

PALM BEACH COUNTY
BOARD OF COUNTY COMMISSIONERS
AGENDA ITEM SUMMARY

Meeting Date:	October 20, 2015	<input type="checkbox"/> Consent	<input checked="" type="checkbox"/> Regular
		<input type="checkbox"/> Ordinance	<input type="checkbox"/> Public Hearing
Submitted by:	Department of Economic Sustainability		
Submitted for:	County Administration		

I. EXECUTIVE BRIEF



Motion and Title: Staff recommends motion to approve: an Economic Development Incentive Agreement with Carrier Corporation and Otis Elevator Company (the "Companies"), divisions of United Technologies Corporation, for an Ad Valorem Tax Exemption not to exceed \$3 Million over a ten (10) year period.

Summary: On March 10, 2015, the Board of County Commissioners (BCC) conceptually approved an Economic Development Ad Valorem Tax Exemption (R2015-0356) not to exceed \$3 Million over a period of ten (10) years. The Agreement with Carrier Corporation and Otis Elevator Company, (Project Diamond) requires the Companies to make a minimum \$115 Million capital investment, create 380 jobs over a six (6) year period at an average annualized wage of \$85,000 and retain those jobs for a period of five (5) years from creation. Additionally, 70 existing full-time jobs are required to be retained for a period of five (5) years. The State of Florida approved \$2.66 Million in the form of a Qualified Target Industry Tax Refund (QTI) with a High-Impact Sector Bonus, and \$4.9 Million from the Quick Action Closing Fund. The City of Palm Beach Gardens approved cash incentives totaling \$630,000 and a 100% Ad Valorem Tax Exemption for up to five (5) years and a 50% exemption for years six (6) through ten (10).

The project encompasses the construction of an approximately 250,000 sf state of the art building to be known as the "UTC Center for Intelligent Buildings" to be located on 30 acres within the Briger Property. The UTC Center for Intelligent Buildings will serve as a showcase to demonstrate new building technologies and will encourage global customer interaction, collaboration and inspiration to see the new possibilities for advanced integrated and sustainable building solutions. It will also provide office space for employees engaged in, amongst other things, research and product development activities of the company. The Companies are a \$29 Billion operating segment of United Technologies Corporation, a Fortune 500 Company. The Companies are the world's largest provider of building technologies, including security, fire safety, building automation, heating, ventilation, air conditioning, elevator, escalator and refrigeration systems. Award of the Ad Valorem Tax Exemption is contingent upon the determination that the project meets the requirements under Florida Statute 196.012 for an Ad Valorem Tax exemption. This project is expected to have a five (5) year economic impact of \$662.4 Million. District 1 (JB)

Background and Justification: The County's Economic Development Ad Valorem Tax Exemption may be used as local participation for the State Qualified Target Industry Program and is designed to motivate businesses by providing funding assistance to either relocate or establish a facility in Palm Beach County, or to help an existing local business with an expansion project which creates full time jobs, increases the County's tax base and strengthens and diversifies the local economy.

Attachment(s):
1. Economic Development Incentive Agreement

Recommended By:		10-7-15
	Department Director	Date
Approved By:		10-8-15
	Assistant County Administrator	Date

II. FISCAL IMPACT ANALYSIS

A. Five Year Summary of Fiscal Impact:

Fiscal Years	2016	2017	2018	2019	2020
Grant Expenditures					
Operating Costs					
External Revenues	\$300,000	\$300,000	\$300,000	\$300,000	\$300,000
Program Income					
In-Kind Match (County)					
NET FISCAL IMPACT	\$300,000	\$300,000	\$300,000	\$300,000	\$300,000

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

Budget Account No.:

Fund _____ Dept _____ Unit _____ Object _____ Program Code/Period _____.

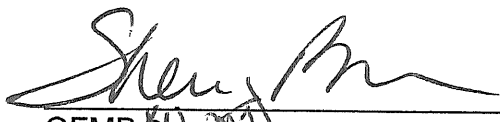
B. Recommended Sources of Funds/Summary of Fiscal Impact:

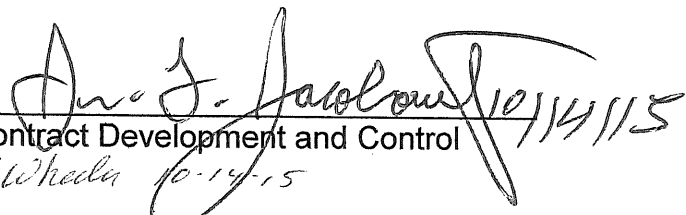
The source of funds are in the form of an ad valorem tax exemption not to exceed \$3 Million over a ten (10) year period if so approved by the Board of County Commissioners. There is no direct fiscal impact on DES from granting a tax exemption for real property and tangible personal property improvements. The overall County impact is a reduction of collectable taxes. The estimated improvement costs attributed to the real property and tangible personal property total \$115,000,000.

