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ORDINANCE NO. 2021-

AN ORDINANCE OF THE BOARD OF COUNTY COMMISSIONERS OF BROWARD COUNTY, FLORIDA, PERTAINING TO THE BROWARD COUNTY BUSINESS OPPORTUNITY ACT AND RELATING TO PROCUREMENT AND CONTRACTING OPPORTUNITIES FOR COUNTY BUSINESS ENTERPRISES; AMENDING VARIOUS SECTIONS OF CHAPTER 1 OF THE BROWARD COUNTY CODE OF ORDINANCES ("CODE") ADDRESSING THE ESTABLISHMENT OF COUNTY BUSINESS ENTERPRISE ("CBE") GOALS FOR COUNTY CONTRACTS, INCLUDING LONG-TERM GROUND LEASES; AND PROVIDING FOR SEVERABILITY, INCLUSION IN THE CODE, AND AN EFFECTIVE DATE.

WHEREAS, the Broward County Business Opportunity Act of 2012 ensures that small Broward County-based businesses are provided sufficient opportunities to meaningfully participate in the award of County-funded contracts;

WHEREAS, County enters into lease agreements with entities for the economic improvement and development of County-owned property, which generally include construction and improvement projects that present an opportunity to establish County Business Enterprise ("CBE") goals and provide certified small businesses the ability to participate in the development and construction process;

WHEREAS, the Broward County Board of County Commissioners ("Board") finds that attaching CBE goals to certain leases of County-owned property will increase the ability of CBEs to participate in the economic development of Broward County; and

WHEREAS, the Board finds that amending Chapter 1 of the Broward County Code of Ordinances, pertaining to the establishment of CBE goals, is appropriate at this time,

BE IT ORDAINED BY THE BOARD OF COUNTY COMMISSIONERS OF BROWARD COUNTY, FLORIDA:

1 Section 1. Division 6 of Article IV of the Broward County Code of Ordinances is
2 hereby amended as follows:

3 **DIVISION 6. COUNTY BUSINESS OPPORTUNITY ACT OF 2012**

4 Section 2. Section 1-81 of the Broward County Code of Ordinances is hereby
5 amended as follows:

6 **Sec. 1-81. Short title.**

7 This section shall be known and may be cited as the "Broward County Business
8 Opportunity Act of 2012" (the "Act").

9 Section 3. Section 1-81.1 of the Broward County Code of Ordinances is hereby
10 created to read as follows:

11 **Sec. 1-81.1. Objectives and definitions.**

12 (a) *Program objectives.*

13 (1) To ensure that small Broward County-based businesses are provided
14 sufficient opportunities to meaningfully participate in the award of
15 County-funded contracts, when permitted by applicable law; and

16 (2) To ensure that only the entities that meet the eligibility criteria stated herein
17 are permitted to participate in the programs established by this Act.

18 . . .

19 (c) *Program definitions.*

20 (4) *Affiliate* means any corporation, firm, limited liability company, partnership,
21 or other entity that directly or indirectly controls, is controlled by, or is under
22 common control with, the entity applying for or certified as a CBE or SBE
23 (as applicable). Control means (i) ownership, directly or through one (1) or
24 more affiliates, of fifty percent (50%) or more of the shares of stock entitled

1 to vote for the election of directors, in the case of a corporation, or fifty
2 percent (50%) or more of the equity interests in the case of any other type
3 of legal entity; (ii) status as a general partner in the case of a partnership;
4 (iii) any other arrangement whereby a party controls or has the right to
5 control the Board of Directors or equivalent governing body of the entity; or
6 (iv) in the case of a corporation or a partnership, if the abovementioned
7 applicable level of ownership or control is prohibited in any country where
8 the entity is organized or maintains its headquarters or principal place of
9 business, the maximum ownership or control level for the entity permitted
10 in that country.

11 (2) *Bid or Proposal* means a response to any County procurement solicitation.

12 (3) *Bidder* means an entity that submits a response to any County procurement
13 solicitation, including but not limited to an invitation to bid (“ITB”), request
14 for letters of interest (“RLI”), request for proposals (“RFP”), and request for
15 qualifications (“RFQ”).

