

II. FISCAL IMPACT ANALYSIS

A. Five Year Summary of Fiscal Impact:

Fiscal Years	2019	2020	2021	2022	2023
Grant Expenditures	\$54,000				
Operating Costs					
External Revenues					
Program Income					
In-Kind Match (County)					
NET FISCAL IMPACT	\$54,000				

# ADDITIONAL FTE POSITIONS (Cumulative)	-0-				
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Is Item Included In Current Budget? Yes X No
 Does this Item include the use of Federal funds? Yes No X

Budget Account No.:

Fund 1539 Dept 143 Unit 1031 Object 8201 Program Code/Period N/A

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


Approval of this agenda item will allocate \$54,000 in General Fund Ad Valorem dollars.

C. Departmental Fiscal Review:


 Beverley Reid, Fiscal Manager I

III. REVIEW COMMENTS

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

 9/24/18
 OFMB
 9/24/18
 10/11/18
 Contract Development and Control
 10/11/18 TD

B. Legal Sufficiency:

 10/2/18
 Assistant County Attorney

C. Other Department Review:

 Department Director

CONTRACT FOR CONSULTING/PROFESSIONAL SERVICES

This Contract is made as of October 16, 2018, 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 the COUNTY, and the Palm Beach County Black Business Investment Corporation, a not-for-profit Florida Corporation, hereinafter referred to as the CONSULTANT, whose Federal I.D. is 592829862.

In consideration of the mutual promises contained herein, the COUNTY and the CONSULTANT agree as follows:

ARTICLE 1 - SERVICES

The CONSULTANT'S responsibility under this Contract is to provide professional/consulting services in the area of business recruitment, retention and expansion and to promote the general business and industrial interests of the COUNTY as more specifically set forth in the Scope of Work detailed in Exhibit "A".

The COUNTY'S representative/liaison during the performance of this Contract shall be Sherry L. Howard, Deputy Director, Department of Housing & Economic Sustainability, telephone number (561) 233-3653, email showard@pbcgov.org.

The CONSULTANT'S representative/liaison during the performance of this Contract shall be Marlon D. White, President of the Palm Beach County Black Business Investment Corporation, telephone number (561) 845-8055, email pbcbbic@att.net

ARTICLE 2 - SCHEDULE

The CONSULTANT shall commence services on October 1, 2018, the Effective Date, and complete all services by September 30, 2019.

Reports and other items shall be delivered or completed in accordance with the detailed schedule set forth in Exhibit "A".

ARTICLE 3 - PAYMENTS TO CONSULTANT

- A. The total amount to be paid by the COUNTY under this Contract for all services and materials including, if applicable, "out of pocket" expenses shall not exceed a total contract amount of Fifty-Four Thousand Dollars (\$54,000.00). The CONSULTANT shall notify the COUNTY's representative in writing when 90% of the "not to exceed amount" has been reached. The CONSULTANT will bill the COUNTY on a monthly basis, in twelve (12) equal payments of Four Thousand Five Hundred Dollars (\$4,500.00). Invoices shall be accompanied by monthly status reports as detailed in Exhibit "A".
- B. Invoices received from the CONSULTANT pursuant to this Contract will be reviewed and approved by the COUNTY's representative, to verify that services have been rendered in conformity with the Contract. Approved invoices will then be sent to the Finance Department for payment. Invoices will normally be paid within thirty (30) days following the COUNTY representative's approval.
- C. Final Invoice: In order for both parties herein to close their books and records, the CONSULTANT will clearly state "final invoice" on the CONSULTANT'S final/last billing to the COUNTY. This shall constitute CONSULTANT'S certification that all services have been properly performed and all charges and costs have been invoiced to Palm Beach County. Any other charges not properly included on this final invoice are waived by the CONSULTANT.

ARTICLE 4 – TRUTH-IN-NEGOTIATION CERTIFICATE

Signature of the Contract by CONSULTANT shall also act as the execution of a truth-in-negotiation certificate certifying that the wage rates, over-head charges, and other costs used to determine the compensation provided for in this Contract are accurate, complete and current as of the date of the Contract and no higher than those charged the CONSULTANT'S most favored customer for the same or substantially similar service.

The said rates and costs shall be adjusted to exclude any significant sums should the COUNTY determine that the rates and costs were increased due to inaccurate, incomplete or noncurrent wage rates or due to inaccurate representations of fees paid to outside CONSULTANTS. The COUNTY shall exercise its rights under this Article 4 within three (3) years following final payment.

