

PALM BEACH COUNTY
BOARD OF COUNTY COMMISSIONERS

AGENDA ITEM SUMMARY

Meeting Date: June 20, 2017 [] Consent [X] Regular
[] Ordinance [] Public Hearing

Submitted by: Department of Economic Sustainability

I. EXECUTIVE BRIEF

Motion and Title: Staff recommends motion to approve: an Economic Development Incentive Grant Agreement with Tellus Products, LLC (Company), to provide an ad valorem tax exemption in an amount not to exceed \$850,000 over a ten (10) year period.

Summary: On September 22, 2015, the Board of County Commissioners (BCC) conceptually approved (Agenda Item 5A-3) an Economic Development Incentive for the Company totaling \$850,000. This Agreement discloses the name of the Company, Tellus Products, LLC, previously referred to as Project Tiger. The Company is a new business unit of Sugar Cane Growers Cooperative of Florida. The Company will build a manufacturing facility that will use a proprietary process to produce molded packaging products. The Agreement requires the Company to make a capital investment of a minimum of \$40 Million for the construction of a plant and equipment in the Glades region. The Company is required to create 71 new jobs over a five (5) year period. These new full time jobs must have an annualized average wage of \$50,000 excluding benefits and a median wage of \$40,000. The Company is required to maintain the new jobs for five (5) years from date of creation. The five (5) year economic impact is estimated to be \$162 Million.

The State is not participating in the incentive due to limited funding. However, a County incentive is recommended because the plant will be located in the Glades region of Palm Beach County where dire economic conditions persist and where poverty rates and unemployment rates are, respectively, double and quadruple the national averages. The Palm Beach County incentive will be provided in the form of an ad valorem tax exemption in an amount not to exceed \$850,000 over a ten (10) year period provided the project meets the requirements under Florida Statute 196.012. District 6 (JB)

Background and Justification: The Economic Development Incentive Program continues to provide for long term economic growth in Palm Beach County and further diversification of the local economy. The Program implements the BCC's policy to attract new business to Palm Beach County, to support expanding existing businesses in the county that would otherwise expand elsewhere, and to create employment opportunities for residents of Palm Beach County.

Attachments(s):

- 1. Economic Development Incentive Grant Agreement with Tellus Products, LLC.
- 2. Agenda Item 5A-3 of September 22, 2015

Recommended By: Jimmy Howard 6-9-17
Department Director Date

Approved By: Kevin Johnson 6/15/17
Assistant County Administrator Date

II. FISCAL IMPACT ANALYSIS

A. Five Year Summary of Fiscal Impact:

Fiscal Years	2017	2018	2019	2020	2021
Capital Expenditures					
Operating Costs					
External Revenues	\$85,000	\$85,000	\$85,000	\$85,000	\$85,000
Program Income					
In-Kind Match (County)					
NET FISCAL IMPACT	\$85,000	\$85,000	\$85,000	\$85,000	\$85,000

# 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:

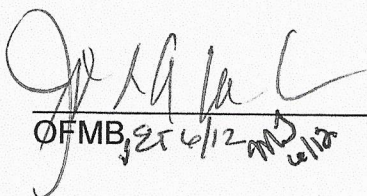
The source of funds for the Economic Development Incentive is in the form of an ad valorem tax exemption over ten (10) years. The estimated tax assessment value for the tax exemption cannot be determined at this time.

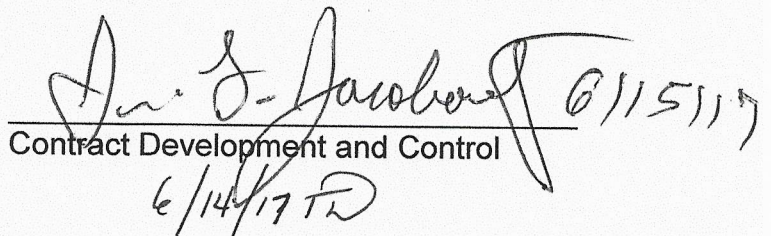
C. Departmental Fiscal Review:


