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PALM BEACH COUNTY
BOARD OF COUNTY COMMISSIONERS
AGENDA ITEM SUMMARY

Meeting Date: January 15, 2013

Consent Regular
 Public Hearing

Department

Submitted By: COUNTY ATTORNEY

Submitted For: Office of Small/Minority/Women Business Assistance

I. EXECUTIVE BRIEF

Motion and Title: Staff recommends motion to adopt: an Ordinance of the Board of County Commissioners of Palm Beach County, Florida, amending Sections 2-80.20 through 2-80.34 of the Palm Beach County Code, which codified Ordinance No. 2002-064, as amended by Ordinance No. 04-071, Ordinance No. 05-048, Ordinance No. 2008-014, and Ordinance No. 2009-024, and established a Small Business Enterprise Program; providing for policy and purpose; providing for definitions; providing for Small Business Certification; providing for MWBE certification; providing for the Small Business Advisory Board; providing for repeal of laws in conflict; providing for severability; providing for inclusion in the code of laws and ordinances; and providing for an effective date.

Summary: On December 18, 2012, the Board of County Commissioners held preliminary reading of this ordinance and authorized advertising for public hearing. The proposed changes to the SBE Ordinance are recommended to create a thorough process for reviewing applications for certification, update the membership of the SBE Advisory Board, and provide further clarity, Countywide (TKF)

Background and Policy Issues: The Board of County Commissioners implemented a Small Business Enterprise Program (SBE) on October 1, 2002. During the ten years of implementation of the program, it has become apparent that certain changes are needed to provide clarity. This ordinance amendment also addresses some of the concerns raised by the Inspector General's Office. The proposed ordinance amendment was reviewed with the Small Business Advisory Committee on November 21, 2012, and they unanimously approved the changes. A courtesy copy of the ordinance draft was sent to the League of Cities on November 28, 2012.

The proposed changes are highlighted below:

- The policy and purpose of the ordinance is reiterated in the body of the ordinance so that it will appear in the codified code.

(Continues)

Attachments:

1. Proposed Ordinance Amendment

Recommended by: _____

County Attorney

12/21/12
Date

Approved by: _____

N/A

Date

II. FISCAL IMPACT ANALYSIS

A. Five Year Summary of Fiscal Impact:

Fiscal Years	2013	2014	2015	2016	2017
Capital Expenditures	_____	_____	_____	_____	_____
Operating Costs	_____	_____	_____	_____	_____
External Revenues	_____	_____	_____	_____	_____
Program Income (County)	_____	_____	_____	_____	_____
In-Kind Match (County)	_____	_____	_____	_____	_____
NET FISCAL IMPACT	_____	_____	_____	_____	_____
# ADDITIONAL FTE POSITIONS (Cumulative)	_____	_____	_____	_____	_____

Is Item Included in Current Budget? Yes ___ No ___

Budget Account No.: Fund ___ Department ___ Unit ___ Object ___

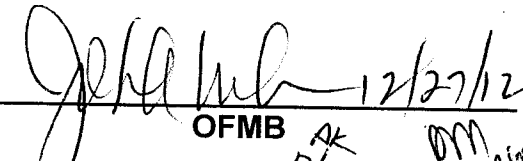
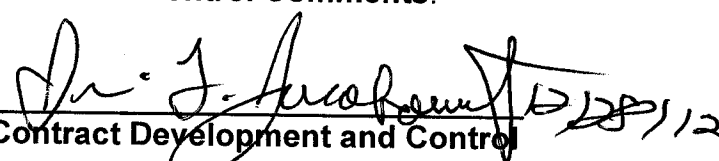
Reporting Category _____

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

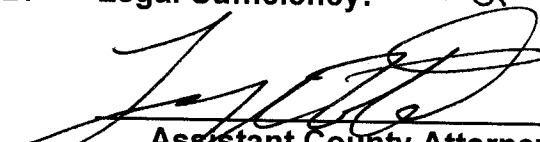
C. Departmental Fiscal Review: _____

III. REVIEW COMMENTS

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

 12/27/12
 OFMB *AK 12/27/12* *DM 12/26/12*  12/28/12
 Contract Development and Control

B. Legal Sufficiency:

 12/20/12
 Assistant County Attorney

C. Other Department Review:

Department Director

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

Background and Policy Issues: (continued from page 1)

- Definitions of “commercially useful business function,” “domiciled” and “small business” have been updated, and definitions of “independent contractor,” “independent business,” “leased employee” and “supplier” are added.
- Eligibility standards have been updated for SBEs and M/WBEs.
- Application procedures and appeal procedures have been updated.
- Membership on the Advisory Board has been updated.

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ORDINANCE NO. 2013 -

AN ORDINANCE OF THE BOARD OF COUNTY COMMISSIONERS OF PALM BEACH COUNTY, FLORIDA, AMENDING SECTIONS 2-80.20 THROUGH 2-80.34 OF THE PALM BEACH COUNTY CODE, WHICH CODIFIED ORDINANCE NO. 2002-064, AS AMENDED BY ORDINANCE NO. 04-071, ORDINANCE NO. 05-048, ORDINANCE NO. 2008-014, AND ORDINANCE NO. 2009-024, AND ESTABLISHED A SMALL BUSINESS ENTERPRISE PROGRAM; PROVIDING FOR POLICY AND PURPOSE; PROVIDING FOR DEFINITIONS; PROVIDING FOR SMALL BUSINESS CERTIFICATION; PROVIDING FOR M/WBE CERTIFICATION; PROVIDING FOR THE SMALL BUSINESS ADVISORY BOARD; PROVIDING FOR REPEAL OF LAWS IN CONFLICT; PROVIDING FOR SEVERABILITY; PROVIDING FOR INCLUSION IN THE CODE OF LAWS AND ORDINANCES; AND PROVIDING FOR AN EFFECTIVE DATE.