ARTICLE 5 - TERMINATION

This Contract may be terminated by the CONSULTANT upon sixty (60) days prior written notice to the COUNTY's representative in the event of substantial failure by the COUNTY to perform in accordance with the terms of this Contract through no fault of the CONSULTANT. It may also be terminated early, in whole or in part, by the COUNTY, with or without cause, immediately upon written notice to the CONSULTANT. Unless the CONSULTANT is in breach of this Contract, the CONSULTANT shall be paid for services rendered to the COUNTY'S satisfaction through the date of early termination. After receipt of a Termination Notice and except as otherwise directed by the COUNTY the CONSULTANT shall:

- A. Stop work on the date and to the extent specified.
- B. Terminate and settle all orders and subcontracts relating to the performance of the terminated work.
- C. Transfer all work in process, completed work, and other materials related to the terminated work to the COUNTY.
- D. Continue and complete all parts of the work that have not been terminated.

ARTICLE 6 - PERSONNEL

The CONSULTANT represents that it has, or will secure at its own expense, all necessary personnel required to perform the services under this Contract. 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 CONSULTANT or under its supervision, and all personnel engaged in performing the services shall be fully qualified and, if required, authorized or permitted under state and local law to perform such services.

Any changes or substitutions in the CONSULTANT'S representative must be made known to the COUNTY'S representative and written approval must be granted by the COUNTY's representative before said change or substitution can become effective.

The CONSULTANT warrants that all services shall be performed by skilled and competent personnel to the highest professional standards in the field.

All of the CONSULTANT'S personnel (and all Subcontractors) while on County premises will comply with all COUNTY requirements governing conduct, safety and security.

ARTICLE 7 – SUBCONTRACTING

The COUNTY reserves the right to accept the use of a subcontractor or to reject the selection of a particular subcontractor and to inspect all facilities of any subcontractors in order to make a determination as to the capacity of the subcontractor to perform properly under this Contract. The CONSULTANT is encouraged to seek additional small business enterprises for participation in subcontracting opportunities. If the CONSULTANT uses any subcontractors on this project the following provisions of this Article shall apply:

If a subcontractor fails to perform or make progress, as required by this Contract, and it is necessary to replace the subcontractor to complete the work in a timely fashion, the CONSULTANT shall promptly do so, subject to acceptance of the new subcontractor by the COUNTY.

The subcontractor shall be in compliance with the COUNTY'S Civil Rights and Non-Discrimination Policy as contained in Resolution R2014-1421 and further described in Article 21 contained herein.

The Palm Beach County Board of County Commissioners has established a minimum goal for SBE participation of 15% on all County solicitations.

The CONSULTANT agrees to abide by all provisions of the Palm Beach County Code establishing the SBE Program, as amended, and understands that failure to comply with any of the requirements will be considered a breach of contract.

The CONSULTANT understands that each SBE firm utilized on this Contract must be certified by Palm Beach County in order to be counted toward the SBE participation goal.

The CONSULTANT shall provide the COUNTY with a copy of the CONSULTANT's contract with any SBE subcontractor or any other related documentation upon request.

The CONSULTANT understands the requirements to comply with the tasks and proportionate dollar amounts throughout the term of the Contract as it relates to the use of SBE firms.

The CONSULTANT will only be permitted to replace a certified SBE subcontractor who is unwilling or unable to perform. Such substitutions must be done with another certified SBE in order to maintain the SBE percentages established in this CONTRACT. Requests for substitutions of SBE's must be submitted to the COUNTY's representative and to the Office of Small Business Assistance.

The CONSULTANT shall be required to submit to the COUNTY Schedule 1 (Participation of SBE-M/WBE Contractors) and Schedule 2 (Letter of Intent) to further indicate the specific participation anticipated, where applicable.

The CONSULTANT agrees to maintain all relevant records and information necessary to document compliance pursuant to Palm Beach County Code and will allow the COUNTY to inspect such records.

ARTICLE 8 - FEDERAL AND STATE TAX

The COUNTY is exempt from payment of Florida State Sales and Use Taxes. The COUNTY will sign an exemption certificate submitted by the CONSULTANT. The CONSULTANT shall not be exempted from paying sales tax to its suppliers for materials used to fulfill contractual obligations with the COUNTY, nor is the CONSULTANT authorized to use the COUNTY'S Tax Exemption Number in securing such materials.

