MEMORANDUM

TO: Department Directors

DATE: April 20, 1994

SUBJECT: Prompt Payment Ordinance

FROM: Edward Marquez, Director
Finance Department

On March 17, 1994, the Board of County Commissioners approved Ordinance No. 94-40, as amended, that provides for prompt payment of proper invoices by County departments. Attached is a copy of this Ordinance for review and implementation by your department's appropriate staff.

We are presently working with the Audit and Management Services Department to prepare an administrative order that will include procedures for processing proper invoices in a timely manner. All authorized invoices that are to be submitted to the Finance Department for payment should be delivered to the Finance's Accounts Payable Section at least ten days prior to the applicable payment due date pursuant to Section 4 of the Ordinance.

If there are any questions, please contact Norman White, at 375-5111.

Thank you for your cooperation.

107.07-17A METRO-DADE/GSA-MAT MGT

MEMORANDUM

Amended
Agenda Item No. 7(E)

(Public Hearing 3-15-94)

TO: Hon. Chairperson and Members
Board of County Commissioners

DATE: January 18, 1994

SUBJECT: Prompt Payment Ordinance

FROM: Robert A. Ginsburg
County Attorney

O#94-40

The accompanying ordinance was prepared and placed on the agenda at the request of Commissioner Alexander Penelas.

Robert A. Ginsburg
County Attorney

M E M O R A N D U M

TO: Honorable Chairperson and Members
Board of County Commissioners

DATE: March 15, 1994

SUBJECT: Prompt Payment Ordinance

FROM: Joaquín G. Aviñó, P.E., P.L.S.
County Manager

In connection with the attached ordinance sponsored by Commissioner Penelas regarding prompt payments, please accept the following as its Economic Analysis.

ECONOMIC ANALYSIS

1. The economic impact of the ordinance on the County's budget:

   Negligible impact on County budget. The County is presently meeting the timeframes in this ordinance with minimal exceptions.

2. The economic impact of the ordinance on the private sector:

   Minimum impact on the private sector. The County will continue to do whatever it can to process invoices in an expeditious manner.

3. The effect of the ordinance on public or private employment:

   Not applicable.

4. The costs and benefits, both direct and indirect, of establishing and maintaining the program set forth in the ordinance:

   County staff will be charged with additional tasks to keep track of invoices, date of receipt of goods and verification of interest calculation when necessary.

5. Whether the ordinance is necessary to enable the County to obtain State or federal grants or other financing:

   Not applicable.

6. Whether another ordinance which is already in existence should be repealed or amended:

   Not applicable.

7. Whether the creation of a new ordinance is the best method of achieving the benefit derived.

   Not applicable.

Amended
Agenda Item No. 7(E)
3-17-94

ORDINANCE NO. 94-40

ORDINANCE AMENDING THE CODE OF METROPOLITAN DADE COUNTY, FLORIDA, CODIFYING THE FLORIDA PROMPT PAYMENT ACT; PROVIDING EXPEDITED PAYMENTS TO SMALL BUSINESSES; CREATING DISPUTE RESOLUTION PROCEDURES; REQUIRING REPORTING OF LATE INTEREST PAYMENTS; REQUIRING THAT PROMPT PAYMENT PROVISIONS BE INCLUDED IN COUNTY CONTRACTS; REQUIRING THAT SUBCONTRACTS PROVIDE EXPEDITED PAYMENTS TO SMALL BUSINESSES; PROVIDING SEVERABILITY, INCLUSION IN THE CODE, AND AN EFFECTIVE DATE

WHEREAS, Florida law requires that local governments issue payment to vendors in a prompt and timely manner, and develop procedures for the expeditious resolution of disputes concerning payment; and

WHEREAS, Section 2-8.2 of the County Code and Administrative Order 3-3 provide special procedures for expedited payment to Black Business Enterprises; and

WHEREAS, small businesses, like the Black Business Enterprises, may experience a greater difficulty in advancing materials and services on County contracts than do larger, more established firms; and

WHEREAS, it is in the best interest of the County to encourage historically under-utilized businesses to contract with the County;

NOW THEREFORE, BE IT ORDAINED BY THE BOARD OF COUNTY COMMISSIONERS OF DADE COUNTY, FLORIDA:

Section 1. Section ____ of the Code of Metropolitan Dade County, Florida, is hereby added to read as follows:

Sec.____ Sherman S. Winn Prompt Payment Ordinance.

