

II. FISCAL IMPACT ANALYSIS

A. Five Year Summary of Fiscal Impact:

| Fiscal Years | 2009 | 2010 | 2011 | 2012 | 2013 |
|---|-----------------------|-----------------------|-----------------------|-----------------------|------------------------|
| Capital Expenditures | _____ | _____ | _____ | _____ | _____ |
| Operating Costs | <u>5,000</u> | <u>5,000</u> | <u>7,000</u> | <u>8,000</u> | <u>10,000</u> |
| External Revenues | _____ | _____ | _____ | _____ | _____ |
| Program Income (County) | <u><20,000></u> | <u><40,000></u> | <u><60,000></u> | <u><80,000></u> | <u><100,000></u> |
| In-Kind Match (County) | _____ | _____ | _____ | _____ | _____ |
| NET FISCAL IMPACT | <u>(15,000)</u> | <u>(35,000)</u> | <u>(53,000)</u> | <u>(72,000)</u> | <u>(90,000)</u> |
| # ADDITIONAL FTE | <u>0</u> | <u>0</u> | <u>0</u> | <u>0</u> | <u>0</u> |
| POSITIONS (Cumulative) | <u>0</u> | <u>0</u> | <u>0</u> | <u>0</u> | <u>0</u> |
| Is Item Included In Current Budget? | Yes _____ | | No <u>X</u> | | |
| Budget Account No.: Fund _____ Agency _____ Org. _____ Object _____ Reporting Category _____ | | | | | |
| Revenue Fund <u>0001</u> Agency <u>660</u> Org. <u>6100</u> Object <u>Various</u> REV <u>6999</u> | | | | | |

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

The MVP Program annual subscription fees will generate additional income for operating the Consumer Affairs Division's mediation and enforcement programs. Program income will offset ad-valorem costs.

C. Departmental Fiscal Review:

Eugene Villanueva

III. REVIEW COMMENTS

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

[Signature] 2/28/09
[Signature] 3/2/09
OFMB 2/27/09
CP 3/2/09
Contract Dev. and Control

B. Legal Sufficiency:

[Signature] 3/3/09
Assistant County Attorney

C. Other Department Review:

Department Director

Revised 9/03
ADM FORM 01

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

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ATTACHMENT 1

RESOLUTION NO. R-2009-_____

A RESOLUTION OF THE BOARD OF COUNTY COMMISSIONERS OF PALM BEACH COUNTY, FLORIDA ESTABLISHING AND APPROVING THE MVP PROGRAM THROUGH ITS CONSUMER AFFAIRS DIVISION

WHEREAS, the Board of County Commissioners has placed a high priority on consumer protection in Palm Beach County; and

WHEREAS, the Board of County Commissioners has initiated and approved the Consumer Affairs Ordinances and additional consumer protection regulatory ordinances; and

WHEREAS, the Board of County Commissioners has created the Consumer Affairs Division for its citizens and businesses in Palm Beach County; and

WHEREAS, it is in the best interest of the public to assist consumers in making better and informed decisions when searching for the most appropriate companies with which to do business; and

WHEREAS, the Board of County Commissioners wishes to implement the MVP Program for the business community to voluntarily assist consumers in making those informed decisions and assuring consumers are treated fairly and respectfully in all business transactions.

NOW, THEREFORE, BE IT RESOLVED BY THE BOARD OF COUNTY COMMISSIONERS OF PALM BEACH COUNTY, FLORIDA, that:

1. The MVP Program is approved for implementation by the Consumer Affairs Division. The Consumer Affairs Division shall have the authority to:
 - a. Promote the MVP Program with businesses having a commercial presence in Palm Beach County.
 - b. Develop an MVP Program application, agreement and terms and conditions for businesses which are interested in becoming an MVP member.
 - c. Make interpretations of the MVP standard agreement to determine which companies are eligible or ineligible to become an MVP member and has the

authority to deny, suspend, revoke or terminate a company from participation in the MVP Program based upon the parameters set forth in the terms and conditions. The terms and conditions have provisions allowing businesses which disagree with the action of the Consumer Affairs Division to appeal such decision to the Consumer Affairs Hearing Board/Special Master.

2. The standard application and agreement (Attachment 1) is approved for use by businesses applying to be associated with the MVP Program.

3. The terms and conditions (Attachment 2) are approved for businesses applying to be associated with the MVP Program.

4. The County Administrator or his designee (Consumer Affairs Director) is authorized to sign the standard agreement on behalf of the Board of County Commissioners with businesses approved to be associates with the MVP Program.

5. The MVP logo (Attachment 3) is approved for use by MVP members in accordance to the agreement and the terms and conditions for promotion of the program by the County/Consumer Affairs Division.

6. Fees collected through the MVP Program shall be used to offset the cost of operating the Consumer Affairs Division and the cost of operating the MVP Program.

7. The following non-refundable annual fees are approved for businesses wishing to be associated with the MVP Program:

a. \$300 – for a single business and for each location within Palm Beach County – up to 3 locations.

b. \$1,000 – for a single business with from four to 10 locations within Palm Beach County.

c. \$2,000 – for a single business with from 11 to 20 locations within Palm Beach County.

d. \$3,000 – for a single business with more than 21 locations within Palm Beach County

e. Businesses which are regulated through the Consumer Affairs Division (currently towing, vehicle for hire and moving) shall pay a fee that is one-half of

the fees outlined in subparagraphs a., b., c., and d. above.

8. Businesses which wish to appeal a decision of the Consumer Affairs Division to deny, revoke, suspend or terminate the MVP associate relationship with the county shall pay a \$100 Appeal Fee.

9. The Consumer Affairs is authorized to accept MVP Program applications, agreement approval and payment of fees online through the county's website.

The foregoing resolution was offered by Commissioner _____ who moved its adoption. The motion was seconded by Commissioner _____, and upon being put to a vote, the vote was as follows:

| | |
|---|-------|
| COMMISSIONER JOHN F. KOONS, CHAIRMAN | _____ |
| COMMISSIONER BURT AARONSON, VICE CHAIRMAN | _____ |
| COMMISSIONER KAREN T. MARCUS | _____ |
| COMMISSIONER SHELLEY VANA | _____ |
| COMMISSIONER JESS R. SANTAMARIA | _____ |
| COMMISSIONER ADDIE L. GREENE | _____ |

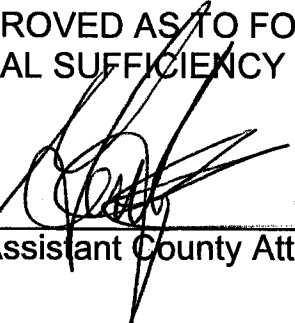
The Chair thereupon declared the resolution duly passed and adopted this _____ day of March, 2009.

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

Sharon R. Bock, Clerk & Comptroller

By: _____
Deputy Clerk

APPROVED AS TO FORM AND LEGAL SUFFICIENCY

By:  _____
Assistant County Attorney



**PALM BEACH COUNTY, FLORIDA
BOARD OF COUNTY COMMISSIONERS**

Department of Public Safety
Consumer Affairs Division
50 South Military Trail, Suite 201, West Palm Beach, FL 33415
(561)712-6600 (Main Office)
Boca/Delray/Glades 1-888-852-7362
www.pbcgov.com/consumer

2009-10

CATS ID #

Office Use only

**APPLICATION & AGREEMENT
MVP Program**

PLEASE TYPE OR PRINT IN INK

Full Legal Name of Business: _____

Doing Business As: _____

Physical Address: _____
(Please do not use post office box or mail drops)

Mailing Address: _____
(Leave blank if same as above)

Phones - Business: _____ **Fax:** _____ **Cell:** _____

E-Mail: _____ **Web Site:** _____

Full Name of individual owner/president or senior corporate representative/chief executive officer:

Is your business incorporated or formed in the state of Florida? Yes No

If NO, what state? _____

Check which type of business you have:

Sole Proprietorship General or Limited Partnership Corporation

Year your business was organized: _____

Name of person who will be handling consumer disputes: _____

Work phone: _____ Alt. phone: _____

Have you/your business, or any of your directors, officers, owners, or general partners been added to the State of Florida convicted vendor list per (FL Statute 287.132-133) YES NO

Please provide a copy of the following:

- A. State of Florida corporate/partnership information (if applicable).
- B. Fictitious name registration (if applicable).
- C. Palm Beach County Local Business Tax Receipt and all Municipal Business Tax Receipts for each of your locations in Palm Beach County.
- D. Proof of general liability insurance of at least \$500,000.

MVP Program Agreement

As the owner, partner or chief corporate officer of this company:

1. I agree to abide by the conditions and requirements of the Palm Beach County MVP Program administered by the Palm Beach County Consumer Affairs Division.
2. I agree to report to Palm Beach County Consumer Affairs any change in address or location and any change in executive officers within thirty (30) calendar days.
3. I understand this Agreement along with the attached standard terms and conditions set forth the entire agreement between the parties, and that there are no other promises or understanding. None of the provisions, terms and conditions contained in the Agreement may be added to, modified, superseded or otherwise altered, except by written instrument executed by the parties hereto.
4. I certify that neither our company nor any of our principals have had any convictions or judgments as a result of governmental action regarding fraud in the marketplace or unfair and deceptive trade practices.
5. This MVP Program application is true and correct to the best of my knowledge.

The business has paid (via check, money order or credit card) a total of \$ _____ to be a member of the MVP Program. It is understood that this agreement begins on the date that the COUNTY/Consumer Affairs Director signs the agreement and that the agreement ends exactly one year later.

IN WITNESS WHEREOF, the Director of the Division of Consumer Affairs, as the designee of the County Administrator of Palm Beach County, Florida has made and executed this Agreement on behalf of the COUNTY and COMPANY has hereunto set its hand the day and year above written.

**PALM BEACH COUNTY, FLORIDA
FOR ITS BOARD OF COUNTY COMMISSIONERS
BY DENNIS MOORE, DIRECTOR - CONSUMER AFFAIRS DIVISION**

_____ Date: _____
Dennis Moore, Director

COMPANY:

Print Name: _____ Title: _____
(owner, partner, or corporate officer)

Signed: _____ Date: _____

ANNUAL FEES

| Price | Fees |
|---------|--|
| \$300 | A single business and each location within Palm Beach County up to 3 locations |
| \$1,000 | A single business with from 4 to 10 locations within Palm Beach County |
| \$2,000 | A single business with from 11 to 20 locations within Palm Beach County |
| \$3,000 | A single business with more than 21 locations within Palm Beach County |

Businesses regulated by the Division of Consumer Affairs shall pay half of the fees outlined above

*Please pay by check, money order or Visa/MasterCard, payable to the Board of County Commissioners.
(CASH NOT ACCEPTED)*

Number of Locations: _____ Total Due: _____

Fees are non-refundable

In accordance with the provisions of the Americans with Disabilities Act, this application may be requested in an alternate format. Please contact the Division of Consumer Affairs at the above-referenced telephone numbers.

ATTACHMENT 3

Palm Beach County
Public Safety Department
Consumer Affairs Division
MVP Program
Standard Terms and Conditions

SECTION 1 - UNDERSTANDING

For the purposes of these terms and conditions, Palm Beach County shall be referred to as "COUNTY", and the MVP Program applicant shall be referred to as the "COMPANY".

