

**FUNDING AGREEMENT**  
*for*  
**ECONOMIC DEVELOPMENT INCENTIVES**

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MANATEE COUNTY, FLORIDA  
PROJECT NAME: BAXTER

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**THIS FUNDING AGREEMENT FOR ECONOMIC DEVELOPMENT INCENTIVES** (“Agreement”) is made and entered into by and between MANATEE COUNTY, a political subdivision of the State of Florida (hereinafter “County”), and Project Baxter (hereinafter “Company”).

**WHEREAS**, Florida Statute 125.045 (the “Act”) provides that the County may expend public funds to attract and retain business enterprises, and the use of public funds toward the achievement of such economic development goals constitutes a public purpose, including expending public funds to make grants to private enterprises for the expansion of businesses existing in the community or the attraction of new businesses to the community; and

**WHEREAS**, pursuant to the Act, the County has established an Economic Development Incentive Grant Program for those businesses that create a minimum of ten (10) quality jobs in targeted industries paying at least 100% of the average annual Manatee County wage, unless Company meets criteria for customized incentive; and

**WHEREAS**, Company has applied for economic development incentives for a project to locate in the County within the meaning of the Act; and

**WHEREAS**, the County’s Board of County Commissioners adopted Resolution R-20-118 on August 11, 2020, a copy of which is attached hereto as Exhibit “A” (the “Resolution”), approving Company (identified therein as “Project Baxter”) (hereinafter, the “Project”) as a locally qualified target industry for economic development incentives; and

**WHEREAS**, the Resolution R-20-118 provides \$50,000 for participation with Company for economic development incentives based on job creation; and

**WHEREAS**, the Resolution R-20-118 provides an estimated \$18,000 for participation with Company for an Inclusive Economic Development Bonus; and

**WHEREAS**, Company is locating a facility for Manatee County and will create twenty-five (25) new jobs in Manatee County paying at least 150% of the average annual wage; and

**WHEREAS**, the Resolution approves and authorizes the execution of a funding agreement

between the County and Company to provide economic development incentives for the Project; and

**WHEREAS**, pursuant to and in accordance with the Act and the Resolution, the County and Company wish to enter into this Agreement to provide economic development incentives for the Project, subject to the terms and conditions set forth herein.

***NOW, THEREFORE, in consideration of the mutual covenants and conditions contained herein, the County and Company agree as follows:***

***Article I***  
**COVENANTS AND OBLIGATIONS**

**1.1 Incorporation.** The recitals set forth above are true and correct and are incorporated herein in their entirety.

**1.2 Business Maintenance and Continuing Performance Condition Requirement.** Pursuant to representations made by Company in its application for economic development incentives, Company shall:

- a. Locate the Facility in Manatee County;
- b. Create 25 permanent full-time new jobs;
- c. Compensate all permanent full-time employees at an average wage of sixty-three thousand four hundred thirty-four Dollars (\$63,434).

**1.3 Information and Reporting.** Pursuant to the Act, Company shall provide the following information:

- a. Company shall submit One (1) original and Two (2) copies of the following by April 30<sup>th</sup> annually in the billing year immediately following previous job creation year as outlined in the schedule below for the duration of the Agreement which will commence on August 11, 2020 and end on December 31, 2026:
  - i. Invoice requesting payment for number of jobs created per the Resolution;
  - ii. W-9 (Request for Taxpayer Identification Number and Certification);
  - iii. Information detailing how County funds paid in the preceding job creation year were spent and detailing the results of the Company's efforts on behalf of the County; and
  - iv. Documentation of net annual employees to include:

- Employee roster showing number of permanent full-time employees on beginning of job creation year with employee identifying number, average annual wage of at least \$63,434 for the duration of the Agreement for Company employees (Total W-2 wages for all listed employees divided by total number of employees; for purposes of calculating the average wage, W-2 wages should be annualized for employees hired after January 1st), and job title.
  - Employee roster showing number of permanent full-time employees on December 31<sup>st</sup> of job creation year with employee identifying number, average annual wage of at least \$63,434 for the duration of the Agreement for Company employees (Total W-2 wages for all listed employees divided by total number of employees; for purposes of calculating the average wage, W-2 wages should be annualized for employees hired after January 1st), and job title, showing new hires.
- b. Company shall prepare and submit all necessary additional information and reports as requested, to assure compliance with the provisions of this Agreement, the Act and any other State law or local regulation.
- c. County shall have the right to obtain and review any information or records pertaining to this Agreement. Company shall make information and records available during a mutually agreed upon time.
- d. Required information and documentation shall be submitted to the County's representative:

Redevelopment & Economic Opportunity Department  
Manatee County Government  
1112 Manatee Av W, 3rd Floor  
Bradenton, FL 34205

**1.4 Public Records.** The Company shall comply with the provisions of Chapter 119, Florida Statutes applicable to this Agreement as the same may be limited or construed by other applicable law. It is expressly understood that County may terminate this Agreement for the Company's refusal to comply with the applicable provisions of Chapter 119, Florida Statutes. In the event that the Company receives a request for a "public record" (as such term is defined in Section 119.011, Florida Statutes) in connection with this Agreement, the Company shall provide notice to County of such request as soon as practicable after the Company's receipt of such request. If the Company submits records to County that are confidential and exempt from public disclosure as trade secrets pursuant to Section 288.075(3), Florida Statutes or proprietary confidential business information pursuant to Section 288.075(4), Florida Statutes, such records shall be marked accordingly by the Company prior to submittal to County. In the event that County's claim of exemption asserted in response to the Company's assertion of confidentiality is challenged in a court of law, the Company shall defend the County against such claim, assume and be

responsible for all fees, costs and expenses in connection with such challenge.

**1.5 Compliance with Program Requirements.** Company shall comply with all requirements of the Act, the Resolution and any policies and procedures enacted by the Board from time to time related to the economic development incentives provided hereunder.

**1.6 Indemnification.** The Company shall indemnify, defend, keep and save harmless, County, its agents, officials and employees, against all claims, liabilities, judgments, costs, attorney’s fees and other expenses incurred in connection with this Agreement, and if any judgment shall be rendered against the County in any action arising out of the performance of this Agreement or those projects undertaken by the Company shall, at its expense, satisfy and discharge same. The indemnity hereunder shall continue until such times as any and all claims arising under this Agreement have been finally settled, regardless of when such claims are made.

**1.7 Authorized Representative.** The Company’s President is designated as the representative authorized to act on behalf of the Company on matters related to this Agreement.

**1.8 Payment of Incentives.** Subject to Company’s performance of its obligations under this Agreement, the County shall pay economic development incentives to Company in accordance with the following provisions:

a. Job creation, billing and payment schedule will be as follows for the duration of this Agreement:

<b>Job Creation Year</b>	<b>Billing Year</b>	<b>Manatee County Payment</b>
08/11/21 – 12/31/21	FY2021-2022	\$ 20,000
01/01/22 – 12/31/22	FY2022-2023	\$ 4,000
01/01/23 – 12/31/23	FY2023-2024	\$ 6,000
01/01/24 – 12/31/24	FY2024-2025	\$ 10,000
01/01/25 – 12/31/25	FY2025-2026	<u>\$ 10,000</u>
		\$ 50,000

b. As the Economic Development Incentive (“EDI”) for the Project, County shall reimburse Company \$2,000 per job created according to the projected schedule set forth above. Net new permanent full-time jobs created shall be maintained for a period of five (5) years. There is no penalty if the maximum number of jobs to be created annually is not met, however Company will only be paid EDI for the actual number of jobs created annually. Company may request a modification to the reimbursement schedule so long as it does not exceed the time period and amount approved in Resolution R-20-118. The request shall be in written form to the Manatee County Redevelopment & Economic Opportunity Department, and shall state specific reasons

for modification request. Approval shall be provided in written form prior to submittal of Company's request for reimbursement. The County Administrator or designee is authorized such modifications to the reimbursement schedule so long as, in the aggregate, the total amount reimbursed for the total number of jobs is consistent with this Agreement. The total amount paid to Company shall not exceed \$50,000 for the period identified above.