C. Departmental Fiscal Review: 
Shairette Major, Fiscal Manager II

III. REVIEW COMMENTS

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


OFMB 10/17/15 10/17/15 10/17/15


Contract Development and Control 10/14/15
10-14-15

B. Legal Sufficiency:


Assistant County Attorney

C. Other Department Review:

Department Director

Economic Development Incentive Agreement

THIS AGREEMENT, dated as of this ____ day of _____, 2015, by and between **PALM BEACH COUNTY**, a political subdivision of the State of Florida, (hereinafter the "COUNTY") and **CARRIER CORPORATION**, a Foreign For-Profit Corporation, whose Federal I.D. Number is 06-0991716, and **OTIS ELEVATOR COMPANY**, a Foreign For-Profit Corporation, whose Federal I.D. Number is 13-5583389, its successors and assigns (hereinafter jointly and severally referred to as the "COMPANIES").

PART I RECITALS

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

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

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

WHEREAS, the COUNTY has determined that offering an Economic Development Incentive encourages either existing businesses to remain and/or expand, or new businesses to establish a facility in Palm Beach County and thereby create employment opportunities for the residents of Palm Beach County; and

WHEREAS, the COMPANIES are legal entities which operate as part of United Technologies Corporation.

WHEREAS, the COMPANIES are locating regional managing offices to Palm Beach County with total a capital expenditure of approximately \$115 Million (inclusive of costs to acquire land), will create 380 new jobs over six (6) years and retain 70 existing full-time jobs at an annualized average wage of \$85,000, and will maintain the new jobs for five (5) years from date of creation and maintain the existing retained jobs for five (5) years; and,

WHEREAS, the State of Florida has approved a Qualified Target Industry (QTI) Tax Refund for COMPANIES with a High-Impact Sector Bonus in the amount of \$2.66 Million and \$4.9 Million from the Quick Action Closing Fund (QACF), both of which include local financial support; and,

WHEREAS, Palm Beach County's Ad Valorem Tax Exemption program may be used as local participation for the State QTI and QACF programs; and

WHEREAS, the Board of County Commissioners, on March 10, 2015, conceptually approved an Ad Valorem Tax Exemption to COMPANIES in an amount not to exceed \$3 Million over a period of ten (10) years; and

WHEREAS, the COUNTY finds and declares that it is in the public interest to award an Economic Development Incentive to the COMPANIES pursuant to the terms of this Agreement.

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

PART II DEFINITIONS

1. **Definitions:** The below terms as used in this Agreement shall mean:
 - A. **New Job:** Shall include an employee (including employees obtained from a temporary employment agency or employee leasing company) in a full time job working a minimum of 1,820 hours annualized (inclusive of vacation, holidays, sick leave, and other paid activities), a Full Time Equivalent Job, or a Relocated Employee. Each New Job shall also:
 - (1) Result in a net increase in the number of the COMPANIES' Palm Beach County employees; and
 - (2) Involve only an employee working on-site at the COMPANIES' Palm Beach County facilities at the addresses shown in Exhibit "A" attached hereto and made a part hereof and at United Technologies Corporation's Palm Beach County Campus at 17900 Beeline Highway, Jupiter, FL where the Companies may locate jobs prior to the completion of the UTC Center for Intelligent Buildings.
 - B. **Full Time Equivalent Job:** Shall mean any two or more part-time employees whose sum total work hours, inclusive of vacation and holidays, equals 1,820 hours annualized. Notwithstanding the foregoing, the 1,820 hours annualized shall be determined pursuant to the job requirement of the employee, and not the actual number of hours clocked at work, allowing for vacation, holiday and sick leave.
 - C. **Relocated Employee:** Shall mean either an employee in a full time job working a minimum of 1,820 hours annualized (inclusive of vacation and holidays), or a Full Time Equivalent Job that is identified on the COMPANIES' payrolls, in each case, who transferred to the COMPANIES' facilities in Palm Beach County from COMPANIES' facilities in a location other than one located in a county adjacent to the borders of Palm Beach County. Notwithstanding any provision in this Agreement to the contrary, for all purposes under this Agreement it shall be deemed that any employee in a full time job working a minimum of 1,820 hours annualized (inclusive of vacation and holidays), or a Full Time Equivalent Job that is identified on the COMPANIES' payrolls, in each case, who transferred to the COMPANIES' facilities in a location other than one located in a county adjacent to the borders of Palm Beach County prior to the Effective Date for the purpose of effectuating COMPANIES' facilities in Palm Beach County is a Relocated Employee deemed to have transferred to Palm Beach County after the Effective Date and shall constitute a New Job.
 - D. **Annualized Average Wage:** The average of the actual annual wage, salaries, and other payments for jobs created and retained under this Agreement as follows:

wages; salaries; commissions; bonuses; drawing accounts (advances to employees against future earnings); prizes and awards (if given by employer for employment); vacation pay; payment to employees of difference between regular pay and jury pay; payments to employees temporarily absent while in military service; wages earned before death but paid after death; dismissal pay; sick pay (not made under a plan or system); and supplemental payments (difference between workers' compensation and employee's salary).

PART III WHOLLY OWNED SUBSIDIARIES

1. **Establishment of Wholly Owned Subsidiaries:** The COMPANIES may create or purchase wholly owned subsidiaries in connection with activities undertaken by the COMPANIES pursuant to this Agreement. All wholly owned subsidiaries, thus

created or purchased, shall be under the full control of the COMPANIES, and the COMPANIES shall oblige all such wholly owned subsidiaries to comply with the requirements of this Agreement as provided for herein.

2. **Notification of Wholly Owned Subsidiaries:** The COMPANIES shall, within thirty (30) days of creation or purchase of wholly owned subsidiaries in connection with this Agreement, notify the COUNTY in writing of such wholly owned subsidiaries by divulging to the COUNTY the name of such entities and the location of the entities' facilities, and the COMPANIES shall provide the COUNTY, to the COUNTY'S satisfaction, documentation evidencing the COMPANIES' full control of such wholly owned subsidiaries.

3. **Acceptance of Jobs Created by Subsidiaries:** The parties agree that all jobs created and maintained by the Companies' wholly owned subsidiaries that satisfy the requirements of paragraphs 1 and 2 of this Part III will be treated pursuant to this Agreement as jobs created and maintained by the Companies. COMPANIES agrees that this Agreement is solely between COMPANIES and COUNTY and COUNTY has the right, in its sole and absolute discretion to reject or accept any or all jobs created by COMPANIES' wholly owned subsidiaries.

PART IV COMPANIES' OBLIGATIONS

1. **Job Creation:** The COMPANIES shall create 380 New Jobs within six (6) years of March 13, 2015.

2. **Existing Job Retention:** The COMPANIES shall retain 70 existing full-time jobs ("Retained Jobs") for five (5) years from March 13, 2015.

3. **New Job Maintenance:** The COMPANIES shall maintain the required New Jobs for a period of five (5) years from the date each New Job was created.

4. **Annualized Average Wage:** The COMPANIES shall pay an Annualized Average Wage equal to or greater than \$85,000 (excluding benefits) for all New Jobs created and all Retained Jobs maintained under this Agreement.

5. **Capital Investment:** The COMPANIES shall provide proof that they have made a minimum total Capital Investment of \$115 Million (inclusive of costs to acquire land) at the addresses shown on Exhibit "A" attached hereto and made a part hereof.

Per Part VI, Section 1 of this agreement, the COMPANIES may file for the Ad Valorem Property Tax Exemption by March 1st in the year that the exemption is desired to take effect. Therefore, the COMPANIES are not required to fully achieve the commitments listed in the above "Companies' Obligations" prior to initiating the Ad Valorem Tax Exemption, with the exception of the Capital Investment.

PART V Performance Period

1. **Effective Date:** This Agreement is effective March 13, 2015.

2. **Termination Date:** Unless earlier terminated according to the terms of this Agreement, this Agreement shall terminate on the later of (a) December 31st of the last year when an ad valorem tax exemption is claimed in accordance with Part VI herein, or (b) December 31, 2027.

