

3A-4

PALM BEACH COUNTY
BOARD OF COUNTY COMMISSIONERS

AGENDA ITEM SUMMARY

Meeting Date: December 16, 2008 Consent Regular
 Workshop Public Hearing
 Department: Administration
 Submitted By: Economic Development Office

I. EXECUTIVE BRIEF

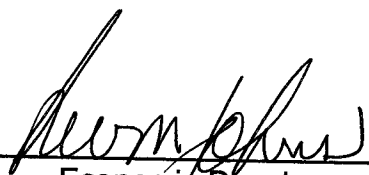
Motion and Title: Staff recommends motion to approve: **A)** Amendment No. 2 to the Business Development Board of Palm Beach County Inc. (BDB) five-year Agreement (R2006-1998) to provide that the Chair may designate a member of the Board of County Commissioners to sit on the executive committee of the BDB; and **B)** modification to The Scope of Services to be consistent with the Agreement. The Agreement period is from October 1, 2006 through September 30, 2011 and it is in the third year of the term.

Summary: The Board of County Commissioners entered into an Agreement with the BDB to provide business recruitment assistance, business retention activities and business expansion services in Palm Beach County. Palm Beach County and the BDB entered into a public-private partnership to promote the County, attract new businesses and assist in creating new industries in the County. The Agreement also provides that the Chair of the Board of County Commissioners will be appointed to the executive committee of the BDB. In the event of a scheduling conflict, the Chair should be allowed to designate that another member of the Board of County Commissioners be appointed to the BDB's executive committee and the Chair will then select a representative to serve on the BDB's Board of Directors. **Countywide (DW)**

Background and Policy Issues: Since 1982 the Board of County Commissioners has partially funded activities of the Business Development Board of Palm Beach County, Inc., (BDB) that provides for business development activities. In 2007-2008, the BDB completed 19 expansion and relocation projects, including finalizing the location of the U.S. Headquarters of the Max Planck Institute. The projected impact from these business projects are \$55.5 million in capital investment and \$411 million in overall impact on the economy.

Attachments:

1. Grant Agreement
2. Amendment to Agreement
3. Scope of Services (Exhibit "A")

Recommended By:  12-4-08
Economic Development Director Date

Approved By:  12/16/08
Assistant County Administrator Date

II. FISCAL IMPACT ANALYSIS

A. Five Year Summary of Fiscal Impact:

| Fiscal Years | 2009 | 2010 | 2011 | 2012 | 2013 |
|---|---------|-------|-------|-------|-------|
| Capital Expenditures | _____ | _____ | _____ | _____ | _____ |
| Grant Expenditure | _____ | _____ | _____ | _____ | _____ |
| Operating Revenues | _____ | _____ | _____ | _____ | _____ |
| Program Income (PBC) | _____ | _____ | _____ | _____ | _____ |
| In-Kind Match (PBC) | _____ | _____ | _____ | _____ | _____ |
| NET FISCAL IMPACT | * _____ | _____ | _____ | _____ | _____ |
| # ADDITIONAL FTE POSITIONS (Cumulative) | _____ | _____ | _____ | _____ | _____ |

Is Item Included In Current Budget? Yes No

Fund _____ Department _____ Unit _____ Object _____

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

C. Departmental Fiscal Review:

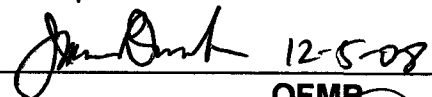


 Economic Development


III. REVIEW COMMENTS

A. OFMB Fiscal and/or Contract Administration Comments:

* No fiscal impact

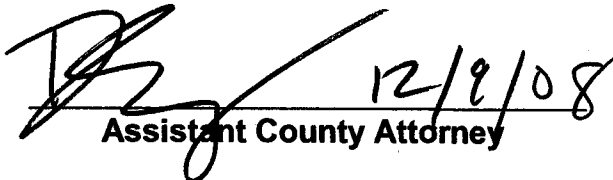


 OFMB *cn 12/4/08*
 (NO) *12/5/08*



 Contract Administration
E. Jones 12/5/08

B. Legal Sufficiency:



 Assistant County Attorney

This amendment complies with our review requirements.

At the time of our review, the Amendment was not executed.

