three (3) qualified quotes for goods and services (if goods and services include equipment, each piece of equipment will require three separate quotes). The COMPANY must inform DES in writing (and include the purchase order or written agreement) of the vendor selected. The purchase order or written agreement must include the name / type of goods or services purchased and all costs associated with the purchase.

(5) REPORTS, AUDITS, AND EVALUATIONS

Payment will be contingent upon receipt of complete and accurate reports required by this Agreement, including the resolution of monitoring or audit findings identified pursuant to this Agreement.

(6) ADDITIONAL COUNTY AND U.S. HUD REQUIREMENTS

The State or Federal funds being provided hereunder cannot be used as a match for other State or Federal grants to the COMPANY and the COMPANY cannot submit requests for the same expenses to more than one funding source or under more than one program.

DES shall have the right under this Agreement to suspend or terminate payments until the COMPANY complies with any additional conditions that may be imposed by the COUNTY or U.S. HUD.

(7) PRIOR WRITTEN APPROVALS - SUMMARY

The following includes, but is not limited to, activities that require the prior written approval of the DES Director or his designee to be eligible for reimbursement or payment:

- (1) All subcontracts and agreements pursuant to this Agreement;
- (2) All capital equipment expenditures of \$1,000 or more;
- (3) All out-of-town travel; (travel shall be reimbursed in accordance with Florida Statutes, Chapter 112.061);
- (4) All change orders;
- (5) Requests to utilize uncommitted funds after the expiration of this Agreement for programs described in Exhibit "A"; and
- (6) All rates of pay and pay increases paid from funds provided hereunder, whether for merit or cost of living.

PART IV
GENERAL CONDITIONS

A. OPPORTUNITIES FOR RESIDENTS AND CIVIL RIGHTS COMPLIANCE

The COMPANY agrees that no person shall on the ground of race, color, ancestry, disability, national origin, religion, age, familial status, marital status, sex, sexual orientation, or gender identity or expression 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. To the greatest extent feasible, lower-income residents of the project areas shall be given opportunities for training and employment; and to the greatest extent feasible eligible business concerns located in or owned in substantial part by persons residing in the project areas shall be awarded Agreements in connection with the project. At a minimum, the COMPANY shall comply with the Section 3 Clause of the Housing and Community Development Act of 1968, as amended.

B. OPPORTUNITIES FOR SMALL AND MINORITY/WOMEN-OWNED BUSINESS ENTERPRISES

In the procurement of supplies, equipment, construction, or services to implement this Agreement, the COMPANY shall make a positive effort to utilize small business and minority/women-owned business enterprises of supplies and services, and provide these sources the maximum feasible opportunity to compete for Agreements to be performed pursuant to this Agreement. To the maximum extent feasible these small business and minority/women-owned business enterprises shall be located in or owned by residents of the areas designated by Palm Beach County in the Annual Consolidated Plan approved by U.S. HUD.

C. PROGRAM BENEFICIARIES

At least fifty-one percent (51%) of the jobs created through this project must be held by, or made available to, low and moderate income persons, and must reside in unincorporated

Palm Beach County or in Municipalities participating in the COUNTY's Urban County Qualification Program. The COMPANY shall provide written verification of compliance as described in Exhibit "A" of this Agreement to DES upon DES's request.

D. EVALUATION AND MONITORING

The COMPANY agrees that DES will carry out periodic monitoring and evaluation activities, as determined necessary by DES or the COUNTY, during the term of this Agreement and during the periods of time described in Exhibit "A" of this Agreement. The COMPANY agrees to furnish upon request to DES, the COUNTY or the COUNTY's designees and make copies or transcriptions of such records and information as is determined necessary by DES or the COUNTY. The COMPANY shall submit information and status reports required by DES, the COUNTY or U.S. HUD, at DES's request, to enable DES to evaluate said progress and to enable DES to complete reports required of DES by U.S. HUD. The COMPANY shall allow DES or U.S. HUD to monitor the COMPANY on site. Such site visits may be scheduled or unscheduled as determined by DES or U.S. HUD.