16 (4) ~~*Bidder Assurance* means a written pledge, on the Bidder’s company~~
17 ~~letterhead, signed by an authorized representative, in which the Bidder (i)~~
18 ~~agrees to fully comply with the requirements of the Act; (ii) acknowledges~~
19 ~~the CBE goal established in the solicitation for the project; and (iii) agrees~~
20 ~~to engage in Good Faith Efforts, as defined below, to achieve the CBE goal~~
21 ~~and related requirements as stated in the solicitation documents.~~

22 (5) *Board* means the Broward County Board of County Commissioners.

23 (6) *Broker* means an individual or entity that acts merely as an intermediary
24 between the County and prospective suppliers, retailers, or wholesalers of

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1 goods, materials, or services. For purposes of the Act, a Broker does not
2 include an individual or entity that owns, operates, or maintains a store,
3 warehouse, or other establishment in which the goods, materials, or
4 services are regularly sold in the ordinary course of business by such
5 individual or entity.

6 (7) *Broward County Small Business Development Program or Program* means
7 the County's initiatives, through OESBD and its procurement process, to aid
8 and assist the interests of small businesses in Broward County, ensure that
9 small businesses have a fair opportunity to participate in County eContracts,
10 preserve free competitive enterprise, and maintain and strengthen the
11 overall economy of Broward County. The Program includes the rules,
12 regulations, and policies delineated in the Act, Chapter 19, Part V of the
13 Broward County Administrative Code, and related administrative
14 procedures.

15 (8) *Commercially Useful Function* means that a CBE or SBE performs the
16 following functions as part of its direct responsibility under a contract with
17 the Prime Contractor and/or the County, as applicable:

- 18 a. Provides a distinct element of the work under the contract;
- 19 b. Provides management of the work assigned by the Prime Contractor
20 and/or the County, as applicable, and supervision of staff designated
21 to complete the elements of the assigned work;
- 22 c. Performs work under the contract that is consistent with the services
23 and functions it generally provides to other entities in the normal
24 course of its business (e.g., an engineering firm providing

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1 engineering design provides a Commercially Useful function; a
2 CBE or SBE offering consulting services that are vague or not
3 sufficiently detailed which deviate from its normally offered services,
4 would not satisfy this requirement); and

- 5 d. Performs at least fifty percent (50%) of the assigned work with its
6 own employees under its direct management and supervisory
7 control. Conversely stated, the CBE or SBE may not subcontract
8 more than fifty percent (50%) of the work to be performed. Subject
9 to the fifty percent (50%) self-performance requirement, the
10 percentage of self-performed work may vary for certain specialties,
11 including general contractors, based on normal industry practices.
12 However, credit (toward meeting assigned CBE goals) for certified
13 entity participation is only granted for that portion actually performed
14 by certified CBEs. Note that in projects involving a CBE or SBE
15 reserve, all work associated with the reserve must be performed by
16 CBEs or SBEs, as applicable, in order to be considered responsible
17 under the reserve requirement or the applicable procurement
18 solicitation.

19 (9) *Continuous Operating Presence* means an entity with a current business
20 tax receipt issued by Broward County; that has a physical address located
21 within the geographical limits of Broward County (not a P.O. Box or address
22 provided by a business service center); that has continuously maintained
23 such address for at least one (1) year prior to the time of application for
24 certification; that, if reasonably expected to have equipment in its trade, has

1 located such equipment in its Broward County location; that has been in
2 operation and employs at least one (1) full-time employee or equivalent
3 engaged in its primary specialty at its Broward County location for a period
4 of at least one (1) year; and that, as determined by the Program Director,
5 employs sufficient employees in Broward County to perform the work
6 required under a contract covered by this Act. A CBE or SBE may not use
7 a government-owned facility as a business address for purposes of
8 establishing a eContinuous oOperating pPresence unless the CBE or SBE
9 has a lease to occupy such facility.

10 Contractor Assurance means a written pledge, on the Bidder's or Prime
11 Contractor's company letterhead, completed and signed by an authorized
12 representative, in which the Bidder or Prime Contractor (i) agrees to fully
13 comply with the requirements of the Act; (ii) acknowledges the CBE goal
14 established in the solicitation or in the Ground Lease; and (iii) agrees to
15 engage in Good Faith Efforts, as defined below, to achieve the CBE goal
16 and to comply with the related requirements as stated in the solicitation
17 documents or in the Ground Lease.