 Beverly Reid, Fiscal Manager I

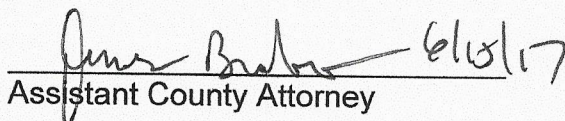
III. REVIEW COMMENTS

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

 6/13/17
 OFMB, 25 6/12 MD 6/17

 6/15/17
 Contract Development and Control
 6/14/17 TD

B. Legal Sufficiency:

 6/15/17
 Assistant County Attorney

C. Other Department Review:

Department Director

(THIS SUMMARY IS NOT TO BE USED AS A BASIS FOR PAYMENT)

Economic Development Incentive Agreement

THIS AGREEMENT, dated as of this ____ day of _____, 2017, ("Effective Date") by and between **PALM BEACH COUNTY**, a political subdivision of the State of Florida, (hereinafter the "COUNTY") and **TELLUS PRODUCTS, LLC** a Florida limited liability company, whose Federal I.D. Number is 47-2324075 (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 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 COMPANY is locating a new manufacturing facility in the unincorporated Glades region of Palm Beach County and will make approximately a forty million dollar (\$40,000,000) capital investment for the construction of a plant and equipment (personal property), create seventy-one (71) new permanent full time (or the equivalent as set forth herein) jobs over five (5) years at an annualized average wage of fifty thousand dollars (\$50,000) and a median wage of forty thousand dollars (\$40,000), and retain the new jobs for five (5) years from the date each job is created ("Project"); and

WHEREAS, the Board of County Commissioners on September 22, 2015, conceptually approved an Economic Development Incentive in the form of an Ad Valorem Tax Exemption Grant to COMPANY in an amount not to exceed eight hundred and fifty thousand dollars (\$850,000) over a ten (10) year period.

WHEREAS, the incentive recommendation is based on the fact that the Project will be located in the Glades region of Palm Beach County where dire economic conditions persist with poverty rates and unemployment rates are, respectively, double and quadruple the national averages; and

WHEREAS, the COUNTY finds and declares that it is in the public interest to award an Economic Development Incentive 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 one-thousand eight hundred and twenty (1,820) hours annualized (inclusive of vacation, holidays, sick leave, disability leave, leave provided pursuant to the Family and Medical Leave Act, and other

paid activities or leave), a Full Time Equivalent Job, and/or a Relocated Employee. Notwithstanding the foregoing, the one-thousand eight hundred and twenty (1,820) hours annualized shall be determined pursuant to the job requirement of the employees, and not the actual number of hours clocked at work. Employees of the COMPANY shall include persons working full-time exclusively for the benefit of the COMPANY, who are hired after the Effective Date of this Agreement by Sugar Cane Growers Cooperative of Florida, an affiliate of the COMPANY, for administrative efficiency, such as payroll and other employee benefits; provided that all expenses of such persons shall be separately allocated to the COMPANY and paid by the COMPANY. 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 or based out of 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 (2) or more part-time employees whose sum total work hours (inclusive of vacation, holidays, sick leave, disability leave, leave provided pursuant to the Family and Medical Leave Act, and other paid activities or leave) equals one-thousand eight hundred and twenty (1,820) hours annualized. Notwithstanding the foregoing, the 1,820 hours annualized shall be determined pursuant to the job requirement of the employees, and not the actual number of hours clocked at work, allowing for vacation.

C. Relocated Employee: Shall mean either an employee in a full time job working a minimum of 1,820 hours annualized (inclusive of vacation, holidays, sick leave, disability leave, leave provided pursuant to the Family and Medical Leave Act, and other paid activities or leave) equals one-thousand eight hundred and twenty), or a Full Time Equivalent Job that is identified on the COMPANY'S payroll or otherwise indirectly paid by COMPANY through an affiliate of COMPANY, 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 1,820 hours annualized (inclusive of vacation and holidays or other leave), or a Full Time Equivalent Job that is identified on the COMPANY'S payroll, or is otherwise indirectly paid by COMPANY through an affiliate of COMPANY, 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. Annualized Average Wage: Actual annual wage, salaries, and other payments for New 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); disability leave or Family Medical Leave Act where required to hold a position; retirement benefits.

- E. **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 the median.

