

II. FISCAL IMPACT ANALYSIS

A. Five Year Summary of Fiscal Impact:

Fiscal Years	2008	2009	2010	2011	2012
Capital Expenditures	_____	_____	_____	_____	_____
Grant Expenditure	_____	<u>99,000</u>	_____	_____	_____
Operating Revenues	_____	_____	_____	_____	_____
Program Income (PBC)	_____	_____	_____	_____	_____
In-Kind Match (PBC)	_____	_____	_____	_____	_____
NET FISCAL IMPACT	_____	<u>99,000</u>	_____	_____	_____
# ADDITIONAL FTE POSITIONS (Cumulative)	_____	_____	_____	_____	_____

Is Item Included In Proposed Budget? Yes X No _____

Budget Account Number:

Fund 1539 Department 764 Unit 1221 Object 3401

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

\$99,000 from 1539-764-1221-3401

C. Departmental Fiscal Review: *[Signature]* 9/8/08

III. REVIEW COMMENTS

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

[Signature] 9-11-08
OFMB *[Stamp]* 9/9/08

[Signature] 9/12/08
Contract Dev. and Control *[Signature]* 9/12/08

This Contract complies with our contract review requirements.

B. Legal Sufficiency:

[Signature] 9-17-08
Assistant County Attorney

C. Other Department Review:

Department Director

This summary is not to be used as a basis for payment.

**Agreement between Palm Beach County and
The World Trade Center Association Palm Beach, Inc.**

THIS AGREEMENT is entered into this _____ day of _____, 2008 by and between Palm Beach County, Florida, a political subdivision of the State of Florida, hereinafter referred to as "COUNTY", and **World Trade Center Association Palm Beach, Inc.**, a not-for-profit Florida corporation, having its principal place of business at Phillips Point, West Tower, 777 South Flagler Drive, Suite 800, West Palm Beach, Florida 33401, hereinafter referred to as "WTCPB", whose Federal I.D. number is **65-0976620**.

WHEREAS, COUNTY has determined that there is a need to enhance COUNTY'S prosperity and visibility in the international market by increasing international investment, import and export initiatives, and trade competitiveness activities conducive to international business in order to provide a stronger, more balanced, and stable economy in the COUNTY; and

WHEREAS, WTCPB is a not-for-profit association affiliated to the World Trade Centers Association, which includes nearly 300 World Trade Centers in 85 countries and whose mission is to expand international business opportunities in Palm Beach County, Florida; and

WHEREAS, WTCPB offers assistance to companies and governments to identify and compete for international business, and create alliances and support from businesses and governmental communities in which it serves; and

WHEREAS, COUNTY now finds and determines that it is in the public interest to enter into an Agreement with WTCPB to establish Palm Beach County as an international trade hub, thereby expanding the COUNTY'S tax base; and

WHEREAS, WTCPB performs international regulatory, trade, and diplomatic activities which are not performed by the COUNTY and which are essential to expanding the COUNTY's international business opportunities; and

WHEREAS, COUNTY finds that WTCPB is an appropriate entity to facilitate international trade, finance and business development in Palm Beach County.

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

Recitals

The foregoing recitals are correct and true at the time of execution of this Agreement and are incorporated herein by reference.

**PART I
TERMS OF THE AGREEMENT**

Scope of Services

WTCPB shall, in a satisfactory and proper manner as determined by the COUNTY, perform the tasks necessary to complete the Scope of Services outlined in Exhibit "A" and provide reports as shown in Exhibit "B", which are attached hereto and made a part hereof.

Effective Date and Term

The effective date of this Agreement shall be the 1st day of October 2008. The term of this Agreement shall be twelve (12) months from the effective date of this Agreement. This Agreement shall end on the 30th day of September 2009.

Funding

COUNTY hereby grants to WTCPB a total of **\$99,000 (ninety nine thousand dollars)** under the terms of this Agreement for WTCPB's international business development activities, conducted on behalf of the COUNTY as generally described in Exhibit "A." Any funds not obligated by the expiration date of this Agreement shall automatically revert to the COUNTY.

Performance Period

WTCPB shall have twelve (12) months from the effective date of this Agreement to fulfill the obligations as scheduled in Exhibit "A." Said services shall be performed in a manner satisfactory to COUNTY. In any event, all services required hereunder shall be completed by WTCPB no later than September 30, 2009.

Method of Payment

Payment of COUNTY'S obligation pursuant to this Agreement shall be made to WTCPB as follows: Payment of \$8,250 each month upon submittal of a consulting service invoice, for a total amount not to exceed \$99,000. It is understood that payments remain subject to satisfactory achievement of the deliverables as stated in Exhibit "A."