E. AUDITS AND INSPECTIONS

At any time during normal business hours and as often as DES, the COUNTY, U.S. HUD, or the Comptroller General of the United States may deem necessary, there shall be made available by the COMPANY to DES, the COUNTY, U.S. HUD, or the Comptroller General for examination all its records with respect to all matters covered by this Agreement. If during the year, the COMPANY expends over \$500,000 of Federal awards, the COMPANY shall comply with the provisions of OMB Circular A-133. The COMPANY shall submit a single audit, including any management letter, made in accordance with the general program requirements of OMB Circulars A-110, A-122, A-133, and other applicable regulations within the earlier of, 30 days after receipt of the auditor's report(s), or nine (9) months after the end of the audit period in which DES-administered funds are expended. Said audit shall be made by a Certified Public Accountant of the COMPANY's choosing, subject to the COUNTY's approval. In the event the COMPANY anticipates a delay in producing such audit, the COMPANY shall request an extension in advance of the deadline. The cost of said audit shall be borne by the COMPANY. In the event the COMPANY is exempt from having an audit conducted under A-133, the COMPANY shall submit audited financial statements and/or the COUNTY reserves the right to conduct a "limited scope audit" of the COMPANY as defined by A-133. The COUNTY will be responsible for providing technical assistance to the COMPANY, as deemed necessary by the COUNTY.

F. UNIFORM ADMINISTRATIVE REQUIREMENTS

The COMPANY agrees to comply with the applicable uniform administrative requirements as described in Federal Community Development Block Grant Regulations 24 CFR 570.502.

G. DATA BECOMES COUNTY PROPERTY

All reports, plans, surveys, information, documents, maps, and other data procedures purchased, developed, prepared, assembled, or completed by the COMPANY for the purpose of this Agreement shall become the property of the COUNTY without restriction, reservation, or limitation of their use and shall be made available by the COMPANY at any time upon request by the COUNTY or DES. Upon completion of all work contemplated under this Agreement, copies of all documents and records relating to this Agreement shall be surrendered to DES if requested. In any event, the COMPANY shall keep all documents and records for three (3) years after expiration of this Agreement.

H. INDEMNIFICATION

The COMPANY shall protect, defend, reimburse, indemnify and hold the COUNTY, its agents, employees and elected officers harmless from and against all claims, liability, expense, loss, cost, damages or causes of action of every kind or character, including attorney's fees and costs, whether at trial or appellate levels or otherwise, arising during performance of the terms of this Agreement or due to the acts or omissions of the COMPANY. The COMPANY's aforesaid indemnity and hold harmless obligation, or portion or applications thereof, shall apply to the fullest extent permitted by law. The COMPANY further agrees to hold the COUNTY harmless and will indemnify the COUNTY

for any funds which the COUNTY is obligated to refund the Federal Government arising out of the conduct, any activities and administration of the COMPANY.

I. INSURANCE REQUIREMENT

Unless otherwise specified in this Agreement, the COMPANY shall, at its sole expense, maintain in full force and effect at all times during the life of this Agreement, insurance coverages and limits, including endorsements, as described herein. The requirements contained herein as to types and limits, as well as COUNTY's review or acceptance of insurance maintained by the COMPANY are not intended to and shall not in any manner limit or qualify the liabilities and obligations assumed by the COMPANY under the Agreement.

(1) COMMERCIAL GENERAL LIABILITY

The COMPANY shall agree to maintain Commercial General Liability at a limit of liability not less than \$500,000 Each Occurrence. Coverage shall not contain any endorsement excluding Contractual Liability or Cross Liability unless granted by COUNTY's Risk Management Department. The COMPANY agrees this coverage shall be provided on a primary basis.

(2) BUSINESS AUTOMOBILE LIABILITY

The COMPANY shall agree to maintain Business Automobile Liability at a limit of liability not less than \$500,000 Each Occurrence for all owned, non-owned and hired automobiles. In the event the COMPANY does not own any automobiles, the Business Auto Liability requirement shall be amended allowing the COMPANY to agree to maintain only Hired & Non-Owned Auto Liability. This amended requirement may be satisfied by way of endorsement to the Commercial General Liability, or separate Business Auto coverage form. COMPANY agrees this coverage shall be provided on a primary basis.

(3) WORKERS' COMPENSATION & EMPLOYER'S LIABILITY

The COMPANY shall agree to maintain Worker's Compensation Insurance & Employers Liability in accordance with Florida Statute Chapter 440. The COMPANY agrees this coverage shall be provided on a primary basis.

(4) INSURANCE COVERING EQUIPMENT

The COMPANY shall agree to maintain insurance coverages against theft, loss, damage, and loss to persons or property in an amount not less than one hundred percent (100%) of the replacement cost of the equipment purchased with funds under this Agreement for a period of seven (7) years. The COMPANY shall agree to be fully responsible for any deductible or self-insured retention and agrees to name the COUNTY as a Loss Payee on each policy as its interest may appear in equipment purchased with funds under this Agreement.

(5) ADDITIONAL INSURED

The COMPANY shall agree to endorse the COUNTY as an Additional Insured with a CG 2026 Additional Insured - Designated Person or Organization endorsement, or its equivalent, to the Commercial General Liability. The Additional Insured endorsement shall read "Palm Beach County Board of County Commissioners, a Political Subdivision of the State of Florida, its Officers, Employees and Agents, c/o Department of Economic Sustainability". The COMPANY shall agree that the Additional Insured endorsements provide coverage on a primary basis.

(6) CERTIFICATE OF INSURANCE

The COMPANY shall agree to deliver to the COUNTY a certificate(s) of insurance evidencing the required insurance is in full force and effect within thirty (30) calendar days prior to the execution of the Agreement and upon renewal or reduction of any required insurance. A minimum thirty (30) day endeavor to notify due to cancellation or non-renewal of coverage shall be included on the certificate(s).

(7) RIGHT TO REVIEW & ADJUST

The COMPANY shall agree that the COUNTY, by and through its Risk Management Department, in cooperation with DES, reserves the right to periodically review, modify,

reject or accept any required policies of insurance, including limits, coverages, or endorsements, herein from time to time throughout the life of this Agreement. The COUNTY reserves the right, but not the obligation, to review and reject any insurer providing coverage because of its poor financial condition or failure to operate legally.

J. CONFLICT OF INTEREST

The COMPANY covenants that no person who presently exercises any functions or responsibilities in connection with the project has any personal financial interest, direct or indirect, which would conflict in any manner or degree with the performance of this Agreement and that no person having any conflict of interest shall be employed by or subcontracted by the COMPANY. Any possible conflict of interest on the part of the COMPANY or its employees shall be disclosed in writing to DES provided, however, that this paragraph shall be interpreted in such a manner so as not to unreasonably impede the statutory requirement that maximum opportunity be provided for employment of and participation of low and moderate income residents of the project target area.

K. CITIZEN PARTICIPATION

The COMPANY will cooperate with DES in the implementation of the Citizen Participation Plan by informing project beneficiaries and the community of the activities the COMPANY is undertaking in carrying out the provisions of this Agreement.

L. RECOGNITION

All property purchased or constructed pursuant to this Agreement shall be clearly identified as to funding source. The COMPANY will include a reference to the financial support herein provided by DES in all publicity. In addition, the COMPANY will make a good faith effort to recognize DES support for all activities made possible with funds made available under this Agreement.

M. AGREEMENT DOCUMENTS

The following documents are herein incorporated by reference and made a part hereof, and shall constitute and be referred to as the Agreement; and all of these documents taken as a whole constitute the Agreement between the parties and are as fully a part of the Agreement as if they were set forth verbatim and at length herein:

- (1) This Agreement, including its Exhibits, which the COUNTY may revise from time to time, as required;
- (2) 48 CFR Part 31 – Contract Cost Principles and Procedures
- (3) Palm Beach County Purchasing Ordinance
- (4) Palm Beach County's Tangible Property Disposal Ordinance
- (5) Community Development Block Grant Regulations (24 CFR Part 570), as amended
- (6) The COMPANY's Incorporation Certificate
- (7) The COMPANY's Certificates of Insurance and Bonding

The COMPANY shall keep an original of this Agreement, including its Exhibits, and all Amendments thereto, on file at its principal office.

N. DEFAULTS

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

- (1) Vacating, abandoning, or closing the COMPANY'S business.
- (2) Relocating the COMPANY'S existing business in Palm Beach County outside Palm Beach County.
- (3) Failure of the COMPANY to create the number of jobs as required in this Agreement.
- (4) Failure of the COMPANY to maintain the required number of jobs for the entire three (3) year period, as required in this Agreement.
- (5) Failure of the COMPANY to submit to the COUNTY the written verification of job creation required in this Agreement.
- (6) Failure of the COMPANY to observe or perform any of the terms, covenants, conditions, obligations, or provisions of this Agreement to be observed or performed

by the COMPANY where such failure continues for a period of thirty (30) days after written notice thereof from the COUNTY to the 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 the COMPANY commenced such cure within said thirty (30) day period and thereafter diligently pursues such cure to completion.

- (7) The making by the COMPANY of any general assignment, or general arrangement for the benefit of creditors.
- (8) 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.
- (9) 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.
- (10) 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.

O. REMEDIES

In the event of a Default by the 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 the COMPANY or any party joining in or consenting to this Agreement, all sums paid by the COUNTY to the COMPANY, pursuant to this Agreement.

P. TERMINATION

In the event of termination, the COMPANY shall not be relieved of liability to the COUNTY for damages sustained by the COUNTY by virtue of any breach of the Agreement by the COMPANY, and the COUNTY may withhold any payment to the COMPANY for set-off purposes until such time as the exact amount of damages due to the COUNTY from the COMPANY is determined.

- (1) Termination for Cause: If through any cause either party shall fail to fulfill in timely and proper manner its obligations under this Agreement, or if either party shall violate any of the covenants, agreements, or stipulations of this Agreement, either party shall thereupon have the right to terminate this Agreement or suspend payments in whole or part by giving written notice of such termination or suspension of payments and specifying the effective date of termination or suspension. The COMPANY shall repay the full value of this grant, unless otherwise specified by DES, within thirty (30) days of receiving the termination notice from the COUNTY.
- (2) Termination Due To Cessation: In the event the grant to the COUNTY under Title I of the Housing and Community Development Act of 1974 (as amended) is suspended or terminated, this Agreement shall be suspended or terminated effective on the date U.S. HUD specifies.

In the event the COMPANY ceases to exist, or ceases or suspends its operation for any reason, this Agreement shall be suspended or terminated on the date the COUNTY specifies. The determination that the COMPANY has ceased or suspended its operation shall be made solely by the COUNTY, and the COMPANY, its successors or assigns in interest agrees to be bound by the COUNTY'S determination. At the COUNTY'S sole discretion, pursuant to this Section, the COMPANY shall return all funds received through this Agreement to the COUNTY within sixty (60) days of receiving the termination notice from the County.

- (3) Termination for Convenience of the COUNTY: The COUNTY may terminate this Agreement at any time by giving at least ten (10) working days notice in writing from the COUNTY to the COMPANY. If this Agreement is terminated by the COUNTY as provided herein, the COMPANY will be paid for allowable services and allowable expenses under Part II of this Agreement until the effective date of termination.

- (4) Termination for Convenience of the COMPANY: The COMPANY may terminate this Agreement at any time by giving at least ten (10) working days prior written notice to DES. If the COMPANY has received funds through this Agreement, the COMPANY shall return all funds to the COUNTY prior to the termination of this Agreement.

Q. SEVERABILITY OF PROVISIONS

If any provision of this Agreement is held invalid, the remainder of this Agreement shall not be affected thereby if such remainder would then continue to conform to the terms and requirements of applicable law.

R. AMENDMENTS

The COUNTY may, at its discretion, amend this Agreement to conform with changes in Federal, State, County, or U.S. HUD guidelines, directives, and objectives. Such Amendments shall be incorporated by written amendment as a part of this Agreement and shall be subject to approval of the Palm Beach County Board of County Commissioners. Except as otherwise provided herein, no Amendment to this Agreement shall be binding on either party unless in writing, approved by the Board of County Commissioners, and signed by both parties.

S. NOTICES

All notices required in this Agreement shall be sent by certified mail, return receipt requested, hand delivery or other delivery service requiring signed acceptance. If sent to the COUNTY, notices shall be addressed to:

Ed Lowery, Director
Department of Economic Sustainability
100 Australian Avenue, Suite 500
West Palm Beach, Fl 33406

With a copy to:

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

If sent to the COMPANY, notices shall be addressed to:

Philippe Cohen, General Manager
Oxygen Development, L.L.C.
1441 W. Newport Center Drive
Deerfield Beach, Fl 33442

T. INDEPENDENT AGENT AND EMPLOYEES

The COMPANY agrees that, in all matters relating to this Agreement, it will be acting as an independent agent and that its employees are not Palm Beach County employees and are not subject to the COUNTY provisions of the law applicable to COUNTY employees relative to employment compensation and employee benefits.

U. NO FORFEITURE

The rights of the COUNTY under this Agreement shall be cumulative and failure on the part of the COUNTY to exercise promptly any rights given hereunder shall not operate to forfeit or waive any of the said rights.

V. PUBLIC ENTITY CRIMES

As provided in F.S. 287.132-133, by entering into this Agreement or performing any work in furtherance hereof, the COMPANY certifies that it, its affiliates, suppliers, subcontractors and consultants who will perform hereunder have not been placed on the convicted vendor

list maintained by the State of Florida Department of Management Services within the thirty-six (36) months immediately preceding the date hereof. This notice is required by F.S. 287.133(3)(a).

W. ENTIRETY OF CONTRACTUAL AGREEMENT

The COUNTY and the 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.

This Agreement and its provisions merge any prior Agreements, if any, between the parties hereto and constitutes the entire understanding. The parties hereby acknowledge that there have been and are no representations, warranties, covenants, or undertakings other than those expressly set forth herein.

X. COUNTY FUNDED PROGRAMS

COUNTY funding can be used to match grants from other non-COUNTY sources; however, the COMPANY cannot submit reimbursement requests for the same expenses to more than one funding source or under more than one COUNTY funded program.

Y. ANTI-PIRACY PROVISION

The COMPANY hereby certifies that it is in compliance with Section 105H of U.S.C. 5305 and 24 CFR 570.210 and 570.482 and 570.506 in that the CDBG grant will not cause the COMPANY to locate a facility, plant or operation, including the expansion of a business that will result in the loss of jobs from one Labor Market Area to another.

Z. PALM BEACH COUNTY OFFICE OF THE INSPECTOR GENERAL

Pursuant to Palm Beach County Code Sections 2-421 to 2-440, Palm Beach County has established the Office of the Inspector General, which authorizes and empowers this office to review past, present and proposed COUNTY agreements, contracts, transactions, accounts and records. All parties doing business with the COUNTY and receiving COUNTY funds, including the COMPANY, shall fully cooperate with the Inspector General. The Inspector General has the power to subpoena witnesses, administer oaths, require the production of records, and to audit, investigate, monitor, and inspect the activities of the COMPANY, its officers, agents, employees, and lobbyists in order to ensure compliance with this Agreement and to detect waste, corruption and fraud.

AA. REGULATIONS: LICENSING REQUIREMENTS

The COMPANY and its subcontractors shall comply with all laws, ordinances and regulations applicable to the services contemplated herein, to include those applicable to conflict of interest and collusion. The COMPANY is presumed to be familiar with all federal, state and local laws, ordinances, codes and regulations that may in any way affect the services offered.

BB. COUNTERPARTS OF THE AGREEMENT


This Agreement, consisting of seventeen (17) enumerated pages which include the Exhibits referenced herein, shall be executed in three (3) counterparts, each of which shall be deemed to be an original, and such counterparts will constitute one and the same instrument.

REMAINDER OF PAGE LEFT INTENTIONALLY BLANK

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

(CORPORATE SEAL)

OXYGEN DEVELOPMENT, L.L.C.

By: 
Philippe Cohen, General Manager

By: _____
Attorney for COMPANY
(Signature Optional)

(COUNTY SEAL BELOW)

**PALM BEACH COUNTY, FLORIDA, a
Political Subdivision of the State of Florida
BOARD OF COUNTY COMMISSIONERS**

ATTEST: Sharon R. Bock,
Clerk & Comptroller

By: _____
Shelley Vana, Chair
Board of County Commissioners

By: _____
Deputy Clerk

Document No.: _____

Approved as to Form and Legal Sufficiency

Approved as to Terms and Conditions
Dept. of Economic Sustainability

By: _____
Dawn S. Wynn
Assistant County Attorney

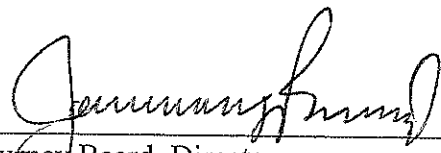
By: 
Journey Beard, Director
Contract Development and Quality Control

EXHIBIT "A"

WORK PROGRAM NARRATIVE

1. The COMPANY agrees to:

A. PROJECT SCOPE

Pursuant to the terms of this Agreement, the COMPANY shall be reimbursed for the following: Working capital to begin production in the COMPANY's growth and expansion of a new cosmetic manufacturing plant in the Village of Palm Springs, located at 1525 South Congress Avenue. The COMPANY may use the working capital for everyday operating expenses, including but not limited to, utility payments (electric, gas, water, garbage and sanitary sewer), initial purchase of raw materials, or maintenance of equipment.

The COMPANY further agrees that DES shall be the final arbiter on the COMPANY's compliance with the above.

B. JOB CREATION AND MAINTAINENCE

(1) Subsequent to the effective date of this Agreement and within one (1) year of the completion of the activity, the COMPANY shall create at least three (3) full-time equivalent (FTE) jobs, and at least two (2) of the jobs shall be held by low and moderate income persons (as referenced in Exhibit "C"), and must reside in unincorporated Palm Beach County or in Municipalities participating in the COUNTY's Urban County Qualification Program. The COMPANY will register said jobs with, and consider applicants referred by, Palm Beach County Workforce Alliance.

A full-time job shall mean employment for a minimum of 2,080 hours per year and for a wage or salary equal to or better than the minimum wage as determined by the U.S. Department of Labor. Low and moderate income status is based on the person's income at the time of hire and is not affected by subsequent raises or promotions. These jobs shall include, but are not be limited to, the jobs listed in Exhibit "D."

In accordance with this Agreement, the jobs committed for creation cannot be counted or used toward receiving any additional Palm Beach County grants.

(2) All full time equivalent (FTE) jobs created must be maintained for a period of at least three (3) years, commencing with the completion of the activity to comply with the Job Creation requirements. DES will monitor the creation and maintenance of all jobs. The cumulative three (3) year maintenance period for each job does not include any duration in which a job was held and consequently vacated for any reason. The COMPANY will perform its best effort to re-fill any vacated job position within a reasonable and expeditious period of time.

If the minimum FTE job requirement has not been met, or falls 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 or breach of this Agreement, the COMPANY agrees that it shall, within sixty (60) days of the date of termination or breach of the Agreement, make restitution to the COUNTY the per job grant award (or \$33,333 per job) paid by the COUNTY to the COMPANY for each position not created and maintained as required by this Agreement.

The provisions of this section shall survive the expiration of this Agreement.

C. REPORTS: The COMPANY shall submit the reports listed below to DES:

1) Semi-Annual reports during the term of this Agreement that describe the status of the activity funded under this Agreement. For the first year, semi-annual reports are due

no later than thirty (30) days following the sixth and twelfth month of this Agreement (by September 6, 2012 and March 20, 2013). The COMPANY and COUNTY agree that the frequency, type and due dates of all reports are at the sole discretion of the COUNTY and can be changed and altered as necessary by the COUNTY without written amendment to this Agreement.

- 2) Written verification of job creation, satisfactory to DES. Verification shall include job title, salary, fringe benefits, full-time equivalency status, name and address of person hired, proof that said person is of low and moderate income, and dates of employment. This written verification shall be provided to DES at the completion of the activity funded under this Agreement and annually thereafter for a period of at least three (3) years, as well as any additional time necessary to complete the requirements of this Agreement. The Record of Hiring Form (Exhibit "E") must be completed for each employee hired under this Agreement.
- D. ENVIRONMENTAL CONDITIONS: The COMPANY shall comply with all requirements resulting from the COUNTY's environmental review(s) of the project, including properly addressing all Recommended Environmental Concerns (REC) and the incorporation of any applicable mitigation measures, in order to proceed with the project.
2. The COUNTY agrees to:
 - A. Provide funding for the above specified improvements as described above in "Project Scope", during the term of this Agreement, in the amount of One Hundred Thousand Dollars (\$100,000).
 - B. Provide project administration and inspection to the COMPANY to ensure compliance with U.S. HUD, the Department of Labor, and applicable State, Federal and County laws and regulations.
 - C. Monitor the COMPANY at any time during the term of this Agreement. Visits may be scheduled or unscheduled as determined by DES, be conducted by DES staff or its subcontractors, and will serve to ensure that planned activities are conducted in a timely manner, to verify the accuracy of reporting to DES on program activities and compliance with U.S. HUD regulations.

THE REMAINDER OF THIS PAGE IS INTENTIONALLY LEFT BLANK

EXHIBIT "B"

LETTERHEAD STATIONERY

DATE: _____

TO: Ed Lowery, Director
Department of Economic Sustainability
100 Australian Avenue, Suite 500
West Palm Beach, Fl 33406

FROM: Philippe Cohen, General Manager
Oxygen Development, L.L.C.
1441 W. Newport Center Drive
Deerfield Beach, Fl 33442

SUBJECT: Oxygen Development, L.L.C. Working Capital
Reimbursement Request No. _____
Contract No. _____

Attached you will find Invoice # _____ requesting reimbursement for
\$ _____. The expenditures for this invoice cover the period of _____
through _____.

Additionally, please find the attached, back-up original documentation relating to the expenditures
being involved.

Philippe Cohen, General Manager

EXHIBIT "C"

**ANNUAL INCOME LIMITS
FOR
WEST PALM BEACH – BOCA RATON, FL HMFA**

Title: HUD INCOME LIMITS 2012
Author: U.S. Department of Housing and Urban Development
Date Published: 2012

ANNUAL INCOME LIMITS	
Number of Persons In Household	Low Income - 80%
1	40,550
2	46,350
3	52,150
4	57,900
5	62,550
6	67,200
7	71,800
8	76,450

EXHIBIT "D"

JOB LIST FOR POSITIONS TO BE CREATED

<u>Job Title</u>	<u># of Employees (to be hired)</u>	<u>Full-Time Equivalency (select one)</u>
		Full Time or Part Time
		Full Time or Part Time
		Full Time or Part Time
		Full Time or Part Time
		Full Time or Part Time
		Full Time or Part Time
		Full Time or Part Time
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NOTEPAD:

HOLDER CODE PALMBEA
INSURED'S NAME Oxygen Development LLC

OXYGE-1
OP ID: CR

PAGE 2
DATE 03/08/12

Palm Beach County Board of County Commissioners, a Political Subdivision of the State of Florida, its Officers, Employees and Agents, c/o Department of Economic Sustainability is included as additional insured for General Liability per CG2018 11-85 Additional Insured-Mortgagee, Assignee, OR Receiver Endorsement that provides additional insured status only when there is a written contract between the named insured and the certificate holder that requires such status.