WHEREAS, it is the policy of the Board of County Commissioners of Palm Beach County, Florida that all businesses be afforded an opportunity for full participation in our free enterprise system; and

WHEREAS, in order to implement this policy, The Board of County Commissioners of Palm Beach County, Florida is committed to ensuring full and equitable participation by small business enterprises in the provision of goods and services to Palm Beach County; and

WHEREAS, on October 1, 2002, Palm Beach County implemented a Small Business Enterprise Program; and

WHEREAS, modifications to the Program are appropriate at this time.

NOW, THEREFORE, BE IT ORDAINED BY THE BOARD OF COUNTY COMMISSIONERS OF PALM BEACH COUNTY, FLORIDA, that Sections 2-80.20 through 2-80.34 of the Palm Beach County Code are hereby amended as follows:

SECTION I. POLICY AND PURPOSE:

Section 2-80.20 of the Palm Beach County Code is hereby added:

It is the policy of the Board of County Commissioners of Palm Beach County, Florida that all business be afforded an opportunity for full participation in the free enterprise system. In order to implement the policy, the Board of County

1 Commissioners of Palm Beach County, Florida is committed to ensuring full and
2 equitable participation by small business enterprises in the provision of goods and
3 services to Palm Beach County.

4 **SECTION II. DEFINITIONS:**

5 The definitions of commercially useful business function, domiciled and small business
6 in Section 2-80.21 of the Palm Beach County Code are amended to read as follows,
7 and the definitions of independent contractor, independent business, leased employees,
8 and supplier are added:

9 *Commercially useful business function* means adding value to the goods and
10 services supplied under a contract. A small business is considered to perform a
11 commercially useful business function when it is responsible for execution of a distinct
12 element of work of a contract or transaction and carrying out its responsibilities by
13 actually performing, managing and supervising the work performed. Businesses who
14 merely act as a conduit do not perform a commercially useful business function and will
15 not be eligible for certification as a SBE. In determining whether a business performs a
16 commercially useful business function, consideration will include, but not be limited to,
17 whether the business adds a value to the product or service provided; whether the
18 business has a distributorship agreement with the manufacturer of goods supplied;
19 whether the business takes possession of the product or service provided; whether the
20 business warrants the product or service provided; whether the business maintains
21 sufficient storage space to keep the product in inventory; whether the business
22 maintains sufficient inventory to meet the requirements of its contracts; whether the
23 business provides the product or service to the public or other business other than a
24 governmental agency.

25 *Domiciled* in the county means the business holds a valid Palm Beach County
26 business tax receipt and has a permanent place of business in the county. In order to
27 establish a permanent place of business in the county, the business must:

28 (1) Demonstrate that business has been conducted ~~business activity during~~
29 ~~the preceding twelve (12) months~~ at the county location, and sufficient full-time
30 employees are maintained in the county to perform the contracted work;

1 (2) The county business tax receipt bears the county address, and the county
2 location is in an area zoned for the conduct of such business;

3 (3) The county location must be verifiable through documentation such as
4 property tax bill, or lease agreement, or utility bills, client invoices, payroll records or
5 other appropriate documentation; and,

6 (4) The county location ~~should~~ must be identifiable through signage, telephone
7 book-listing, and/or website or social media. ~~or other appropriate means.~~ On-site visits
8 may be conducted at any time prior to and during the certification term to determine
9 continued adherence to the domicile requirements and other requirements of the code.
10 Additional backup documentation may be requested on a case-by-case basis. A county
11 telephone number or post office box in the county shall not be sufficient without further
12 documentation, to establish domicile in Palm Beach County.

13 *Small business* means a business domiciled in Palm Beach County and certified
14 by the county which is an independently owned and operated, for profit, business
15 concern organized to engage in commercial transactions and whose ~~adjusted gross~~
16 income, together with its affiliates do ~~margin does not~~ exceed the following:

17 (1) For a provider of construction the annual gross ~~income~~ receipts ~~does~~ may
18 not exceed nine million dollars (\$9,000,000.00) (averaged over the previous three (3)
19 years, or if in business, less than three (3) years, averaged during duration of business).

20 (2) For a ~~provider~~ supplier of commodities the annual gross income ~~receipts~~
21 does ~~may~~ not exceed five million dollars (\$5,000,000.00) (averaged over the previous
22 three (3) years, or if in business, less than three (3) years, averaged during duration of
23 business).

24 (3) For a ~~provider~~ supplier of professional services procured pursuant to the
25 CCNA statute the annual gross income ~~receipts~~ ~~does~~ may not exceed five million dollars
26 (\$5,000,000.00) (averaged over the previous three (3) years or if in business less than
27 three (3) years, averaged during duration of business).

28 (4) For a ~~provider~~ supplier of other professional services, the annual gross
29 income ~~receipts~~ ~~does~~ may not exceed four million dollars (\$4,000,000.00) (averaged
30 over the previous three (3) years, or if in business less than three (3) years, averaged

1 during the duration of the business.)

