



**II. FISCAL IMPACT ANALYSIS**

**A. Five Year Summary of Fiscal Impact:**

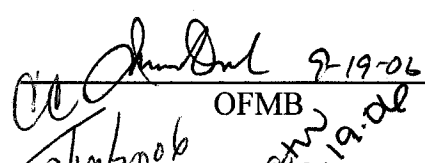
Fiscal Years	2007	2008	2009	2010
Capital Expenditures				
Operating Costs	\$94,000			
External Revenues				
Program Income (County)				
In-Kind March (County)				
Net Fiscal Impact	\$94,000			
# Additional FTE				

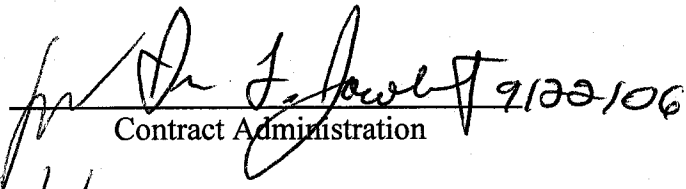
Is Item Included in Current Budget?	Yes <u>X</u>	No _____		
Budget Account No.:	Fund <u>001</u>	Agency <u>768</u>	Org <u>7658</u>	Object <u>3401</u>
Reporting Category				

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

**III. REVIEW COMMENTS**

**A. OFMB Fiscal and/or Contract Administration Comments:**

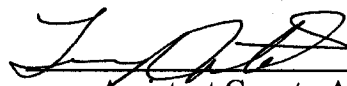

  
 OFMB  
 9/19/06  
 9-19-06


  
 Contract Administration  
 9/21/06

**B. Legal Sufficiency:**

This Contract complies with our contract review requirements.

This Contract complies with our Contract review requirements. OSBA is obtaining an update Certificate of Insurance for Worker's Compensation. ↑


  
 Assistant County Attorney

**C. Other Department Review:**


  
 Department Director

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

10/01/2006

## **CONTRACT FOR CONSULTING/PROFESSIONAL SERVICES**

This Contract is made as of the first day of October, 2006 by and between **Palm Beach County**, a Political Subdivision of the State of Florida, by and through its Board of Commissioners, hereinafter referred to as the **COUNTY**, and Florida Atlantic University Board of Trustees, a corporation for the benefit of the University's **Small Business Development Center**, hereinafter referred to as the **CONSULTANT**, whose Federal I.D. number is **07007140360**.

In consideration of the mutual promises contained herein, the **COUNTY** and the **CONSULTANT** agree as follows:

### **ARTICLE 1 - SERVICES**

The **CONSULTANT**'s responsibility under this Contract is to provide professional/consultation services in the area of training, procurement, financial and management assistance to prospective and existing small business owners/operators throughout Palm Beach County, as more specifically set forth in the Scope of Work detailed in **Exhibit "A"**.

The **COUNTY** representative/liaison during the performance of this Contract shall be Hazel Oxendine, Director, Office Of Small Business Assistance, 50 Military Trail, Suite 209, West Palm Beach, Fl 33415, Telephone no. 561-616-6840.

The **CONSULTANT**'s representative/liaison during the performance of this Contract shall be Nancy Young, Director, Small Business Development Center 777 Glades Road, Bldg, Boca Raton, Fl 33431, and telephone no. 561- 297-1149.

### **ARTICLE 2 - SCHEDULE**

The **CONSULTANT** shall commence services on October 1, 2006 and complete all services by September 30, 2007.

Reports and other items shall be delivered or completed in accordance with the detailed schedule set forth in Exhibit "A".

### **ARTICLE 3 - PAYMENTS TO CONSULTANT**

- A. The total amount to be paid by the **COUNTY** under this Contract for all services and materials including, if applicable, "out of pocket" expenses (specified in paragraph C below) shall not exceed a total contract amount of Ninety-Four Thousand Dollars (\$94,000). The **CONSULTANT** shall notify the **COUNTY**'s representative in writing when 90% of the "not to exceed amount" has been reached. The **CONSULTANT** will bill the **COUNTY** on a quarterly basis, or as otherwise provided, at the amounts set forth in **Exhibit "B"** for services rendered toward the completion of the Scope of Work.

Where incremental billings for partially completed items are permitted, the total billings shall not exceed the estimated percentage of completion as of the billing date.

