

**PALM BEACH COUNTY
BOARD OF COUNTY COMMISSIONERS
AGENDA ITEM SUMMARY**

Draft, Subject to Change

Meeting Date: November 22, 2016 Consent Regular
 Ordinance Public Hearing

Submitted by: Department of Economic Sustainability

Submitted for: County Administration

I. EXECUTIVE BRIEF

Motion and Title: Staff recommends motion to approve: A) an Economic Development Incentive Agreement with Cancer Treatment Centers of America Global, Inc. (Company), for an incentive in the form of an \$157,500 local match paid according to the State’s schedule for the Qualified Target Industry Program, and an incentive with the Company in the amount not to exceed \$200,000 paid over a five (5) year period for the State Quick Action Closing Fund; **B)** a Budget Transfer of \$357,500 from the General Fund Contingency Reserves to the Department of Economic Sustainability Fund Economic Incentive Growth Program; and **C)** a Budget Amendment of \$357,500 in the Department of Economic Sustainability Fund to recognize the funds from the General Fund.

Summary: On January 14, 2014, the Board of County Commissioners conceptually approved (R2014-0094) an economic development incentive for the Company totaling \$357,500. This Agreement discloses the name of the Company, Cancer Treatment Centers of America Global, Inc., previously referred to as Project Emblem. The Agreement requires the Company to make a minimum \$14.5 Million capital investment to purchase and renovate an existing facility in Boca Raton for its corporate headquarters, create 225 new full time jobs over a five (5) year period, at an average annualized wage of \$90,000 excluding benefits. The Company will maintain the new jobs for a period of five (5) years following the job creation period. Cancer Treatment Centers of America Global, Inc. is a family owned management and marketing company supporting a group of hospitals, with a primary mission to treat patients suffering from advanced and complex cancer.

The State of Florida is providing the Company \$1,575,000 in the form of a Qualified Target Industry (QTI) Tax Refund which includes a required 20% local match of \$315,000 which will be split equally between the County (\$157,500) and the City of Boca Raton (\$157,500). Additionally, Enterprise Florida is providing \$400,000 from the Quick Action Closing Fund (QACF). The County and City of Boca Raton are also providing a 100% local QACF match incentive to the State in the amount of \$400,000 which will be split equally between the County (\$200,000) and the City of Boca Raton (\$200,000). The State has entered into agreements with the Company for both incentives. This project is expected to have a five (5) year economic impact of \$216 Million. The Company shall, without risk of violating any laws, make best efforts to develop and implement hiring policies that provide Palm Beach County residents preference in the hiring process. This Economic Development Incentive Grant will be secured by a Letter of Credit, Bond, Corporate Guarantee, or equivalent security. District 4 (JB)

Background and Justification: The Economic Development Incentive Grant will be used to offset significant capital costs required to renovate and equip the current facility in Palm Beach County.

Attachments:

1. Economic Development Incentive Grant Agreement with Cancer Treatment Centers of America Global, Inc.
2. Resolution R2014-0094
3. Budget Transfer and Budget Amendment

Recommended By: _____ *Jimmy Howard* 11-8-16
 Department Director Date

Approved By: _____
 Assistant County Administrator Date

II. FISCAL IMPACT ANALYSIS

A. Five Year Summary of Fiscal Impact:

Fiscal Years	2017	2018	2019	2020	2021
Grant Expenditures	\$71,500	\$71,500	\$71,500	\$71,500	\$71,500
Operating Costs					
External Revenues					
Program Income					
In-Kind Match (County)					
NET FISCAL IMPACT	\$71,500	\$71,500	\$71,500	\$71,500	\$71,500

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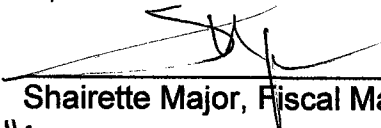
Is Item Included In Current Budget? Yes _____ No X
 Budget Account No.:

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

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

The source of funds is general fund contingency reserve dollars for QTI match of \$157,500 and QACF match of \$200,000.

C. Departmental Fiscal Review:



 Shairette Major, Fiscal Manager II
11/18/16

III. REVIEW COMMENTS

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

 OFMB

 Contract Development and Control

B. Legal Sufficiency:

 Assistant County Attorney

C. Other Department Review:

 Department Director

Economic Development Incentive Grant Agreement

THIS AGREEMENT, dated as of this _____ day of _____, 2016, by and between **PALM BEACH COUNTY**, a political subdivision of the State of Florida, (hereinafter the "COUNTY") and **CANCER TREATMENT CENTERS OF AMERICA GLOBAL, INC.**, a For Profit, Florida corporation authorized to do business in the State of Florida, whose Federal I.D. Number is **46-5659341** (hereinafter the "COMPANY").

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 ("STATE") 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 Grant 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 COMPANY is committing to invest FOURTEEN MILLION FIVE HUNDRED THOUSAND DOLLARS (\$14,500,000) to purchase and renovate property in Boca Raton, FL for its corporate headquarters, and create TWO HUNDRED TWENTY-FIVE (225) new permanent full-time jobs over a six (6) year period at an average annual wage of NINETY THOUSAND DOLLARS (\$90,000), excluding benefits . The COMPANY is committing to maintain the new jobs for a period of five (5) years from the day each job is created; and

WHEREAS, the State of Florida has approved ONE MILLION FIVE HUNDRED SEVENTY-FIVE THOUSAND DOLLARS (\$1,575,000) in incentive funding for the COMPANY; and

WHEREAS, the Board of County Commissioners on January 14, 2014, conceptually approved a Job Growth Incentive (JGI) Grant to COMPANY in an amount not to exceed THREE HUNDRED FIFTY-SEVEN THOUSAND FIVE HUNDRED DOLLARS (\$357,500), which consists of ONE HUNDRED FIFTY-SEVEN THOUSAND FIVE HUNDRED DOLLARS (\$157,500) as one half of the required local match to the STATE'S Qualified Target Industry (QTI) Tax Refund Program, and TWO HUNDRED THOUSAND DOLLARS (\$200,000) representing one half of a local match to the STATE'S Quick Action Closing Fund (QACF); and

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

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

PART II DEFINITIONS

1. **Definitions:** The below terms as used in this Agreement shall mean:

- A. New Job: Shall include an employee in a full-time job working a minimum of two thousand eighty (2,080) 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 COMPANY'S Palm Beach County employees; and
 - (2) Involve only an employee working on-site at the COMPANY'S Palm Beach County facility at the address shown in Exhibit A attached hereto and made a part hereof.
- 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 two thousand eighty (2,080) hours annualized. Notwithstanding the foregoing, the two thousand eighty (2,080) 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 two thousand eighty (2,080) hours annualized (inclusive of vacation and holidays), or a Full-Time Equivalent Job that is identified on the COMPANY'S payroll who transferred to the COMPANY'S facility in Palm Beach County from a COMPANY facility 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 two thousand eighty (2,080) hours annualized (inclusive of vacation and holidays), or a Full Time Equivalent Job that is identified on the COMPANY'S payroll, who transferred to the COMPANY'S facility 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 COMPANY'S facility 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. Full Time Contract Employee: Not Applicable.
- E. Annualized Average Wage: Actual annual wage, salaries, and other payments for Full-Time Equivalent Jobs to be created 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).
- F. Median Wage: Shall mean the annual wage that is the exact middle of all annual wages. It shall be determined by taking the middle annual wage on the list if an odd number of annual wages and if an even number, taking the higher of the middle numbers and considering it the median.

PART III WHOLLY OWNED AFFILIATES

1. Establishment of Wholly Owned Affiliates: The COMPANY may create or purchase wholly owned affiliates in connection with activities undertaken by the

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

2. **Notification of Wholly Owned Affiliates:** The COMPANY shall, within thirty (30) days of its creation or purchase of a wholly owned affiliate in connection with this Agreement, notify the COUNTY in writing of such wholly owned affiliates by divulging to the COUNTY the name of such entity and the location of the entity's facilities, and the COMPANY shall provide the COUNTY, to the COUNTY'S satisfaction, documentation evidencing the COMPANY'S full control of such wholly owned affiliates.
3. **Acceptance of Jobs Created by Subsidiaries:** The parties agree that all jobs created and maintained by the COMPANY's 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 COMPANY. COMPANY agrees that this Agreement is solely between COMPANY and COUNTY and COUNTY has the right, in its sole and absolute discretion to reject or accept any or all jobs created by COMPANY'S wholly owned subsidiaries.

PART IV COMPANY OBLIGATIONS

1. **New Job Creation:** The COMPANY shall create two hundred twenty-five (225) New Jobs within six (6) years of January 14, 2014, which is in accordance with Section 6. (b) of the State QTI Tax Refund Agreement and Section 7. (a) of the State QACF Agreement.
2. **New Job Maintenance:** The COMPANY shall maintain the required New Jobs for a period of five (5) years from the date each New Job was created.
3. **Salaries:** The COMPANY shall pay an Annualized Average Wage per annum equal to or greater than NINETY THOUSAND DOLLARS (\$90,000), excluding benefits, for each New Job created under this Agreement.
4. **Capital Investment:** The COMPANY shall make a minimum Capital Investment of FOURTEEN MILLION FIVE HUNDRED THOUSAND DOLLARS (\$14,500,000) at the address shown on Exhibit A attached hereto and made a part hereof.