The CONSULTANT shall be responsible for payment of its own and its share of its employees' payroll, payroll taxes, and benefits with respect to this contract.

ARTICLE 9 - AVAILABILITY OF FUNDS

The COUNTY'S performance and obligation to pay under this contract for subsequent fiscal years are contingent upon annual appropriations for its purpose by the Board of County Commissioners.

ARTICLE 10 - INSURANCE

- A. CONSULTANT shall, at its sole expense, agree to maintain in full force and effect at all times during the life of this Contract, insurance coverages and limits (including endorsements), as described herein. CONSULTANT shall agree to provide the COUNTY with at least ten (10) day prior notice of any cancellation, non-renewal or material change to the insurance coverages. The requirements contained herein, as well as COUNTY'S review or acceptance of insurance maintained by CONSULTANT are not intended to and shall not in any manner limit or qualify the liabilities and obligations assumed by CONSULTANT under the contract.
- B. **Commercial General Liability** CONSULTANT shall maintain Commercial General Liability at a limit of liability not less than **\$500,000** Each Occurrence. Coverage shall not contain any endorsement excluding Contractual Liability or Cross Liability unless granted in writing by County's Risk Management Department. CONSULTANT shall provide this coverage on a primary basis.

- C. **Business Automobile Liability** CONSULTANT shall maintain Business Automobile Liability at a limit of liability not less than **\$500,000** Each Accident for all owned, non-owned and hired automobiles. In the event CONSULTANT doesn't own any automobiles, the Business Auto Liability requirement shall be amended allowing CONSULTANT 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. CONSULTANT shall provide this coverage on a primary basis.
- D. **Worker's Compensation Insurance & Employers Liability** CONSULTANT shall maintain Worker's Compensation & Employers Liability in accordance with Florida Statute Chapter 440. CONSULTANT shall provide this coverage on a primary basis.
- E. **Additional Insured** CONSULTANT 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." CONSULTANT shall provide the Additional Insured endorsements coverage on a primary basis.
- F. **Waiver of Subrogation** CONSULTANT hereby waives any and all rights of Subrogation against the County, its officers, employees and agents for each required policy. When required by the insurer, or should a policy condition not permit an insured to enter into a pre-loss agreement to waive subrogation without an endorsement to the policy, then CONSULTANT shall agree to notify the insurer and request the policy be endorsed with a Waiver of Transfer of rights of Recovery Against Others, or its equivalent. This Waiver of Subrogation requirement shall not apply to any policy, which specifically prohibits such an endorsement, or which voids coverage should CONSULTANT enter into such an agreement on a pre-loss basis.
- G. **Certificate(s) of Insurance** Prior to execution of this Agreement, the AGENCY shall deliver to the COUNTY via the Insurance Company/Agent a signed 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. During the term of the Agreement and prior to each subsequent renewal thereof, the AGENCY shall provide this evidence to ITS at pbc@instracking.com or fax (562) 435-2999, which is Palm Beach County's insurance management system, prior to the expiration date of each and every insurance required herein. Said Certificate(s) of Insurance shall, to the extent allowable by the insurer, include a minimum thirty (30) day endeavor to notify due to cancellation (10 days for nonpayment of premium) or non-renewal of coverage.

Palm Beach County
 c/o Insurance Tracking Services, Inc. (ITS)
 P. O. Box 20270
 Long Beach, CA 90801

In the event COUNTY discontinues its use of the insurance tracking system named herein, the COUNTY shall provide written notice to the AGENCY with instructions regarding a substitute delivery address.

- H. **Umbrella or Excess Liability** If necessary, CONSULTANT may satisfy the minimum limits required above for Commercial General Liability, Business Auto Liability, and Employer's Liability coverage under Umbrella or Excess Liability. The Umbrella or Excess Liability shall have an Aggregate limit not less than the highest "Each Occurrence" limit for Commercial General Liability, Business Auto Liability or Employer's Liability. The COUNTY shall be specifically endorsed as an "Additional Insured" on the Umbrella or Excess Liability, unless the Certificate of Insurance notes the Umbrella or Excess Liability provides coverage on a "Follow-Form" basis.

- I. **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 Contract. 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 11 - INDEMNIFICATION

CONSULTANT shall protect, defend, reimburse, indemnify and hold 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 this Contract or due to the acts or omissions of CONSULTANT.