1. Purpose and Policy.

(a) The purpose of this ordinance is:

(1) To provide for prompt payments by County agencies and the Public Health Trust;

(2) To provide for expedited payment to small businesses;

(3) To provide for interest payments on late payments made by the County and the Public Health Trust;

(4) To create a dispute resolution process for payment of County and Public Health Trust obligations.

(b) It is the policy of this County that payment for all purchases by County agencies and the Public Health Trust be made in a timely manner.

2. Definitions.

As used in this section:

(1) "Proper invoice" means an invoice which conforms with the present requirements of the County departments listed in section 8 below or the Public Health Trust, and any rules promulgated from time to time by Administrative Order of the County Manager. A proper invoice shall include a statement by the vendor waiving claims for extra direct and indirect costs or time associated with work preceding the date of the invoice, or a statement in sufficient detail containing all rights reserved for work already performed. All

present requirements or future rules pertaining to the execution of a proper invoice must be made available to vendors in a timely manner.

(2) "Purchase" means the purchase of goods or services, the purchase or lease of personal property, or the lease of real property.

(3) "Small Business" means a small business as defined in Section 2-222 of the County Code, as presently written and as may hereafter be amended.

(4) "Vendor" means any person who sells goods or services, sells or leases personal property, or leases real property to the County.

3. Timely payment.

The time at which payment for a purchase by the County or the Public Health Trust is due shall be calculated from:

(a) The date on which a proper invoice is received by the County or the Public Health Trust, after approval by the Board of County Commissioners or the Trust; or

(b) If a proper invoice is not received by the County or the Public Health Trust, the date:

(1) On which delivery of personal property is accepted by the local governmental entity;

(2) On which services are completed;

(3) On which the rental period begins;

or

(4) On which the County or the Public Health Trust and the vendor agree in a contract which may provide dates relative to payment periods;

whichever date is latest.

4. Procedures for calculation of payment due dates:

(a) The County Manager, by Administrative Order, shall establish procedures whereby each invoice received by the County or the Public Health Trust shall be marked as having been received on the date on which it is first delivered into the hands of an agent or employee of the County or the Public Health Trust, or is first delivered to a facility or office of the County or the Public Health Trust. The date so marked shall be the date on which the invoice is received.

(b) The time at which payment shall be due from the County or the Public Health Trust shall be forty-five (45) days from the date specified in section 3 above.

(c) The time at which payment shall be due to small businesses shall be thirty (30) days from the date specified in Section 3 above.

(d) If the terms under which a purchase is made allow for partial deliveries and a proper invoice is submitted for such a partial delivery, then the time for payment for such partial delivery shall be

calculated from the time of such partial delivery and submission of such invoice in the same manner as provided in section 3 above.

(e) All payments due from the County or the Public Health Trust, and not made within the time specified by these sections shall bear interest from thirty (30) days after the due date at the rate of one (1) percent per month on the unpaid balance. The vendor must invoice the County or the Public Health Trust for any interest accrued in order to receive the interest payment. Any overdue period of less than one (1) month shall be considered as one (1) month in computing interest. Unpaid interest shall compound monthly. With respect to each past due payment, interest shall cease to accrue after interest on that payment has accrued for twelve (12) months. For purposes of this section, one (1) month shall constitute a period beginning on any day of one month and ending on the same day of the following month.