C. Other Department Review:

Department Director

**AMENDMENT NO. 2 – TO CONTRACT (R 2006-1998)
BETWEEN PALM BEACH COUNTY
AND THE BUSINESS DEVELOPMENT BOARD OF PALM BEACH COUNTY, INC.**

THIS AMENDMENT NUMBER NO. 2, dated this _____ day of _____, 2008 to the Contract of September 12, 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 "COUNTY", and the BUSINESS DEVELOPMENT BOARD OF PALM BEACH COUNTY, INC., hereinafter referred to as the "BOARD."

WHEREAS, the parties entered into a Contract dated September 12, 2006 (R2006-1998) under which the BOARD is to provide general marketing and business recruitment activities, which include funding to focus on bio/life science clusters. Activities also include the recruiting, retaining and expanding of corporate headquarters and manufacturing facilities in Palm Beach County, providing a national advertising program for the County and promoting the County's Tax Exempt Bond Program.

WHEREAS, the Contract provides that the BOARD must appoint the Chair of the COUNTY to the BOARD's executive committee; and

WHEREAS, the COUNTY and the BOARD agree that in the event of a scheduling conflict, that the Chair should be able to designate that another member of the Board of County Commissioners be appointed to the BOARD's executive committee; and

WHEREAS, the COUNTY also desires to revise the Scope of Services (See Exhibit "A") to reflect this designation.

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

1. The Chair of the Board of County Commissioners or his/her designee shall be appointed to the Board of Directors and to the executive committee of the BOARD.
2. The Scope of Services (see Exhibit "A") is amended to reflect this designation.

Except as expressly modified above, the Contract is hereby confirmed and remains in full force and effect.

IN WITNESS WHEREOF, the Board of County Commissioners of Palm Beach County, Florida has made and executed this Amendment No. 2 on behalf of the COUNTY and the Business Development Board of Palm Beach County, Inc. has hereunto set its hand the day and year above written.

ATTEST:

SHARON R. BOCK, Clerk & Comptroller

PALM BEACH COUNTY, FLORIDA
BY ITS BOARD OF COUNTY
COMMISSIONERS

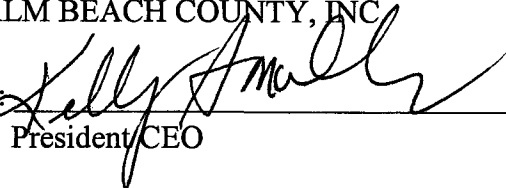
By: _____
Deputy Clerk

By: _____
John F. Koons, Chairman

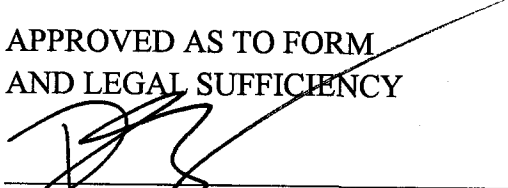
WITNESS:

BUSINESS DEVELOPMENT BOARD OF
PALM BEACH COUNTY, INC.

By: _____
Signature


By: 
President/CEO

APPROVED AS TO FORM
AND LEGAL SUFFICIENCY



County Attorney

APPROVED AS TO
TERMS AND CONDITIONS



Department Director

R2006-1998

SEP 12 2006

AGREEMENT BETWEEN PALM BEACH COUNTY AND THE BUSINESS
DEVELOPMENT BOARD OF PALM BEACH COUNTY, INC.

THIS AGREEMENT is entered into this 12th day of September, 2006 by and between Palm Beach County, Florida, a political subdivision of the State of Florida, hereinafter referred to as "COUNTY", and the Business Development Board of Palm Beach County, Inc., a not-for-profit Florida corporation, having its principal place of business at 310 Evernia Street, West Palm Beach, Florida 33401, hereinafter referred to as the "BOARD", whose Federal I.D. number 59-2169828.