ARTICLE 12 - SUCCESSORS AND ASSIGNS

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

ARTICLE 13 - REMEDIES

This Contract shall be governed by the laws of the State of Florida. Any legal action necessary to enforce the Contract will be held in a court of competent jurisdiction located 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.

No provision of this Contract is intended to, or shall be construed to, create any third party beneficiary or to provide any rights to any person or entity not a party to this Contract, including but not limited to any citizen or employees of the COUNTY and/or CONSULTANT.

ARTICLE 14 - CONFLICT OF INTEREST

The CONSULTANT 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 and the Palm Beach County Code of Ethics. The CONSULTANT further represents that no person having any such conflict of interest shall be employed for said performance of services.

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

The CONSULTANT shall require its president and directors to complete an executed public disclosure, in writing, under oath and subject to the penalties prescribed for perjury, on the form attached hereto as Exhibit "B" prohibiting CONSULTANT'S president and directors or their business associates, relatives and/or person or company by whom the president/director is retained from having a beneficial interest in any projects recommended by CONSULTANT to COUNTY for all projects recommended by CONSULTANT to the COUNTY. Beneficial Interest forms shall be submitted to the COUNTY prior to any project being recommended by CONSULTANT to the COUNTY.

ARTICLE 15 - EXCUSABLE DELAYS

The CONSULTANT shall not be considered in default by reason of any failure in performance if such failure arises out of causes reasonably beyond the control of the CONSULTANT or its subcontractors and without their fault or negligence. Such causes include, but are not limited to, acts of God, force majeure, natural or public health emergencies, labor disputes, freight embargoes, and abnormally severe and unusual weather conditions.

Upon the CONSULTANT'S request, the COUNTY shall consider the facts and extent of any failure to perform the work and, if the CONSULTANT'S failure to perform was without it or its subcontractors fault or negligence, the Contract Schedule and/or any other affected provision of this Contract shall be revised accordingly, subject to the COUNTY'S rights to change, terminate, or stop any or all of the work at any time.

ARTICLE 16 - ARREARS

The CONSULTANT shall not pledge the COUNTY'S credit or make it a guarantor of payment or surety for any contract, debt, obligation, judgment, lien, or any form of indebtedness. The CONSULTANT further warrants and represents that it has no obligation or indebtedness that would impair its ability to fulfill the terms of this Contract.

ARTICLE 17 - DISCLOSURE AND OWNERSHIP OF DOCUMENTS

The CONSULTANT shall deliver to the COUNTY's representative for approval and acceptance, and before being eligible for final payment of any amounts due, all documents and materials prepared by and for the COUNTY under this Contract.

To the extent allowed by F. S. Chapter 119, all written and oral information not in the public domain or not previously known, and all information and data obtained, developed, or supplied by the COUNTY or at its expense will be kept confidential by the CONSULTANT and will not be disclosed to any other party, directly or indirectly, without the COUNTY'S prior written consent unless required by a lawful court order. All data base, reports and other data developed, or purchased, under this Contract for or at the COUNTY'S expense shall be and remain the COUNTY'S property and may be reproduced and reused at the discretion of the COUNTY.

All covenants, agreements, representations and warranties made herein, or otherwise made in writing by any party pursuant hereto, including but not limited to any representations made herein relating to disclosure or ownership of documents, shall survive the execution and delivery of this Contract and the consummation of the transactions contemplated hereby.

Notwithstanding any other provision in this Contract, all documents, records, reports and any other materials produced hereunder shall be subject to disclosure, inspection and audit, pursuant to the Palm Beach County Office of the Inspector General, Palm Beach County Code, Sections 2-421 – 2-440, as amended.

ARTICLE 18 - INDEPENDENT CONTRACTOR RELATIONSHIP

The CONSULTANT is, and shall be, in the performance of all work services and activities under this Contract, an 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 CONSULTANT'S sole direction, supervision, and control. The CONSULTANT shall exercise control over the means and manner in which it and its employees perform the work, and in all respects the CONSULTANT'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 CONSULTANT does not have the power or authority to bind the COUNTY in any promise, agreement or representation.

ARTICLE 19 - CONTINGENT FEES

The CONSULTANT warrants that it has not employed or retained any company or person, other than a bona fide employee working solely for the CONSULTANT to solicit or secure this Contract and that it has not paid or agreed to pay any person, company, corporation, individual, or firm, other than a bona fide employee working solely for the CONSULTANT, any fee, commission, percentage, gift, or any other consideration contingent upon or resulting from the award or making of this Contract.

ARTICLE 20 – OFFICE OF INSPECTOR GENERAL

Palm Beach County has established the Office of the Inspector General in Palm Beach County Code, Section 2-421 – 2-440, as may be amended. The Inspector General’s authority includes but is not limited to the power to review past, present and proposed County contracts, transactions, accounts and records, to require the production of records, and to audit, investigate, monitor, and inspect the activities of the CONSULTANT, its officers, agents, employees, and lobbyists in order to ensure compliance with contract requirements and detect corruption and fraud.

Failure to cooperate with the Inspector General or interfering with or impeding any investigation shall be in violation of Palm Beach County Code, Section 2-421 – 2-440, and punishable pursuant to Section 125.69, Florida Statutes, in the same manner as a second degree misdemeanor.

ARTICLE 21- CIVIL RIGHTS COMPLIANCE AND NON-DISCRIMINATION POLICY

The Grantee acknowledges that the County is committed to assuring equal opportunity in the award of grants or contracts and complies with all laws prohibiting discrimination. Pursuant to Palm Beach County Resolution R2017-1770, as may be amended, the Grantee warrants and represents that throughout the term of this Agreement, including any renewals thereof, all of its employees are treated equally during employment with regard to race, color, ancestry, disability, national origin, religion, age, familial status, marital status, sex, gender, sexual orientation, gender identity and expression, or genetic information. Failure to meet this requirement shall be considered cause for termination of this Agreement.

In furtherance of such policy, the Grantee shall not, on the basis of race, color, ancestry, disability, national origin, religion, age, familial status, marital status, sex, gender, sexual orientation, gender identity and expression, or genetic information, exclude any person from the benefits of, or subject any person to discrimination under, any activity carried out by the performance of this Agreement. Upon receipt of evidence of such discrimination, the County shall have the right to terminate this Agreement.

ARTICLE 22 - AUTHORITY TO PRACTICE

The CONSULTANT hereby represents and warrants that it has and will continue to maintain all licenses and approvals required to conduct its business, and that it will at all times conduct its business activities in a reputable manner. Proof of such licenses and approvals shall be submitted to the COUNTY's representative upon request.

ARTICLE 23 - SEVERABILITY

If any term or provision of this Contract, or the application thereof to any person or circumstances shall, to any extent, be held invalid or unenforceable, the remainder of this Contract, or the application of such terms or provision, 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 Contract shall be deemed valid and enforceable to the extent permitted by law.

ARTICLE 24 - PUBLIC ENTITY CRIMES

As provided in F.S. 287.132-133, by entering into this contract or performing any work in furtherance hereof, the CONSULTANT 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 the 36 months immediately preceding the date hereof. This notice is required by F.S. 287.133(3)(a).

ARTICLE 25 - MODIFICATIONS OF WORK

The COUNTY reserves the right to make changes in Scope of Work, including alterations, reductions therein or additions thereto. Upon receipt by the CONSULTANT of the COUNTY'S notification of a contemplated change, the CONSULTANT shall, in writing: (1) provide a detailed estimate for the increase or decrease in cost due to the contemplated change, (2) notify the COUNTY of any estimated change in the completion date, and (3) advise the COUNTY if the contemplated change will affect the CONSULTANT'S ability to meet the completion dates or schedules of this Contract.

If the COUNTY so instructs in writing, the CONSULTANT shall suspend work on that portion of the Scope of Work affected by a contemplated change, pending the COUNTY'S decision to proceed with the change.

If the COUNTY elects to make the change, the COUNTY shall initiate a Contract Amendment and the CONSULTANT shall not commence work on any such change until such written amendment is signed by the CONSULTANT and approved and executed on behalf of Palm Beach County.

ARTICLE 26 - NOTICE

All notices required in this Contract shall be sent by certified mail, return receipt requested, hand delivery or other delivery service requiring signed acceptance. If sent to the COUNTY, notices shall be addressed to:

Sherry Howard
Deputy Director, Department of Housing & Economic Sustainability
100 Australian Avenue, Suite 500
West Palm Beach, Florida 33406

With copy to:

James Brako, Assistant County Attorney
County Attorney's Office
301 North Olive Avenue, Suite 601
West Palm Beach, Florida 33401

If sent to the CONSULTANT, notices shall be addressed to:

Marlon D. White, President
Palm Beach County Black Business Investment Corporation
2001 Broadway, Suite 250
West Palm Beach, Florida 33404

ARTICLE 27 - ENTIRETY OF CONTRACTUAL AGREEMENT

The COUNTY and the CONSULTANT agree that this Contract sets forth the entire agreement between the parties, and that there are no promises or understandings other than those stated herein. None of the provisions, terms and conditions contained in this Contract may be added to, modified, superseded or otherwise altered, except by written instrument executed by the parties hereto in accordance with Article 25 - Modifications of Work.