PART V PERFORMANCE PERIOD

1. **Effective Date:** This Agreement is expressly contingent upon the approval of the Palm Beach County Board of County Commissioners and the execution by all parties, and shall become effective on the date it is approved by the Palm Beach County Board of County Commissioners.
2. **Termination Date:** This Agreement shall terminate sixty six (66) months after the creation of the two hundred and twenty-fifth (225th) New Job.

PART VI INCENTIVE AMOUNTS

1. **Quick Action Closing Funds (QACF):** The COMPANY is eligible to receive from the COUNTY, in the form of a cash subsidy, QACF Grant Funds, an amount not to exceed TWO HUNDRED THOUSAND DOLLARS (\$200,000), paid over five (5) years, with the first payment request being made in 2016.
2. **Quick Action Closing Funds Distributions:** The COUNTY shall, upon receipt of an annual written request from the COMPANY, and based on the number of New Jobs reported by COMPANY on the Annual Job Creation and Maintenance Report that is required to be filed with the COUNTY under Part VIII.1 of this

Agreement, disburse QACF Grant Funds in the per job amount of EIGHT HUNDRED EIGHTY-EIGHT DOLLARS AND EIGHTY-EIGHT CENTS (\$888.88). The maximum amount that COUNTY would be obligated to disburse is TWO HUNDRED THOUSAND DOLLARS (\$200,000) with any amount less than the TWO HUNDRED THOUSAND DOLLARS (\$200,000) being carried forward to the next year until the maximum amount of Two Hundred Thousand Dollars (\$200,000) has been exhausted, provided it is within the five (5) year period. Excess funds will not be carried over beyond the fifth (5th) year.

As a prerequisite to making the initial disbursement of QACF program funds, the COUNTY shall have received a form of security, acceptable to COUNTY in its sole discretion, acting reasonably, as required herein.

3. **Qualified Target Industry (QTI) Program:** The COMPANY is eligible to receive from the COUNTY, in the form of a cash subsidy, QTI Match Funds, an amount not to exceed ONE HUNDRED FIFTY-SEVEN THOUSAND FIVE HUNDRED DOLLARS (\$157,500) paid according to the schedule established by the STATE.
4. **Job Growth Incentive Grant Distributions as Match to State Qualified Target Industry Tax Refund (QTI):** The COUNTY shall, upon receipt of an annual written request from the STATE, disburse QTI Match Funds to the STATE in the per job amount of SEVEN HUNDRED DOLLARS (\$700.00) according to the schedule established by the STATE. The maximum amount that COUNTY is obligated to disburse is ONE HUNDRED FIFTY SEVEN THOUSAND FIVE HUNDRED DOLLARS (\$157,500). Payment of tax refunds for the STATE and local match are conditioned on and subject to pay amounts authorized in Section 288.106 Florida Statutes.
5. **Submission of Job Creation and Maintenance Reports:** As a prerequisite to making all disbursements of QACF Grant Funds and QTI Match Funds, the COUNTY shall have determined that the COMPANY is in compliance with the terms of this Agreement, including, but not limited to, the COMPANY'S submission of the Job Creation and Maintenance Reports required herein.
6. **Condition Prior to Distribution of Grant Funds:** The COMPANY shall provide the COUNTY a form of security, including a clean, irrevocable Letter of Credit, Performance Bond, or Corporate Guaranty, in a form acceptable to the COUNTY in its sole discretion, acting reasonably. The security, in the amount of the requested disbursement pursuant to this Part VI, shall be provided to the COUNTY as a precondition to the COUNTY making any disbursements of QACF Grant Funds or QTI Match Funds contemplated herein.

The security shall remain in effect until the COUNTY has received the Final Job Creation and Maintenance Performance Audit and verified that the COMPANY has complied with the requirements outlined in this Agreement, or as indicated below.

Upon the COUNTY'S determination that the COMPANY has satisfactorily complied with the terms of this Agreement, the COUNTY shall notify the COMPANY that the security can be released.