WITNESSETH:

WHEREAS, the Legislature of the State of Florida and the COUNTY have determined that there is a need to enhance economic activities in the State by attracting manufacturing development, business headquarters, business enterprise management and other activities conducive to economic promotion in order to provide a stronger, more balanced, and stable economy in the State; and

WHEREAS, to implement this goal the State Legislature has adopted Chapter 159, Florida Statutes, including the Revenue Bond Act of 1953, the Florida Industrial Development Financing Act, and Industrial Development Authorities, Housing Finance Authorities, and Research and Development Authorities; and

WHEREAS, the BOARD is a private not-for-profit corporation created by the initiative of seven Chambers of Commerce and the Economic Council of Palm Beach County, Inc. for the purpose of recruiting, retaining, and expanding office headquarters and manufacturing facilities for Palm Beach County; and

WHEREAS, the COUNTY now finds and determines that it is in the public interest to assist the BOARD through this Agreement to expand the COUNTY'S tax base, to expand the employment opportunities of the residents of the COUNTY and thereby reduce unemployment and associated burdens placed on local government and the private sector taxpayers; and

WHEREAS, the BOARD performs many business development activities which are not performed by the COUNTY and which are essential to successful business development in Palm Beach County and which the COUNTY cannot successfully perform; and

WHEREAS, the COUNTY recognizes that successful business development requires confidentiality with respect to the plans, objectives, criteria, and corporate information of business candidates for establishment, relocation, or expansion, and that such confidentiality is in the public interest of the citizens of Palm Beach County; and

WHEREAS, the Legislature of Florida has recognized in Section 288.075(2), Florida Statutes, and in other provisions of said statutes, the public interest in maintaining certain confidentiality in the business development process; and

WHEREAS, the COUNTY finds that the BOARD is an especially appropriate entity to facilitate business development in Palm Beach County which includes providing business development candidates with the type of confidential assistance which is essential to successful business development; and

WHEREAS, the COUNTY finds that it is essential to the public interest to have an appropriate accounting of the expenditure of public funds, especially by a non-public agency such as the BOARD; and

WHEREAS, the BOARD has created six new Board of Directors seats for appointees of the COUNTY and the Chairman of the BCC serves on the Executive Committee of the BOARD; and

WHEREAS, pursuant to the Florida Industrial Development Financing Act, Part II of Chapter 159, Florida Statutes, the COUNTY is permitted to issue Industrial Development Revenue Bonds; and

WHEREAS, in connection with the performance of its responsibilities, the COUNTY receives, investigates and reviews applications from various parties seeking issuance of such Bonds; and

WHEREAS, the BOARD agrees to perform certain functions as specified in this Agreement on behalf of the COUNTY in reviewing, processing and/or presenting such Bond applications; providing continuing administration with respect to Bond issues which have been placed; and perform other specified functions.

WHEREAS, since the COUNTY recognized that economic conditions have changed over the years, the COUNTY created a Task Force to review the mission, goals and structure of the BOARD; and

WHEREAS, the Task Force made recommendations to the COUNTY which recommendations have been incorporated into the Scope of Services outlined in this Agreement.

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.

ARTICLE 1. SCOPE OF SERVICES

The BOARD shall, in a satisfactory and proper manner as determined by the COUNTY, perform the tasks necessary to complete the Scope of Services outlined in this Agreement. The Scope of Services describes conditions for maximum payment under the terms of this Agreement. The last monthly installment will be withheld until appropriate reports and goals are met to the satisfaction of COUNTY staff (see Exhibit A)

ARTICLE 2. EFFECTIVE DATE AND TERM

The effective date of this Agreement shall be the 1st day of October, 2006. The term of this Agreement shall be sixty (60) months from the effective date of this Agreement. This Agreement shall end on the 30th day of September, 2011 unless earlier terminated in accordance with Article 6 herein.

ARTICLE 3. FUNDING

- a. The COUNTY hereby grants to the BOARD \$837,100 for each year of this Agreement for the BOARD'S business development activities, conducted on behalf of the COUNTY as generally described in Exhibit "A" attached hereto. The BOARD agrees that it shall obtain annual funding from private sector sources of at least \$575,000. Payment of the COUNTY'S grant shall be made to the BOARD in equal monthly installments on the first day of the month commencing with the first month after the execution of this Agreement.
- b. The BOARD shall, prior to the 6th and 12th monthly installments of each year of this Agreement, certify the amount of private funds obtained and written commitments received for funds payable during the pending contract year for the previous six months.