ARTICLE 28 - CRIMINAL HISTORY RECORDS CHECK

If CONSULTANT'S employees or subcontractors are required under this contract to enter a "critical facility" as identified in Resolution R-2003-1274, the CONSULTANT shall comply with the provisions of Chapter 2, Article IX of the Palm Beach County Code ("Criminal History Records Check" section). The CONSULTANT 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 CONSULTANT shall be solely responsible for the financial, schedule, and staffing implications associated in complying with this section of the Palm Beach County Code.

ARTICLE 29 - REGULATIONS; LICENSING REQUIREMENTS:

The CONSULTANT shall comply with all laws, ordinances and regulations applicable to the services contemplated herein including those applicable to conflict of interest and collusion. CONSULTANT 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 - PALM BEACH COUNTY LOBBYIST REGISTRATION ORDINANCE

The CONSULTANT and its board members shall be prohibited from lobbying as defined under the Palm Beach County Lobbyist Registration Ordinance, Palm Beach County Code Section 2-351, *et seq.*, for any project under consideration by the COUNTY.

ARTICLE 31 - EXCLUSION OF THIRD PARTY BENEFICIARIES

No provision of this Agreement is intended to, or shall be construed to, create any third party beneficiary or to provide any rights to any person or entity not a party to this Agreement, including but not limited to any citizen or employee of the COUNTY and/or the CONSULTANT.

ARTICLE 32 - INCORPORATION BY REFERENCE

Exhibits attached hereto and referenced herein or in Exhibit "A" shall be deemed to be incorporated into this Agreement by reference.

ARTICLE 33 - PUBLIC RECORDS

Notwithstanding anything contained herein, as provided under Section 119.0701, F.S., if the CONSULTANT: (i) provides a service; and (ii) acts on behalf of the COUNTY as provided under Section 119.011(2) F.S., the CONSULTANT shall comply with the requirements of Section 119.0701, Florida Statutes, as it may be amended from time to time. The CONSULTANT is specifically required to:

- A. Keep and maintain public records required by the COUNTY to perform services as provided under this Contract.
- B. Upon request from the County's Custodian of Public Records, provide the COUNTY with a copy of the requested records or allow the records to be inspected or copied within a reasonable time at a cost that does not exceed the cost provided in Chapter 119 or as otherwise provided by law. The CONSULTANT further agrees that all fees, charges and expenses shall be determined in accordance with Palm Beach County PPM CW-F-002, Fees Associated with Public Records Requests, as it may be amended or replaced from time to time.
- C. Ensure that public records that are exempt, or confidential and exempt from public records disclosure requirements are not disclosed except as authorized by law for the duration of the contract term and following completion of the Contract, if the CONSULTANT does not transfer the records to the County.

- A. Upon completion of the Contract the CONSULTANT shall transfer, at no cost to the COUNTY, all public records in possession of the CONSULTANT unless notified by County's representative/liaison, on behalf of the County's Custodian of Public Records, to keep and maintain public records required by the COUNTY to perform the service. If the CONSULTANT transfers all public records to the COUNTY upon completion of the Contract, the CONSULTANT shall destroy any duplicate public records that are exempt, or confidential and exempt from public records disclosure requirements. If the CONSULTANT keeps and maintains public records upon completion of the Contract, the CONSULTANT shall meet all applicable requirements for retaining public records. All records stored electronically by the CONSULTANT must be provided to COUNTY, upon request of the County's Custodian of Public Records, in a format that is compatible with the information technology systems of COUNTY, at no cost to COUNTY.

Failure of the CONSULTANT to comply with the requirements of this article shall be a material breach of this Contract. COUNTY shall have the right to exercise any and all remedies available to it, including but not limited to, the right to terminate for cause. CONSULTANT acknowledges that it has familiarized itself with the requirements of Chapter 119, F.S., and other requirements of state law applicable to public records not specifically set forth herein.