2 A small business must be majority owned and controlled by an individual who is
3 a citizen or a lawful permanent resident of the United States.

4 Independent contractor means a person who contracts to do work for another
5 person according to his or her own processes and methods and is not subject to the
6 control of the other person except for what is specified in the agreement for a specific
7 job.

8 Independent business is a business that operates free of control or reliance on
9 another business. Recognition of the business as a separate legal entity for tax or
10 corporate purposes is not necessarily sufficient for recognition as an independent
11 business. In determining whether a potential small business is an independent
12 business, the county shall consider all relevant factors, including but not limited to, the
13 date the business was established, the adequacy of its resources for the type of work
14 specified, relationships with affiliates and subsidiaries, and the degree to which
15 financial, equipment leasing and other relationships with other businesses vary from
16 established industry practices. If there has been a recent change in ownership of the
17 business, a review of whether the acquisition of the business was done pursuant to an
18 arm's length transaction will also be considered in determining independence of the
19 business.

20 Leased employee means the employee of a leasing company of professional
21 employee organize who works for a business organization. The business organization
22 maintains management of the worked performed by the employee. The leasing
23 company handles administrative responsibilities such as, but not limited to payroll,
24 compliance with state and federal regulations and unemployment insurance.

25 Supplier means a business that supplies goods or materials. A supplier may be
26 distinguished from a contractor or subcontractor who commonly adds specialized input
27 to deliverables.

28 **SECTION II. SMALL BUSINESS CERTIFICATION:**

29 Section 2-80.30 of the Palm Beach County Code is amended to read as follows:

30 (a) *Eligibility standards.* An eligible small business is an independent, for-profit

1 business concern that performs a commercially useful business function, whose gross
2 income is receipts are within the standards as defined in section 2-80.21 above and
3 who has been in business for at least one (1) year or whose owner has a certificate of
4 small business competency issued by the Small Business Development Center, Palm
5 Beach Resource Center, Palm Beach State College ~~Community College~~ or other office
6 of Small Business Assistance approved courses. A small business must behave a
7 domiciled in Palm Beach County in order to be eligible to participate. ~~An eligible small~~
8 ~~business for this program shall be an independent business. Recognition of the~~
9 ~~business as a separate legal entity for tax or corporate purposes is not necessarily~~
10 ~~sufficient for recognition as a small business. In determining whether a potential small~~
11 ~~business is an independent business, the county shall consider all relevant factors,~~
12 ~~including but not limited to, the date the business was established, the adequacy of its~~
13 ~~resources for the type of work specified, relationships with affiliates and subsidiaries,~~
14 ~~and the degree to which financial, equipment leasing and other relationships with other~~
15 ~~businesses vary from established industry practices. An eligible small business for this~~
16 ~~program must perform a commercially useful business function. If there has been a~~
17 ~~recent change in ownership of the business, a review of whether the acquisition of the~~
18 ~~business was done pursuant to an arm's length transaction will also be considered in~~
19 ~~determining independence of the business.~~

20 (b) ~~Commercially useful business function. A small business is considered to~~
21 ~~perform a commercially useful business function when it is responsible for execution of~~
22 ~~a distinct element of work of a contract and carrying out its responsibilities by actually~~
23 ~~performing, managing and supervising the work performed. Businesses who merely act~~
24 ~~as a conduit do not perform a commercially useful business function and will not be~~
25 ~~eligible for certification as a SBE. In determining whether a business performs a~~
26 ~~commercially useful business function, consideration will include, but not be limited to~~
27 ~~whether the business adds a value to the product or service provided; whether the~~
28 ~~business has a distributorship agreement with the manufacturer of goods supplied;~~
29 ~~whether the business takes possession of the product or service provided; whether the~~
30 ~~business warrants the product or service provided; whether the business maintains~~

1 ~~sufficient storage space to keep the product in inventory; whether the business~~
2 ~~maintains sufficient inventory to meet the requirements of its contracts; whether the~~
3 ~~business provides the product or service to the public or other business other than a~~
4 ~~governmental agency.~~

5 (b) *Application procedures.* All applicants wishing to be considered as certified
6 businesses for the benefits of this program must apply for small business certification by
7 completing the application and affidavit which can be obtained through the office of
8 small business assistance and pay the applicable fee for certification, modification of
9 certification or recertification. Applicants must submit the documentation listed below as
10 appropriate to their business and all of its affiliates. The office of small business
11 assistance may request any other documentation necessary to determine eligibility.
12 Documents not in English must be accompanied by a certified translation. In instances
13 where the applicant business has not been in existence three (3) years, it shall provide
14 the documentation for the years the business has been in existence.