5. Mandatory interest.

No contract between the County or the Public Health Trust and a vendor shall prohibit the vendor from invoicing for late payment interest charges allowed under this part.

6. Improper invoice; resolution of disputes.

(a) In any case in which an improper invoice is submitted by a vendor, the County or the Public Health Trust shall, within ten (10) days after the improper invoice is received by it, notify the vendor that

the invoice is improper and indicate what corrective action on the part of the vendor is needed to make the invoice proper.

(b) In the event a dispute occurs between a vendor and the County or the Public Health Trust concerning payment of an invoice, such disagreement shall be finally determined as provided in this section. Proceedings to resolve the dispute shall be commenced not later than forty-five (45) days after the date on which the proper invoice was received by the County or the Public Health Trust, and shall be concluded by final written decision of the County Manager, or his or her designee(s), not later than sixty (60) days after the date on which the proper invoice was received by the County or the Pubic Health Trust. The proceedings shall be recorded or transcribed, at the expense of the County or the Public Health Trust, and shall be conducted on an informal basis, with hearsay evidence being admissible.

If the dispute is resolved in favor of the County or the Public Health Trust, interest charges shall begin to accrue on the sum contained in the Manager, or his or her designee's decision, fifteen (15) days after the Manager or his or her designee's final decision. If the dispute is resolved in favor of the vendor, then interest shall begin to accrue as of the original date the payment became due.

7. Payment by federal funds.

Where the County or the Public Health Trust intend to pay for a purchase with federal funds, the purchase shall not be made without reasonable and written assurance that federal funds will cover the cost thereof. Where payment or the time of payment is contingent on receipt of federal funds or federal approval, any contract and any solicitation to bid shall clearly state such contingency.

8. Report of interest.

The County Finance Department, Aviation Department, Department of Housing and Urban Development, the Public Health Trust, and the Water and Sewer Authority, shall, during December of each year, report to the Board of County Commissioners or the Trust, as applicable, the number of interest payments made by each during the preceding fiscal year, the total amount of such payments made pursuant to this ordinance and the Florida Prompt Pay Act, and an explanation as to each such interest payment made.

9. Inclusion in contracts; applicability to subcontracts.

All County contracts and contracts of the Public Health Trust shall contain the provisions of this ordinance as presently written and as may hereafter be amended. The County Manager shall develop and include appropriate language in all County contracts and contracts of the Public Health Trust to require the prime vendor to issue prompt payment and have dispute resolution procedures in place in the event of disputed payments to small businesses. Failure of the prime vendor to issue prompt payment to a small business, or to adhere to its dispute resolution procedures, may be cause for suspension, termination, and debarment, in accordance with the terms of the County contract or Public Health Trust contract and the debarment procedures of the County.

Section 2. The County Manager is requested to return to the Board with recommendations on the applicability of the expedited payment provisions of this ordinance to woman-owned and Hispanic-owned businesses, in light of the findings and recommendations contained in the disparity study already completed by the County's consultant pursuant to Resolution No. 728-92, no later than sixty (60) days from the effective date of this ordinance.

The County Manager is also directed to review the applicability of the expedited payment provisions to business enterprises owned and controlled by disabled groups, and to make recommendations on expediting payment to this category of businesses no later than sixty (60) days from the effective date of this ordinance.

Section 3. If any section, subsection, sentence, clause or provision of this ordinance is held invalid, the remainder of this ordinance shall not be affected by such invalidity.

Section 4. It is the intention of the Board of County Commissioners, and it is hereby ordained that the provisions of this ordinance shall become and be made a part of the Code of Metropolitan Dade County, Florida. The sections of this ordinance may be renumbered or relettered to accomplish such intention, and the word "ordinance" may be changed to "section," "article," or other appropriate word.

Section 5. This ordinance shall become effective ten (10) days after the date of enactment.

PASSED AND ADOPTED: MAR 17 1994

Approved by County Attorney as to form and legal sufficiency.

Prepared by: