



**II. FISCAL IMPACT ANALYSIS**

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

Fiscal Years	2014	2015	2016	2017	2018
Capital Expenditures					
Operating Costs					
External Revenues					
Program Income					
In-Kind Match (County)					
<b>NET FISCAL IMPACT</b>	*				

# ADDITIONAL FTE POSITIONS (Cumulative)					
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Is Item Included In Current Budget? Yes \_\_\_\_\_ No \_\_\_\_\_

Budget Account No.:

Fund \_\_\_\_\_ Dept \_\_\_\_\_ Unit \_\_\_\_\_ Object \_\_\_\_\_ Program Code/Period \_\_\_\_\_

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

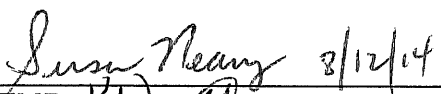
\*No Fiscal Impact at this time. The five year annual payments of \$100,000 will begin in FY2019-2020. Funding for this Job Growth Incentive Grant will come from the General Fund Contingency Reserves.

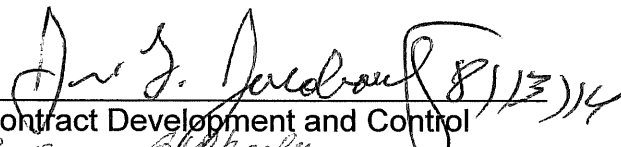
**C. Departmental Fiscal Review:**

  
 \_\_\_\_\_  
 Shairette Major, Fiscal Manager I

**III. REVIEW COMMENTS**

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

  
 \_\_\_\_\_  
 OFMB KD  
 8/12 8/12

  
 \_\_\_\_\_  
 Contract Development and Control  
 8-13-14

**B. Legal Sufficiency:**

  
 \_\_\_\_\_  
 Chief Assistant County Attorney

**C. Other Department Review:**

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

**AMENDMENT NO. 1  
TO  
SPECIAL ECONOMIC DEVELOPMENT AGREEMENT  
FOR  
MAJOR INVESTMENTS**

This Amendment No. 1 to Special Economic Development Agreement for Major Investments (this "Amendment") is made and entered into as of \_\_\_\_\_, 2014, (the "Amendment Effective Date") by and between Office Depot, Inc. ("**Company**") and Palm Beach County by and through its Board of County Commissioners ("**County**").

**WHEREAS**, County and Office Depot entered into that certain Special Economic Development Agreement for Major Investments (R2009-1343), dated as of August 18, 2009 (the "Agreement"), and the parties desire to amend the Agreement, on the terms and conditions as provided herein; and

**WHEREAS**, the Board of County Commissioners of Palm Beach County finds it in the public interest to award a Job Growth Incentive Grant in the amount of \$500,000 (the "**Extension Term Grant Award**"), conditional upon the Company's compliance with all terms of the Agreement, including achieving its goal of retaining the 1,950 Full Time Equivalent employees whose jobs were either created or retained pursuant to the terms of the Agreement, and hiring an additional 378 Full Time Equivalent employees in accordance with the terms set forth herein; and

**WHEREAS**, the parties hereto agree that the Agreement is amended as stated herein and that this Amendment shall be incorporated into the Agreement and made a part thereof.

**NOW, THEREFORE**, in consideration of the mutual covenants set forth herein, the parties agree as follows:

1. The foregoing recitals are true and correct and incorporated herein by reference. Terms not defined herein shall have the same meaning as ascribed to them in the Agreement.
2. The following paragraph G is added to the end of **Part IV, Commencement Date & Grant Term**:
  - G. Extension of Term. The term of this Agreement shall be automatically extended for a period of 5 years from September 1, 2019 through August 31, 2024 ("**Extension Term**"), under the same terms and conditions of this Agreement as same may be amended, provided no earlier termination or event of default hereunder has occurred. Thereafter, this Agreement shall provide for an additional four (4) month period (September 1, 2024 – December 31, 2024) to enable Company to comply with the provisions of Part XIII.C. of this Agreement (the "**Extension Term Final Verification Period**").
3. The following paragraph E is added to the end of **Part V, Retention of Jobs and Creation of New Jobs**:
  - E. Extension Term Requirements for Job Creation and Job Retention. Prior to the commencement of the Extension Term, Company shall hire an additional 378 Full Time Equivalent employees (the "New FTE Jobs (Growth)") in accordance with the terms set forth in Part XIII, Extension Term Requirements. The New FTE Jobs (Growth) shall be subject to all terms and conditions in the Agreement regarding New Jobs unless there is a conflict between the Agreement and the terms and conditions contained in this Amendment. In the event of a conflict between the Agreement and this Amendment, the terms and conditions of this Amendment shall govern.

During the Extension Term, Company shall retain the New FTE Jobs (Growth) employees in accordance with the terms set forth in Part XIII, Extension Term Requirements, in addition to retaining the 1,950 Full Time Equivalent jobs ("the Original FTE Jobs") that were either created or retained pursuant to Part V, Retention of Jobs and Creation of New Jobs, Paragraph A, of the Agreement.

4. **Part XII, General Conditions**, is modified as follows:

**Employee: Bona Fide.** Discrimination on the basis of any of the following shall also be prohibited: ancestry, marital status, and/or genetic information.

**Notice.** All notices that are required to be sent to the County shall be sent to:

Sherry Howard, Deputy Director  
Palm Beach County Department of Economic Sustainability  
100 Australian Avenue, Suite 500  
West Palm Beach, FL 33406

With a copy to:

Dawn Wynn, Senior Assistant County Attorney  
County Attorney's Office  
301 N. Olive Avenue – Suite 601  
West Palm Beach, FL 33401

All notices that are required to be sent to the Company shall be sent to:

Richard Haas, Vice President – Tax  
Office Depot, Inc.  
6600 North Military Trail  
Boca Raton, FL 33496

With a copy to:

Office of General Counsel  
Office Depot, Inc.  
6600 North Military Trail  
Boca Raton, FL 33496

5. The following **Part XIII, Extension Term Requirements**, is added to the Agreement:

**Part XIII.  
EXTENSION TERM REQUIREMENTS**

A. **Job Performance.**

- (1) Company shall retain employees in all Original FTE Jobs and all New FTE Jobs (Growth) throughout the Extension Term.
- (2) For purposes of Full Time Equivalent Job definition and calculation, New FTE Jobs (Growth) shall be considered New Jobs as set forth in Part VI, Definitions, Paragraph A.(2).

B. **Wages.** As a further condition precedent to receiving the Extension Term Grant Award from County, Company shall pay an average salary per annum equal to or greater than \$104,000 (excluding benefits) for all of the New FTE Jobs (Growth) that must be retained, created in or relocated to Palm Beach County pursuant to

this Agreement. The Company shall pay an average salary per annum (excluding benefits) for the Original FTE Jobs that meets or exceeds the average salary per annum (excluding benefits) in place for the Original FTE Jobs at the commencement of the Extension Term.

C. Performance Audit. During the Extension Term, annual audits shall be performed, reimbursements shall be requested, and records may be inspected in compliance with the requirements set forth in Part VIII, Job Performance & Audit, unless modified by the following:

- (1) An independent Certified Public Accountant (CPA) must perform annual audits during the Extension Term. The CPA must examine Company's statements/schedules annually for the number of Original FTE Jobs and the New FTE Jobs (Growth) and the average annualized salary for each. An expressed written opinion is required. The examination must be conducted in accordance with standards established by the American Institute of Certified Public Accountants. The performance audit ("Annual Performance Audit") must be submitted to the County (attn: Palm Beach County Department of Economic Sustainability), on or before December 31, 2020, and on each anniversary thereafter until December 31, 2024.
- (2) The Company may submit such performance audits and seek reimbursement based on the schedule in this Part XIII, Subsection D, below. Reimbursement requests must be submitted no later than December 31 of the applicable year, and reimbursement from the County is contingent upon Company's satisfaction of the performance standards set forth in this Agreement.
- (3) This Agreement shall automatically terminate, thereby relieving the parties hereto of any liability or obligations hereunder, if Company fails to submit the first performance audit for the Extension Term by December 31, 2020, and the remaining performance audits as set forth herein. Notwithstanding the foregoing, Company may, upon written notice to the County, extend the performance audit due date by thirty (30) days.

D. Payment Schedule. County shall pay Company the Extension Term Grant Award in five (5) annual installments of \$100,000 each as follows:

- (1) The first installment of \$100,000 (an "**Extension Term Grant Award Payment**") shall be paid to Company within 30 days after submission of the Annual Performance Audit for the time period of September 1, 2019 – August 31, 2020.
- (2) The second Extension Term Grant Award Payment shall be paid to Company within 30 days after submission of the Annual Performance Audit for the time period of September 1, 2020 – August 31, 2021.
- (3) The third Extension Term Grant Award Payment shall be paid to Company within 30 days after submission of the Annual Performance Audit for the time period of September 1, 2021 – August 31, 2022.
- (4) The fourth Extension Term Grant Award Payment shall be paid to Company within 30 days after submission of the Annual Performance Audit for the time period of September 1, 2022 – August 31, 2023.
- (5) The fifth and final Extension Term Grant Award Payment shall be paid to Company within 30 days after submission of the Annual Performance Audit for the time period of September 1, 2023 – August 31, 2024.

E. Breach of Agreement. The company must fully comply with the retention of jobs and salary guarantees, and the reporting of such, as set forth in this Agreement. Any breach of Agreement under this section shall be treated as a Default in the same manner as a breach of Part IX of the Agreement. The Company shall be considered by the County to have breached this Agreement if any of the following events occur: i) the number of New FTE Jobs (Growth) and/or the number of Original FTE Jobs fall below the minimum for the respective reporting period; the Company fails to pay the average salary required for the New FTE Jobs (Growth) and/or the number of Original FTE Jobs; the Company fails to submit an Annual Performance Audit as required herein; or the Company fails to meet any other requirement of this Agreement. County shall provide Company of written notice of any breach and the Agreement shall terminate. In the event of termination, Company shall, within 60 days of the date of termination, make restitution to the County of the full amount of the Extension Term Grant Award received by the Company.

6. The Agreement is modified to add the following provision regarding the Inspector General:

Palm Beach County has established the Office of Inspector General in Palm Beach County Code, Section 2-421 - 2-440, as may be amended. The Inspector General's authority includes but is not limited to the power to review past, present and proposed County contracts, transactions, accounts and records, to require the production of records, and to audit, investigate, monitor, and inspect the activities of the Agency, its officers, agents, employees, and lobbyists in order to ensure compliance with contract requirements and detect corruption and fraud. Failure to cooperate with Inspector General or interfering with or impeding any investigation shall be in violation of Palm Beach County Code, Section 2-421 - 2-440, and punished pursuant to Section 125.69, Florida Statutes, in the same manner as a second degree misdemeanor.

7. The Agreement is modified to add the following provision regarding third-party beneficiaries:

No provision of this Agreement is intended to, or shall be construed to, create any third party beneficiary or to provide any rights to any person or entity not a party to this Agreement, including but not limited to any citizen or employees of the County and/or the Company.

8. This Amendment may be executed in any number of multiple counterparts, each of which shall be deemed an original, but all of which together constitute one and the same instrument. Any provision not specifically modified by this Amendment shall remain in full force and effect.

(REMAINDER OF PAGE INTENTIONALLY LEFT BLANK)

IN WITNESS WHEREOF, the undersigned have executed this Amendment No. 1 to Special Economic Development Agreement for Major Investments as of the Amendment Effective Date.

ATTEST:

SHARON R. BOCK  
CLERK & COMPTROLLER

PALM BEACH COUNTY, a political  
subdivision of the State of Florida

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

By: \_\_\_\_\_  
Priscilla A. Taylor, Mayor

APPROVED AS TO FORM AND  
LEGAL SUFFICIENCY

APPROVED AS TO TERMS AND  
CONDITIONS

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

By: \_\_\_\_\_  
Department Director

OFFICE DEPOT, INC., a Delaware corporation

WITNESSES FOR COMPANY:

Heather Stern  
Witness Signature

By: \_\_\_\_\_  
Michael Allison  
Executive Vice President Human Resources

HEATHER STERN  
Print Witness Name

Elisa D. Garcia C.  
Witness Signature

ELISA D. GARCIA C.  
Print Witness Name

(SEAL)



R2009F1343

**SPECIAL ECONOMIC DEVELOPMENT AGREEMENT  
FOR  
MAJOR INVESTMENTS**

**THIS AGREEMENT** is made as of the AUG 18 2009 day of August 2009 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 Office Depot, Inc., [ ] an individual, [ ] a partnership, [ x ] a 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", 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 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 Special Economic Development Agreement for Major Investments as described above, encourages either existing businesses to remain and/or expand or new businesses to establish a facility in Palm Beach County and thereby create a strengthened economy and further employment opportunities for the residents of Palm Beach County; and

**WHEREAS**, the COUNTY has initiated a Special Economic Development Agreement for Major Investments; and

**WHEREAS**, COMPANY'S capital investment in excess of \$210,000,000, retention of 1750 jobs, generation of salaries double the Palm Beach County average wage, creation of new full time employment opportunities for residents of Palm Beach County, creation of a Global World and Latin America headquarters, and the economic impact resulting from COMPANY'S business expansion within Palm Beach County is beneficial to the local economy; and

**WHEREAS**, the average annual wage for COMPANY'S newly created and/or relocated jobs will meet or exceed by double the average salary level in Palm Beach County or the applicable industry average wage when the COUNTY provides a Special Economic Development Agreement for Major Investments to COMPANY; and

**WHEREAS**, the COUNTY has determined that COMPANY is eligible to receive a Special Economic Development Agreement for Major Investments based on the same factors used to determine the Criteria of the Economic Development Ad Valorem Tax Exemption Program, as amended; and

**WHEREAS**, the COUNTY finds and declares that it is in the public's best interests to award a Special Economic Development Agreement for Major Investments to COMPANY pursuant to the terms of this Agreement; and

**WHEREAS**, the State of Florida has provided additional grants from the State Quick Action Closing Fund of \$2,700,000, the Economic Development Transportation Trust Fund Grant of \$2,000,000, the Quick Response Training Grant of \$652,612 and State Qualified Target Industry Tax Refund of \$1,720,000, for a total State of Florida commitment to COMPANY, of \$7,072,612;

**WHEREAS**, the Board of County Commissioners of Palm Beach County on July 11, 2006 approved a conceptual Economic Development Ad Valorem Tax Exemption for COMPANY not to exceed \$650,000 annually, conditional upon the COMPANY achieving its goal of investing \$210,000,000 in private capital for construction of the COMPANY'S Global Headquarters in Boca Raton, meeting or exceeding by double the Palm Beach County average salary level, retaining 1,750 Full Time Equivalent employees, and hiring an additional 580 Full Time Equivalent employees; and

**WHEREAS**, COMPANY has met 100% of the obligation to construct a new Global Headquarters, consisting of approximately 635,067 square feet in Boca Raton at a capital investment of \$210,000,000; and

**WHEREAS**, COMPANY has met 100% of their obligation to create enhanced average salaries of at least 200% of Palm Beach County average wages, with COMPANY salaries averaging \$76,792, excluding benefits; and

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WHEREAS, COMPANY has substantially (89%) met its obligation for the Job Retention and Growth Goal of retaining and creating 2,180 Full Time Equivalent employees, with a new Job Retention and Growth Goal of 1,950 Full Time Equivalent employees.

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 Special Economic Development Agreement for Major Investment 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. Capital Investment. COMPANY'S business operations in Palm Beach County shall be documented to have invested at least \$210,000,000 in the construction of the New Global Headquarters facility.
- C. Minimum Jobs & Salary. COMPANY shall have a job retention and job creation goal and shall retain and create Full Time Equivalent jobs in Palm Beach County as follows:
- (1) Retain the existing **one thousand seven hundred fifty (1,750)** Full Time Equivalent jobs; and
  - (2) Create at least **two hundred (200)** new Full Time Equivalent jobs; and
  - (3) The new jobs must be created in Palm Beach County following the commencement date of this Agreement, within the performance period, and meet or exceed by double the Palm Beach County average annual salary as set forth in PART VII of this Agreement. The Palm Beach County average annual salary at the time of conceptual approval (July 11, 2006) was \$38,396 (according to the "Florida Agency for Workforce Innovation"). Therefore, the average annual salary for the new jobs created by COMPANY must be at least \$76,792.

PART III.  
REIMBURSEMENT AMOUNT

Reimbursement Maximum Amount. COMPANY shall receive reimbursement during the term of this Agreement in an annual amount not to exceed \$650,000. Actual reimbursement amount for the ten (10) years shall be calculated annually based upon the following formula:

AVTP = Ad Valorem Taxes Paid

Annual Reimbursement Amount = AVTP \* (A) + AVTP \* (B) + AVTP \* (C)

A = .3333 (33%) in recognition of having met the \$210,000,000 Capital Investment Requirement,

B = .3333 (33%) in recognition of having met the \$76,792 annual salary goal,

C = .3333 (33%) \* .89 (89%) in recognition of having met 89%, or 1,950 retained 1750 and 200 new FTE of the previous 2,180 job goal (1,750 retained and 430 new FTE).

PART IV.  
COMMENCEMENT DATE & GRANT TERM

Time frames. COMPANY shall be obligated to:

- A. Commencement Date. This Agreement shall commence on the 1<sup>ST</sup> day of September 2009 and end on the 31<sup>ST</sup> day of August 2019.
- B. Term: 10 Years. The term of this Agreement shall be for ten (10) years, 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 as provided for in PART IV of this Agreement. However, the only circumstance whereby the term of this

Agreement may expire prior to the end of the ten (10) years is set forth in PART X of this Agreement.

- C. Performance Period: 5 years. COMPANY shall have five (5) years (September 1, 2009 through August 31, 2014) from the commencement date of this Agreement to fulfill the obligations set forth hereinafter relating to job creation.
- D. Maintenance Period for jobs retained: 10 years. COMPANY shall be obligated to maintain 1750 FTE jobs for ten (10) years (through August 31, 2019). The maintenance period for jobs retained will begin from the date COMPANY provides 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. Maintenance Period for Jobs created: 5 years. COMPANY shall be obligated to create 200 Full Time Equivalent jobs within five (5) years (September 1, 2009 through August 31, 2014) of the contract execution, and maintain those new jobs an additional five (5) years (September 1, 2014 through August 31, 2019). The maintenance period for new jobs created will begin the date COMPANY provides 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.
- F. Final Verification Period: 4 months. This Agreement shall provide an additional four months immediately following the maintenance period to enable COMPANY to comply with the provisions of PART VIII of this Agreement.

#### PART V.

#### RETENTION OF JOBS AND CREATION OF NEW JOBS

Retention of jobs and creation of New Jobs. The conditions for COMPANY to obtain the maximum amount of reimbursement from the COUNTY include:

- A. Job Performance & Period. COMPANY shall retain one thousand seven hundred and fifty (1,750) Full Time Equivalent jobs and create two hundred (200) Full Time Equivalent jobs in Palm Beach County. New jobs will be created within five (5) years (by August 31, 2014) of the commencement date of this Agreement. All newly created FTE jobs cannot include transfer workers of COMPANY that are identified on the payroll of an existing COMPANY facility that is located in Palm Beach County prior to the commencement date of this Agreement; and
- B. Job Advertising. In addition to COMPANY'S normal advertisement of job positions, COMPANY, commencing upon the date of this Agreement as set forth above, shall undertake 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 upon request of the COUNTY and shall be included within the Performance Audit.
- C. Job Availability & Competition. After the date of this Agreement as set forth above, COMPANY shall make job descriptions available for all new job hires (as those job descriptions are being created and made available) to:  
  
(1) Workforce Alliance, Inc.  
Main Office: 315 South Dixie Highway, Suite 102  
West Palm Beach, Florida 33401  
Attention: Executive Director
- D. Transportation to & from Job Location. After the date of this Agreement as set forth above, 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 stops 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. Full Time Equivalent Job. A "Full Time Equivalent Job" for purposes of this Agreement means:
- (1) Retained jobs shall be calculated at 40 hours/week or 2,080 hours annually, and,
  - (2) New Jobs shall be calculated at a minimum of 35 hours/week or 1,820 hours annually.
- All Hours are paid time per week. In tabulating hours, any paid leave an employee takes during the pay period, such as vacation or sick leave, may be included.
- B. Retained Job. A Full Time Equivalent job that is retained in Palm Beach County which sustains Palm Beach County's total job base, is listed on the COMPANY'S payroll, and involves working on-site or as a base of operations at COMPANY'S facility that is located in Palm Beach County. A full time or equivalent job may include permanent salaried, part-time, leased employees, and contractors and subcontractors.
- C. New Job. A Full Time Equivalent job that is created in or relocated to 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 or 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.
- D. Relocating Employee. A Full Time Equivalent employee identified on COMPANY'S payroll who relocates to Palm Beach County. Excluded is any employee on COMPANY'S payroll from 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.
- E. Capital Investment. Capital Investment is determined to be Improvements to real property excluding purchase of land.
- F. Enhanced salaries and wages. Enhanced salaries and wages are determined to be salaries that meet or exceed by double the Palm Beach County average annual salary.

PART VII.  
JOB & SALARY

**Criteria for Job & Wages.** As a further condition precedent to obtaining the reimbursement amount from COUNTY, COMPANY shall pay an average salary per annum equal to or greater than **\$76,792 (excluding benefits)** for all of those COMPANY Full Time Equivalent Employees that must be retained, created in or relocated to Palm Beach County pursuant to this Agreement.

PART VIII.  
JOB PERFORMANCE & AUDIT

**Performance Audit.**

- A. Independent Audit. COMPANY shall provide written audited verification annually, at its sole cost and expense, satisfactory to COUNTY in its sole but reasonable 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 annually for the number of retained Full Time Equivalent jobs and the average annualized salary, for the length of this Agreement September 1, 2009 – August 31, 2019. After a five (5) year period September 1, 2009 – August 31, 2014 audit must identify the newly created/relocated jobs in Palm Beach County. An expressed written **opinion is required**. 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 retained and 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 newly created Full Time Equivalents 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 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 Equivalent jobs to be created in / relocated to 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) The performance audit must be submitted to the COUNTY (attn: Palm Beach County Economic Development Office) on or before **March 1<sup>st</sup>** for each year the reimbursement is requested by COMPANY.
  - (9) COMPANY will be informed by the COUNTY when the COUNTY has made the determination that there are deficiencies with the audit documentation. Under these circumstances, the audit and reimbursement documentation cannot be processed pending COMPANY resolving the identified deficiencies.
  - (10) Upon receipt by the COUNTY from COMPANY of the appropriate audited documentation, processing of the audit and reimbursement may proceed.
  - (11) To the fullest extent permitted by applicable law and/or regulation, COUNTY agrees to keep confidential and not to disclose to third parties the information provided in COMPANY's audit report. COMPANY considers this information proprietary and confidential. However, the COMPANY recognizes COUNTY's obligations and responsibilities pursuant to Chapter 119, Florida Statutes.
- B. Audit & Reimbursement Submittal. The COMPANY may submit such performance audit and seek reimbursement based on the amount calculated pursuant to Part III of this Agreement no later than March 1<sup>st</sup> of each year and upon satisfaction of the performance standards set forth hereinabove.
- C. 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 electronic 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.
- D. 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 March 1st following the commencement date of this Agreement (by **March 1st, 2010**) and each year thereafter. Notwithstanding the foregoing, COMPANY may, upon written notice to the COUNTY, extend the performance audit due date by thirty (30) days.

PART IX.  
**BREACH OF AGREEMENT**

The COMPANY must fully comply with the retention and creation of Full Time Equivalent job and salary guarantees as set forth in this Agreement.

- A. An annual audit of the COMPANY must show that the COMPANY retained one thousand seven hundred and fifty (1,750) Full Time Equivalent positions, and created two hundred (200) additional Full Time Equivalent positions over the performance period at an average annual salary that does not fall below **\$76,792 (excluding benefits)**;
- B. If the minimum Full Time Equivalent positions, retained or new, fall below the minimum, at the five (5) year or ten (10) year benchmark periods, 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 full amount received by COMPANY as required by this Agreement.
- C. If COMPANY salaries fall below the minimum at any annual audit, 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

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agrees that it shall, within 60 days of the date of termination, make restitution to the COUNTY the full amount received by COMPANY as required by this Agreement.

PART X.  
JOB MAINTENANCE & REPORT

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

- A. Maintenance Period. COMPANY shall maintain each Full Time Equivalent position retained/created in or relocated to Palm Beach County, and at the average salary per annum required by this Agreement or at the number of Full Time Equivalent jobs and wage levels verified by the performance audit:
- (1) Until the expiration of the ten (10) years (August 31, 2019) 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 five (5) years following the commencement date of this Agreement, the job maintenance under this Agreement shall commence as set forth in Paragraph "B" below. In the event that the maintenance period commences prior to September 1, 2014, 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 five (5) years of job and salary maintenance shall commence as of the compliance by COMPANY with the terms of this Agreement. In the event that during the Maintenance Period the COUNTY subsequently and reasonably determines that the first 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 Full Time Equivalent 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 but reasonable 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 five (5) years, (by August 31, 2014) following the commencement date of this Agreement or no later than sixty (60) days following the expiration of the five (5) years of job maintenance and creation.
- E. Restitution. Within sixty (60) days from the date this audit is submitted to the COUNTY, COMPANY agrees to make full restitution to the COUNTY 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".
- F. Inspection. Upon ten (10) business days prior written 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 electronic 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.
- G. Records. To the fullest extent permitted by applicable law and/or regulation, but notwithstanding Chapter 119, Florida Statutes, COUNTY agrees to keep confidential and not to disclose to third parties the information provided in COMPANY'S Maintenance Report. COMPANY considers this information proprietary and confidential.

PART XI.  
LOCAL MATCH COMMITMENT

**Qualified Target Industry Tax Refund Program.** COMPANY has entered 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). Therefore, the following shall apply:

- A. Maximum Match Amount. Any Reimbursement funds provided for under this Agreement may be credited by COUNTY as the required match toward the required QTI local match of up to 20%, with the total reimbursement provided by COUNTY not to exceed the total amount of this Agreement.

- B. Documentation of Match for QTI. The reimbursement by COUNTY on behalf of COMPANY as part of the required QTI local match, and as provided for under this Agreement, shall be documented directly by COUNTY to the State of Florida Economic Development Trust Fund to satisfy matching requirement documentation in accordance with the QTI Program.
- C. 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 Special Economic Development Agreement for Major Investments commitments with COUNTY, the COMPANY shall be entitled to seek reimbursement of funds pursuant to this Agreement.

PART XII.  
GENERAL CONDITIONS

**Obligation & Annual Appropriation.** The COUNTY'S obligation to provide reimbursement under this Agreement is contingent upon annual appropriation for its purpose by the Board of County Commissioners.

**Employee: Bona Fide.** Other than its legal counsel and tax counsel, 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, gender identity or expression, 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.** Using commercially reasonable efforts,
- (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. COMPANY agrees this coverage shall be provided on a primary basis.

**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/business\\_operations/state\\_purchasing/vendor\\_information](http://dms.myflorida.com/business_operations/state_purchasing/vendor_information)

**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 or COMPANY, 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 reasonably 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, once the COMPANY begins contemplating and has decided to make a change.

**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 with respect to this matter, 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 headquarters.
- B. Relocating COMPANY'S headquarters outside Palm Beach County during the term this Agreement is in effect.
- 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 IX.

**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  
West Palm Beach, Florida 33402-1989

With a copy to:

Dawn Wynn, Senior 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:

Kimberly Brunson, Senior Manager State and Local Taxes  
Office Depot Inc.,  
6600 North Military Trail  
Boca Raton, FL 33496

With a copy to:

General Counsel Real Estate  
6600 North Military Trail  
Boca Raton, FL 33496

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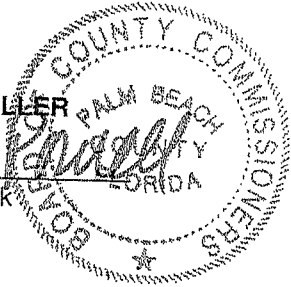


IN WITNESS WHEREOF, the Board of County Commissioners of Palm Beach County, Florida has made and executed this Agreement on behalf of Palm Beach County, and COMPANY has hereunto set its hand the day and year above written.

R2009 1343 AUG 18 2009

ATTEST:  
SHARON R. BOCK,  
CLERK & COMPTROLLER

By: [Signature]  
Deputy Clerk



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

By: [Signature]  
John F. Koons, Chairman

APPROVED AS TO TERMS  
AND CONDITIONS:

By: [Signature]  
Director, Economic Development

APPROVED AS TO FORM  
AND LEGAL SUFFICIENCY:

By: [Signature]  
County Attorney

WITNESS FOR COMPANY:

[Signature]  
Signature

[Signature]  
Name (type or print)

Sr. Manager, State & Local Taxes  
Title

COMPANY NAME: Office Depot Inc.

[Signature]  
Signature

[Signature]  
Name (type or print)

VP, Tax  
Title

Reviewed and approved as to form and legality  
by: Office Depot Legal Department

Attorney / Paralegal: SAIF

Date: 8/18/09

COMPANY SEAL

Office Depot Inc.

(Seal must be identical to COMPANY name.  
If seal is unavailable, COMPANY must draw  
seal.)

EXHIBIT "A"

**SPECIAL ECONOMIC DEVELOPMENT AGREEMENT FOR MAJOR INVESTMENTS  
BETWEEN PALM BEACH COUNTY AND  
OFFICE DEPOT, INC.**

COMPANY IDENTIFICATION AND INFORMATION:

**OFFICE DEPOT, INC.**

Existing Location: Boca Raton – 6600 North Military Trail, Boca Raton FL 33496

State of Florida: Status: Active  
Registration Date: Date of Incorporation 9/12/1986  
(Registered with the Division of Corporations, Florida Department of State, in order to conduct business operations within the State of Florida)

Federal ID number (FEI): 59-2663954

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

The company has established its world headquarters in Palm Beach County. It is a global supplier of office products and services. The Company sold \$14.5 billion of products and services in 2008. Sales are processed through multiple channels, consisting of office supply stores, management sales forces, internet sites, direct marketing catalogs and call centers.

Company History:

Office Depot Inc. was incorporated on September 12, 1986. The Boca Raton location is the Global and North American Corporate headquarters built at a cost of \$210 million and housing 1,750 current Full Time Employees. Office Depot Inc. has a history of community involvement, is recognized with awards from the National Association of Female Executives, U.S. Hispanic Chamber of Commerce and was named Corporation of the Year by the Women's Business Enterprise National Council. It is named one of the top organizations for multicultural business opportunities by DiversityBusiness.com.





**ADDITIONAL REMARKS SCHEDULE**

<b>AGENCY</b> MARSH USA INC.		<b>NAMED INSURED</b> Office Depot, Inc. & its Subsidiaries including Office Max Inc. 6600 North Military Trail Boca Raton, FL 33496	
<b>POLICY NUMBER</b>		<b>EFFECTIVE DATE:</b>	
<b>CARRIER</b>	<b>NAIC CODE</b>		

**ADDITIONAL REMARKS**

**THIS ADDITIONAL REMARKS FORM IS A SCHEDULE TO ACORD FORM,**  
**FORM NUMBER: 25 FORM TITLE: Certificate of Liability Insurance**

ADDITIONAL WORKERS COMPENSATION POLICIES

CARRIER: NEW HAMPSHIRE INS COMPANY  
 POLICY NUMBER: WC 026034983 (AK,AZ,GA,VA)  
 POLICY TERM: 05/01/2014 - 05/01/2015  
 WORKERS COMPENSATION: STATUTORY LIMIT  
 EMPLOYERS LIABILITY EACH ACCIDENT: \$2,000,000  
 EMPLOYERS LIABILITY DISEASE-POLICY LIMIT: \$2,000,000  
 EMPLOYERS LIABILITY DISEASE-EACH EMPLOYEE: \$2,000,000

CARRIER: NEW HAMPSHIRE INS COMPANY  
 POLICY NUMBER: WC 026034982 (KY,NC,NH,UT,VT)  
 POLICY TERM: 05/01/2014 - 05/01/2015  
 WORKERS COMPENSATION: STATUTORY LIMIT  
 EMPLOYERS LIABILITY EACH ACCIDENT: \$2,000,000  
 EMPLOYERS LIABILITY DISEASE-POLICY LIMIT: \$2,000,000  
 EMPLOYERS LIABILITY DISEASE-EACH EMPLOYEE: \$2,000,000

CARRIER: NEW HAMPSHIRE INS COMPANY  
 POLICY NUMBER: WC 026034984 (NJ, PA)  
 POLICY TERM: 05/01/2014 - 05/01/2015  
 WORKERS COMPENSATION: STATUTORY LIMIT  
 EMPLOYERS LIABILITY EACH ACCIDENT: \$2,000,000  
 EMPLOYERS LIABILITY DISEASE-POLICY LIMIT: \$2,000,000  
 EMPLOYERS LIABILITY DISEASE-EACH EMPLOYEE: \$2,000,000

CARRIER: NEW HAMPSHIRE INS COMPANY  
 POLICY NUMBER: WC 026034987 (ME)  
 POLICY TERM: 05/01/2014 - 05/01/2015  
 WORKERS COMPENSATION: STATUTORY LIMIT  
 EMPLOYERS LIABILITY EACH ACCIDENT: \$2,000,000  
 EMPLOYERS LIABILITY DISEASE-POLICY LIMIT: \$2,000,000  
 EMPLOYERS LIABILITY DISEASE-EACH EMPLOYEE: \$2,000,000

CARRIER: NATIONAL UNION FIRE INSURANCE COMPANY  
 POLICY NUMBER: XWC 6636293 (OH)  
 POLICY TERM: 05/01/2014 - 05/01/2015  
 WORKERS COMPENSATION: STATUTORY LIMIT  
 EMPLOYERS LIABILITY EACH ACCIDENT: \$2,000,000  
 EMPLOYERS LIABILITY DISEASE-POLICY LIMIT: \$2,000,000  
 EMPLOYERS LIABILITY DISEASE-EACH EMPLOYEE: \$2,000,000

WORKERS COMPENSATION SIR VALUE: \$1,000,000