18 Contract Value means: (a) for Ground Leases, the total cost of the
19 construction and improvements at the leasehold property provided for in the
20 Ground Lease at the time of execution of the lease (and, if applicable, any
21 amendment to the lease), including, but not limited to, engineering, design,
22 and consulting services related to construction, fixtures, furniture, and
23 equipment in buildings or other structures, but excluding any costs or other
24 reimbursable amounts that the Ground Lease provides that the County will

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1 pay; and (b) for all other County Contracts, the total amount payable by
2 County to Bidder or Prime Contractor, excluding any costs or other
3 reimbursable amounts that the County is required to pay pursuant to the
4 contract.

5 (10) *County* means Broward County, Florida.

6 (11) *County Business Enterprise* or *CBE* means an entity certified as a CBE by
7 the County as provided herein.

8 County Contract means any contract entered into by the County (a) as a
9 result of a competitive solicitation, or (b) that constitutes a Ground Lease
10 for a duration of more than one (1) year.

11 (12) *Good Faith Efforts* means that the Bidder or Prime Contractor, without an
12 intent to defraud or to seek an unfair advantage, took all necessary steps to
13 secure and maximize CBE participation to meet or exceed the established
14 CBE goal for the project. The determination of Good Faith Efforts shall be
15 made by the Program Director upon evaluation of the Bidder's response to
16 the solicitation factors listed in Section 1-81.5(c).

17 Ground Lease means a lease agreement between County and a lessee for
18 County-owned property wherein the lessee is permitted or required to
19 develop, construct upon, or improve the leased property or premises during
20 the lease term.

21 Letter of Intent means a document signed by the Bidder or Prime Contractor
22 and a CBE stating that the Bidder or Prime Contractor intends to use the
23 identified CBE to perform a specified scope of work on a project for a certain
24 payment amount or percentage of the work.

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1 (13) *OESBD* means the Broward County Office of Economic and Small Business
2 Development.

3 (14) *Personal Net Worth* means the value of the assets of an individual after total
4 liabilities (not including contingent liabilities) are deducted. For purposes of
5 CBE or SBE certification, an individual's ~~p~~Personal ~~n~~Net ~~w~~Worth shall not
6 include either the individual's ownership interest in any CBE or SBE
7 applying for certification or certified by the County, or the individual's equity
8 in his or her primary place of residence.

9 (15) *Prime Contractor* means an entity awarded a County eContract.

10 (16) *Program Director* means the Director of OESBD or designee.

11 (17) *Small Business Enterprise* or *SBE* means an entity certified as an SBE by
12 the County as provided herein.

13 (18) *Subcontractor* means an entity that enters into a contract with a Prime
14 Contractor to perform work required by a County eContract.

15 Section 2. Section 1-81.3 of the Broward County Code of Ordinances is hereby
16 amended to read as follows:

17 **Sec. 1-81.3 CBE goals and reserves.**

18 (a) *Establishment of CBE Goal.* A CBE goal of at least twenty-five percent (25%)
19 participation by CBEs is hereby established for each County eContract, except those
20 contracts that are subject to other participation goals other than CBE reserves (e.g.,
21 federal DBE program or SBE reserves), those contracts that are exempt from the
22 County's Procurement Code, those contracts that are otherwise ineligible by state or
23 federal law, and those contracts to which goals are not assigned (e.g., sole source, sole
24 brand, and emergency contracts). However, a CBE goal of at least twenty-five (25%) shall

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1 not be required if, at any time, the Board approves a different goal or approves that no
2 CBE goal shall be set, based upon a written ~~OESBD~~ determination by OESBD provided
3 to the Board that establishes at least one (1) of the following:

4 (1) With regard to no CBE goal being set:

5 a. There are fewer than two (2) certified CBEs available to participate
6 in a specific project; or

7 b. There is no work related to the contract that can be performed by a
8 CBE; or

9 (2) There are other documented compelling reasons to assign a lower CBE
10 goal to a particular County eContract; or

11 (3) There is no competitive solicitation associated with the contract.

12 (b) CBE goals shall be set as a percentage of the total value of each eContract
13 ~~Value, excluding any costs or other reimburseables that the County is required to pay to~~
14 ~~Prime Contractors pursuant to each contract.~~

15 (c) *Board waiver of CBE goal.* The Board may waive the application of, or may
16 modify, any CBE goal at any time.

17 (d) A Bidder or Prime Contractor may satisfy the requirements of the Act by
18 meeting the established CBE goal through bona fide, commercially useful participation of
19 CBEs or by showing that the Bidder or Prime Contractor made Good Faith Efforts to
20 achieve the established CBE goal for the project.

21 . . .

22 Section 3. Section 1-81.5 of the Broward County Code of Ordinances is hereby
23 amended to read as follows:

24 **Sec. 1-81.5. Satisfaction of CBE goals; Good Faith Efforts.**

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1 . . .

2 (b) *Letters of Intent.*

3 (1) Except for Ground Leases, A Bidder's response to the solicitation satisfies
4 the responsibility criteria for the established CBE goal if the Bidder submits
5 completed Letter(s) of Intent, ~~stating all of the following information: that~~
6 satisfy the established CBE goal with their response to the solicitation or
7 within three (3) business days after the County's request.

8 (2) For Ground Leases, the Prime Contractor must submit Letter(s) of Intent at
9 the same time as the request for the County's approval or notice to proceed
10 for the applicable construction or improvements (if County approval or
11 notice to proceed is not required under the Ground Lease, then at least ten
12 (10) business days prior to commencement of the applicable construction
13 or improvements).

14 (3) The Bidder's or Prime Contractor's Letter(s) of Intent must include all of the
15 following information:

16 (1) The names and addresses of each CBE that ~~would~~ will participate in
17 the contract if awarded to the Bidder;

18 (2) A description of the work that each CBE ~~would~~ will perform and the
19 North American Industry Classification System (NAICS) code
20 assigned to each CBE;

21 (3) The percentage of the total ~~e~~Contract ~~v~~Value that the Bidder or Prime
22 Contractor intends to subcontract to each CBE ("CBE Work
23 Percentages"), and whether those percentages cumulatively meet or
24 exceed the established CBE goal;

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1 (4) The Bidder's or Prime Contractor's commitment to subcontract the
2 CBE Work Percentages to the identified CBEs, as affirmed in writing
3 by authorized representatives of the Bidder or Prime Contractor and
4 each CBE; and

5 (5) A written certification from the Bidder or Prime Contractor that the
6 scope of work proposed to be performed by each CBE is within the
7 field of each CBE's current certification, and that each CBE has
8 stated that it is ready, willing, and able to perform at least the
9 percentage of work allocated to it as listed on the schedule.

10 (c) *Bidder Contractor Assurances*. Notwithstanding the requirement of a Bidder
11 and Prime Contractor to provide completed Letter(s) of Intent as required in paragraph (b)
12 above, a solicitation may allow a Bidder to submit completed Bidder Contractor
13 Assurances with its response to the solicitation and thereafter submit completed Letter(s)
14 of Intent no later than ~~the timeframe required in the applicable solicitation documents~~
15 three (3) business days after the County's request. However, in order for the Program
16 Director to recommend that the Bidder is responsible regarding the established CBE goal
17 of the solicitation, the Bidder must submit completed Letter(s) of Intent that satisfy the
18 established CBE goal no later than ~~the time frame required in the applicable solicitation~~
19 ~~documents~~ three (3) business days after the County's request.

20 (d) *Determination of Good Faith Efforts*.

21 (1) A Bidder whose response to a solicitation fails to satisfy the
22 requirements of paragraphs (b) and (c) above, as applicable, shall
23 not be denied award of a contract if the Bidder otherwise timely
24 (within ~~the applicable timeframes provided in the solicitation~~ three (3)

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1 business days after the County's request) provides documentation
2 demonstrating, as determined by the Program Director, the Bidder's
3 Good Faith Efforts to satisfy the requirements.

4 (2) If a Bidder or Prime Contractor is unable to provide Letter(s) of Intent
5 as required in paragraph (b) above or is unable to meet the CBE
6 goal, the Bidder or Prime Contractor shall provide documentation
7 demonstrating its Good Faith Efforts to meet the CBE goal
8 requirements. In determining whether a Bidder or Prime Contractor
9 has demonstrated Good Faith Efforts ~~under this Act~~, the Program
10 Director shall consider the quality, quantity, and extent of the ~~various~~
11 Bidder's or Prime Contractor's efforts that the Bidder has made to
12 satisfy the established CBE goal. The Program Director may also
13 consider any representations made by the Bidder or Prime
14 Contractor during the preaward phases of the County Contract
15 regarding its commitment to attain the CBE goal. ~~These~~ Good Faith
16 Efforts may include, but are not limited to, any or all of the following:

17 (a) Soliciting, through activities such as attendance at prebid
18 meetings, advertising, or written notices, the interest of
19 certified CBEs that have the ability and capacity to perform
20 the ~~contract~~ work. The Bidder or Prime Contractor must solicit
21 this interest in a timely manner to allow the CBEs an
22 opportunity to respond ~~to the solicitation~~. The Bidder or Prime
23 Contractor must take appropriate steps to follow up on initial
24 solicitations of CBEs.