- c. The Inclusive Economic Development Bonus incentive is customized per business based on the number of jobs created and the average annual wage and is paid based on performance over a five-year period. Graduates from county-approved Inclusive Economic Development programs are eligible to be connected to the new jobs created. The company may hire up to six (6) employees that are graduates of county-approved Inclusive Economic Development programs. The incentive will pay \$3,000 per employee hired that maintains the position for at least 6 months. The total Inclusive Economic Development Bonus incentive is not to exceed \$18,000.

### **1.5 County Revocation.**

- a. In the event Company fails to satisfy the business maintenance and continuing performance conditions set forth in Section 1.2 of this Agreement or fails to comply with the Act, the County may, upon thirty (30) days written notice to Company, revoke the economic development incentives provided hereunder, or take such other action with respect to the economic development incentives as it deems appropriate.
- b. If it is determined that for any year within the duration of this Agreement, Company was not entitled to receive all or a portion of such economic development incentives, Company shall reimburse the County all such economic development incentives for which it was not eligible, plus annual interest at the maximum rate allowed by law.
- c. This Section shall survive termination of this Agreement.

**1.6 Assignment Estoppel.** The rights and privileges granted pursuant to the Resolution and this Agreement are not assignable or transferable without written consent of the County Administrator or designee.

### **1.7 Binding Effect and Effectiveness; Representations and Warranties.**

- a. Subject to the specific provisions of this Agreement, this Agreement shall be binding upon and inure to the benefit of and be enforceable by the parties and their respective successors, notwithstanding changes in corporate or other governance.
- b. Company represents and warrants to the County that as of the date hereof and throughout the term of this Agreement:
  - i. Company is a for profit corporation, duly organized under the laws of the State of Florida, maintains a place of business within the State of Florida, and is

validly existing and is doing business in the State of Florida as Manufacturing.

- ii. Company has the power and authority to own its properties and assets and to carry on its business as now being conducted and has the power and authority to execute and perform this Agreement.
- iii. This Agreement (a) is the lawful, valid and binding agreement of Company in its corporate name enforceable against Company in accordance with its terms; (b) does not violate any order of any court or other agency of government binding on Company, the charter documents of Company or any provision of any indenture, agreement or other instrument to which Company is a party; and (c) does not conflict with, result in a breach of, or constitute an event of default, or an event which, with notice or lapse of time, or both, would constitute an event of default, under any material indenture, agreement or other instrument to which Company in its corporate name is a party;
- iv. Company has not received written notice of any action having been filed against Company that challenges the validity of this Agreement or Company's right and power to enter into and perform this Agreement; and
- v. The Signatory hereto has the authority to execute this Agreement and to bind Company to the terms and conditions set forth herein.

**1.9 No General Obligation.** Notwithstanding any other provisions of this Agreement, the obligations undertaken by the County under this Agreement shall not be construed to be or constitute general obligations, debts or liabilities of the County, the District or the State of Florida or any political subdivision thereof within the meaning of the Constitution and laws of the State of Florida. Such obligations are subject to the annual budgeting and appropriation of legally available funds by the County's Board of County Commissioners.

*Article II*  
**DURATION AND TERMINATION.**

- 2.1 Effective Date.** This Agreement shall take effect as of its date set forth above.
- 2.2 Termination.** Unless terminated for cause in accordance with Section 2.3, this Agreement shall terminate on December 31, 2026.
- 2.3 Termination for Cause.** This Agreement may be terminated by either party upon thirty (30) days written notice to the other party should either party fail substantially to perform in accordance with the terms of this Agreement.