15 (1) *Corporations:*

- 16 a. List of the corporation's current full-time and part-time employees,
17 including leased employees and/or independent contractors by length of service;
- 18 b. Proof of business location and operation in Palm Beach County;
- 19 c. Articles of incorporation, including date approved by the state, and any
20 subsequent amendments;
- 21 d. By-laws;
- 22 e. Prior three (3) years' financial statement prepared by an independent
23 CPA or accountant;
- 24 f. Prior three (3) years' federal corporate tax returns, including all
25 schedules, as signed and filed;
- 26 g. Copies of last three (3) months' corporate payroll; and/or payments to
27 independent contractors;
- 28 h. Any necessary licenses to perform the work for which certification is
29 sought;
- 30 i. Palm Beach County business tax receipt;

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- j. A list of all affiliates;
 - k. Resume of principals and management personnel showing education, training and employment dates;
 - l. Stock transfer agreements;
 - m. Copies of the corporation's distribution of profits for the previous year;
 - n. Copies of third party agreements, such as rental and lease agreements, management agreements, and purchase agreements;
 - o. Proof of stock purchase and capital investments.
- (2) *Partnerships:*
- a. List of the partnership's current full-time and part-time employees, including leased employees and/or independent contractors by length of service;
 - b. Proof of business location and operation in Palm Beach County;
 - c. Partnership agreement;
 - d. Prior three (3) years' financial statements prepared by an independent CPA or accountant;
 - e. Prior three (3) years' federal tax returns, including all schedules, as signed and filed;
 - f. Any other-necessary licenses to perform the work for which certification is sought;
 - g. Copies of last three (3) months' corporate payroll and/or payments to independent contractors;
 - h. Palm Beach County business tax receipt;
 - i. A list of all affiliates.
 - j. Resumes of all partners and management personnel showing education, training and employment dates;
 - k. Buy-out rights agreements;
 - l. Profit sharing agreement;
 - m. Proof of capital investment;
 - n. Copies of the partnership distribution of profits for the previous year;
 - o. Copies of third party agreements, such as rental and lease agreements.

1 management agreements, or purchase agreements.

2 (3) *Sole proprietors:*

3 a. Any ~~other~~-necessary licenses to perform the work for which certification
4 is sought;

5 b. Verification of fictitious name registration;

6 c. Prior three (3) years' federal tax returns, including all schedules, as
7 signed and filed;

8 d. List of current full-time and part-time employees including leased
9 employees and/or independent contractors by length of service;

10 e. Proof of business location and operation in Palm Beach County.

11 f. Palm Beach County business tax receipt;

12 g. A list of all affiliates;

13 h. Resumes of owner and management personnel—resumes showing
14 education, training, and employment dates;

15 i. Copies of third party agreements such as rental and lease agreements,
16 management agreements or purchase agreements.

17 j. Copies of last three (3) months' payroll and/or payments to independent
18 contractors.

19 (~~dc~~) *Application review procedures.* Once an applicant has submitted the
20 application and all supporting documentation, certification review will commence ~~be~~
21 ~~completed within ninety (90) days~~ and the following procedures will apply:

22 (1) The small business certification application and all supporting documents
23 will be logged in as appropriate. The application will be reviewed for
24 completeness and accuracy. The office of small business assistance will
25 inform the applicant of any missing documentation. Any applicant failing to
26 submit the requested documentation within thirty (30) days of the notice
27 shall be deemed to have abandoned its application.

28 (2) References will be called and information verified by third parties, when
29 appropriate. The office of small business assistance will review the goods
30 or services provided by the applicant to determine the appropriate

1 National Institute of Government Procurement (NIGP) classification codes.
2 Businesses will only be certified in the areas where they provide a
3 commercially useful business function. In those instances when the NIGP
4 codes are broader than the goods or services provided by the applicant,
5 the office of small business assistance will appropriately limit the
6 certification to those goods or services for which the application performs
7 a commercially useful business function.

8 (3) When deemed appropriate by the office of small business assistance, a
9 personal interview or site visit will be scheduled with the principal(s) to
10 discuss the documentation submitted and determine if the applicant meets
11 the established criteria.

12 (4) Applicants approved for certification will be notified immediately by mail.

13 (de) *Denial of certification.* Applicants denied certification shall be notified by
14 certified mail and informed of their right to appeal the denial. An applicant denied
15 certification may not reapply for certification for one (1) year from the date of denial of
16 the certification.

17 (ef) *Appeal of certification denial.* Any firm that believes it has been wrongly
18 denied certification as a small business may file an appeal in writing, signed and dated,
19 with the office of small business assistance. The appeal shall be filed no later than
20 ~~fifteen (15)~~ twenty (20) days from the date of receipt of the notice of denial of
21 certification. The request for appeal shall state the specific reasons why the firm
22 believes the denial of certification is erroneous.

23 (fg) *Hearing on appeal of certification denial.* If an appeal is filed, an
24 administrative review will be conducted by the director of the office of small business
25 assistance. The review will be conducted within forty-five (45) days of the filing of the
26 request for appeal. The director of the office of small business assistance shall take one
27 of the following actions on the request for appeal:

28 (1) Uphold the appeal. If a determination is made that certification was
29 denied, contrary to the provisions of the code, the director may uphold the
30 appeal. If the appeal is upheld, a certification certificate shall be issued.

1 (2) Deny the appeal. If the appeal is denied, the applicant has the right to
2 request the appeal be referred to a special master in accordance with
3 subsection 2-80.30(ji) below.

4 (3) Refer the appeal directly to a special master with no determination made
5 by the director of the office of small business, in accordance with
6 subsection 2-80.30(j) below.

7 (g) Continued certification. A business must remain continuously eligible for
8 certification throughout its certification period. Certification under a previous code does
9 not guarantee that the small business continues to be eligible for the entire certification
10 period if there is a modification of eligibility criteria. The Office of Small Business
11 Assistance may conduct site visits or review documents to ensure continued
12 compliance at any time during the certification period. Certified businesses are also
13 required to notify the Office of Small Business within thirty (30) days of any change in
14 ownership, operation, control, activities, or domicile or gross receipts.