PART VI INCENTIVE AMOUNTS

1. **Ad Valorem Tax Exemption:** The COMPANIES were conceptually approved to receive an Ad Valorem Tax Exemption not to exceed \$3 Million over a ten (10) year period in consideration of the capital investments, new jobs created and maintained and Annualized Average Wage memorialized under this Agreement. This conceptual

approval was contingent upon the determination that the project meets the requirements under Florida Statute 196.012 for an Ad Valorem Tax Exemption.

The COMPANIES shall submit a Formal Application for Ad Valorem Tax Exemption on the application entitled "Economic Development Ad Valorem Property Tax Exemption, Chapter 196.1995, Florida Statutes Form 418" by March 1st in the year that the exemption is desired by the COMPANIES to take effect. This application will be reviewed by the Palm Beach County Property Appraiser for eligibility as outlined in the County's Ordinance No. 2013-022.

The COMPANIES, if eligible, will be granted an Ad Valorem Tax Exemption for 100% of the assessed value of all qualifying tangible personal property acquired and added improvements to real property for a total amount not to exceed \$3 Million over a ten (10) year period. The COMPANIES understand that the Ad Valorem Tax Exemption will not apply to the assessed value of property taxes relating to the land which are levied by Palm Beach County, where Palm Beach County is the taxing authority. The exemption does not apply to taxes levied by a municipality, school district, or water management district, or to taxes levied for the payment of bonds or taxes authorized by a vote of the electors.

2. Revocation of Ad Valorem Tax Exemption: Should the COMPANIES fail to file the joint annual report with the Board on or before March 1st of each year the exemption has been granted as required by the Ad Valorem Tax Exemption Ordinance, or fail to continue to meet the definition of a new business or an expansion of an existing business, and/or fail to fulfill any other representation made to the Board during the application process, including the creation and maintenance of the total number of new jobs identified by the COMPANIES in the application (Exhibit "B"), the Board may adopt an ordinance revoking the Ad Valorem Tax Exemption.

The revocation of the Ad Valorem Tax Exemption may occur if the COMPANIES fail to fulfill their obligations as provided for under the ordinance granting the COMPANIES an exemption. The effective date for revocation of the exemption will be identified in the ordinance.

Upon revocation, the Board shall immediately notify the Property Appraiser.

For any year that taxes may have been exempted and the Board finds that the COMPANIES were not entitled to the exemption, such taxes may be recovered and the Property Appraiser will assist the Board to recover any taxes exempted. The Board may recover taxes exempted throughout the term of the Agreement.

Should the COMPANIES fail to file the annual exemption renewal application with the Property Appraiser on or before March 1st of each year the exemption has been granted as required in the Ad Valorem Tax Exemption Ordinance and in accordance with Chapter 196.011(1) (a), Florida Statutes, or fail to continue to meet the definition of a new business or an expansion of an existing business, the Property Appraiser may deny the exemption in accordance with Chapter 196.193(5), Florida Statutes.

Nothing herein shall prohibit the COMPANIES from reapplying for an ad valorem tax exemption pursuant to State law.

PART VII ADVERTISING, RECRUITING AND JOB INFORMATION

1. Job Advertising: In the event the COMPANIES shall undertake advertising of job openings in Palm Beach County, COMPANIES will provide sufficient notice to Palm Beach County's residents concerning the availability of COMPANIES' new positions. The advertising regarding the new jobs at COMPANIES' facilities in Palm Beach County must be countywide, include Hispanic and Minority news venues, and not limited to a single advertisement. Advertising jobs on the COMPANIES' website or other internet sites shall fulfill this requirement.