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- (b) Identifying the portions of the ~~contract~~ work that could reasonably be performed by a CBE in order to increase the likelihood that the CBE goal will be achieved. This may include, where appropriate and commercially practicable, separating contract work items into segments more appropriate for participation by CBEs.
- (c) Providing each interested CBE with adequate information about the plans, specifications, and requirements of the contract in a timely manner.
- (d) Negotiating in good faith with each interested CBE. Evidence of such negotiation includes the names, addresses, and telephone numbers of CBEs that were considered; a description of the information provided regarding the plans and specifications for the work selected for subcontracting; and explaining why an agreement could not be reached with any of the interested CBEs. The fact that there may be some additional costs involved in subcontracting with CBEs is not in itself sufficient reason for a ~~Bidder's~~ failure to meet the ~~contract~~ CBE goal, as long as such additional costs are reasonable, as determined by the Program Director in ~~his or her~~ their sole discretion.
- (e) Rejecting an interested CBE as being unqualified for participation only after diligently investigating the CBE's capabilities and documenting the sound reasons justifying

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1 such rejection (with such documentation to be provided to the
2 Program Director).

3 (f) Contacting OESBD for assistance, including with regard to
4 recruiting CBEs or, when the scope of services changes or a
5 change in CBE is warranted, to request the substitution or
6 addition of a CBE to increase CBE participation.

7 (g) Actively pursuing outreach opportunities, advertising, meet
8 and greets, and written notices to CBEs that may have the
9 capacity and ability to perform the work.

10 (h) Utilizing one or more CBEs as per the submitted Letters of
11 Intent.

12 (i) Timely submission of the monthly utilization reports to
13 document and report any unforeseen circumstances affecting
14 the utilization of CBEs.

15 (j) Other activities that the Program Director determines
16 demonstrate the spirit and intent of the Small Business
17 Program and the goals and objectives of OESBD.

18 ...

19 Section 4. Section 1-81.6 of the Broward County Code of Ordinances is hereby
20 amended to read as follows:

21 **Sec. 1-81.6. Participation requirements and enforcement.**

22 (a) *Participation Requirements.* Entities may not participate in a County
23 eContract as CBEs or SBEs unless they are certified as CBEs or SBEs, as applicable,
24 prior to Bid submittal to perform the type of work required by the contract or at the time of

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1 submission of the Letter(s) of Intent to the County for the CBE or SBE. However, if it
2 becomes necessary to substitute a CBE or SBE in order to meet the County eContract's
3 participation requirements, a CBE or SBE may be substituted, upon the approval of the
4 Program Director, provided that such CBE or SBE is certified at the time of the
5 substitution.

6 (1) Only the work actually performed by a CBE or SBE (whether as a Prime
7 Contractor or Subcontractor) shall be counted toward satisfaction of the
8 applicable goal.

9 (2) Prime Contractors that use CBEs or SBEs as Subcontractors on a County
10 eContract must pay those ~~Subcontractors~~ CBEs or SBEs directly for all
11 goods or services provided by the ~~Subcontractors~~ within fifteen (15) days
12 after receipt of payment from the County.

13 (b) *Fair Dealing.* It is the County's policy that all business activities related to
14 this Act shall be conducted in a fair and reasonable manner, free of fraud, coercion,
15 collusion, intimidation, or bad faith. Violation of this policy by any Prime Contractor,
16 Subcontractor, Bidder, or other individual or entity that seeks to engage in business with
17 the County may result in a written determination by the Director of Purchasing, after
18 consulting with the Program Director and the Office of the County Attorney, that the
19 County should consider termination of any or all business relationships between the
20 violating individual(s) or entity(ies) and the County, including cancellation of solicitations,
21 cessation of negotiations, revocation of CBE or SBE certification, and suspension or
22 debarment for cause from consideration for award of future contracts. Such written
23 determination shall state the reasons for the action taken and inform the individual(s) and
24 entity(ies) involved of their right to administrative review in accordance with ~~Section~~

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1 ~~21.119~~ Part XII of the Procurement Code. Any determination made by the Director of
2 Purchasing pursuant to this paragraph may be appealed in accordance with ~~Section~~
3 ~~21.120~~ Part XII of the Procurement Code.