Conditions on which Payment is Contingent

Financial Accountability

The COUNTY as it deems necessary, may at any time review WTCPB's financial systems, or conduct an audit of WTCPB or any of its subcontractors, to determine the capability of WTCPB to fiscally manage the Scope of Services in accordance with COUNTY requirements.

Reports

Reports shall be submitted to the COUNTY, postmarked no later than fourteen (14) days after the end of the reporting period, as outlined in Exhibit "B". The reports shall be to the satisfaction of the COUNTY and be subject to verification. The COUNTY reserves the right to request additional reports that are reasonable and fair from WTCPB, for any previous periods funded by the COUNTY upon ten (10)-business days notice. The final report produced and submitted by WTCPB will reflect quarterly and cumulative information.

**PART II
GENERAL CONDITIONS**

Opportunities for Residents and Civil Rights Compliance

WTCPB agrees that no person shall, on the grounds of race, color, disability, national origin, religion, age, familial status, sex, sexual orientation, or gender identity or expression be excluded from the benefits of, or be subjected 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. To the greatest extent feasible, low-income residents of the COUNTY shall be given opportunities for training and employment; and to the greatest extent feasible, businesses located in or owned by persons residing in the COUNTY shall be awarded contracts in connection with this Grant.

Opportunities for Small and Minority/Women-Owned Business Enterprises

In the procurement of supplies, equipment, construction, or services to implement this Agreement, WTCPB shall make a positive effort to utilize small and minority/women-owned business enterprises as sources of supplies and services, and provide these enterprises the maximum feasible opportunity to compete for contracts to be performed pursuant to this Agreement. To the maximum extent feasible, these small and minority/women-owned business enterprises shall be located in and/or owned by residents of Palm Beach County.

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 WTCPB. WTCPB shall not be exempted from paying sales tax to its suppliers for materials used to fulfill contractual obligations with the COUNTY, nor is WTCPB authorized to use the COUNTY'S Tax Exemption Number in securing such materials. WTCPB shall be responsible for payment of its own and its share of its employees' payroll, payroll taxes, and benefits with respect to this Agreement.

Governing Law and Venue

This Agreement shall be performed in accordance with applicable Federal, State, COUNTY laws, ordinances, and codes. These represent minimum regulations that may be supplemented by more restrictive guidelines set forth by the COUNTY. Venue in any action, suit or proceeding in connection with this Agreement shall lie in a Florida State Court of competent jurisdiction located in Palm Beach County.

Binding Effect

This Agreement shall be binding upon and shall inure to the benefit of the parties hereto and their respective legal representatives, successors, and assigns.

Construction of Agreement

No party shall be considered the author of this Agreement since the parties hereto have participated in extensive negotiations, drafting, and redrafting of this document to arrive at this final Agreement. Thus, the terms of this Agreement shall not be strictly construed against one party as opposed to the other party based on who drafted it. In the event that any section, paragraph, sentence, clause, or provision hereof shall be held by a court of competent jurisdiction to be invalid, such shall not affect the remaining portions of this Agreement and the same shall remain in full force and effect.

Recognition

WTCPB shall make a good faith effort to recognize COUNTY support for all activities made possible with funds available under this Agreement.

No Forfeiture

The rights of the COUNTY under this Agreement shall be cumulative and failure on the part of the COUNTY to exercise promptly any rights given hereunder shall not operate to forfeit or waive any of the said rights.

Default

In the event WTCPB fails or refuses to perform any term, covenant, or condition of this Agreement for which a specific remedy is not set forth in the Agreement, the COUNTY shall, in addition to any other remedies provided at law or in equity, have the right of specific performance thereof.

Failure to Comply

If WTCPB fails to comply with any of the provisions of this Agreement, the COUNTY may withhold, temporarily or permanently, all, or any, unpaid portion of the funding upon giving written notice to WTCPB, terminate this Agreement and/or demand a refund of the funding and the COUNTY shall have no further funding obligation to WTCPB under this Agreement.

Waiver

No waiver of any provision of this Agreement shall be effective against any party hereto unless it is in writing and signed by the party(s) waiving such provision. A written waiver shall only be effective as to the specific instance for which it is obtained and shall not be deemed a continuing or future waiver.

Termination

This Agreement may be terminated by WTCPB upon sixty (60) 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 Agreement through no fault of WTCPB. It may also be terminated, in whole or in part, by the COUNTY, with or without cause, immediately upon written notice to WTCPB. Unless WTCPB is in breach of this Agreement, WTCPB shall be paid for services rendered to the COUNTY'S satisfaction through the date of termination.