2. **Job Availability:** The COMPANIES shall cooperate with the following agencies regarding new job opportunities:
 - A. CareerSource Palm Beach County
3400 Belvedere Road
West Palm Beach, FL 33406
Attention: Executive Director
 - B. West Career Center
1083 South Main Street
Belle Glade, FL 33430
Attention: Chairperson
3. **Low-income Residents:** The COMPANIES shall make best efforts to provide qualified low-income residents opportunities for training and employment at the COMPANIES.
4. **Resident Preference:** The COMPANIES shall, without risk of violating any laws, make best efforts to develop and implement hiring policies that provide qualified Palm Beach County residents preference in the hiring process.
5. **Veterans Preference:** The COMPANIES shall, without violating any laws, make best efforts to develop and implement hiring policies that provide qualified Veterans preference in the hiring process.
6. **Local Businesses:** The COMPANIES shall, without risk of violating any laws, make reasonable efforts to award contracts in connection with this Agreement to qualified eligible business concerns located in or owned in substantial part by persons residing in Palm Beach County.
7. **Transportation To And From Job Location:** The COMPANIES shall make the following information available to employees it hires by posting such information on its web site or by providing in written form:
 - A. The bus stop location closest to COMPANIES' offices;
 - B. The name and location of Tri-Rail train station closest to COMPANIES' offices;
 - C. Information about COMPANIES' car pool programs (if they exist); and
 - D. Directions to COMPANIES' offices from Interstate 95.

PART VIII AUDITS AND REPORTS

1. **Annual Job Creation and Maintenance Reports:** The COMPANIES shall provide the COUNTY'S Department of Economic Sustainability with an Annual Job Creation and Maintenance Report, satisfactory to the COUNTY in its sole discretion, acting reasonably, verifying the COMPANIES' compliance with the requirements of PART IV of this Agreement. Such Annual Job Creation and Maintenance Report shall comply with the following:
 - A. Identify **each** New Job, the date it was created, the duration of its maintenance period to date, and its annual wage for the year being reported.
 - B. Identify **each** Retained Job, the duration of its maintenance period to date, and its annual wage for the year being reported.

C. Report on the annualized average wage for the year being reported for (i) all New Jobs that were created and/or maintained, and (ii) all Retained Jobs that were maintained.

D. Report on the number of employees who reside in Palm Beach County at the time of the report.

E. The Annual Job Creation and Maintenance Report shall be submitted to the COUNTY'S Department of Economic Sustainability by the anniversary of the effective date of this Agreement.

2. **Final Job Creation and Maintenance Performance Audit:** The COMPANIES shall provide the COUNTY'S Department of Economic Sustainability a written Final Job Creation and Maintenance Performance Audit (hereinafter "Audit") satisfactory to the COUNTY in its sole discretion, acting reasonably, verifying the COMPANIES' compliance with the requirements of PART IV of this Agreement. Such Audit, which shall be prepared at the COMPANIES' sole cost and expense, shall comply with the following:

A. The Audit shall be conducted and prepared by a Certified Public Accountant (CPA) according to standards established by the American Institute of Certified Public Accountants and shall be submitted on the CPA's letterhead.

B. The CPA shall "examine" the COMPANIES' records, statements, and schedules and those of all wholly owned subsidiaries created or purchased by the COMPANIES in connection with this Agreement, to verify the accuracy of the number of New Jobs created and maintained as required in Part IV of this Agreement, and to verify the annualized average wage for the New Jobs. The CPA shall express a written "opinion" in the Audit regarding the number of New Jobs created in compliance with this Agreement and the annualized average wage for these New Jobs.

C. The CPA's report shall include examining evidence supporting the COMPANIES' schedules of New Jobs and the annualized average wage of the New Jobs and those of the wholly owned subsidiaries stated immediately above.

D. The CPA's report must provide the annualized average wage for the below categories:

(1) All New Jobs: Identify the annualized average wage of all New Jobs including all exempt and non-exempt employees and all officers and senior corporate executives that are included in the number of New Jobs to be created as required by this Agreement.

(2) Low and Mid Echelon New Jobs Only: Identify the annualized average wage of all New Jobs as stated above, excluding from these calculations the average annual salary of all officers and senior corporate executives.

E. The accuracy of the number, hire dates and annualized average wages of all New Jobs as represented by the COMPANIES shall be verified in the Audit by the CPA to the COUNTY'S satisfaction.

F. The Audit may be performed in conjunction with other auditing services.

G. A report by a CPA that is a "review or agreed-upon procedures report" on the COMPANIES' representations shall not be deemed to meet the Audit requirements of this Agreement.

- H. The Audit shall be submitted to the COUNTY'S Department of Economic Sustainability within sixty-three (63) months from the date the last New Job was created.