*Article III*  
**AMENDMENTS; ENFORCEMENT**

- 3.1 Amendments Generally.** This Agreement may be amended, and its material provisions may be waived, only by written instrument expressly approved for the County by the Board

of County Commissioners and for Company by its President, and only if properly executed by all the parties hereto.

- 3.2. Enforcement.** The parties to this Agreement shall have all legal and equitable remedies provided by Florida law for enforcement hereof.

*Article IV*  
**MISCELLANEOUS PROVISIONS**

- 4.1 Validity.** After consultation with their respective legal counsel, the County and Company each represents and warrants to the other its respective authority and power under Florida law to enter into this Agreement, acknowledges the validity and enforceability of this Agreement, and waives any future right of defense based on claim of illegality, invalidity or unenforceability of any nature. The Company and the County each hereby represents, warrants and covenants to and with the other (i) that this Agreement has been validly approved by its respective governing body, and (ii) that this Agreement constitutes a legal, valid and binding contract enforceable against the respective party in accordance with the terms hereof (assuming the due authorization, execution and delivery hereof by the other party hereto).
- 4.2 Force Majeure.** No party shall be liable for any failure to perform, or delay in the performance of, any obligation under this Agreement if such failure is caused directly by hurricane, tornado, fire, earthquake, civil commotion or failure or disruption of utility services, or other like cause beyond the reasonable control of the party obliged to perform.
- 4.3 Ambiguities.** Both parties have been allowed equal input regarding the terms and wording of this Agreement and have had the benefit of consultation with legal counsel prior to its execution, such that all language herein shall be construed equally against the parties, and no language shall be construed strictly against its drafter.
- 4.4 Headings.** The headings or captions of sections or paragraphs used in this Agreement are for convenience of reference only and are not intended to define or limit their contents, nor are they to affect the construction of or to be taken into consideration in interpreting this Agreement.
- 4.5 Severability.** The provisions of this Agreement are declared by the parties to be severable.
- 4.6 Governing Law; Venue.** This Agreement shall be governed by and construed in accordance with laws of the State of Florida. Any action filed regarding this Agreement shall be filed in Manatee County, Florida, or if in Federal Court, the Middle District of Florida, Tampa Division.
- 4.7 Full Agreement.** This Agreement contains the entire agreement of the parties with respect to the matters addressed herein. Previous agreements and understandings of the parties, with respect to such matters are null and void and of no effect

**4.8 Notices.** All notices, elections, requests and other communications hereunder shall be in writing and shall be deemed given in the following circumstances: when personally delivered; or three (3) business days after being deposited in the United States Mail, postage prepaid, certified or registered; or the next business day after being deposited with a recognized overnight mail or courier delivery service; or when transmitted by facsimile or telecopy transmission, with receipt acknowledged upon transmission; and addressed as follows (or to such other person or at such other address, of which any party hereto shall give written notice as provided herein):

If to County:                      Redevelopment & Economic Opportunity Dept.  
Manatee County Administration Center  
1112 Manatee Avenue, 3<sup>rd</sup> Floor  
Bradenton, Florida 34205  
Facsimile: (941)742-5848

With copies to:                      Manatee County Attorney's Office  
1112 Manatee Avenue West, Suite 969  
Bradenton, Florida 34205  
Attention: County Attorney  
Facsimile: (941)749-3089

If to Company:                      \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

In all cases, notices shall be deemed delivered to a party only upon delivery of copies to the persons indicated above in the same manner as for the party being notified. The Company may request a change of address by written notification to the Director of Redevelopment and Economic Opportunity.

*[signature page to follow]*

***WHEREFORE, the County and Company have executed this Agreement as of the date and***

*year first above written.*

**MANATEE COUNTY, FLORIDA,**  
a political subdivision of the State of Florida

By: Board of County Commissioners

By: \_\_\_\_\_  
County Administrator or designee

[COMPANY], a \_\_\_\_\_

By: \_\_\_\_\_

**EXHIBIT "A"**  
**RESOLUTION**

**EXHIBIT "B"**  
**FORM OF INVOICE**