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**JOBS GRANT AGREEMENT BETWEEN INDIAN RIVER COUNTY
AND
DIAMOND DRINKS OF FLORIDA, INC.**

THIS INDIAN RIVER COUNTY JOBS GRANT AGREEMENT (“Agreement”) is made as of the 30th day of March, 2021 (the “Effective Date”) by and between Indian River County, a political subdivision of the State of Florida, by and through its Board of Commissioners, hereinafter referred to as COUNTY, and Diamond Drinks of Florida, Inc, a company authorized to do business in the State of Florida, hereinafter referred to as COMPANY.

BACKGROUND RECITALS:

WHEREAS, it is the policy of COUNTY to stimulate economic growth in COUNTY by either attracting new businesses to COUNTY or by encouraging the expansion of existing businesses within COUNTY; and

WHEREAS, the creation of new employment opportunities for residents of COUNTY and the increased tax revenues resulting from such business expansions or relocations within COUNTY is beneficial to the local economy; and

WHEREAS, COUNTY has determined that offering a Jobs Grant Program encourages businesses to expand within or new businesses to locate in COUNTY and thereby creates new employment opportunities for the residents of COUNTY; and

WHEREAS, COUNTY, through its Board of County Commissioners, has created a local Jobs Grant Program; and

WHEREAS, COMPANY currently has 0 full time employees employed within Indian River County, and

WHEREAS, COMPANY, in accordance with the COUNTY’s Jobs Grant Program criteria, is a New Business that will expand its business in COUNTY to create 50 additional full-time jobs which pay at least 75% of COUNTY’s average annual wage level; and

WHEREAS, COUNTY has determined that COMPANY is eligible to receive a Jobs Grant; and

WHEREAS, COMPANY acknowledges that this Agreement shall be based upon compliance with COUNTY Jobs Grant Program requirements; and,

WHEREAS, COUNTY finds and declares that it is in the public interest to award a Jobs Grant to COMPANY pursuant to the terms of this Agreement.

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

1. Definitions. As used in this Agreement, the following terms shall mean:
 - a. “Adjacent Counties” means Brevard, Osceola, St. Lucie, Okeechobee, and Martin Counties.
 - b. “Annual Wage” - includes salary, bonuses, and commissions.
 - c. "Default" - failure to comply with the terms of this Agreement.
 - d. "Expanding Business" – shall be defined as a business expanding its operation over and above its base employment amount at the time of jobs grant approval by 5 or more new jobs to employ 5 or more new full-time employees in the COUNTY within the term of the Grant.
 - e. “Full-time Equivalent Job” - shall be defined as a position that is scheduled for at least 35 hours per week.
 - f. “Indian River County Average Annual Wage” – shall be defined as the average annual wage per job in COUNTY as determined by Florida Agency for Workforce Innovation, Labor Market Statistics Center, Quarterly Census of Employment and Wages Program, in cooperation with the U.S. Department of Labor, Bureau of Labor Statistics. Currently, the COUNTY’s average annual wage is \$43,178 (effective January 1st 2019 for the state QTI Tax Refund Program). This dollar value shall be used for the duration of this Agreement for determining local jobs grant incentives.
 - g. "New Business" – shall be defined as a business establishing 5 or more new jobs to employ 5 or more new full-time employees in the COUNTY within the term of the Grant (as such term is hereinafter defined), provided that such business first begins operations on a site in the COUNTY clearly separate from any other operation owned by the same business.
 - h. Commencement Date” – the date that the COUNTY begins tracking qualifying jobs for potential local jobs grant payments. Such date shall start on one of the following dates: January 1st, April 1st, July 1st, or October 1st of a year agreed to by COUNTY as established within this Agreement or as otherwise modified in accordance with this Agreement.
 - i. “Qualifying job” – a full-time equivalent job having an annual wage equal to or greater than 75% of Indian River County’s Average Annual Wage. Such jobs must be filled by people who live in COUNTY or Adjacent Counties.

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- j. “Quarterly Reemployment Compensation Report (RT-6 form)” – Form from the Florida Department of Revenue that businesses in the state of Florida must complete and submit to the state on a quarterly basis. Information collected on the form includes the names of employees, their social security numbers, and the gross wages paid to each employee on a quarterly basis. The information is used for reemployment compensation should employees cease to be employed. For purposes of this Agreement, this definition shall also include other similar COUNTY approved certified forms from COMPANY or COMPANY’s professional employer organization.
 - k. “Relocation of a business” – a business relocating to COUNTY and employing 5 or more full-time employees in the COUNTY.
 - l. “Target Industry” – An industry identified within the Target Industry List of the Economic Development Element of COUNTY’s Comprehensive Plan (Policy 2.5 of the Economic Development Element).
2. Term; Termination. This Agreement shall be effective as of the date of this Agreement stated on page 1 and shall automatically terminate after one of the following has occurred (whichever occurs first), unless terminated earlier by COUNTY because of a Default by COMPANY.
- a. COUNTY has made the last payment to COMPANY;
 - b. COMPANY did not employ a minimum of 5 new Qualifying Jobs by the Commencement Date, as may be modified; or
 - c. COMPANY failed, for a period of 3 consecutive years (12 quarters), to provide required Quarterly Reemployment Compensation Reports (RT-6 form) to COUNTY.
3. Grant Eligibility; Payment Schedule.
- a. COMPANY will be eligible for total Jobs Grant Funding (hereinafter a "Grant") in an amount of up to **\$150,000**. COMPANY acknowledges and agrees that the initial Grant under this Agreement is payable on a re-imbusement basis. The number of jobs estimated to be provided is listed below. Jobs grant payments are dependent upon the number of employees exceeding the company’s employment level at the time that this Agreement is approved by the Indian River County Board of County Commissioners, and by the criteria set forth below.
 - (i) For Phase I, 10 new qualifying jobs meeting the wage level commitment in Section 5 of this Agreement shall be provided by the phase

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commencement date 4/01/21. For each of the three successive annual periods that those jobs are maintained at the required wage level, COMPANY shall receive 1/3 of the Grant amount for those 10 jobs.

(ii) For Phase II, 15 new qualifying jobs meeting the wage level commitment in Section 5 of this agreement shall be provided by the phase commencement date 4/01/22. For each of the three successive annual periods that those jobs are maintained at the required wage level, COMPANY shall receive 1/3 of the Grant amount for those 15 jobs.

(iii) For Phase III, 25 new qualifying jobs meeting the wage level commitment in Section 5 of this agreement shall be provided by the phase commencement date 4/01/23. For each of the three successive annual periods that those jobs are maintained at the required wage level, COMPANY shall receive 1/3 of the Grant amount for those 25 jobs.

(iv) It is understood that the quantity of jobs proposed above, their annual wages, and dates of hire are estimates. Because of that, the quantity of jobs provided may be less than 50, and the Commencement Date (for Grant tracking) may be extended. Proposed jobs will remain eligible for Grant incentives provided:

- a. The minimum number of qualifying jobs provided in Phase I is 5.
- b. The maximum number of jobs eligible for local jobs grant funds for Phases I, II, and III is 50.
- c. The maximum extension for a phase commencement date shall be one year. Such commencement date extension may be approved administratively by the County Community Development Director or his designee provided the extension date meets the requirements of Section 3 of this agreement. If any of the 50 eligible jobs proposed for Phases I, II, and III are created after the Phase III commencement date or, if applicable, after an administratively approved extension to the Phase III commencement date, those jobs shall not be eligible for local jobs grant funds.

In no case shall the total Grant exceed **\$150,000**.

(v) Failure of COMPANY to maintain claimed jobs for at least 3 years at required wage levels will result in the reduction of the Grant amount paid to COMPANY, as set forth herein. If, by the end of any of the annual periods, COMPANY has not maintained the total number of claimed jobs

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required or if COMPANY has provided the total jobs required, but the annual wage for any of those jobs is less than required for that year, the Community Development Department Director, or his designee, will lower the jobs grant award for the respective year by the amount allocated in such year for each job for which the requirements of this agreement are not met. Thus, the total jobs grant award could be less than **\$150,000** by the end of this Agreement.

(vi) If COMPANY changes the products or services it provides in such a way that would make COMPANY no longer qualify as a “Target Industry” or if COMPANY relocates outside of Indian River County, COMPANY shall be in Default of this Agreement. COMPANY shall reimburse COUNTY for payments made to COMPANY while COMPANY was not a “Target Industry or if while COMPANY was not relocated within Indian River County.”

(vii) During the Term of this Agreement, COMPANY shall have a majority (greater than 50%) of its goods and services, attributable to the Indian River County location, sold or distributed outside of Indian River County. COMPANY shall reimburse COUNTY for payments made to COMPANY while COMPANY did not meet this requirement.

- b. Performance Evaluation for Payment. Prior to the submittal of COMPANY’s 1st Quarterly Reemployment Compensation Report COMPANY shall provide to the COUNTY Community Development Director, or his designee, an employee census and a copy of the Quarterly Reemployment Compensation Report for the Effective Date of this Agreement. That employee census must list employee name, job title, city and state in which the employee lives, annual salary, location where employee works, and date of hire.

COMPANY’s performance evaluation will be conducted on an annual basis using the information provided on the Quarterly Reemployment Compensation Report (RT-6 form) and COMPANY’s quarterly updates to its employee census. Each updated employee census must include the information referenced above plus the date of termination for each employee (if the employee terminates employment with the COMPANY). COMPANY shall supply additional documentation to the Community Development Director, or his designee, in a form acceptable to the Community Development Director, or his designee, showing that positions for which Grant funds will be awarded are filled by people who live in COUNTY or Adjacent Counties.

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The Grant eligibility determinations will cover one year periods, with each yearly period beginning and ending as follows:

Phase	Grant Eligibility Determinations					
	1 st		2 nd		3 rd (final)	
	Begin	End	Begin	End	Begin	End
I	4/01/2021	3/31/2022	4/01/2022	3/31/2023	4/01/2023	3/31/2024
II	4/01/2022	3/31/2023	4/01/2023	3/31/2024	4/01/2024	3/31/2025
III	4/01/2023	3/31/2024	4/01/2024	3/31/2025	4/01/2025	3/31/2026

(i) Each job must meet the minimum wage requirements specified in this Agreement. Payment of Grant funds shall be made based on the County’s current adopted payment calculation methodology (methodology approved by the BCC on 10-24-2017) within forty-five (45) days after the date COMPANY submits the latest Quarterly Reemployment Compensation Report comprising the Annual Job Status Report (as defined in Paragraph 6), and this payment obligation shall survive the termination of this Agreement. Notwithstanding the foregoing, should the date for filing the last Quarterly Reemployment Compensation Report, as described above, not coincide with the date that an eligibility determination is made, COMPANY shall have the right to file a Quarterly Reemployment Compensation Report, in a form substantially similar to a Quarterly Reemployment Compensation Report, and such Quarterly Reemployment Compensation Report shall constitute the Annual Job Status Report, the filing of which shall begin the running of the forty-five (45)-day period within which payment shall be made.

If COMPANY applies for a Qualified Target Industry (QTI) Tax Refund from the State of Florida and if COMPANY has that QTI Tax Refund approved by the State, the Community Development Director or his designee will reduce the Grant amount paid directly to COMPANY for each eligibility determination in an amount sufficient to cover COUNTY’s QTI Tax Refund 20% contribution obligation to the State for COMPANY’s QTI Tax Refund agreement. The Community Development Director or his designee will submit the 20% payment obligation to the State for placement in the Florida Economic Development Trust Fund.

(ii) If at the time of performance evaluation for payment as described in subsection 3.b COMPANY is not current on COUNTY Real Estate and Tangible Personal Property Taxes, COUNTY shall withhold Grant payments for that eligibility determination time period and COMPANY shall automatically forfeit its right to collect Grant payments for that eligibility time period. COMPANY shall remain eligible for any

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remaining future Grant payments for future eligibility time periods provided COMPANY is current on such taxes referenced above at the time of future Grant eligibility determination time periods.

- 4. Job Creation Commitment. COMPANY estimates that it will provide 50 new Qualifying Jobs within COUNTY as set forth in Exhibit “B”, which is attached hereto and made a part hereof. The exact number of jobs actually supplied and their salaries, however, may vary. Grant funds will be awarded up to a maximum of **\$150,000**. The Grant award will be based on the following:

Category*	Amount Per Job
75% to 99.99% of Indian River County Average Annual Wage	\$3,000
100% to 149.99% of Indian River County Average Annual Wage	\$5,000
150% of Indian River County Average Annual Wage (or greater)	\$7,000

*One average annual wage category will be utilized consistent with Exhibit “D” and the County’s current adopted payment calculation methodology.

- 5. Wage Level Commitment. COMPANY estimates that it will pay 48 employees whose jobs are eligible for a Grant hereunder an annual wage of not less than \$32,383.50, will pay 1 employee an annual wage of not less than \$43,178.00, and will pay 1 employee an annual wage of not less than \$64,767.00. The annual wage of the positions will be determined without taking into account the value of any benefits. COMPANY shall, in accordance with the provisions of paragraph 6 below, provide written verification of such wages satisfactory to the Community Development Director or his designee.
- 6. Annual Job Status. COMPANY must provide the Community Development Director or his designee with Quarterly Reemployment Compensation Reports (Form RT-6) of its business operations within COUNTY on State form RT-6, as amended, a sample of which is attached hereto and made a part hereof as Exhibit “C”. COMPANY must also provide the Community Development Director or his designee with quarterly updates to its employee census for employees working at its Indian River County location(s) (see section 3.b. of this Agreement). The cumulative Quarterly Reemployment Compensation Reports required to be filed for the annual period, correlated with each eligibility determination and the corresponding quarterly employee census shall collectively comprise the Annual Job Status Report. Quarterly, COMPANY must also provide the Community Development Director or his designee a signed statement indicating the percent of

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its total sales/services from the Indian River County location provided outside of Indian River County for the jobs grant payment time period.

Starting with calendar quarter 1 in 2021, quarterly reports must be submitted for Grant eligibility determination. Those quarterly reports must be submitted no later than 60 days after the end of each quarter, until the termination of this Agreement. Submittal deadline may be waived by the Community Development Director, for good cause.

7. Default; Termination. Except as set forth herein, in the event that COMPANY defaults in the performance of its guarantees and commitments as provided for in this Agreement, COUNTY may, at its option, terminate this Agreement.
8. Indemnification. COMPANY shall indemnify and hold harmless and defend COUNTY, its agents, servants, and employees from and against any and all claims, liabilities, losses, and/or causes of action which may arise from any negligent act or omission of COMPANY, its agents, servants, or employees in the performance of services under this Agreement.
9. Forum; Venue. This Agreement shall be governed by the laws of the State of Florida. Any and all legal action necessary to enforce the Agreement will be held in Indian River County or the Federal District Court for the Southern District of Florida. 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 by 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. Parties hereby waive their right for a jury trial.
10. Lobbyist Certification. COMPANY warrants that it has not employed or retained any company or person, other than a bona fide employee working solely for COMPANY, to solicit or secure this Agreement and that it has not paid or agreed to pay any person, company, corporation, individual, or firm, other than a bona fide employee working solely for COMPANY, any fee, commission, percentage, gift, or any other consideration contingent upon or resulting from the award or making of this Agreement.
11. No Discrimination Certification. COMPANY warrants and represents that all of its employees are treated equally during employment without regard to race, color, religion, disability, sex, age, national origin, ancestry, marital status, or sexual orientation.

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12. Attorneys Fees. If any legal action or other proceeding is brought for the enforcement of this Agreement, or because of an alleged dispute, breach, default or misrepresentation in connection with any provisions of this Agreement, each party shall bear its own costs.
13. Enforceability. 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. The COMPANY's failure to maintain its job creation commitment or annual wage level commitment for any one year will result in the decrease of the Grant amount it was scheduled to receive for that year; however, such decrease will not preclude the COMPANY's receipt of scheduled Grant amounts for those subsequent years in which it is able to maintain its job creation and wage level commitment.
14. Assignment. COMPANY shall not, directly or indirectly, assign or transfer any of its rights or obligations under this Agreement, or any interest therein (the foregoing herein collectively "Transfer"), without the express prior written consent of the Community Development Director. The Community Development Director shall not unreasonably withhold its consent to any Transfer. Any such attempted Transfer without the express prior written Community Development Director consent shall be null and void and may, at the option of the County Community Development Director, be deemed a Default under this Agreement. COMPANY acknowledges and agrees that the Community Development Director has the right, in granting or withholding consent to any Transfer, to consider, among other things, the financial responsibility and business reputation of the proposed assignee or transferee (the foregoing herein collectively "Transferee"); and any other items that the COUNTY Community Development Director, in his sole discretion, deems appropriate.

If COMPANY seeks the Community Development Director's consent for a Transfer, COMPANY shall submit to the Community Development Director a written request therefore, accompanied by the following documentation: (i) the name, address, and telephone number of the proposed Transferee; (ii) a description of the business and jobs, including wages, to be created in COUNTY; and (iii) a financial statement or other reasonably detailed financial information concerning the proposed Transferee. If the Community Development Director withholds the consent to Transfer, COMPANY may appeal to the County Administrator. If the County Administrator withholds the consent to Transfer, COMPANY may appeal to the Board of County Commissioners. COMPANY acknowledges and agrees that: (a) the County Administrator or his designee, or the Indian River County Board of County Commissioners, has the right to request any additional information deemed necessary to make the decision relating to consent to the

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Transfer; and (b) if appealed to the Board of County Commissioners such request for a Transfer is expressly subject to the approval of the Transfer by the Board of County Commissioners, and such Transfer shall become effective only when signed by the Transferee and approved by the Board, which consent shall not be unreasonably withheld.

The foregoing covenant shall be binding on the permitted successors or assigns of COMPANY. The prohibition on Transfers shall not prohibit a change in the form in which COMPANY conducts business. COMPANY will be released from further liability under this Agreement in the event of an approved Transfer; provided that the COUNTY's consent to any Transfer will not otherwise relieve COMPANY from any pre-existing obligation to COUNTY under this Agreement.

15. Conflict of Interest. COMPANY represents that it presently has no interest and shall acquire no interest, either direct or indirect, which would conflict in any manner with the performance of services required hereunder, as provided for in Florida Statutes Part III, Chapter 112. COMPANY further represents that no person having any interest shall be employed for said performance.
16. Notices. All notices required in this Agreement shall be sent by certified mail, return receipt requested and if sent to COUNTY shall be mailed to:

Community Development Director
Indian River County
1801 27th Street
Vero Beach, Florida 32960

and if sent to COMPANY shall be mailed to (or current, official address):

7355 9th Street SW
Vero Beach FL 32968

17. Entire Agreement. COUNTY and 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.
18. No Pledge of Credit. COMPANY shall not pledge COUNTY's credit or make it a guarantor of payment or surety for any contract, debt, obligation, judgment, lien, or any form of indebtedness.
19. Public Records. COMPANY shall comply with the provisions of Chapter 119, Florida Statutes (Public Records Law) in connection with this Agreement, as modified by exemptions in Chapter 288, Florida Statutes.

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- 20. Counterparts. This Agreement may be executed in one or more counterparts, each of which shall be deemed to be an original copy and all of which shall constitute but one and the same instrument.
- 21. General. The Background Recitals are true and correct and form a material part of this Agreement.

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

**BOARD OF COUNTY COMMISSIONERS
OF INDIAN RIVER COUNTY**

BY: _____
Joseph E. Flescher, Chairman

ATTEST BY: Jeffrey R. Smith, Clerk of Court and Comptroller

By: _____
Deputy Clerk

APPROVED:

Jason E. Brown, County Administrator

APPROVED AS TO FORM AND LEGAL SUFFICIENCY

Dylan Reingold, County Attorney

COMPANY:

BY: _____ **Title:** _____

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Typed Name

WITNESS:

Signature

Title: _____

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**EXHIBIT "A" TO THE JOBS GRANT AGREEMENT
BETWEEN INDIAN RIVER COUNTY & DIAMOND DRINKS OF FLORIDA,
INC**

COMPANY Identification and Information:

Application received date: February 23, 2021.

COMPANY description:

DIAMOND DRINKS OF FLORIDA, INC. is a new manufacturer in the County that will manufacture plastic bottles and fruit flavored juices.

COMPANY'S current mailing address:

7355 9th Street SW
Vero Beach FL 32968

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**EXHIBIT "B" TO THE JOBS GRANT AGREEMENT
BETWEEN INDIAN RIVER COUNTY & DIAMOND DRINKS OF FLORIDA, INC**

I. Target Industry Categories eligible for application:

COMPANY qualifies for the Jobs Grant Program under the “Manufacturing/Warehouse/Distribution” category. Under the North American Industrial Classification System (NAICS), COMPANY’s activities are classified in the category of “Beverage Manufacturing”, NAICS Code #3121.

II. Employment Commitment:

The COMPANY is receiving this Grant based upon its representation that it will bring the following employment opportunities to COUNTY:

- 1) 48 # of new, full-time employees whose annual wages are between 75% and 99.9% of Indian River County's average annual wage.
- 2) 1 # of new, full-time employees whose annual wages are between 100% and 149.99% of Indian River County’s average annual wage
- 3) 1 # of new, full-time employees whose annual wages are 150% or greater of Indian River County’s average annual wage

III. Maximum Potential Grant Amount

Category	Qualified Jobs	Amount per Job	Total
Average Annual Wage of all qualified jobs projected to be between 75% and 100% of COUNTY average wage	50	\$3,000	\$150,000

*The actual amount of the grant will depend upon the actual number of jobs provided and the salary paid for those jobs. In no case shall the total amount of the grant exceed \$150,000. As noted in the agreement, incremental payments will be made for qualified jobs based upon phase dates and actual company performance in meeting local jobs grant requirements.

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