EVIDENCE OF PROPERTY INSURANCE

DATE (MM/DD/YYYY)
03/08/2012

THIS EVIDENCE OF PROPERTY INSURANCE IS ISSUED AS A MATTER OF INFORMATION ONLY AND CONFERS NO RIGHTS UPON THE ADDITIONAL INTEREST NAMED BELOW. THIS EVIDENCE DOES NOT AFFIRMATIVELY OR NEGATIVELY AMEND, EXTEND OR ALTER THE COVERAGE AFFORDED BY THE POLICIES BELOW. THIS EVIDENCE OF INSURANCE DOES NOT CONSTITUTE A CONTRACT BETWEEN THE ISSUING INSURER(S), AUTHORIZED REPRESENTATIVE OR PRODUCER, AND THE ADDITIONAL INTEREST.

AGENCY Tanenbaum Harber of Florida 2900 SW 149th Avenue Miramar, FL 33027-6605 Manny T. Altneu		PHONE (A/C, No, Ext): 954-883-2900	COMPANY Zurich American Insurance Co. 1400 American Lane Schaumburg, IL 60196-1056	
FAX (A/C, No): 954-517-7400		E-MAIL ADDRESS:		
CODE:		SUB CODE:		
AGENCY CUSTOMER ID #: OXYGE-1				
INSURED Oxygen Development LLC Oxygen Holdings LLC; J&G LLC 1525 South Congress Avenue Palm Springs, FL 33406		LOAN NUMBER	POLICY NUMBER CPP549074100	
		EFFECTIVE DATE 03/05/12	EXPIRATION DATE 03/05/13	<input type="checkbox"/> CONTINUED UNTIL <input type="checkbox"/> TERMINATED IF CHECKED
THIS REPLACES PRIOR EVIDENCE DATED:				

PROPERTY INFORMATION

LOCATION/DESCRIPTION 1525 S Congress Avenue Palm Springs, FL 33406	Manufacturer & Distributor for private label cosmetics (lipstick, make-up, and related items)
THE POLICIES OF INSURANCE LISTED BELOW HAVE BEEN ISSUED TO THE INSURED NAMED ABOVE FOR THE POLICY PERIOD INDICATED. NOTWITHSTANDING ANY REQUIREMENT, TERM OR CONDITION OF ANY CONTRACT OR OTHER DOCUMENT WITH RESPECT TO WHICH THIS EVIDENCE OF PROPERTY INSURANCE MAY BE ISSUED OR MAY PERTAIN, THE INSURANCE AFFORDED BY THE POLICIES DESCRIBED HEREIN IS SUBJECT TO ALL THE TERMS, EXCLUSIONS AND CONDITIONS OF SUCH POLICIES. LIMITS SHOWN MAY HAVE BEEN REDUCED BY PAID CLAIMS.	

COVERAGE INFORMATION

COVERAGE / PERILS / FORMS	AMOUNT OF INSURANCE	DEDUCTIBLE
Premise 001 Building 001		
BUILDING	15000000	5000*
BUSINESS PERSONAL PROPERTY	8000000	5000*
BUSINESS INCOME	3000000	24 HOUR
SPECIAL FORM/AGREED VALUED/REPLACEMENT COST		
5% TIV (\$1,301,250) WIND/HAIL DEDUCTIBLE		

REMARKS (Including Special Conditions)

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CANCELLATION

SHOULD ANY OF THE ABOVE DESCRIBED POLICIES BE CANCELLED BEFORE THE EXPIRATION DATE THEREOF, NOTICE WILL BE DELIVERED IN ACCORDANCE WITH THE POLICY PROVISIONS.

ADDITIONAL INTEREST

NAME AND ADDRESS Palm Beach County, Florida And/or it successors & assigns 301 North Olive Ave, 10th Fl West Palm Beach, FL 33401	<input checked="" type="checkbox"/>	MORTGAGEE	ADDITIONAL INSURED
	<input type="checkbox"/>	LOSS PAYEE	
	LOAN#		
	AUTHORIZED REPRESENTATIVE <i>Emanuel T. Altneu</i>		

NOTES:

INSURED'S NAME **Oxygen Development LLC**
CSR: CR

PAGE 2
DATE 3/8/2012

Mortgagee:
Palm Beach County Board of County Commissioners, a Political Subdivision
of the State of Florida, its Officers, Employees and Agents, c/o
Department of Economic Sustainability