

3A-4

**PALM BEACH COUNTY
BOARD OF COUNTY COMMISSIONERS**

AGENDA ITEM SUMMARY

Meeting Date:	December 16, 2008	<input checked="" type="checkbox"/> Consent	<input type="checkbox"/> Regular
		<input type="checkbox"/> Workshop	<input type="checkbox"/> 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: _____

Economic Development Director

Date

12-4-08

Approved By: _____

Assistant County Administrator

Date

12/16/08

II. FISCAL IMPACT ANALYSIS

A. Five Year Summary of Fiscal Impact:

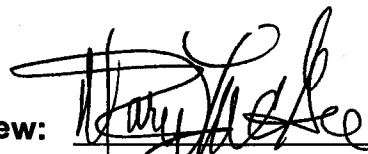
Fiscal Years	2009	2010	2011	2012	2013
Capital Expenditures	_____	_____	_____	_____	_____
Grant Expenditure	_____	_____	_____	_____	_____
Operating Revenues	_____	_____	_____	_____	_____
Program Income (PBC)	_____	_____	_____	_____	_____
In-Kind Match (PBC)	_____	_____	_____	_____	_____
NET FISCAL IMPACT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

Is Item Included In Current Budget? Yes X No

Fund Department Unit Object

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

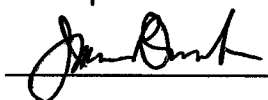

C. Departmental Fiscal Review:

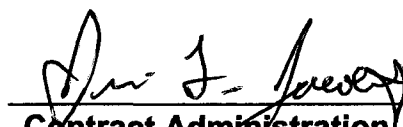

12/3/08
 Economic Development

III. REVIEW COMMENTS

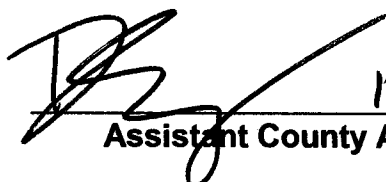
A. OFMB Fiscal and/or Contract Administration Comments:

* No fiscal impact


12-5-08
 OFMB  12/4/08


12/5/08
 Contract Administration
12/5/08

B. Legal Sufficiency:


12/9/08
 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

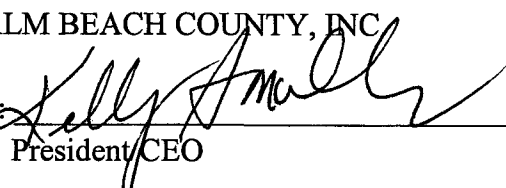
By: _____
Deputy Clerk

By: _____
John F. Koons, Chairman

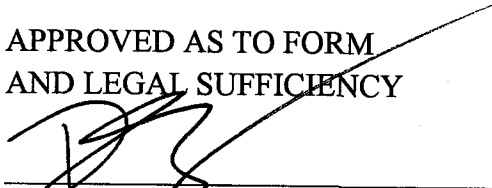
WITNESS:

BUSINESS DEVELOPMENT BOARD OF
PALM BEACH COUNTY, INC.

By: _____
Signature

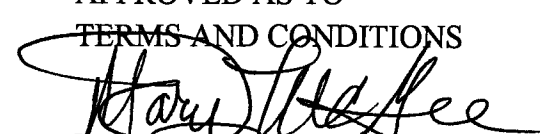
By:  _____
President/CEO

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.

ARTICLE 10. FINANCIAL ACCOUNTABILITY

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

ARTICLE 11. INDEMNIFICATION

The BOARD shall protect, defend, reimburse, indemnify and hold the COUNTY, its agents, employees and elected officials 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 performance of the terms of this Agreement or due to the acts or omissions of the BOARD. The BOARD'S aforesaid indemnity and hold harmless obligation, or portion or applications thereof, shall apply to the fullest extent permitted by law. The BOARD will hold the COUNTY harmless and shall indemnify the COUNTY for the conduct of activities and administration of the BOARD.

ARTICLE 12. INDEPENDENT CONTRACTOR RELATIONSHIP

The BOARD is hereby declared by the parties to be an Independent Contractor for the performance of the work and/or services and activities conducted pursuant to this Agreement. All persons engaged in any of the work or services performed pursuant to this Agreement shall at all times, and in all places, be subject to the BOARD'S sole direction, supervision, and control. The BOARD shall exercise control over the means and manner in which it and its employees perform the work, and in all respects the BOARD'S relationship and the relationship of its employees to the COUNTY shall be that of an Independent Contractor and not as employees or agents of the COUNTY. The BOARD shall be responsible for initiating, maintaining and supervising all safety precautions and programs necessary in connection with its grant activities and services or performance of its operations under this Agreement. The BOARD agrees to comply with all applicable safety laws, ordinances, rules, regulations, standards and lawful order of any public authority having jurisdiction over the matter in question.