PART III WHOLLY OWNED SUBSIDIARIES

1. **Establishment of Wholly Owned Subsidiaries:** The COMPANY may create or purchase wholly owned subsidiaries, in connection with activities undertaken by the COMPANY pursuant to this Agreement. All wholly owned subsidiaries, thus created or purchased, shall be under the full control of the COMPANY, and the COMPANY shall oblige all such wholly owned subsidiaries to comply with the requirements of this Agreement as provided for herein in the event COMPANY will include any New Jobs of such subsidiary as part of the calculation for New Jobs created to meet its requirements hereunder.
2. **Notification of Wholly Owned Subsidiaries:** The COMPANY shall, within thirty (30) days of its creation or purchase of a wholly owned subsidiary in connection with this Agreement, notify the COUNTY in writing of such wholly owned subsidiaries 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 subsidiaries in the event COMPANY intends to include any New Jobs of such subsidiary as part of the calculation for New Jobs created to meet its requirements hereunder.
3. **Acceptance of Jobs Created by Subsidiaries:** Notwithstanding that COUNTY is allowing COMPANY and the wholly owned subsidiaries of COMPANY to create and maintain said jobs, 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 New Jobs created by COMPANY'S wholly owned subsidiaries. If COUNTY rejects the acceptance of all New Jobs created by a COMPANY's wholly owned subsidiary, joint venture partner, and/or consultant that COUNTY has been notified of, then COUNTY shall provide COMPANY written notice of this rejection within thirty (30) days of receipt of the notice of the COMPANY.

PART IV COMPANY OBLIGATIONS

1. **New Job Creation:** The COMPANY shall create seventy-one (71) New Jobs within five (5) years of March 1, 2017.
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 fifty thousand dollars (\$50,000), excluding healthcare benefits, for each New Job created under this Agreement. The COMPANY shall pay a Median Wage per annum for the New Jobs equal to or greater than forty thousand dollars (\$40,000) excluding healthcare benefits.
4. **Capital Investment:** The COMPANY shall make a minimum Capital Investment of forty million dollars (\$40,000,000), 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 ("Board") and the execution by all parties, and shall be effective on the date set forth on the first

page of this Agreement.

2. **Termination Date:** Unless earlier terminated according to the terms of this Agreement, this Agreement shall terminate sixty-six (66) months after the creation of the seventy first (71st) New Job.

PART VI INCENTIVE AMOUNTS

1. **Ad Valorem Tax Exemption:** The COMPANY has been conceptually approved to receive an Ad Valorem Tax Exemption not to exceed eight-hundred fifty thousand dollars (\$850,000) 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 Chapter 196, Florida Statutes for an Ad Valorem Tax Exemption.

The COMPANY will be required to 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 Ad Valorem Tax Exemption is desired to take effect. This application will be reviewed by the Palm Beach County Property Appraiser ("Property Appraiser") for eligibility as outlined in the County's Ordinance No. 2012-042.

The COMPANY, if eligible, will be granted an Ad Valorem Tax Exemption over (10) years in an amount not to exceed \$850,000 for the assessed value of all qualifying tangible personal property acquired and added improvements to real property excluding land taxes levied by COUNTY, where COUNTY is the taxing authority. The Ad Valorem Tax 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 COMPANY fail to file the annual report on or before March 1st of each year the Ad Valorem Tax 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 COMPANY in Part IV, Section 1 hereof, the Board may adopt an ordinance revoking the Ad Valorem Tax Exemption

The revocation of the Ad Valorem Tax Exemption may occur if the COMPANY fails to fulfill its obligations as provided for under the ordinance granting the COMPANY an Ad Valorem Tax Exemption. The effective date for revocation of the Ad Valorem Tax 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 Palm Beach County Property Appraiser finds that the COMPANY was not entitled to the Ad Valorem Tax Exemption, such taxes may be recovered and the Palm Beach County 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 COMPANY fail to file the annual Ad Valorem Tax Exemption renewal application with the Property Appraiser on or before March 1st of each year the Ad Valorem Tax 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 Ad Valorem Tax Exemption in accordance with Chapter 196.193(3), Florida Statutes, for that year.

**PART VII
ADVERTISING, RECRUITING AND JOB INFORMATION**

1. **Job Advertising**: The COMPANY shall make commercially reasonable efforts to 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 Jobs. 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 make commercially reasonable efforts to coordinate 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
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 with an Annual Job Creation and Maintenance Report, satisfactory to the COUNTY in its 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 New Job created and the date it was created.
 - B. Identify each New 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 Annualized Median Wage for New Jobs that were created.
 - F. Report on the number of Palm Beach County residents hired to date.