PART IX GENERAL CONDITIONS

1. **Obligation and Annual Appropriation:** Not applicable.
2. **Non-Discrimination:** The COMPANIES acknowledge that it is the express policy of the Board of County Commissioners of Palm Beach County, Florida that the County shall not conduct business with nor appropriate any funds to any organization that practices discrimination on the basis of race, color, ancestry, disability, national origin, religion, age, familial status, marital status, sex, gender, sexual orientation, gender identity and expression, or genetic information. In compliance with the COUNTY's requirements, the COMPANIES have either submitted a copy of their written non-discrimination policies which are consistent with Resolution R-2014-1421 and the policy detailed above, or have submitted executed statements affirming that their non-discrimination policy is in conformance with Resolution R-2014-1421 and the policy detailed above.

In furtherance of such policy, the COMPANIES shall not, on the basis of race, color, ancestry, disability, national origin, religion, age, familial status, marital status, sex, gender, sexual orientation, gender identity and expression, or genetic information, exclude any person from the benefits of, or subject any person 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.
3. **Workers' Compensation and Employers' Liability:** The COMPANIES shall maintain Workers' Compensation Insurance & Employers' Liability in accord with Florida Statutes Chapter 440 for all jobs set forth in this Agreement. Coverage shall be provided on a primary and noncontributory basis.
4. **Convicted Vendor List:** As provided in F.S. 283.132-133, by entering into this Agreement or performing any work in furtherance hereof, the COMPANIES certify that they, and their subsidiaries 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. 283.133(3) (a).
5. **Successors and Assigns:** The COUNTY and the COMPANIES each binds itself and its partners, wholly owned subsidiaries, successors, executors, administrators and assigns to the other party and to the partners, wholly owned subsidiaries, successors, executors, administrators and assigns of such other party, in respect to all covenants of this Agreement. Except as above, neither the COUNTY nor the COMPANIES shall assign, sublet, convey or transfer its interest in this Agreement without the prior written consent of the other. Nothing herein shall be construed as creating any personal liability on the part of any officer or agent of the COUNTY, nor shall it be construed as giving any rights or benefits hereunder to anyone other than the COUNTY and the COMPANIES. In the event that the COUNTY determines that the COMPANIES are in violation of this paragraph, the COUNTY shall have the right to terminate this Agreement.
6. **Name Change:** Within fifteen (15) calendar days of the COMPANIES changing the name of the COMPANIES, the COMPANIES shall provide the COUNTY written notice regarding this change to COMPANIES' names.
7. **Material Change of Circumstances:** The COMPANIES shall immediately notify the COUNTY of any material change of circumstances for the COMPANIES' business operations in Palm Beach County. For the purposes hereof, material change of circumstance shall include, but not be limited to, the failure of the COMPANIES to

diligently and actively pursue fulfillment of the terms hereof, the sale or transfer of COMPANIES' assets for the benefit of creditors, COMPANIES' relocation outside of Palm Beach County, the suspension, closing or cessation of operation of the COMPANIES, voluntary or involuntary bankruptcy or an assignment for the benefit of the COMPANIES' 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 the COMPANIES under this Agreement.

8. **Entire Agreement Between Parties:** The COUNTY and the COMPANIES 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. 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 COMPANIES.

9. **Waiver:** If the COUNTY shall waive any provisions of the Agreement, or shall fail to enforce any of the conditions or provisions of this Agreement, such waiver shall not be deemed to be a continuing waiver and shall never be construed as such; and the COUNTY shall thereafter have the right to insist upon the enforcement of such conditions or provisions.

10. **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.

11. **Performance Time and 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.

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

- A. Vacating, abandoning, or closing the UTC Center for Intelligent Buildings.
- B. Relocating the UTC Center for Intelligent Buildings in Palm Beach County outside Palm Beach County.
- C. Failure of the COMPANIES to create the number of New Jobs as required in this Agreement.
- D. Failure of the COMPANIES to maintain the required number of New Jobs for the entire Maintenance Period.
- E. Failure of the COMPANIES to make the capital investments required.
- F. Failure of the COMPANIES to submit to the COUNTY the Annual Job Creation and Maintenance Report and/or the Audit as required in this Agreement.
- G. Failure of the COMPANIES to observe or perform any of the terms, covenants, conditions, obligations, or provisions of this Agreement to be observed or performed by the COMPANIES where such failure continues for a period of thirty (30) days after written notice thereof from the COUNTY to the COMPANIES; provided, however, that if the nature of COMPANIES' default is such that more than thirty (30) days are reasonably required for its cure, then COMPANIES shall

not be deemed to be in default if the COMPANIES commenced such cure within said thirty (30) day period and thereafter diligently pursue such cure to completion.