IF THE CONSULTANT HAS QUESTIONS REGARDING THE APPLICATION OF CHAPTER 119, FLORIDA STATUTES, TO THE CONSULTANT'S DUTY TO PROVIDE PUBLIC RECORDS RELATING TO THIS CONTRACT, PLEASE CONTACT THE CUSTODIAN OF PUBLIC RECORDS AT RECORDS REQUEST, PALM BEACH COUNTY PUBLIC AFFAIRS DEPARTMENT, 301 N. OLIVE AVENUE, WEST PALM BEACH, FL 33401, BY E-MAIL AT RECORDSREQUEST@PBCGOV.ORG OR BY TELEPHONE AT 561-355-6680.

ARTICLE 34 – REPORTS

A. All reports shall be submitted to the County, postmarked no later than fourteen (14) days after the end of the reporting period, as outlined in the Exhibits contained herein. The reports shall be to the satisfaction of the County and be subject to verification. The County reserves the right to request additional reports that are reasonable and fair from the Grantee, for any previous periods funded by the County upon ten (10) business days notice. The final report produced and submitted by the Grantee will reflect quarterly and cumulative figures.

B. In compliance with Section 125.045, Florida Statutes, the Grantee shall submit an annual report detailing how the County funds were spent and the results of the Grantee's efforts on behalf of the County. The annual report shall cover the period from October 1 through September 30 of the reporting year and be due to the County no later than December 31st following the reporting year.

IN WITNESS WHEREOF, the Board of County Commissioners of Palm Beach County, Florida, has made and executed this Contract on behalf of the COUNTY and the CONSULTANT has hereunto set its hand and seal the day and year above written.

(SEAL)
Corporation not-for-profit

**PALM BEACH COUNTY BLACK
BUSINESS INVESTMENT CORPORATION**

By: Marlon D. White
Marlon D. White, President

(COUNTY SEAL BELOW)

**PALM BEACH COUNTY, FLORIDA, a
Political Subdivision of the State of Florida**

BOARD OF COUNTY COMMISSIONERS

ATTEST: Sharon R. Bock,
Clerk & Comptroller

By: _____
Melissa McKinlay, Mayor
Palm Beach County

By: _____
Deputy Clerk

Document No.: _____

Approved as to Form and Legal Sufficiency

Approved as to Terms and Conditions
Dept. of Housing & Economic Sustainability

By: James Brako
James Brako
Assistant County Attorney

By: Jonathan B. Brown
Jonathan B. Brown
Director

EXHIBIT "A"
SCOPE OF SERVICES

TASK 1- ASSIST FOUR (4) BUSINESSES OWNED BY BLACK CITIZENS IN OBTAINING A TOTAL OF \$500,000 IN LOANS APPROVED BY BANKS/ FINANCIAL INSTITUTIONS, WHICH CREATE OR RETAIN 25 JOBS

Task 1 -Business Loans and Jobs

CONSULTANT shall assist four (4) businesses owned by Black citizens to secure a total amount of \$500,000 in business loans approved by Banks/Financial Institutions. The four (4) businesses which receive the loans shall create/retain the equivalent of 25 full time equivalent jobs.

Task 1-Reporting Deliverables for Individual Businesses

CONSULTANT shall provide a detailed monthly written report, to be accompanied by each invoice, which shall include the following for each business assisted that has received an approved loan from a Banking/Financial Institution:

1. Business Name
2. Business Address/Location
3. Type of Business
4. Identify the NAICS code for 2012, from the following website link, which best describes the business NAICS Code and Industry Title
<http://www.census.gov/eos/www/naics/> or <http://www.naics.com/search.htm>
5. Dollar amount of new capital investment, excluding equipment
6. Dollar amount of new equipment
7. Number of New Full Time Equivalent Jobs Created
8. Number of Full Time Equivalent Jobs Retained
9. Total Number of Full Time Equivalent Jobs Created and Retained
10. Name of Bank/Financial Institution Approving the Loan
11. Amount of Loan for each Business

The CONSULTANT shall provide the information requested in EXHIBIT "C" as their detailed monthly reports for above tasks, to accompany each invoice.

Task 2- SERVE 270 CLIENTS

CONSULTANT shall assist 270 clients that seek assistance for business loans, bonding, equity capital, and/or other business services.

Task 2-Reporting Deliverables

CONSULTANT shall provide a detailed monthly report, to be accompanied by each invoice, which shall include the following information:

1. Name of client assisted
2. Date of assistance
3. Type of assistance sought by client/client needs

The CONSULTANT shall provide the information requested in EXHIBIT "D" as their detailed monthly reports for above tasks, to accompany each invoice.

EXHIBIT "B"

DISCLOSURE OF BENEFICIAL INTERESTS

TO: PALM BEACH COUNTY CHIEF OFFICER, OR HIS OR HER OFFICIALLY DESIGNATED REPRESENTATIVE

STATE OF FLORIDA
COUNTY OF PALM BEACH

BEFORE ME, the undersigned authority, this day personally appeared _____, hereinafter referred to as "Affiant", who being by me first duly sworn, under oath, deposes and states as follows:

1. Affiant is the position - (i.e. employee, Board Member) _____ of the Palm Beach County Black Business Investment Corporation, which entity is recommending incentive funding for _____ (Project Name).
2. Affiant's address is _____
3. Affiant acknowledges that they, their business associates, relatives and/or person or company by whom the Affiant is retained has no beneficial interest in _____ (Project Name)
4. Affiant further states that the Affiant is familiar with the nature of an oath and with the penalties provided by the laws of the State of Florida for falsely swearing to statements under oath.
5. Under penalty of perjury, Affiant declares that Affiant has examined this Affidavit and to the best of Affiant's knowledge and belief it is true, correct, and complete.

FURTHER AFFIANT SAYETH NAUGHT.

Affiant
(Print Affiant Name)

The foregoing instrument was sworn to and acknowledged before me this _____ day of _____, 201 __, by _____ [] who is personally known to me or [] who has produced _____ as identification and who did take an oath.

{Notary Seal}

Notary Public

Print Notary Name

Commission Number: _____

Commission expires: _____

EXHIBIT "C"

BBIC REPORTING FORM FOR EACH BUSINESS ASSISTED	
Business Name	
Business Address/Location	
Type of Business	
Identify the <u>six (6) digit</u> NAICS code for 2012, from the following website link, which best describes the business NAICS Code and Industry Title - http://www.census.gov/eos/www/naics/ or http://www.naics.com/search.htm	
Dollar amount of new capital investment, excluding equipment	
Dollar amount of new equipment	
Number of Full Time Equivalent Jobs Created	
Number of Full Time Equivalent Jobs Retained	
Total Number of Full Time Equivalent Jobs Created and Retained	
Name of the Bank/Financial Institution Approving the Loan	
Amount of Business Loan	

NAICS Code and Industry Title, <http://www.naics.com/search.htm>

Code	Industry Title	Code	Industry Title
<u>11</u>	<u>Agriculture, Forestry, Fishing and Hunting</u>	<u>53</u>	<u>Real Estate Rental and Leasing</u>
<u>21</u>	<u>Mining</u>	<u>54</u>	<u>Professional, Scientific, and Technical Services</u>
<u>22</u>	<u>Utilities</u>	<u>55</u>	<u>Management of Companies and Enterprises</u>
<u>23</u>	<u>Construction</u>	<u>56</u>	<u>Administrative and Support and Waste Management and Remediation Services</u>
<u>31-33</u>	<u>Manufacturing</u>	<u>61</u>	<u>Educational Services</u>
<u>42</u>	<u>Wholesale Trade</u>	<u>62</u>	<u>Health Care and Social Assistance</u>
<u>44-45</u>	<u>Retail Trade</u>	<u>71</u>	<u>Arts, Entertainment, and Recreation</u>
<u>48-49</u>	<u>Transportation and Warehousing</u>	<u>72</u>	<u>Accommodation and Food Services</u>
<u>51</u>	<u>Information</u>	<u>81</u>	<u>Other Services (except Public Administration)</u>
<u>52</u>	<u>Finance and Insurance</u>	<u>92</u>	<u>Public Administration</u>

EXHIBIT "D"

PBC BBIC REPORT FOR INDIVIDUAL CLIENTS ASSISTED DURING THE MONTH OF _____ 201__

Place an X in appropriate box.

#	Date	Name	Business Loan	Line of Credit	Working Capital	Real Estate Loan	CONSULTANT
1							
2							
3							
4							
5							
6							
7							
8							
9							
10							
11							
12							
13							
14							
15							
16							
17							
18							
19							
20							

I certify this monthly report to be accurate which will be maintained by the BBIC for monitoring purposes, according to the terms of the BBIC's Contract with Palm Beach County.

John H. Howard

President

Printed name

Title

Employer Signature

Date