The purpose of the MVP Program is to assist consumers in making informed decisions when searching for the best company with which to do business. It is understood that the Palm Beach County Board of County Commissioners through its Consumer Affairs Division and the MVP Program do not rate or recommend any company, product or service.

The term MEMBER does not denote a business relationship or partnership between the COUNTY and the COMPANY. The COUNTY is not and shall not be a partner or business associate as it relates to the COMPANY's business dealings or transactions with third parties. The COUNTY is not and shall not be held liable for any claims or actions arising against COMPANY by a third-party. The COMPANY's status as an MVP member does not imply a preferred ranking for procurement purposes in Palm Beach County.

SECTION 2 - COUNTY

A. The COUNTY through its Consumer Affairs Division agrees to provide:

1. A certificate to the COMPANY for display at its place of business, showing that the COMPANY meets all the requirements and conditions and is an "MEMBER" of the County's MVP Program.
2. A distinctive MVP logo decal for display at the Palm Beach County place of business on a glass door or window.
3. A listing on the Palm Beach County Consumer Affairs website showing that the COMPANY is a member of the MVP program.
4. Authorization to use the MVP logo in business marketing efforts.
5. An extended Consumer Affairs "Business Information Report" including the business profile for the MVP COMPANY listing all consumer contacts in the Consumer Affairs Tracking system (CATS).
6. The MVP logo to be used on the official website of the member provided the COMPANY provides the specific hyperlink to the Consumer Affairs website when the MVP logo is "clicked" or used by any "visitor".
7. At least 1 hour of customer service training provided to the MVP COMPANY for in-house staff each year, as requested by the COMPANY and scheduled with the Consumer Affairs Division. The training must take place within Palm Beach County and is limited to one (1) hour of training for each location of a COMPANY with multiple locations (to a maximum of ten [10] hours each year).
8. Notice by the Consumer Affairs Division to the MVP COMPANY of upcoming changes to county consumer protection ordinances under the jurisdiction of the Consumer Affairs Division.

B. The COMPANY shall:

1. Maintain all Business Tax Receipts, licenses, certificates, and approvals required to conduct business, and agree to comply with all applicable local, state and federal laws relating to consumer protection and/or unfair and deceptive trade practices.
2. Agree to provide a business profile, including corporate status, identification of all officers and/or owner(s), beginning operation date, and other relevant information requested by the COUNTY, including but not limited to the specific name or names of persons in the business who will serve as the point-of-contact for the COUNTY and consumers when a dispute is submitted. The business agrees to also provide the direct mailing address, phone number(s) and e-mail address of such persons.
3. Agree to conduct its business in a reputable and ethical manner, providing the COUNTY with supporting documents and information concerning consumer

disputes within twenty (20) days after being contacted by the COUNTY. The COMPANY agrees to make a good faith effort to resolve disputes in a fair and considerate manner. If agreed by the COUNTY, the COMPANY may request an extension of time in order for the COMPANY to provide the written response.

4. Agree, when requested by the COUNTY or disputing consumer, to face-to-face informal mediation with the consumer if the normal mediation procedure was unsuccessful in resolving a dispute with a value larger than \$500. Typically, such mediation and negotiations will occur at the office of the Consumer Affairs Division located in West Palm Beach, Florida -- unless COUNTY, COMPANY and consumer agree to meet at another specified location. If no mutually agreeable solution is reached between the consumer and the COMPANY at the end of this process, the Consumer Affairs Division may issue recommendations to the COMPANY and/or consumer. The recommendation is non-binding on either party, is not a legal interpretation of law and does not compel either party to take action.
5. Agree to immediately relinquish all MVP seals, posters, and certificates to the COUNTY and further agrees to stop/eliminate all public conveyances that the COMPANY is part of the MVP program, should the COUNTY determine that the COMPANY has not abided by the requirements of the Agreement and these standard terms and conditions. The COUNTY will provide written notice of such action to the COMPANY. Any COMPANY which disputes such action by the COUNTY may appeal such action to the Consumer Affairs Hearing Board/Special Master within thirty (30) days of the written notice and after payment of a One Hundred Dollar (\$100.00) non-refundable administrative fee. Such administrative hearing shall be had in accordance with the procedures provided for the Consumer Affairs Hearing Board in Palm Beach County Ordinance No. 77-10, Sections 11 and 12, as amended.
6. Agrees to maintain records of the disputes filed with Consumer Affairs Division for 4 years from closure date of the dispute.

SECTION 3 – FAILURE TO COMPLY

If the COMPANY fails to comply with any these terms or conditions or the requirements listed below, the County may deny, suspend, revoke, or terminate the Agreement and/or disallow future participation in the program. The COMPANY may appeal such action as set forth in Section 2.B.5 above.

The Consumer Affairs Division reserves the right to terminate or deny a COMPANY from the Agreement and these standard terms and conditions for cause including, but not limited to the following reasons:

- A. Any action taken by the COUNTY where the business was found to be in violation of any of the ordinances administered by the Consumer Affairs Division, or any other applicable federal, state, or local laws.
- B. Any felony conviction or adjudication withheld where principals of the business had action taken against them by a government entity where the issue concerns a matter directly related to an unfair or deceptive business practice as defined by Florida Statute 502.201.
- C. Failure of the COMPANY to provide a written response to a dispute forwarded by the COUNTY within the specified time frame of these standard terms and conditions.
- D. Failure to timely provide information when the ownership of the company has changed hands.
- E. Failure to provide true and accurate information on the application and/or supporting documents.
- F. COMPANY is on or is added to the State of Florida convicted vendor list per Florida Statute 287.132-133.
- G. After the first year's acceptance and participation in the MVP Program, future participation in the MVP Program by the COMPANY will be prohibited or denied if the number of consumer disputes registered with the COUNTY against the COMPANY over the preceding year is higher than the average number of consumer disputes on record with the COUNTY for other similar types of businesses as determined by the COUNTY.
- H. Failure to maintain adequate insurance as required by Section 8.
- I. Any failure of COMPANY to comply with all other terms as set forth within the Agreement and standard terms and conditions.

SECTION 4 – TERM

The term of the Agreement shall be as set forth in the MVP Program Application/Agreement. It is further understood that the Agreement may be extended annually upon proof of compliance with all terms stated in Section 2, B. of these standard terms and conditions and payment of the annual subscription fee(s). The renewal shall be effective only after having been reduced to writing in a duly executed amendment to the Agreement.

SECTION 5 – PRICES AND PAYMENT

The COMPANY is obligated to pay the current rate and price schedule which is available from the COUNTY. Upon renewal of the Agreement, the MVP Member is obligated to pay the then current rate and price schedule which is available from the COUNTY. The COMPANY agrees to pay the yearly non-refundable subscription in advance by check, money order made payable to the "Board of County Commissioners", or credit card (Master Card or Visa). Cash is not accepted.

SECTION 6 – NOTICE AND CONTACT

All notices provided under or pursuant to the Agreement and these terms and conditions shall be in writing, delivered either by hand or by first class, certified mail, return receipt requested, to the representatives identified below at the addresses set forth below:

For COUNTY: Dennis Moore, Director
Consumer Affairs
50 S. Military Trail Suite 201
West Palm Beach, FL 33415

For COMPANY: As per completed application

SECTION 7 – INDEPENDENT CONTRACTOR

The COMPANY is, and shall be, in the performance of all activities under this Contract as Independent CONTRACTOR, and not an employee, agent, or servant of the COUNTY. All persons engaged in any of the work or services performed pursuant to this Contract shall at all times, and in all places, be subject to the COMPANY's sole direction, supervision, and control. The COMPANY shall exercise control over the means and manner in which it and its employees perform the work, and in all respects the COMPANY'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 COMPANY does not have the power or authority to bind the COUNTY in any promise, Agreement or representation.

SECTION 7 - INSURANCE

- A. COMPANY shall, at its sole expense, agree to maintain in full force and effect at all times during the life of the Agreement, insurance coverages and limits (including endorsements), as described herein. The requirements contained herein, as well as COUNTY's review or acceptance of insurance maintained by COMPANY are not intended to and shall not in any manner limit or qualify the liabilities and obligations assumed by COMPANY under the contract.
- B. **Commercial General Liability:** COMPANY shall maintain Commercial General Liability at a limit of liability not less than five-hundred thousand (\$500,000) Per Occurrence Combined Single Limit for Bodily Injury, Personal Injury and Property Damage Liability. Coverage shall not contain any endorsement excluding Contractual Liability or Cross Liability unless granted in writing by County's Risk Management Department. COMPANY shall provide this coverage on a primary basis. Company shall provide this coverage on a primary basis. Company, to the extent permitted by the insurer, hereby waives any and all rights of Subrogation against the COUNTY, its officers, employees and agents.
- C. **Certificate(s) of Insurance:** Prior to execution of the Agreement, COMPANY shall deliver to the County Representative as listed in Section 5 above, a Certificate(s) of Insurance evidencing that all types and amounts of insurance coverages required by this Contract have been obtained and are in full force and effect. Such Certificate(s) of Insurance shall include a minimum ten (10) day endeavor to notify due to cancellation or non-renewal of coverage.

SECTION 8 – INDEMNIFICATION/LIABILITY

The COMPANY shall be solely responsible to parties with whom it shall deal in carrying out the terms of the Agreement and standard terms and conditions, and shall save the COUNTY, the Department, and the Division harmless against all claims of whatever nature by third parties arising out of this Agreement.

The COMPANY shall protect, defend, reimburse, indemnify and hold the 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 the Agreement and standard terms and conditions or due to acts or omissions of the COMPANY.

Any liability to the COUNTY shall not exceed the value of the cost for becoming a MEMBER of the MVP Program.

SECTION 9 – GENERAL TERMS AND CONDITIONS

COUNTY reserves the right to unilaterally cancel the Agreement and these terms and conditions for refusal by the COMPANY to allow COUNTY access to all documents, papers, letters, or other material.

The COMPANY is not to imply, state, or in any way give the impression that this Agreement or being a member of the MVP Program is an endorsement by the COUNTY, that it is perpetual, or that being a member is active when the membership has been revoked.

The COMPANY is prohibited from using the MVP Program member relationship to provide any benefit or advantage when or if the COMPANY sells products or provides services to the COUNTY.

SECTION 10 – INVALIDITY OF CLAUSES

The validity of any portion, article, section, paragraph, provision, clause, or any portion thereof of these standard terms and conditions and the Agreement shall have no effect upon the validity of any other part or portion hereof.

SECTION 11 - VENUE

The Agreement and these standard terms and conditions shall be governed by the laws of the State of Florida. Any legal action necessary to enforce the Agreement and these standard terms and conditions shall be brought in a court of competent jurisdiction in Palm Beach County, Florida.

SECTION 12 – ATTORNEY'S FEES

Any costs or expenses (including reasonable attorney's fees whether at the trial or appellate level or otherwise) associated with the enforcement of the Agreement and these terms and conditions shall be borne by the respective parties, however, this clause pertains only to the parties to this Agreement.

SECTION 13 – NON-DISCRIMINATION

No person shall be excluded from participating in or be subject to discrimination in the performance of the Agreement and these terms and conditions on account of race, creed, color, sex, religion, national origin, sexual orientation, disability, gender identity and expression.

ARTICLE 14 – SUCCESSORS AND ASSIGNS

The Agreement and these standard terms and conditions shall be binding upon and inure to the benefit of the respective parties and their successors.

Proposed MVP Program Logo

Palm Beach County Consumer Affairs Division