- G. Report on the number of employees of Sugar Cane Growers Cooperative of Florida excluding employees exclusively performing work for the COMPANY for the previous year, evidencing that the New Jobs only include employees exclusively performing work for the COMPANY.
 - H. The Annual Job Creation and Maintenance Report shall be submitted to the COUNTY'S Department of Economic Sustainability by March 31st, with the first Annual Job Creation and Maintenance Report due March 31st, 2018.
2. **Final Job Creation and Maintenance Performance Audit:** The COMPANY 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 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 applicable wholly owned subsidiaries 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 as reported pursuant to Part IX (1), and to verify the Annualized Average Wage for these 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 and Median 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 subsidiaries stated immediately above.
 - D. The CPA's Report must provide the Annualized Average Wage **and** the Median Wage for the category below:
 - (1) **All New Jobs:** Identify the Annualized Average Wage **and** Median 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) **New Jobs Only:** Identify the Annualized Average Wage **and** Median Wage of all New Jobs as stated above.
 - E. The accuracy of the number, hire dates and Annualized Average Wage **and** Median Wage of all New Jobs as represented by the COMPANY shall be verified in the Report by the CPA to the COUNTY'S reasonable satisfaction.
 - F. The Audit may be performed in conjunction with other auditing services.
 - G. 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 X
GENERAL CONDITIONS**

1. **Obligation and Annual Appropriation:** N/A
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 Resolution No. R-2014-1421 and the policy detailed above, or has submitted an executed statement affirming that its non-discrimination policy is in conformance with Resolution No. R-2014-1421 and 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, directly or through an affiliate, 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 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 COMPANY shall assign, sublet, convey or transfer its interest in this Agreement without the prior written consent of the other. Neither the COUNTY nor the COMPANY shall unreasonably withhold consent to the assignment, subletting, conveyance, or transfer of its interest in this Agreement. 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 reasonably 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 Ad Valorem Taxes exempted by the COUNTY to the COMPANY.
6. **Name Change:** Within fifteen (15) calendar days of COMPANY changing the name of the COMPANY, the COMPANY shall 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 all or substantially all of COMPANY'S assets for the benefit of creditors, COMPANY'S relocation, but not expansion, of the Project outside of Palm Beach County, the suspension, closing or cessation of operation of the COMPANY'S Project in Palm Beach County, 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 identified in this Agreement.
 - B. Relocating the COMPANY'S Palm Beach County business location as identified in this Agreement to outside Palm Beach County.
 - C. Failure of the COMPANY to create the number of New Jobs as required in this Agreement.
 - D. Failure of the COMPANY to maintain the required number of New Jobs for each job's required maintenance period in this Agreement.
 - E. Failure of the COMPANY to make the capital investments required.
 - F. 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.
 - G. 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.

- H. The making by the COMPANY of any general assignment, or general arrangement for the benefit of creditors.
 - I. 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.
 - J. 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 forty-five (45) days.
 - K. 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 forty-five (45) days.
 - L. The discovery by the COUNTY that any information relating to this Agreement given to the COUNTY was materially false.
13. **Remedies:** In the event of a Default by the COMPANY, the COUNTY may at any time thereafter, terminate this Agreement. In such event, the COUNTY shall be entitled to recover immediately upon demand from the COMPANY or any party joining in or consenting to this Agreement, all taxes exempted by the COUNTY, as applicable, pursuant to this Agreement. Except as set forth in Part X Subpart 12, Subsections I, J, and K, COMPANY 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. 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 COMPANY shall comply with all laws, ordinances and regulations applicable to the services contemplated herein, to include conflict of interest and collusion. The COMPANY is presumed to be familiar with all federal, state and local laws, ordinances, codes and regulations that may 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' notice and at any time during normal business hours and as the COUNTY deems reasonably necessary, there shall be made available by the COMPANY to the COUNTY for examination, its records with respect to all requested matters related covered by this Agreement hereunder. 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 COMPANY. COUNTY shall keep COMPANY'S "Proprietary, Confidential Business Information" and "Trade Secrets" (both as defined in F.S. 288.075 (2016) confidential. Any material submitted to COUNTY by COMPANY that the COMPANY represents, constitutes or contains trade secrets or is otherwise

exempt from production under Florida public records laws ("Trade Secret Materials") must be segregated and conspicuously labeled "EXEMPT FROM PUBLIC RECORD PRODUCT - TRADE SECRET." In the event that a third party submits a request to the COUNTY for records designated by COMPANY as Trade Secret Materials, the COUNTY shall refrain from disclosing the Trade Secret Materials, unless otherwise ordered by a court of competent jurisdiction or authorized in writing by the COMPANY. COMPANY shall indemnify and defend COUNTY and its officers, employees and agents from any and all claims, causes of action, losses, fines, penalties, damages, judgments and liabilities of any kind, including reasonable attorneys' fees, litigation expenses, and court costs, relating to the non-disclosure of any Trade Secret Materials in response to a records request by a third party.