PART VII ADVERTISING, RECRUITING AND JOB INFORMATION

1. **Job Advertising:** The COMPANY 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 countywide, include Hispanic and Minority news venues, and not limited to a single advertisement.
2. **Job Availability:** The COMPANY shall coordinate with the following agencies regarding new job opportunities:

- A. CareerSource Palm Beach County
1951 N Military Trail, Suite D
West Palm Beach, FL 33409
Attention: Executive Director
 - B. West Career Center
1085 S Main Street
Belle Glade, FL 33430
Attention: Chairperson
3. **Low-income Residents:** The COMPANY shall make reasonable efforts to provide low-income residents opportunities for training and employment at the COMPANY.
 4. **Resident Preference:** The COMPANY shall, without risk of violating any laws, make best efforts to develop and implement hiring policies that provide Palm Beach County residents preference in the hiring process.
 5. **Local Businesses:** The COMPANY shall, without risk of violating any laws, make reasonable efforts to award contracts in connection with this Agreement to eligible business concerns located in or owned in substantial part by persons residing in Palm Beach County.
 6. **Veterans Preference:** The COMPANY shall, without risk of violating any laws, make reasonable efforts to develop and implement hiring policies that provide qualified Veterans preference in the hiring process.
 7. **Transportation To And From Job Location:** The COMPANY shall provide the following information 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 COMPANY'S office;
 - B. The name and location of Tri-Rail train station closest to COMPANY'S office;
 - C. Information about COMPANY'S car pool program (if one exists); and
 - D. Directions to COMPANY'S office from Interstate 95.

**PART VIII
SUBCONTRACTING**

The COUNTY reserves the right to accept the use of a subcontractor or to reject the selection of a particular subcontractor and to inspect all facilities of any subcontractors in order to make a determination as to the capability of the subcontractor to perform properly under this Contract. The COMPANY is encouraged to seek additional small business enterprises for participation in subcontracting opportunities. If the COMPANY uses any subcontractors on this project the following provisions of this Article shall apply:

If a subcontractor fails to perform or make progress, as required by this Contract, and it is necessary to replace the subcontractor to complete the work in a timely fashion, the COMPANY shall promptly do so, subject to acceptance of the new subcontractor by the COUNTY.

The Palm Beach County Board of County Commissioners has established a minimum goal for SBE participation of 15% on all County solicitations.

The COMPANY agrees to abide by all provisions of the Palm Beach County Code establishing the SBE Program, as amended, and understands that

failure to comply with any of the requirements will be considered a breach of contract.

The COMPANY understands that each SBE firm utilized on this Contract must be certified by Palm Beach County in order to be counted toward the SBE participation goal.

The COMPANY shall provide the COUNTY with a copy of the COMPANY'S contract with any SBE subcontractor or any other related documentation upon request.

The COMPANY understands the requirements to comply with the tasks and proportionate dollar amounts throughout the term of this Contract as it relates to the use of SBE firms.

The COMPANY will only be permitted to replace a certified SBE subcontractor who is unwilling or unable to perform. Such substitutions must be done with another certified SBE in order to maintain the SBE percentages established in this Contract. Requests for substitutions of SBE's must be submitted to the COUNTY's representative and to the Office of Small Business Assistance.

The COMPANY shall be required to submit to the COUNTY Schedule 1 (Participation of SBE- M/WBE Contractors) and Schedule 2 (Letter of Intent) to further indicate the specific participation anticipated, where applicable.

The COMPANY agrees to maintain all relevant records and information necessary to document compliance with the Palm Beach County Code and will allow the COUNTY to inspect such records.

PART IX AUDITS AND REPORTS

1. **Annual Job Creation and Maintenance Reports:** The COMPANY shall provide the COUNTY'S Department of Economic Sustainability ("DES") with an Annual Job Creation and Maintenance Report, satisfactory to the COUNTY in its sole discretion, acting reasonably, verifying the COMPANY'S 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 job created and the date it was created.
 - B. Identify each job created and the duration of its maintenance period to date.
 - C. Identify each existing job retained and the duration of its maintenance period to date.
 - D. Report on the Annualized Average Wage for New Jobs that were created and maintained.
 - E. Report on the number of Palm Beach County residents hired to date.
 - F. Provide COUNTY with the calculations for the Median Wage paid per annum.
 - G. The Annual Job Creation and Maintenance Report shall be submitted to the COUNTY'S DES by the anniversary of the effective date of this Agreement.
2. **Final Job Creation and Maintenance Performance Audit:** The COMPANY shall provide the COUNTY'S DES a written Final Job Creation and Maintenance Performance Audit (hereinafter "Audit") satisfactory to the COUNTY in its sole