- c. The BOARD shall specifically market and brand Palm Beach County's Bio-Science Industry Cluster through participation in National/International trade shows, media outlets, creation of bioscience CD and all other appropriate methods. The COUNTY shall make payment of \$130,000 to the BOARD in equal monthly installments or as approved by County Administration when deemed appropriate.
- d. The BOARD shall, on behalf of the COUNTY, provide national advertising of the COUNTY'S positive business climate through various nationwide publications. For this service, COUNTY shall provide the BOARD with \$53,000 annually payable in equal monthly installments. The BOARD shall provide the COUNTY with a report annually of the activities conducted and the funds expended in the performance of this service.
- e. The BOARD shall promote the Palm Beach County Industrial Development Revenue Bond Program; and provide the COUNTY with annual reports of the BOARD'S activities and expenses with regard to its Industrial Development Revenue Board activities under this Agreement. For this service, COUNTY shall provide the BOARD with \$12,000 annually payable in equal monthly installments.

ARTICLE 4. RECOGNITION

The BOARD shall include a reference to the financial support herein provided by the COUNTY in all publications and publicity. In addition, the BOARD shall make a good faith effort to recognize COUNTY support for all activities made possible with funds available under this Agreement.

ARTICLE 5. PERSONNEL

- a. The BOARD 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 the COUNTY. All of the services required herein under shall be performed by the BOARD 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.
- b. The BOARD warrants that all services shall be performed by skilled and competent personnel to the highest professional standards in the field. All of the BOARD'S personnel (and all Subcontractors) while on County premises will comply with all COUNTY requirements governing conduct, safety and security.
- c. The BOARD shall establish and maintain staff to process, investigate and review applications for Industrial Development Revenue Bond financing; coordinate the presentation of the Application and information to the COUNTY; review the Feasibility Study included with the Application to estimate the contribution the project is expected to make to the local economy and the estimated economic impact of the project, such as existing employment, new jobs created, new capital investment, etc.; review the audited financial statements supplied by the applicant which shall be prepared in accordance with generally accepted accounting principles, and other information included in the Application; prepare a summary report with recommendations to the Office of Financial Management and Budget and the COUNTY as to the desirability of the project.
- d. The BOARD shall use its best efforts to obtain high quality supplies and services for use in the performance of these services at the lowest practical costs and shall expend funds in accordance with the Summary Budget attached hereto as Exhibit "B".

ARTICLE 6. TERMINATION

- a. The COUNTY may terminate this Agreement with or without cause upon Forty-Five (45) days written notice to the BOARD of its intention to terminate. In the event of termination, the COUNTY shall pay for services and costs incurred pursuant to Article 3 prior to the date of termination. With regard to the portions of payments made to the BOARD in excess of

the services and costs incurred by the BOARD prior to the date of termination, the BOARD shall remit to the COUNTY all of such excess portions. Grant funds under Article 3 shall be prorated to the date of termination.

- b. After notice of termination, and except as otherwise directed, the BOARD 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 all orders and subcontracts to the extent that they relate to performance of work which was terminated.
 4. Prepare all necessary reports and documents required by the terms of the Agreement up to the date of termination, including the final report due at the end of the project, without reimbursement for services rendered in completing said reports beyond the termination date.
- c. The BOARD may terminate this Agreement with or without cause upon ninety (90) days written notice to the COUNTY of its intention to terminate.

ARTICLE 7. WAIVER

Waiver by either party of the breach by the other party of any provisions of this Agreement shall not be deemed a waiver of any other or subsequent breaches and shall not be construed to be a modification of the terms of this Agreement.

ARTICLE 8. PERSONAL IN NATURE

- a. The parties deem the services to be rendered by the BOARD for the COUNTY under this Agreement to be personal in nature. The BOARD shall not assign any rights or duties under this Agreement to any other party without written permission of the COUNTY. If the BOARD attempts to assign any rights or duties without prior written permission of the COUNTY, this Agreement may be declared void by the COUNTY and the BOARD thereupon agrees to remit to the COUNTY all payments made pursuant to this Agreement for the entire term of the Agreement.
- b. The BOARD shall not enter agreements with subcontractors for any of the work contemplated under this Agreement without first obtaining written approval of the COUNTY subject to such conditions and provisions as the COUNTY may deem necessary; provided, however, that notwithstanding the foregoing unless otherwise provided herein, such written approval shall not be required for purchase by the BOARD of such articles, supplies, equipment, and services which are necessary and incidental to the performance of the work described herein. The requirements of this clause shall not be deemed in any event or manner to provide for the incurrence of any obligation of the COUNTY by any actions of the BOARD.

ARTICLE 9. ANNUAL REPORT

In addition to any other reports required herein, the BOARD agrees to provide an Annual Report and presentation to the COUNTY by September 30 of each year.