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 COMPANY, and its wholly owned subsidiaries, 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.
20. **Indemnification And Hold Harmless:** The 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 reasonable attorney's fees, and causes of action of every kind and character against the COUNTY which arise out of this Agreement due to COMPANY'S negligent or willful acts or omissions. The 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.
21. **Notices:** All notices from the COMPANY to the COUNTY and the COUNTY to COMPANY 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 COMPANY: Tellus Products, LLC
1500 West Sugar House Road
Belle Glade, FL 33430
Attn: Matthew Hoffman, Manager

With a copy to: Tellus Products, LLC
P.O. Box 666
Belle Glade, FL 33430
Attn: Matthew Hoffman, Manager

With a copy to: Tellus Products, LLC
1500 West Sugar House Road
Belle Glade, FL33430
Attn: Legal Department

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 resident or employees of the COUNTY and/or COMPANY.
23. **Scrutinized Companies (when contract value is greater than \$1 million):** As provided in F.S. 287.135, by entering into this Contract or performing any work in furtherance hereof, the COMPANY certifies that it, its affiliates, suppliers, subcontractors and consultants who will perform hereunder, have not been placed on the Scrutinized Companies With Activities in Sudan List or Scrutinized Companies With Activities in The Iran Petroleum Energy Sector List created pursuant to F.S. 215.473, or on the Scrutinized Companies that Boycott Israel List, or is engaged in a boycott of Israel, pursuant to F.S. 215.4725, or is engaged in business operations in Cuba or Syria.

If the County determines, using credible information available to the public, that a false certification has been submitted by COMPANY, this Contract may be terminated and a civil penalty equal to the greater of \$2 million or twice the amount of this Contract shall be imposed, pursuant to F.S.287.135.

24. **Public Records:** Notwithstanding anything contained herein, as provided under Section 119.0701, F.S., if the COMPANY: (i) provides a service; and (ii) acts on behalf of the County as provided under Section 119.011(2) F.S., the COMPANY shall comply with the requirements of Section 119.0701, Florida Statutes, as it may be amended from time to time the COMPANY is specifically required to:
- A. Keep and maintain public records required by the County to perform services as provided under this Contract.
 - B. Upon request from the County's Custodian of Public Records, provide the County with a copy of the requested records or allow the records to be inspected or copied within a reasonable time at a cost that does not exceed the cost provided in Chapter 119 or as otherwise provided by law. The COMPANY further agrees that all fees, charges and expenses shall be determined in accordance with Palm Beach County PPM CW-F-002, Fees Associated with Public Records Requests, as it may be amended or replaced from time to time.
 - C. Ensure that public records that are exempt, or confidential and exempt from public records disclosure requirements are not disclosed except as authorized by law for the duration of the contract term and following completion of the Contract, if the COMPANY does not transfer the records to the public agency.
 - D. Upon completion of the Contract the COMPANY shall transfer, at no cost to the County, all public records in possession of the Consultant unless notified by County's representative/liaison, on behalf of the County's Custodian of Public Records, to keep and maintain public records required by the County to perform the service. If the COMPANY transfers all public records to the County upon completion of the Contract, the COMPANY shall destroy any duplicate public records that are exempt, or confidential and exempt from public records disclosure requirements. If the COMPANY keeps and maintains public records upon completion of the Contract, the COMPANY shall meet all applicable requirements for retaining public records. All records stored electronically by the COMPANY must be provided to County, upon

request of the County's Custodian of Public Records, in a format that is compatible with the information technology systems of County, at no cost to County.

Failure of the COMPANY to comply with the requirements of this article shall be a material breach of this Contract. County shall have the right to exercise any and all remedies available to it, including but not limited to, the right to terminate for cause. COMPANY acknowledges that it has familiarized itself with the requirements of Chapter 119, F.S., and other requirements of state law applicable to public records not specifically set forth herein.