discretion, acting reasonably, verifying the COMPANY'S compliance with the requirements of PART IV of this Agreement. Such Audit, which shall be prepared at the COMPANY'S 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 COMPANY'S records, statements, and schedules and those of all wholly owned affiliates created or purchased by the COMPANY 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 attest to examining evidence supporting the COMPANY'S schedules of New Jobs and the Annualized Average Wage of the New Jobs, and those of the wholly owned affiliates stated immediately above.
- D. The CPA's report must provide the Annualized Average Wage for the category below:
 - (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.
- E. The accuracy of the number, hire dates and Annualized Average Wage of all New Jobs as represented by the COMPANY 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 COMPANY'S representations shall not be deemed to meet the Audit requirements of this Agreement.
- H. The Audit shall be submitted to the COUNTY'S DES within sixty-three (63) months from the date the 225th New Job was created.

PART X GENERAL CONDITIONS

1. **Obligation and Annual Appropriation**: The COUNTY'S obligation to pay under this Agreement is contingent upon annual appropriation for its purpose by the COUNTY. To the extent the annual appropriation amount is reduced, the corresponding obligation of the COMPANY shall be similarly and proportionately reduced.
2. **Non-Discrimination**: The COMPANY acknowledges 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 COMPANY has either submitted a copy of its written non-discrimination policy which is consistent with the policy detailed above, or has submitted an executed statement affirming that

its non-discrimination policy is in conformance with the policy detailed above.

In furtherance of such policy, the COMPANY 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 COMPANY 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 basis.
4. **Convicted Vendor List:** As provided in F.S. 287.132-133, by entering into this Agreement or performing any work in furtherance hereof, the COMPANY certifies that it, 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).
5. **Successors and Assigns:** The COUNTY and the COMPANY each binds itself and its partners, wholly owned affiliates, successors, executors, administrators and assigns to the other party and to the partners, wholly owned affiliates, 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 COMPANY shall assign, sublet, convey or transfer its interest in this Agreement without the prior written consent of the other. Nothing herein shall be construed as creating any personal liability on the part of any officer or agent of the COUNTY, nor shall it be construed as giving any rights or benefits hereunder to anyone other than the COUNTY and the COMPANY. In the event that the COUNTY determines that the 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 the COMPANY.
6. **Name Change:** Prior to the COMPANY changing the name of the COMPANY the COMPANY shall immediately provide the COUNTY written notice regarding this change to COMPANY'S name.
7. **Material Change of Circumstances:** The COMPANY shall immediately notify the COUNTY of any material change of circumstances for the 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 the COMPANY to diligently and actively pursue fulfillment of the terms hereof, the sale or transfer of COMPANY'S assets for the benefit of creditors, COMPANY'S relocation outside of Palm Beach County, the suspension, closing or cessation of operation of the COMPANY, voluntary or involuntary bankruptcy or an assignment for the benefit of the 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 the COMPANY under this Agreement.
8. **Entire Agreement Between Parties:** The COUNTY and the COMPANY agree that this Agreement sets forth the entire agreement between the parties, and that there are no promises or understandings other than those stated herein. None of the provisions, terms and conditions contained in this Agreement may be added to, modified, superseded or otherwise altered, except by written instrument executed by the parties hereto. 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 COMPANY.

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 COMPANY'S business.
 - B. Relocating the COMPANY'S business in Palm Beach County outside Palm Beach County.
 - C. Failure of the COMPANY to submit an acceptable form of performance security to the COUNTY and to maintain the security in effect for the period set forth in this Agreement.
 - D. Failure of the COMPANY to create the number of New Jobs as required in this Agreement.
 - E. Failure of the COMPANY to maintain the required number of New Jobs for each job's required maintenance period.
 - F. Failure of the COMPANY to make the capital investments required.
 - G. Failure of the COMPANY to submit to the COUNTY the Annual Job Creation and Maintenance Report and/or the Audit as required in this Agreement.
 - H. Failure of the COMPANY to observe or perform any of the terms, covenants, conditions, obligations, or provisions of this Agreement to be observed or performed by the COMPANY where such failure continues for a period of thirty (30) days after written notice thereof from the COUNTY to the COMPANY; provided, however, that if the nature of COMPANY'S default is such that more than thirty (30) days are reasonably required for its cure, then COMPANY shall not be deemed to be in default if the COMPANY commenced such cure within said thirty (30) day period and thereafter diligently pursues such cure to completion.
 - I. The making by the COMPANY of any general assignment, or general arrangement for the benefit of creditors.
 - J. 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).
 - K. The appointment of a trustee or receiver to take possession of substantially all of COMPANY'S assets where possession is not restored