15 (h) *Recertification.* Certified SBEs are required to submit an affidavit of their
16 continued eligibility as a SBE every three (3) years along with an application for
17 recertification. The office of small business assistance may conduct site visits or review
18 documents to ensure continued compliance as a small business. If there has been a
19 change in operation, ownership, control, activities, domicile or gross receipts, the SBE
20 must identify such change on their application for recertification. ~~notify the office of small~~
21 ~~business assistance within thirty (30) days of the change.~~ Supporting documentation
22 may be required for continued certification. A company that fails to submit its application
23 for recertification and affidavit of continued eligibility or fails to submit documentation
24 requested by the office of small business assistance or allow a site visit, will no longer
25 be deemed certified for purposes of participation in the small business program.

26 The criteria for recertification shall be the same as for certification. An applicant
27 may request an appeal of denial of recertification within ~~twentyfive~~15 days of
28 ~~thereceipt of~~ notice of denial. The hearing shall be conducted in the manner described
29 in section 2-80.30(jg). An applicant denied recertification may not reapply for
30 certification for one (1) year from the denial of recertification.

1 (i) *Decertification.* If during the period of certification, the county has reason to
2 believe that the SBE received certification improperly, or that there has been a
3 substantial change in circumstances in the operation, ownership, control, activities,
4 domicile, or gross receipts that continued certification would be contrary to the county's
5 small business policy, then the office of small business assistance may conduct an
6 investigation of the allegations.

7 The office of small business assistance may decertify the SBE if the investigation
8 indicates that:

- 9 (1) The small business cannot be contacted at the last known address
10 in Palm Beach County;
- 11 (2) The small business is no longer in business;
- 12 (3) The small business is no longer licensed to do the type of business
13 for which it was certified;
- 14 (4) The small business obtained its original certification and/or
15 recertification through false representation or deceit;
- 16 (5) The small business has been disbarred or suspended as a vendor
17 by the county purchasing department. At the expiration of any
18 suspension, the firm may reapply for certification;
- 19 (6) Site visits have revealed no business being conducted at the
20 county location; or
- 21 (7) The small business does not meet the current eligibility standards
22 for certification as a small business. Certification under a previous
23 code ordinance does not guarantee that the small business
24 continues to be eligible for their entire certification period.
- 25 (8) The small business does not perform a commercially useful
26 business function.
- 27 (9) The small business refuses to allow an on-site inspection.
- 28 (10) The small business has failed to notify the office of small business
29 of any change in the ownership, location, structure or any other
30 aspect of the small business which would affect its small business

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certification.

The office of small business assistance shall notify the small business by certified mail that it has been decertified. The small business may request an appeal hearing of the decertification within ~~fifteen (15)~~ twenty (20) days of receipt of the notice. The resolution of the appeal shall be conducted in the manner described in subsection 2-80.30(ig). Nothing in this section shall prevent the office of small business assistance from commencing an investigation regarding the legitimacy of a small business certification. A business decertified pursuant to this section may not re-apply for certification for one (1) year from the date of decertification.

(j) *Hearing before a special master.*

- (1) Upon receipt of a denial of appeal for certification, recertification, or decertification, an applicant may request a hearing before a special master. The request for a hearing shall be in writing to the director of the office of small business assistance, and shall be made within five (5) business days of issuance of the director of the office of small business' determination. The request for a hearing shall be accompanied by an appeal bond of one thousand dollars (\$1,000.00) which shall be remitted in the form of a money order, a certified check, a cashier's check or a bank check payable to the county.
- (2) At no time shall the applicant or any other person contact a special master regarding any issue pertaining to, or involving the appeal. Contact between the county and the special master shall be limited to scheduling and other administrative issues; including the provision and copying of public records pertinent to the appeal.
- (3) The office of small business assistance shall establish rules and regulations by separate policy and procedure detailing the selection of special masters, the appeals process, and the conduct governing appeal hearings. Such rules shall provide that the special master may not consider any evidence which was not available at the time

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of the application or recommendation for decertification or recommendation for denial of certification or recertification. Such rules shall also provide that the special master shall render a written decision within ten (10) working days of the hearing.

(4) Special masters shall have the jurisdiction and authority to hear and decide appeals. The special master shall make a recommendation as to whether the appeal should be upheld as denied.

a. If the special master upholds the appeal, the special master shall recommend the director of the office of small business assistance issue a certification certificate. In these instances, the office of small business assistance shall return the appeal bond to the applicant.

b. If the special master denies the appeal, the special master shall recommend that certification be withheld. In these instances, the applicant's bond shall be forfeited.

c. The director of the office of small business assistance may accept the special master's recommendation or, if the director of the office of small business assistance determines the special master's recommendation is not in the county's best interest, the original recommendation of the office may be referred to the board for approval. At that time, the board may accept or reject the recommendation of the special master.

d. If a special master is unable to provide a fair hearing for any reason, the special master shall not accept the appeal and shall immediately notify the director of the office of small business assistance. The director of the office of small business assistance shall reassign the appeal to a special master who does not have a conflict.

1 **SECTION III. M/WBE CERTIFICATION.**

2 Section 2-80.31 of the Palm Beach County Code is amended to read as follows:

3 (a) Purpose of M/WBE Certification. No preferences will be extended to certified
4 M/WBEs, unless otherwise provided by law. However, businesses eligible for
5 certification as a M/WBE are encouraged to become certified and maintain their
6 certification in order to assist in the tracking of M/WBE availability and awards of
7 contracts to M/WBEs. This information is vital to determining whether race and gender
8 neutral programs assist M/WBE firms or whether race and gender preferences are
9 necessary in order to address any discrimination in the market.