4 (c) Commercially Useful Function. CBEs and SBEs may participate in a County
5 eContract only if they are performing a Commercially Useful Function in the contract and
6 are not acting as Brokers.

7 (d) Enforcement. The provisions of this Act, unless noted otherwise, are
8 primarily enforced through the issuance of Notices to Cure and Notices of Violation by
9 OESBD. OESBD may issue such notices for any infraction of the CBE or SBE programs.
10 Failure to respond timely and completely to such notices will place the alleged violator in
11 a state of noncompliance.

12 (1) Notice to Cure. A Notice to Cure is formal notification to a ~~CBE or SBE~~
13 Prime Contractor or Subcontractor of an alleged violation of the Act. A
14 Notice to Cure may be issued if the entity fails to timely provide requested
15 information or documentation, or if the entity:

- 16 a. Engages in a practice that contravenes the CBE or SBE programs;
- 17 b. Fails to meet certified Subcontractor participation;
- 18 c. Fails to meet prompt payment requirements;
- 19 d. Fails to supply required utilization reports;
- 20 e. Fails to utilize certified Subcontractors as agreed or, without approval
21 from the Program Director, substitutes, deletes, or otherwise adjusts
22 the certified subcontracting team; or
- 23 f. Fails to comply with any other Program requirement, as determined
24 by the Program Director.

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1 (2) *Notice of Violation.* A Notice of Violation results from a substantiated
2 violation of the Act. OESBD may issue a Notice of Violation if a ~~CBE or SBE~~
3 Prime Contractor or Subcontractor fails to comply with a Notice to Cure after
4 being given opportunity to do so through the Notice to Cure process.
5 However, for willful or egregious violations of the Act, as determined by
6 OESBD, a Notice of Violation may issue without the prior issuance of a
7 Notice to Cure.

8 (e) *Penalties for Violations of the Act.* The Program Director may determine,
9 upon reasonable notice to the person or entity involved and reasonable opportunity for
10 that person or entity to be heard, that a person or entity has violated the Act. Upon such
11 a determination, the Program Director may recommend, ~~pursuant to Section 21.119 of~~
12 ~~the Procurement Code,~~ that the Purchasing Director suspend or debar such entity for
13 cause from consideration for award of future contracts ~~for a period of up to three (3) years~~
14 pursuant to Section 21.73 of the Broward County Procurement Code.

15 (1) The County will maintain a public list of entities suspended or debarred from
16 contracting with the County. The list will detail actions taken in response to
17 the Program Director's recommendations. Entities that have their
18 certification revoked through enforcement action of OESBD will be listed on
19 the OESBD website.

20 (2) For all recommendations from the Program Director for suspension or
21 debarment due to violations of the Act, the Purchasing Director will review
22 the allegations and determine what action(s), if any shall be taken against
23 the alleged violator.

24
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1 (3) Any person or entity having a substantial interest in the alleged violation of
2 the Act who is dissatisfied or aggrieved with the Purchasing Director's
3 determination regarding ~~such violation~~ the entity's debarment due to
4 violations of the Act may appeal said determination in accordance with the
5 procedures contained in ~~Section 21.120~~ Part XII of the Procurement Code.

6 . . .

7 Section 5. Section 1-81.7 of the Broward County Code of Ordinances is hereby
8 amended to read as follows:

9 **Sec. 1-81.7. Administrative requirements and other remedies.**

10 (a) *Required Contract Language.* The County shall require that each applicable
11 solicitation and County eContract contains CBE or SBE requirements, and each
12 subcontract a Prime Contractor executes with a CBE or SBE in connection with that
13 County eContract, shall include the following requirements:

14 (1) ~~The contractor (Prime, CBE, or SBE, as applicable) shall~~ A requirement to
15 comply with all applicable requirements of the Broward County Small
16 Business Development Program in the award and administration of ~~this~~ the
17 contract. Failure by the Prime Contractor to carry out any of these
18 requirements shall constitute a material breach of contract, which shall
19 permit the County to terminate its contract with the Prime Contractor or to
20 exercise any other remedy provided under the County eContract, under the
21 Broward County Code of Ordinances or Administrative Code, or under
22 applicable law, with all of such remedies being cumulative.