In the event of termination prior to expiration of the term of this Agreement, all finished or unfinished documents, data studies, surveys, drawings, maps, models, photographs, reports prepared, and capital equipment secured by WTCPB with funds under this Agreement shall be returned to the COUNTY. In the event of termination, WTCPB shall not be relieved of liability to the COUNTY for damages sustained by the COUNTY by virtue of any breach of the Agreement by WTCPB, and the COUNTY may withhold any payment to WTCPB until such time as the exact amount of damages due to the COUNTY from WTCPB is determined.

After notice of termination, and except as otherwise directed, WTCPB shall:

1. Stop working under the Agreement on the date, and to the extent specified, in the notice of termination.
2. Place no further orders or subcontracts for materials, services, or facilities, except as may be necessary for completion of such portion of the work under the Agreement as is not terminated.
3. Terminate and settle all orders and subcontracts relating to the performance of the terminated work.
4. Prepare all necessary reports and documents required by the terms of the Agreement up to the date of termination, including a final report due at the end of the project, without reimbursement for services rendered in completing said reports beyond the termination date.

Amendments

The COUNTY may, at its discretion, amend this Agreement to conform to changes required by Federal, State, or COUNTY guidelines, directives, and objectives. Such amendments shall be incorporated by written amendment as a part of this Agreement and shall be subject to approval of the Board of County Commissioners. Except as otherwise provided herein, no amendment to this Agreement shall be binding

on either party unless in writing, approved by the Board of County Commissioners and signed by both parties.

Personnel

WTCPB represents that it has, or will secure at its own expense, all necessary personnel required to perform the services under this Agreement. Such personnel shall not be employees of or have any contractual relationship with COUNTY. All of the services required herein under shall be performed by WTCPB 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 WTCPB's key personnel 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.

WTCPB warrants that all services shall be performed by skilled and competent personnel to the highest professional standards in the field. All of WTCPB's personnel (and all Subcontractors) while on COUNTY premises will comply with all COUNTY requirements governing conduct, safety and security.

Evaluation and Monitoring

WTCPB agrees that the COUNTY will carry out periodic monitoring and evaluation activities as determined necessary by the COUNTY and that the continuation of this Agreement is dependent upon satisfactory evaluation conclusions based on the terms of this Agreement and comparisons of planned versus actual progress relating to project scheduling, budgets, audit reports, and output measures. WTCPB shall submit information and status reports required by the COUNTY, on forms approved by the COUNTY. WTCPB shall allow the COUNTY to monitor WTCPB on site. Such visits may be scheduled or unscheduled as determined by the COUNTY.

Insurance

WTCPB shall, at its sole expense, agree to maintain in full force and effect at all times during the life of this Agreement, insurance coverage and limits (including endorsements), as described herein. The requirements contained herein, as well as COUNTY'S review or acceptance of insurance maintained by WTCPB are not intended to and shall not in any manner limit or qualify the liabilities and obligations assumed by WTCPB under this Agreement.

A. *Commercial General Liability*

WTCPB shall maintain Commercial General Liability at a limit of liability not less than \$500,000 Each Occurrence. Coverage shall not contain any endorsement excluding Contractual Liability or Cross Liability unless granted in writing by COUNTY'S Risk Management Department. WTCPB shall provide this coverage on a primary basis.

B. *Professional Liability*

WTCPB shall maintain Professional Liability or equivalent Errors & Omissions Liability at a limit of liability not less than \$1,000,000 Per Occurrence. When a self-insured retention (SIR) or deductible exceeds \$10,000, COUNTY reserves the right, but not the obligation, to review and request a copy of WTCPB's most recent annual report or audited financial statement. For policies written on a "Claims-Made" basis, WTCPB shall maintain a Retroactive Date prior to or equal to the effective date of this Contract. In the event the policy is canceled, non-renewed, switched to an Occurrence Form, retroactive date advanced, or any other event triggering the right to purchase a Supplement Extended Reporting Period (SERP) during the life of this Contract, WTCPB shall purchase a SERP with a minimum reporting period not less than 3 years. WTCPB shall provide this coverage on a primary basis.

C. *Worker's Compensation Insurance & Employers Liability*

WTCPB shall maintain Worker's Compensation & Employers Liability in accordance with Florida Statute Chapter 440. WTCPB shall provide this coverage on a primary basis.

D. *Additional Insured*

WTCPB shall endorse the COUNTY as an Additional Insured with a CG 2026 Additional Insured - Designated Person or Organization endorsement, or its equivalent, to the Commercial General Liability. The Additional Insured endorsement shall read "Palm Beach County Board of County Commissioners, a Political Subdivision of the State of Florida, its Officers, Employees and Agents." WTCPB shall provide the Additional Insured endorsements coverage on a primary basis.

E. *Certificate(s) of Insurance*

Prior to execution of this Agreement, WTCPB shall deliver to the COUNTY a Certificate(s) of Insurance evidencing that all types and amounts of insurance coverage required by this Agreement