10 (b) *Eligibility standards:* ~~Although preferences to certified M/WBEs will not be~~
11 ~~extended under this part, unless otherwise provided by law, businesses eligible for~~
12 ~~certification as a M/WBE are encouraged to maintain their certification in order to assist~~
13 ~~in the tracking of M/WBE availability and awards of contracts to M/WBEs. This~~
14 ~~information is vital to determining whether race and gender neutral programs assist~~
15 ~~M/WBE firms or whether race and gender preferences are necessary in order to~~
16 ~~address any continued discrimination in the market.~~

17 An eligible MBE or WBE is a small for profit business concern domiciled in the county
18 which is both owned and controlled by minorities or by women and whose gross
19 receipts are within the standards as defined in section 2-80.21 above. Further, the
20 business must meet all other criteria of a small business as provided above. This means
21 that ~~m~~Minorities and/or women must own at least fifty-one (51) percent of the business
22 and that the management and daily business operations are controlled by the minorities
23 and/or women who own it. ~~An eligible M/WBE for this program shall be an independent~~
24 ~~business.~~The ownership and control by minorities and/or women shall be real,
25 substantial and continuing, and shall continue beyond the pro forma ownership of the
26 firm as reflected in its ownership documents. The minority and/or women owners shall
27 enjoy the customary incident of ownership and shall share in the risks and profits
28 commensurate with their ownership interest, as demonstrated by an examination of the
29 substance rather than form or arrangements. ~~Recognition of the business as a separate~~
30 ~~legal entity for tax or corporate purposes is not necessarily sufficient for recognition as~~

1 an M/WBE. In determining whether a potential M/WBE is an independent business, the
2 county shall consider all relevant factors, including but not limited to the date the
3 business was established, the adequacy of its resources for the type of work specified,
4 relationships with affiliates and subsidiaries, and the degree to which financial,
5 equipment leasing and other relationships with nonminority firms vary from established
6 industry practices. If there has been a recent change in ownership of the business, a
7 review of whether the acquisition of the business was done pursuant to an arm's length
8 transaction will also be considered in determining independence of the business. An
9 eligible M/WBE must perform a commercially useful business function.

10 (1) *Ownership:* In determining ownership of the business, the
11 contribution of capital or expertise by the minority and/or women
12 owners to acquire their interest in the firm shall be real and
13 substantial. Examples of insufficient contributions include, but are
14 not limited to, a promise to contribute capital, a note payable to the
15 firm or its owners who are not minorities or women, or the mere
16 participation as an employee, rather than as a manager/owner.

17 (2) *Control:* The minority and/or woman owner(s) must have
18 operational and managerial control of the business.

19 a. The primary consideration determining operational control
20 and the extent to which the minority person and/or woman
21 actually operates the business will rest upon the peculiarities
22 of the industry of which the business is a part. Accordingly,
23 in order to clarify the level of operational involvement of the
24 minority person or woman in the business to be deemed as
25 an M/WBE, the following examples are put forth and are not
26 to be all-inclusive.

27 1. The minority person and/or woman should have some
28 experience in the industry for which certification is
29 sought.

30 2. The minority person and/or woman should be able to

1 demonstrate that basic decisions pertaining to the
2 daily operation of the business are independently
3 made.

4 3. The minority person and/or woman should have some
5 technical competence in the industry for which
6 certification is sought. The minority person and/or
7 woman should have a working knowledge of the
8 technical requirements of the business needed to
9 operate in the industry.

10 b. Managerial control means that the minority and/or woman
11 has the demonstrable ability to make independent and
12 unilateral business decisions needed to guide the future and
13 destiny of the business. For a minority and/or woman to
14 demonstrate the extent of his/her control, the following
15 examples are put forth and are not intended to be all-
16 inclusive:

17 1. Corporate bylaws or partnership agreements or other
18 agreements should be free of restrictive language
19 which dilutes the minority's or women's control, thus
20 preventing him/her from making those decisions
21 which affect the destiny of the business.

22 2. The minority person and/or woman should be able to
23 clearly show, through production of documents, the
24 areas of control such as, but not limited to:

25 i. Authority and responsibility to sign payroll
26 checks and letters of credit.

27 ii. Authority for negotiations and signature
28 responsibility for insurance and/or bonds.

29 iii. Authority for negotiations and/or signature
30 services.

1 If the owners of the firm who are not minorities or women are
2 disproportionately responsible for the operation of the firm,
3 then the firm is not to be considered an M/WBE within the
4 meaning of this program. Where the actual management of
5 the firm is contracted out to individuals other than the owner,
6 those persons will be considered as controlling the business.

7 ~~(3) Commercially useful business function. A M/WBE is considered to perform a~~
8 ~~commercially useful business function when it is responsible for execution of a distinct~~
9 ~~element of work of a contract and carrying out its responsibilities by actually performing,~~
10 ~~managing and supervising the work performed. Businesses who merely act as a conduit~~
11 ~~do not perform a commercially useful business function and will not be eligible for~~
12 ~~certification as a M/WBE. In determining whether a business performs a commercially~~
13 ~~useful business function, consideration will include, but not be limited to, whether the~~
14 ~~business adds a value to the product or service provided; whether the business takes~~
15 ~~possession of the product or service provided; whether the business has a~~
16 ~~distributorship agreement with the manufacturer of goods supplied; whether the~~
17 ~~business warrants the product or service provided; whether the business maintains~~
18 ~~sufficient storage space to keep the product in inventory; whether the business~~
19 ~~maintains sufficient inventory to meet the requirements of its contracts; whether the~~
20 ~~business provides the product or service to the public or other business other than a~~
21 ~~governmental agency.~~

22 (cb) *Application procedures:* All applicants wishing to be
23 considered as certified businesses must apply for M/WBE
24 certification by completing an M/WBE disclosure affidavit
25 which can be obtained through the office of small business
26 assistance. Applicants must submit the documentation listed
27 in section 2-80.30(b) below, as appropriate to their business
28 and all of its affiliates. The office of small business
29 assistance may request any other documentation necessary
30 to determine eligibility. Documents not in English must be

1 accompanied by a certified translation. In addition,
2 applicants must submit documentation of the minority or
3 woman status. ~~In instances where the applicant business~~
4 ~~has not been in existence three (3) years, it shall provide the~~
5 ~~documentation for the years the business has been in~~
6 ~~existence.~~

7 ~~(1) Corporations.~~

- 8 a. ~~List of the corporation's current full-time and~~
9 ~~part-time employees by length of service;~~
- 10 b. ~~Articles of incorporation, including date~~
11 ~~approved by the state, and any subsequent~~
12 ~~amendments;~~
- 13 c. ~~By laws;~~
- 14 d. ~~Prior three (3) years' financial statement~~
15 ~~prepared by an independent CPA or~~
16 ~~accountant;~~
- 17 e. ~~Prior three (3) years' federal corporate tax~~
18 ~~returns, including all schedules, as signed and~~
19 ~~filed;~~
- 20 f. ~~Resumes of principals and management~~
21 ~~personnel of business showing education,~~
22 ~~training and employment with dates;~~
- 23 g. ~~Stock transfer agreement(s);~~
- 24 h. ~~Any necessary licenses to perform the work for~~
25 ~~which certification is sought;~~
- 26 i. ~~Copies of last three (3) months' corporate~~
27 ~~payroll;~~
- 28 j. ~~Stock ledger;~~
- 29 k. ~~Copies of the corporation's distribution of~~
30 ~~profits for the previous year;~~

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- ~~l. Copies of third party agreements such as rental and lease agreements, management agreements, or purchase agreements;~~
- ~~m. Copies of stock certificates issued;~~
- ~~n. Proof of stock purchase;~~
- ~~o. Palm Beach County business tax receipt.~~
- ~~p. List of all affiliates.~~

~~(2) Partnerships.~~

- ~~a. List of the partnership's current full-time and part-time employees by length of service;~~
- ~~b. Partnership agreements;~~
- ~~c. Prior three (3) years' financial statements prepared by an independent CPA or accountant;~~
- ~~d. Prior three (3) years' federal tax returns, including all schedules, as signed and filed;~~
- ~~e. Resumes of all partners and management personnel showing education, training and employment with dates;~~
- ~~f. Any necessary licenses to perform the work for which certification is sought;~~
- ~~g. Buy-out rights agreement;~~
- ~~h. Profit sharing agreement;~~
- ~~i. Copies of last three (3) months' corporate payroll;~~
- ~~j. Proof of capital invested;~~
- ~~k. Copies of the partnership's distribution of profits for the previous year;~~
- ~~l. Copies of third party agreements such as rental and lease agreements, management~~

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~~agreements or purchase agreements;~~

~~m. Palm Beach County business tax receipt.~~

~~n. List of all affiliates.~~

~~(3) Sole proprietors:~~

~~a. Any other necessary license to perform the work for which certification is sought;~~

~~b. Verification of fictitious name registration;~~

~~c. Prior three (3) years' federal tax returns, including all schedules, as signed and filed;~~

~~d. List of current full-time and part-time employees by length of service;~~

~~e. Proof of business location and operation in Palm Beach County.~~

~~f. Palm Beach County business tax receipt;~~

~~g. A list of all affiliates.~~

~~(de) Application review and appeal procedures: The procedures for application review, recertification, decertification and appeals provided in section 2-80.30(d)—(j) shall apply equally for M/WBE certification.~~

SECTION IV. SMALL BUSINESS ADVISORY COMMITTEE:

Section 2-80.32(i) of the Palm Beach County Code is hereby amended to read as follows:

(1) *Membership:* The SBA advisory committee shall consist of the following members:

- a. One (1) black business owner certified as a small business by the county;
- b. One (1) Hispanic business owner certified as a small business by the county;
- c. One (1) women business owner certified as a small business by the county;

- 1 d. One (1) white male business owner certified as a small business by
- 2 the county;
- 3 e. One (1) business owner domiciled in the county;
- 4 f. One (1) representative of a business incubator program; ~~the Palm~~
- 5 ~~Beach County Resource Center;~~
- 6 g. One (1) representative of a Hispanic ~~the~~ business organization;
- 7 ~~Hispanic Chamber of Commerce of Palm Beach County;~~
- 8 h. ~~One (1) representative of the National Association of Women in~~
- 9 ~~Construction;~~
- 10 h.i. One (1) representative of a women's business organization;
- 11 i.j. One (1) certified minority contractor;
- 12 j.k. One (1) representative of the Associated General Contractors
- 13 Association or Associated Building Contractors Association;
- 14 k.l. One (1) representative of the Small Business Development Center;
- 15 l.m. One (1) representative of a financial institution that assists small
- 16 businesses; ~~the Business Loan Fund of the Palm Beaches;~~ and,
- 17 m.n. One (1) representative of a black business organization; ~~chamber of~~
- 18 ~~commerce.~~