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1 (2) For solicitations and County eContracts where the Prime Contractor is
2 required to satisfy a CBE goal or a CBE or SBE reserve, as applicable,
3 substantially the following language shall be included in the contract:

4 “The parties stipulate that if the Prime Contractor fails to meet the CBE or
5 SBE commitment, as applicable (the “Commitment”), the damages to the
6 County arising from such failure are not readily ascertainable at the time of
7 contracting. Therefore, if the Prime Contractor fails to meet the Commitment
8 and the County determines, in the sole discretion of the Program Director,
9 that the Prime Contractor failed to make Good Faith Efforts to meet the
10 Commitment, the Prime Contractor shall pay the County liquidated
11 damages in an amount equal to fifty percent (50%) of the actual dollar
12 amount by which the Prime Contractor failed to achieve the Commitment,
13 up to a maximum amount of ten percent (10%) of the total ~~eContract amount~~
14 ~~(excluding costs and reimbursables)~~ Value as defined in Section 1-81.1,
15 Broward County Code of Ordinances. For example, if the ~~eContract amount~~
16 ~~(excluding costs and reimbursables)~~ Value is One Million Dollars
17 (\$1,000,000), there is a twenty-five percent (25%) CBE goal, and CBEs
18 receive only twenty percent (20%) of the amounts paid by the County
19 (excluding costs and reimbursables), then the Prime Contractor would have
20 fallen short of the Commitment by Fifty Thousand Dollars (\$50,000), and
21 the liquidated damages due to the County would equal Twenty-Five
22 Thousand Dollars (\$25,000). Such liquidated damages amount shall be
23 either credited against any amounts due from the County or paid to the
24 County within thirty (30) days after written demand, as elected by the

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underscored type are additions.

1 County. These liquidated damages shall be the County's sole contractual
2 remedy for the Prime Contractor's breach of the Commitment, but shall not
3 affect the availability of administrative remedies under this Act. Prime
4 Contractor acknowledges and agrees that the liquidated damages provided
5 in this section are proportionate to an amount that might reasonably be
6 expected to flow from a breach of the Commitment and are not a penalty.

7 Any failure to meet the Commitment attributable solely due to force majeure,
8 changes to the scope of work by the County, or inability to substitute a
9 Subcontractor under the Act where the Program Director has determined
10 that such inability is due to no fault of the Prime Contractor, shall not be
11 deemed a failure by the Prime Contractor to meet the Commitment."

12 . . .

13 Section 6. Severability.

14 If any portion of this Ordinance is determined by any court to be invalid, the invalid
15 portion will be stricken, and such striking will not affect the validity of the remainder of this
16 Ordinance. If any court determines that this Ordinance, in whole or in part, cannot be
17 legally applied to any individual, group, entity, property, or circumstance, such
18 determination will not affect the applicability of this Ordinance to any other individual,
19 group, entity, property, or circumstance.

20 Section 7. Inclusion in the Broward County Code of Ordinances.

21 It is the intention of the Board of County Commissioners that the provisions of this
22 Ordinance become part of the Broward County Code of Ordinances as of the effective
23 date. The sections of this Ordinance may be renumbered or relettered and the word
24

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1 "ordinance" may be changed to "section," "article," or such other appropriate word or
2 phrase to the extent necessary in order to accomplish such intention.

3 Section 8. Effective Date.

4 This Ordinance is effective as of the date provided by law.

6 ENACTED

7 FILED WITH THE DEPARTMENT OF STATE

8 EFFECTIVE

9 Approved as to form and legal sufficiency:
10 Andrew J. Meyers, County Attorney

11 By /s/ (in italics) 00/00/2021
12 Sandy Steed (date)
Assistant County Attorney

14 By /s/ (in italics) 00/00/2021
15 René Harrod (date)
Chief Deputy County Attorney

22 SS/vu
23 CBE Goals for Leases Ordinance.doc
07/15/2021

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Coding: Words in ~~struck-through~~ type are deletions from existing text. Words in underscored type are additions.