- B. Invoices received from the CONSULTANT pursuant to this Contract will be reviewed and approved by the COUNTY's representative, to verify that services have been rendered in conformity with the Contract. Approved invoices will then be sent to the Finance Department for payment. Invoices will normally be paid within thirty (30) days following the COUNTY representative's approval.
- C. "Out-of-pocket" expenses will not be reimbursed under this contract.
- D. Final Invoice: In order for both parties herein to close their books and records, the CONSULTANT will clearly state "**Final Invoice**" on the CONSULTANT's final/last billing to the COUNTY. This shall constitute CONSULTANT's certification that all services have been properly performed and all charges and costs have been invoiced to Palm Beach County. Any other charges not properly included on this final invoice are waived by the CONSULTANT.

#### **ARTICLE 4 - TRUTH-IN-NEGOTIATION CERTIFICATE**

Signature of this Contract by the CONSULTANT shall also act as the execution of a truth-in-negotiation certificate certifying that the wage rates, over-head charges, and other costs used to determine the compensation provided for in this Contract are accurate, complete and current as of the date of the Contract and no higher than those charged the CONSULTANT's most favored customer for the same or substantially similar service.

The said rates and costs shall be adjusted to exclude any significant sums should the COUNTY determine that the rates and costs were increased due to inaccurate, incomplete or noncurrent wage rates or due to inaccurate representations of fees paid to outside consultants. The COUNTY shall exercise its rights under this Article 4 within three (3) years following final payment.

#### **ARTICLE 5 - TERMINATION**

This Contract may be terminated by the CONSULTANT upon thirty (30) days prior written notice to the COUNTY's representative in the event of substantial failure by the COUNTY to perform in accordance with the terms of this Contract through no fault of the CONSULTANT. It may also be terminated, in whole or in part, by the COUNTY, with or without cause, immediately upon written notice to the CONSULTANT. Unless the CONSULTANT is in breach of this Contract, the CONSULTANT shall be paid for services rendered to the COUNTY'S satisfaction through the date of termination. After receipt of a Termination Notice and except as otherwise directed by the COUNTY the CONSULTANT shall:

- A. Stop work on the date and to the extent specified.

- B. Terminate and settle all orders and subcontracts relating to the performance of the terminated work.
- C. Transfer all work in process, completed work, and other materials related to the terminated work to the COUNTY.
- D. Continue and complete all parts of the work that have not been terminated.

#### **ARTICLE 6 - PERSONNEL**

The CONSULTANT represents that it has, or will secure at its own expense, all necessary personnel required to perform the services under this Contract. Such personnel shall not be employees of or have any contractual relationship with the COUNTY.

All of the services required herein shall be performed by the CONSULTANT or under its supervision, and all personnel engaged in performing the services shall be fully qualified and, if required, authorized or permitted under state and local law to perform such services.

Any changes or substitutions in the CONSULTANT's key personnel, as may be listed in **Exhibit "A,"** must be made known to the COUNTY's representative and written approval must be granted by the COUNTY's representative before said change or substitution can become effective.

The CONSULTANT warrants that all services shall be performed by skilled and competent personnel to the highest professional standards in the field.

All of the CONSULTANT's personnel (and all Subcontractors) while on County premises will comply with all COUNTY requirements governing conduct, safety and security.

#### **ARTICLE 7 - 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 CONSULTANT is encouraged to seek additional small business enterprises for participation in subcontracting opportunities. If the CONSULTANT 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 CONSULTANT 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 CONSULTANT 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 CONSULTANT 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 CONSULTANT shall provide the COUNTY with a copy of the CONSULTANT's contract with any SBE subcontractor or any other related documentation upon request.

The CONSULTANT 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 CONSULTANT 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 CONSULTANT 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 CONSULTANT agrees to maintain all relevant records and information necessary to document compliance pursuant to Palm Beach County Code, Sections 2-80.21 through 2-80.34 and any revisions thereto, and will allow the COUNTY to inspect such records.

#### **ARTICLE 8 - FEDERAL AND STATE TAX**

The COUNTY is exempt from payment of Florida State Sales and Use Taxes. The COUNTY will sign an exemption certificate submitted by the CONSULTANT. The CONSULTANT shall not be exempted from paying sales tax to its suppliers for materials used to fulfill contractual obligations with the COUNTY unless the consultant itself qualifies, nor is the CONSULTANT authorized to use the COUNTY's Tax Exemption Number in securing such materials.

The CONSULTANT shall be responsible for payment of its own and its share of its employees' payroll, payroll taxes, and benefits with respect to this contract.

#### **ARTICLE 9 - AVAILABILITY OF FUNDS**

The COUNTY's performance and obligation to pay under this contract for subsequent fiscal year's is contingent upon annual appropriations for its purpose by the Board of County Commissioners.