- H. The making by the COMPANIES of any general assignment, or general arrangement for the benefit of creditors.
- I. The filing by or against COMPANIES of a petition to have the COMPANIES adjudged bankrupt or a petition for reorganization or arrangement under any law relating to bankruptcy (unless, in the case of a petition filed against COMPANIES, the same is dismissed within sixty (60) days).
- J. The appointment of a trustee or receiver to take possession of substantially all of COMPANIES' assets where possession is not restored to COMPANIES within forty-five (45) days.
- K. The attachment, execution or other judicial seizure of substantially all of COMPANIES' assets located within Palm Beach County where such seizure is not discharged within forty-five (45) days.
- L. The discovery by the COUNTY that any financial statement relating to this Agreement given to the COUNTY was materially false.

13. Remedies: In the event of a Default by the COMPANIES, 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 COMPANIES or any party joining in or consenting to this Agreement, all taxes exempted by the COUNTY, as applicable, pursuant to this Agreement. Except as set forth in Part IX Subpart 12, Subsections I, J, and K, COMPANIES shall be granted thirty (30) days from notification of default to cure any deficiency that triggered said default.

14. Law and Remedy: This Agreement shall be governed by the laws of the State of Florida. Unless otherwise agreed to in writing by the parties, 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.

15. Regulations: The COMPANIES shall comply with all laws, ordinances and regulations applicable to the services contemplated herein, to include conflict of interest and collusion. The COMPANIES are presumed to be familiar with all federal, state and local laws, ordinances, codes and regulations that may affect the services offered.

16. Headings: The headings of the sections, paragraphs, divisions, subdivisions, part and subparts of this Agreement are for the convenience of reference only, and shall not limit or otherwise affect any of the terms hereof.

17. Number and Gender: Whenever the singular or plural number, masculine or feminine or neutral gender is used herein, it shall equally include the others and shall apply jointly and severally.

18. Access To Records: Upon thirty (30) business days' written notice and at any time during normal business hours and as the COUNTY deems reasonably necessary, there shall be made available by the COMPANIES to the COUNTY for examination, their records with respect to all requested matters covered by this Agreement. The COUNTY reserves the right to conduct an inspection of the COMPANIES' records regarding performance measures with respect to matters covered by this Agreement at any time for any period covered by this Agreement. In making any request for records, the COUNTY shall construct the request as narrowly as possible so as to avoid any undue burden on the COMPANIES.

19. Office Of 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 COMPANIES, and their wholly owned subsidiaries, their 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 123.69, Florida Statutes, in the same manner as a second degree misdemeanor.

20. Indemnification and Hold Harmless: The COMPANIES agree 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 COMPANIES' or its officers, agents, and employees failure to comply with any provision of this Agreement. The COMPANIES recognize the broad nature of this indemnification and hold harmless clause, and voluntarily make this covenant and expressly acknowledge 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.

21. Notices: All notices from the COMPANIES to the COUNTY and the COUNTY to COMPANIES required or permitted by any provision of this Agreement shall be in writing and sent by registered or certified mail and addressed as follows:

TO COUNTY: DEPARTMENT OF ECONOMIC SUSTAINABILITY
100 Australian Avenue, 5th Floor
West Palm Beach, FL 33406
Attn: Sherry Howard, Deputy Director

With a copy to: Board of County Commissioners
c/o Palm Beach County Attorney's Office
301 N. Olive Avenue, Suite 601
West Palm Beach, FL 33401
Attn: James Brako, Assistant County Attorney

TO COMPANIES:

If by US Mail: Carrier Corporation/Otis Elevator Company
P.O. Box 109615 M/S 715-01
Palm Beach Gardens, FL 33410
ATTN: Sarah David, Vice President Legal Affairs
Telephone: 561-796-6091
Facsimile: 860-660-4511

If by overnight delivery/courier:

Carrier Corporation/Otis Elevator Company
15270 Endeavor Drive M/S 715-01
Jupiter, FL 33478
ATTN: Sarah David, Vice President Legal Affairs

Such addresses may be changed by written notice to the other party.

22. 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 COMPANIES.

23. Counterparts: This Agreement, consisting of fourteen (14) enumerated pages which include the exhibits referenced herein, may be executed in one or more counterparts, all of which shall constitute collectively but one and the same instrument.