ARTICLE 13. INSURANCE

Prior to execution of this Agreement by the COUNTY, the BOARD shall provide Certificates evidencing insurance coverage as required hereunder. All insurance policies shall be issued by companies authorized to do business under the laws of the State of Florida. The Certificates shall clearly indicate that the BOARD has obtained insurance of the type, amount, and classification as required for strict compliance with this ARTICLE and that no material change or cancellation of the insurance shall be effective without thirty (30) days prior written notice to the COUNTY'S representative. Compliance with the foregoing requirements shall not relieve the BOARD of its liability and obligations under this Agreement.

a. Professional Liability

The BOARD shall maintain during the term of this Agreement, standard Professional Liability Insurance in the minimum amount of \$ 1,000,000 per occurrence.

b. Commercial General Liability

The BOARD shall maintain, during the life of this Agreement, commercial general liability, including contractual liability insurance in the amount of \$500,000 per occurrence to protect the BOARD from claims for damages for bodily and personal injury, including wrongful death, as well as from claims of property damages which may arise from any operations under this Agreement, whether such operations be by the BOARD or by anyone directly employed by or contracting with the BOARD. Coverage shall not contain any endorsement excluding Contractual Liability or Cross

Liability unless granted in writing by COUNTY'S Risk Management Department. The BOARD shall provide this coverage on a primary basis.

c. Business Automobile Liability

The BOARD shall maintain, during the life of this Agreement, comprehensive automobile liability insurance in the minimum amount of \$500,000 combined single limit for bodily injury and property damage liability to protect the BOARD from claims for damages for bodily and personal injury, including death, as well as from claims for property damage, which may rise from the ownership, use, or maintenance of owned and non-owned and hired automobiles. In the event the BOARD does not own any automobiles, the Business Auto Liability requirement shall be amended allowing the BOARD to agree to maintain only Hired & Non-Owned Auto Liability. This amended requirement may be satisfied by way of endorsement to the Commercial General Liability, or separate Business Auto coverage form. The BOARD shall provide this coverage on a primary basis.

d. Worker's Compensation Insurance and Employer's Liability

The BOARD shall maintain, during the life of this Agreement, adequate Workers' Compensation Insurance and Employer's Liability Insurance in at least such amounts as are required by law for all of its employees pursuant to Chapter 440, Florida Statutes. The BOARD shall provide this coverage on a primary basis.

e. Additional Insured

The BOARD 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."** The BOARD shall provide the Additional Insured endorsements coverage on a primary basis.

f. Certificate(s) of Insurance

Prior to execution of this Agreement, the BOARD shall deliver to the COUNTY a Certificate(s) of Insurance evidencing that all types and amounts of insurance coverages required by this Agreement have been obtained and are in full force and effect. Such Certificate(s) of Insurance shall include a minimum thirty (30) days endeavor to notify due to cancellation or non-renewal of coverage. The Certificate Holder shall read "Palm Beach County, C/O Palm Beach County Administration, 301 N. Olive Avenue, Suite 1101, West Palm Beach, FL 33401."

g. Right to Review

COUNTY, by and through its Risk Management Department, in cooperation with the contracting/monitoring department, reserves the right to review, modify, reject or accept any required policies of insurance, including limits, coverages, or endorsements, herein from time to time throughout the term of this Agreement. COUNTY reserves the right, but not the obligation, to review and reject any insurer providing coverage because of its poor financial condition or failure to operate legally.

ARTICLE 14. RECORDS

The BOARD shall keep orderly and complete records of its financial accounts and financial transactions involving the funds provided to the BOARD under this Agreement. The BOARD shall open these records to inspection by COUNTY personnel at reasonable hours during the entire term of this Agreement. Any person duly authorized by the COUNTY shall have full access and the right to examine any of these records during the term of this Agreement and up to three (3) years thereafter. The BOARD shall submit annual reports to the COUNTY with regard to the grant

activities and the services provided and the costs incurred on behalf of the COUNTY under this Agreement. The BOARD shall provide the COUNTY with its independent annual audit of the immediately preceding fiscal year no later than January 31 of each year of this Agreement. The provisions of this paragraph will survive termination of this Agreement as to the fiscal years, or portions thereof, during which this Agreement is in effect.

ARTICLE 15. CONFLICT OF INTEREST

The BOARD 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 BOARD further represents that no person having any such conflict of interest shall be employed for said performance of services. The BOARD covenants that no person who presently exercises any functions or responsibilities in connection with the provision of the BOARD'S services has any personal financial interest, direct or indirect, in the activities provided under this Agreement, which would conflict in any manner or degree with the performance of this Agreement.

The BOARD 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 BOARD'S judgement 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 BOARD 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 BOARD. The COUNTY agrees to notify the BOARD of its opinion by certified mail within thirty (30) days of receipt of notification by the BOARD. If, in the opinion of the COUNTY, the prospective business association, interest or circumstance would not constitute a conflict of interest by the BOARD, the COUNTY shall so state in the notification and the BOARD 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 BOARD under the terms of this Agreement.

The BOARD agrees to require each of its directors to complete a conflict form. The conflict form will, among other things, prohibit a BOARD director from knowingly voting on or promoting a measure which inures to the private gain or loss of the BOARD director, the BOARD director's business associate, relative and/or person or company by whom the BOARD director is retained.

ARTICLE 16. NON DISCRIMINATION

The BOARD shall not discriminate against any employee or person served under this Agreement on account of race, color, sex, sexual orientation, age, religion, ancestry, national origin, disability or martial status.

ARTICLE 17. OPPORTUNITIES FOR SMALL AND MINORITY/WOMEN-OWNED BUSINESS ENTERPRISES

In the procurement of supplies, equipment, construction, or services to implement this Agreement, the BOARD 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.

ARTICLE 18. CONSTRUCTION OF AGREEMENT

No party shall be considered the author of this Agreement since the parties hereto have participated in extensive negotiations and 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 effect the remaining portions of this Agreement and the same shall remain in full force and effect.

ARTICLE 19. SEVERABILITY

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 provisions, 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.

ARTICLE 20. 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.

ARTICLE 21. DEFAULT

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

ARTICLE 22. 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.

ARTICLE 23. REMEDIES

This Agreement shall be governed by the laws of the State of Florida. Any legal action necessary to enforce this Agreement 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 or further exercise thereof.

ARTICLE 24. AMENDMENTS

The COUNTY may, at its discretion, amend this Agreement to conform with 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.

ARTICLE 25. SUCCESSORS AND ASSIGNS

The COUNTY and the BOARD 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 Agreement. Except as above, neither the COUNTY nor the BOARD shall assign, sublet, convey or transfer its interest in this Agreement 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 BOARD.

ARTICLE 26. ACCESS AND AUDITS

All reports, plans, surveys, information, documents, maps, and other data procedures developed, prepared, assembled, or completed by the BOARD for the purpose of this Agreement shall become the property of the COUNTY without restriction, reservation, or limitation of their use and shall be made available by the BOARD at any time upon request by the COUNTY. The BOARD shall maintain adequate records to justify all charges, expenses, and costs incurred in estimating and performing the work for at least three (3) years after completion or termination of this Agreement. The COUNTY shall have access to such books, records, and documents as required in this section for the purpose of inspection or audit during normal business hours, at the BOARD'S place of business. The COUNTY reserves the right to require submission of audited financial statements and/or to conduct a "limited scope audit" of the BOARD at any time and for any period. Upon thirty (30) days of notice to the BOARD, the COUNTY may require the BOARD to have a financial system analysis and an internal fiscal control evaluation of the BOARD'S performance at the BOARD'S expense by an independent auditing firm employed by the COUNTY or by the COUNTY'S Internal Auditor at any time the COUNTY deems necessary to determine the capability of the BOARD to fiscally manage the grant award.

ARTICLE 27. ARREARS

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

ARTICLE 28. NOTICES

All notices required in this Agreement shall be hand delivered or sent by certified mail, return receipt requested, and if sent to the COUNTY shall be addressed to:

Verdenia Baker, Deputy County Administrator
Palm Beach County Administration
P.O. Box 1989
West Palm Beach, Florida 33402-1989

and if sent to the BOARD shall be addressed to:

Kelly Smallridge, President
Business Development Board of Palm Beach County, Inc.
310 Evernia Street
West Palm Beach, Florida 33401

ARTICLE 29. REGULATIONS: LICENSING REQUIREMENTS

The BOARD shall comply will all laws, ordinances and regulations applicable to the services contemplated herein, to include those applicable to conflict of interest and collusion. BOARD is presumed to be familiar with all federal, state and local laws, ordinances, codes and regulations that may in any way affect the services offered.

ARTICLE 30. MODIFICATIONS

Any alterations, variations, modifications, or waivers of provisions of this Agreement shall only be valid when they have been reduced to writing, duly signed, and attached to the original of the Agreement.

ARTICLE 31. GOVERNING LAW AND VENUE

This Agreement shall be performed in accordance with applicable Federal, State, COUNTY laws, ordinances, and codes. These represent minimum regulations which 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.

ARTICLE 32. AVAILABILITY OF FUNDS

The COUNTY'S performance and obligation to pay under this Agreement is contingent upon an annual appropriation for its purpose by the Board of County Commissioners.

ARTICLE 33. 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.

ARTICLE 34. PUBLIC ENTITY CRIMES

As provided in F.S. 287.132-133, by entering into this Agreement or performing any work in furtherance hereof, the BOARD certifies that it, its affiliates, suppliers, subcontractors and consultants who will perform hereunder, have not been placed on the convicted vendor list maintained by the State of Florida Department of Management Services within 36 months immediately preceding the date hereof. This notice is required by F.S. 287.133(3)(a).

ARTICLE 35 - CRIMINAL HISTORY RECORDS CHECK

The BOARD shall comply with the provisions of Ordinance 2003-030, the Criminal History Records Check Ordinance ("Ordinance"), if the BOARD'S employees or subcontractors are required under this Agreement to enter a "critical facility" as identified in Resolution R-2003-1274. The BOARD acknowledges and agrees that all employees and subcontractors who are to enter a "critical facility" will be subject to a fingerprint based criminal history records check. Although COUNTY agrees to pay for all applicable FDLE/FBI fees required for criminal history record checks, the BOARD shall be solely responsible for the financial, schedule, and staffing implications associated in complying with Ordinance 2003-030.

IN WITNESS WHEREOF, the parties have executed this Agreement on the dates set forth above.

ATTEST:

SHARON R. BOCK, CLERK &
COMPTROLLER

By: *Sharon R. Bock*

Deputy Clerk

R2006-1998

SEP 12 2006

PALM BEACH COUNTY, FLORIDA, BY ITS
BOARD OF COUNTY COMMISSIONERS

Tony Masiotti
Tony Masiotti, Chairman

WITNESS:

BUSINESS DEVELOPMENT BOARD OF
PALM BEACH COUNTY, INC.

By: *Tanya Johnson*

Printed Name: Tanya Johnson

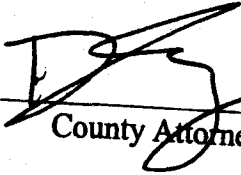
By: *Kelly Smallbridge*

Printed Name: Kelly Smallbridge

Title: President

APPROVED AS TO FORM
AND LEGAL SUFFICIENCY

By:


County Attorney

APPROVED AS TO TERMS AND
CONDITIONS


Department Director

BUSINESS DEVELOPMENT BOARD

SCOPE OF SERVICES

Exhibit "A"

Contract Contract YTD
 FY-07 FY-06 FY-06
 8/05

Conduct annual economic analysis report for Palm Beach County (including the overall fiscal impact of creation/ retention of jobs and loss of jobs on the local economy)	1	1	0
New Business Development Board Members	50	50	62
Participate in National/International Trade Shows to companies interested in relocation /expansion	4	4	6
Strategically promote Palm Beach County's business environment through advertising in national/international media outlets	\$63,000	\$53,000	\$85,989
Conduct local business climate survey and compile results for business, education and government entities to use as a resource	1	1	0
Number of new businesses recruited to Palm Beach County	10	12	7
Number of new jobs created	600	800	162
Number of businesses located in Developing Regions	3	3	5
Number of Expansion/Retention Companies	14	1	14
Number of Expansion/Retention jobs	2000	800	1,597
Number of new Bio/life science businesses recruited in Palm Beach County	2	2	2
Number of new Bio/life science jobs created	200	200	35
Promote, facilitate and review applications for the Industrial Revenue Bond Program and submit annual report reflecting fiscal impact	2	1	4
Participation in Educational/Workforce initiatives to align workforce needs of local industry with the educational providers	5	5	4
Create promotional CDs for the aerospace and bioscience industry	0	2	2

Create promotional materials for the bioscience industry	2	N/A	N/A
Create signature collateral pieces for companies looking relocate or expand to Palm Beach County	2	N/A	N/A
Participation in regional marketing initiatives related to economic development in 8 county area	5	5	5
Production of research reports outlining local industry labor market trends, income/wage studies, new economy trends, etc.	Quarterly	Quarterly	3
Annual report to County on assistance and opportunities provided to small and minority businesses	1	1	1
Appoint six (6) BCC selected representatives to BDB Board of Directors	6	6	6
Appoint Chair of the BCC to the Executive Committee of the BDB	1	1	1