19 Members shall be appointed at large by the board of county commissioners and shall

20 serve for staggered terms of three (3) years. ~~Initially five (5) members shall be~~

21 ~~appointed for a term of three (3) years, four (4) members shall be appointed for a term~~

22 ~~of two (2) years, and four (4) members shall be appointed for a term of one (1) year.~~

23 Vacancies shall be filled in the same manner as the original appointments for the

24 remainder of the vacant term. Each member shall serve without compensation and may

25 be removed without cause by the board of county commissioners at any time. Travel

26 reimbursement is limited to expenses incurred only for travel outside the county

27 necessary to fulfill board member responsibilities when sufficient funds are budgeted

28 and available, and upon prior approval of the board of county commissioners.

29 **SECTION V. REPEAL OF LAWS IN CONFLICT:**

30 All local laws and ordinances in conflict with any provisions of this Ordinance are

1 hereby repealed to the extent of such conflict.

2 **SECTION VI. SEVERABILITY:**

3 If any section, paragraph, sentence, clause, phrase, or word of this Ordinance is
4 for any reason held by the Court to be unconstitutional, inoperative, or void, such
5 holding shall not affect the remainder of this Ordinance.

6 **SECTION VII. INCLUSION IN THE CODE OF LAWS AND ORDINANCES:**

7 The provisions of this Ordinance shall become and be made a part of the Code
8 of Laws and Ordinances of Palm Beach County, Florida. The sections of this Ordinance
9 may be renumbered or relettered to accomplish such, and the word "ordinance" may be
10 changed to "section", "article", or other appropriate word.

11 **SECTION VIII. ENFORCEMENT:**

12 This Ordinance is enforceable by all means provided by law. Additionally, the
13 County may choose to enforce this Ordinance by seeking injunctive relief in the Circuit
14 Court of Palm Beach County.

15 **SECTION IX. PENALTY:**

16 Any violation of any portion of this Ordinance shall be punishable as provided by
17 law.

18 **SECTION X. CAPTIONS:**

19 The captions, section headings, and section designations used in this Ordinance
20 are for convenience only and shall have no effect on the interpretation of the provisions
21 of this Ordinance.

22 **SECTION XI. EFFECTIVE DATE:**

23 The provisions of this Ordinance shall become effective upon filing with the
24 Department of State.

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APPROVED and ADOPTED by the Board of County Commissioners of Palm Beach County, Florida, on this the _____ day of _____, 2013.

SHARON R. BOCK,
CLERK & COMPTROLLER
PALM BEACH COUNTY

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

By: _____
Deputy Clerk

By: _____
Steven L. Abrams, Chairman

APPROVED AS TO FORM AND
LEGAL SUFFICIENCY

By: 
County Attorney

EFFECTIVE DATE: Filed with the Department of State on the ____ day of _____, 2013.

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**FLORIDA COUNTY ORDINANCE DATA RETRIEVAL SYSTEM
(CODRS) CODING FORM**

Instructions: Florida's Department of State, Bureau of Administrative Code has developed the County Ordinance Data Retrieval System (CODRS) to facilitate the tracking of County ordinances in Florida's 67 Counties. CODRS' data base is composed of over 25,000 county ordinances enacted since 1974.

We request your cooperation in completing this coding form. It is to be completed whenever your county enacts a new ordinance. Simply complete this form and include it with other pertinent ordinance information that is submitted to the Bureau of Administrative Code.

To code this form properly, please refer to the "keyfields" description sheet that has been given to your County Attorney's Office. If you do not have this sheet please contact the Bureau. We will be happy to fax one to you for referencing purposes. Please fill out this form as completely as is possible.

Thank you for your assistance. Should you need further assistance please contact the Bureau of Administrative Code, Department of State at (850)245-6270 or Suncom 205-6270.

COUNTY: Palm Beach) COUNTY ORDINANCE # 2013-)
(e.g., 00-001)

PRIMARY KEYFIELD DESCRIPTOR: Purchasing)

SECONDARY KEYFIELD DESCRIPTOR: Construction)

OTHER KEYFIELD DESCRIPTOR: Business Regulation)

ORDINANCE DESCRIPTION: Small Business)
(25 characters maximum including spaces)

ORDINANCES AMENDED: (List below the ordinances that are amended by this legislation. If more than two, list the most recent two.)

AMENDMENT # 1: 2008-014) AMENDMENT # 2: 2005-048)
Amendment No. 3 2009-24

ORDINANCES REPEALED: (List below the ordinances that are repealed by this legislation.)

REPEAL # 1: ()) REPEAL # 3: ())

REPEAL # 2: ()) REPEAL # 4: ())

(Others repealed: List all that apply): _____

(FOR OFFICE USE ONLY): COUNTY CODE NUMBER: ())

KEYFIELD 1 CODE: ()) KEYFIELD 2 CODE: ())

KEYFIELD 3 CODE: ())

Rev. 4/10/04