24. Force Majeure: If COMPANIES shall be delayed or hindered in or preventing from the performance of any act required hereunder by reason of strike, lockouts, failure of power, restrictive governmental laws or regulations, riots, insurrection, war, terrorism, fire or other casualty, or other reason of a similar or dissimilar nature beyond the reasonable control of the COMPANIES, then performance of such act shall be excused for the period of delay and the period for the performance of any such act shall be extended for a period equivalent to the period of such delay without jeopardizing the continuation of the exemption.

PART X REQUIREMENTS APPLICABLE TO WHOLLY OWNED SUBSIDIARIES

In addition to instances where the requirements of this Agreement are expressly set forth to be applicable to wholly owned subsidiaries of the COMPANIES, the requirements of the below listed Parts and Subparts shall also apply to all such wholly owned subsidiaries:

- A. PART IV: Subparts 1, 2, 3 and 4.
- B. PART VI: Subparts 1 and 2.
- C. PART VII: Subparts 1, 2, 3, 4, 5, 6 and 7.
- D. PART IX: Subparts 2, 3, 4, 6, 7, 12, 15, 18, 19 and 20.

IN WITNESS WHEREOF, the COMPANIES and the COUNTY have caused this Agreement to be executed on the date first above written.

Signed, sealed and delivered
in the presence of:

Witnesses:

CARRIER CORPORATION
a foreign for profit corporation

Name: Victoria F. Valentine

By: [Signature]

Signature: Victoria F. Valentine

VP Legal Affairs
South Oahu
(print name and title)

(SEAL)

OTIS ELEVATOR COMPANY
a foreign for profit corporation

Name: VICTORIA F. VALENTINE

By: [Signature]

Signature: Victoria F. Valentine

Sarah David
VP Legal Affairs
(print name and title)

(SEAL)

STATE OF FLORIDA)
COUNTY OF PALM BEACH) ss

The foregoing instrument was acknowledged before me this 16th day of, September, 20 15, by Sarah A. David, who are personally known to me, or who produced _____ as identification and who did/did not take an oath.



Pamela A. Brunel
NOTARY PUBLIC
STATE OF FLORIDA
Comm# FF183517
Expires 12/15/2018
(NOTARY SEAL ABOVE)

Signature: Pamela A. Brunel

Notary Name: Pamela A. Brunel
Notary Public - State of Florida

STATE OF FLORIDA)
COUNTY OF PALM BEACH) ss

The foregoing instrument was acknowledged before me this 16th day of, September, 20 15, by Sarah A. David, who are personally known to me, or who produced _____ as identification and who did/did not take an oath.


Pamela A. Brunel
NOTARY PUBLIC
STATE OF FLORIDA
Comm# FF183517
Expires 12/15/2018
(NOTARY SEAL ABOVE)

Signature: Pamela A. Brunel

Notary Name: Pamela A. Brunel
Notary Public - State of Florida

(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, Mayor

By: _____
Deputy Clerk

Document No.: _____

Approved as to Form and
Legal Sufficiency

Approved as to Terms and Conditions
Department of Economic Sustainability

By: _____
James Brako
Assistant County Attorney

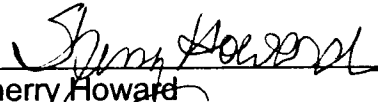
By:  _____
Sherry Howard
Deputy Director

EXHIBIT "A"

**ECONOMIC DEVELOPMENT INCENTIVE GRANT AGREEMENT
BETWEEN PALM BEACH COUNTY AND CARRIER CORPORATION
AND OTIS ELEVATOR COMPANY**

COMPANY IDENTIFICATION AND INFORMATION

QACF application date:	NA
Company Names:	Carrier Corporation Otis Elevator Company
Existing Headquarters:	
Address of the company's facility in Palm Beach County:	UTC Center for Intelligent Buildings and United Technologies Corporation's Palm Beach County Campus at 17900 Beeline Highway, Jupiter, FL where the Company may locate jobs prior to the completion of the UTC Center for Intelligent Buildings.
Products/services to be provided from the company's facility in Palm Beach County:	Regional managing offices and technology center
Business Type:	
State of Florida Status:	Active
State of Florida Filing Date:	Carrier Corporation 06/27/1979
Federal ID Number:	06-0991716 Otis Elevator Company 10/21/1909 13-5583389