IF THE COMPANY HAS QUESTIONS REGARDING THE APPLICATION OF CHAPTER 119, FLORIDA STATUTES, TO THE COMPANY'S DUTY TO PROVIDE PUBLIC RECORDS RELATING TO THIS AGREEMENT, PLEASE CONTACT THE CUSTODIAN OF PUBLIC RECORDS AT RECORDS REQUEST, PALM BEACH COUNTY PUBLIC AFFAIRS DEPARTMENT, 301 NORTH OLIVE AVENUE, WEST PALM BEACH, FL 33401, BY E-MAIL AT RECORDSREQUEST@PBCGOV.ORG OR BY TELEPHONE AT (561) 355-6680.

25. **Counterparts:** This Agreement, consisting of fifteen (15) 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.

**PART XI
REQUIREMENTS APPLICABLE TO WHOLLY OWNED AFFILIATES**

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

- A. PART IV: Subparts 1, 2, 3 and 4.
- B. PART VII: Subparts 1, 2, 3, 4, 5, 6 and 7.
- C. PART X: Subparts 2, 3, 4, 6, 7, 15, 18, 19, 20 and 22.

[signatures on following page]

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

Signed, sealed and delivered in the presence of:

Tellus Products, LLC

Witnesses:

Marisela P. Tellechea
Witness Signature

By: [Signature]
Matthew Hoffman, Manager

Marisela P. Tellechea
Print Witness Name

Witnesses:

Zoi R. Lezcano
Witness Signature

Zoi R. Lezcano
Print Witness Name

STATE OF FLORIDA
COUNTY OF PALM BEACH

The foregoing instrument was acknowledged before me this 6th day of June, 2017, by Matthew Hoffman, who is personally known to me, or who produced _____ as identification and who did/did not take an oath.



(NOTARY SEAL ABOVE)

Signature: Sharon L. Roberts

Notary Name: Sharon L. Roberts
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: _____
_____, 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
Sherry Howard,
Deputy Director

EXHIBIT A

**ECONOMIC DEVELOPMENT INCENTIVE GRANT AGREEMENT BETWEEN
PALM BEACH COUNTY AND TELLUS PRODUCTS, LLC**

COMPANY IDENTIFICATION AND INFORMATION

QACF application date: 4/10/2015

Company Name: Tellus Products, LLC

Existing Headquarters: N/A

Address of the company's facility in Palm Beach
County: 1500 West Sugar House Rd.
Belle Glade, FL 33430

Products/services to be provided from the company's facility in Palm Beach County:
The Company will be producing products from an annually renewable agriculture
byproduct.

Business Type: Agriculture

State of Florida Status: Active

State of Florida Filing Date: 11/12/2014

Federal ID Number: 47-2324075

ADD ON REVISED
Agenda Item #: SA3

PALM BEACH COUNTY
BOARD OF COUNTY COMMISSIONERS
AGENDA ITEM SUMMARY

TIMB 6-0
HV abs

Meeting Date: September 22, 2015 [] Consent [X] Regular
[] Ordinance [] Public Hearing

Submitted by: Department of Economic Sustainability

Submitted for: County Administration

APPROVED
BY BOARD OF COUNTY COMMISSIONERS
AT MEETING OF SEP 22 2015
D.C.
MINUTES & RECORDS SECTION

I. EXECUTIVE BRIEF

Motion and Title: Staff recommends motion to conceptually approve: an Economic Development Incentive for Project Tiger in the form of an Ad Valorem Tax Exemption over ten (10) years, in an amount not to exceed \$850,000.

Summary: Project Tiger is considering a site in the unincorporated Glades region of Palm Beach County for the location of its new manufacturing facility that plans to make a \$40 Million capital investment for the construction of a 40,000 sq. ft. plant. The project will create 71 new full-time jobs over a five (5) year period at an average annual wage of \$50,000 excluding executive salaries and benefits. The company will be required to maintain the new jobs for a period of five (5) years from the date each job is created. The State of Louisiana is also competing for this project.