## **ARTICLE 10 - INSURANCE**

- A. Without waiving the right to sovereign immunity as provided by §.768.28 *f.s.*, CONSULTANT acknowledges to be self-insured for General Liability under Florida sovereign immunity statutes with coverage limits of \$100,000 Per Person and \$200,000 Per Occurrence; or such monetary waiver limits that may change and be set forth by the legislature.

In the event CONSULTANT maintains third party Commercial General Liability in lieu of exclusive reliance of self-insurance under §.768.28 *f.s.*, CONSULTANT shall agree to maintain said insurance policies at limits not less than \$500,000 combined single limit for bodily injury or property damage.

CONSULTANT agrees to maintain, or be self-insured for, Worker's Compensation & Employer's Liability insurance in accordance with Florida Statute 440.

When required, CONSULTANT shall agree to provide an affidavit or Certificate of Insurance evidencing insurance, self-insurance and/or sovereign immunity status, which COUNTY agrees to recognize as acceptable for the above-mentioned coverages.

## **ARTICLE 11 - INDEMNIFICATION**

To the extent provided by law, CONSULTANT shall protect, defend, reimburse, indemnify and hold COUNTY, its agents, employees and elected officers harmless from and against all claims, liability, expense, loss, cost, damages or causes of action of every kind or character, including attorney's fees and costs, whether at trial or appellate levels or otherwise, arising during and as a result of their performance of the terms of this Contract or due to the acts or omissions of CONSULTANT. Nothing in this paragraph shall be deemed a waiver of sovereign immunity by CONSULTANT.

## **ARTICLE 12 - SUCCESSORS AND ASSIGNS**

The COUNTY and the CONSULTANT each binds itself and its partners, successors, executors, administrators and assigns to the other party and to the partners, successors, executors, administrators and assigns of such other party, in respect to all covenants of this Contract. Except as above, neither the COUNTY nor the CONSULTANT shall assign, sublet, convey or transfer its interest in this Contract without the prior written consent of the other. Nothing herein shall be construed as creating any personal liability on the part of any officer or agent of the COUNTY, nor shall it be construed as giving any rights or benefits hereunder to anyone other than the COUNTY and the CONSULTANT.

## **ARTICLE 13 - REMEDIES**

This Contract shall be governed by the laws of the State of Florida. Any legal action necessary to enforce the Contract will 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, by statute or otherwise. No single or partial exercise by any party of any right, power, or remedy hereunder shall preclude any other of further exercise thereof.

#### **ARTICLE 14 - CONFLICT OF INTEREST**

The CONSULTANT 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 Chapter 112, Part III, Florida Statutes. The CONSULTANT further represents that no person having any such conflict of interest shall be employed for said performance of services.

The CONSULTANT shall promptly notify the COUNTY's representative, in writing, by certified mail, of all potential conflicts of interest of any prospective business association, interest or other circumstance which may influence or appear to influence the CONSULTANT's judgment or quality of services being provided hereunder. Such written notification shall identify the prospective business association, interest or circumstance, the nature of work that the CONSULTANT may undertake and request an opinion of the COUNTY as to whether the association, interest or circumstance would, in the opinion of the COUNTY, constitute a conflict of interest if entered into by the CONSULTANT. The COUNTY agrees to notify the CONSULTANT of its opinion by certified mail within thirty (30) days of receipt of notification by the CONSULTANT. If, in the opinion of the COUNTY, the prospective business association, interest or circumstance would not constitute a conflict of interest by the CONSULTANT, the COUNTY shall so state in the notification and the CONSULTANT shall, at its option, enter into said association, interest or circumstance and it shall be deemed not in conflict of interest with respect to services provided to the COUNTY by the CONSULTANT under the terms of this Contract.

#### **ARTICLE 15 - EXCUSABLE DELAYS**

The CONSULTANT shall not be considered in default by reason of any failure in performance if such failure arises out of causes reasonably beyond the control of the CONSULTANT or its subcontractors and without their fault or negligence. Such causes include, but are not limited to, acts of God, natural or public health emergencies, labor disputes, freight embargoes, and abnormally severe and unusual weather conditions.

Upon the CONSULTANT's request, the COUNTY shall consider the facts and extent of any failure to perform the work and, if the CONSULTANT's failure to perform was without it or its subcontractors fault or negligence, the Contract Schedule and/or any other affected provision of this Contract shall be revised accordingly, subject to the COUNTY's as rights to change, terminate, or stop any or all of the work at any time.

#### **ARTICLE 16 - ARREARS**

The CONSULTANT shall not pledge the COUNTY's credit or make it a guarantor of payment or surety for any contract, debt, obligation, judgment, lien, or any form of indebtedness. The