The State has not made a determination on incentives for this project. The incentive recommendation is based on the fact that the project will be located in the Glades region of Palm Beach County where dire economic conditions persist with poverty rates exceeding 30% and unemployment rates exceeding 20% in census tracts (approximately double and quadruple the national averages respectively). The company will be required to enter into a formal agreement approved by the Board of County Commissioners (BCC) memorializing their commitments and establishing criteria for funding distribution. At such time the company name will be disclosed. The five (5) year local economic impact is estimated to be \$162 Million. District 6 (JB)

Background and Justification: The Economic Development Incentive Program continues to provide long term economic growth in Palm Beach County and further diversification of the local economy. The Program is implementing the Board of County Commissioners' policy to attract new business to Palm Beach County, to support expanding business in the County that would otherwise expand elsewhere, and to create employment opportunities for residents of Palm Beach County. The County's Ad Valorem Tax Exemption Program may be used as local participation for the State Qualified Target Industry and Quick Action Closing Fund Programs.

Attachment(s): Letter from Palm Beach County dated September 17, 2015

Recommended By: [Signature] Department Deputy Director Date: 9-16-15

Approved By: [Signature] Assistant County Administrator Date: 9/18/15

II. FISCAL IMPACT ANALYSIS

A. Five Year Summary of Fiscal Impact:

Fiscal Years	2015	2016	2017	2018	2019
Capital Expenditures					
Operating Costs					
External Revenues	\$85,000	\$85,000	\$85,000	\$85,000	\$85,000
Program Income					
In-Kind Match (County)					
NET FISCAL IMPACT	\$85,000	\$85,000	\$85,000	\$85,000	\$85,000


# ADDITIONAL FTE POSITIONS (Cumulative)					
---	--	--	--	--	--

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 the County's Incentive is a ten (10) year Ad Valorem Tax Exemption if approved by the Board of County Commissioners.

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

III. REVIEW COMMENTS

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


 OFMB 5/10/15 9/16/15 9/16/15


 Contract Development and Control

B. Legal Sufficiency:


 Assistant County Attorney

C. Other Department Review:

 Department Director

(THIS SUMMARY IS NOT TO BE USED AS A BASIS FOR PAYMENT)



September 17, 2015

Ms. Kelly Smallridge, President and CEO
Business Development Board of Palm Beach County, Inc.
310 Evernia Street
West Palm Beach, FL 33401

Department of Economic
Sustainability

Dear Ms. Smallridge:

Business Investments

Palm Beach County Administration is very pleased that Project Tiger is considering a site in the unincorporated Glades region of Palm Beach County for the location of its new manufacturing facility. It is our understanding that the project will include a capital investment of \$40 Million, the construction and equipping of a 90,000 sq. ft. plant, and the creation of 71 new jobs over a five (5) year period at an annualized average wage of \$50,000. Based on the limited information received, we estimate that the economic impact of the project would be \$162 Million over five (5) years.

100 Australian Avenue
Suite #500

West Palm Beach, FL 33406

(561) 233-3660

FAX: (561) 656-7553

Additionally, we understand that the State of Florida is currently evaluating other sources of funds to facilitate this project. Based upon these factors, Palm Beach County Administration will recommend to the Board of County Commissioners an incentive in the form of an Ad Valorem Tax Exemption in an amount up to \$850,000 for a period not to exceed ten (10) years. The exemption would be conditioned upon the company being deemed eligible under the County's Economic Development Ad Valorem Tax Exemption Program, as governed by s.196.1995, Florida Statutes.

Palm Beach County
Board of County
Commissioners

Shelley Vana, Mayor

Mary Lou Berger, Vice Mayor

Hal R. Valeche

Paulette Burdick

Steven L. Abrams

Melissa McKinlay

Priscilla A. Taylor

As we are not privy to information we would normally review prior to making a recommendation, we reserve the right to modify or withdraw our recommendation should we become aware of any information that would have affected our decision at the time of our consideration.

I look forward to further discussions on this exciting subject.

Should you have any questions or need any additional information, please do not hesitate to contact me directly at (561) 355-2428.

Best Regards,

County Administrator

Verdenia C. Baker

Shannon R. LaBocque
Shannon R. LaBocque, P.E.
Assistant County Administrator

cc: Verdenia C. Baker, County Administrator
Sherry Howard, Deputy Director, Department of Economic Sustainability

Equal Housing
Opportunity

"An Equal Opportunity
Affirmative Action Employer"

STATE OF FLORIDA, COUNTY OF PALM BEACH
I, SHARON R. BOCK, Clerk of the Board of County Commissioners,
certify this to be a true and correct copy of the original
filed in my office on SEP 22 2015
dated at West Palm Beach, FL on 9/22/15
By: *Sharon R. Bock*
Deputy Clerk