

II. FISCAL IMPACT ANALYSIS

A. Five Year Summary of Fiscal Impact:

Fiscal Years	2008	2009	2010	2011	2012
Capital Expenditures					
Operating Costs	<u>88,000</u>				
Operating Revenues					
Program Income (PBC)					
In-Kind Match (PBC)					
NET FISCAL IMPACT	<u>88,000</u>				
# ADDITIONAL FTE POSITIONS (Cumulative)					

Proposed

Is Item Included In ~~Current~~ Budget? Yes No

Budget Account No.: Fund 1539 Department 764 Unit 1101 Object 8201
Program Code 0865

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

The source for the \$88,000 is the Incubator Program fund account # 1539-764-1101-8201

C. Departmental Fiscal Review:

[Signature] 8/2/07

III. REVIEW COMMENTS

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

The amount requested is included in the proposed FY 2008 budget.

[Signature] 8-4-07
Airt 8/31/07 OFMB *original*

[Signature] 9/17/07
Contract Dev. and Control *9/17/07*

This Contract complies with our contract review requirements.

B. Legal Sufficiency:

[Signature] 9/18/07
Assistant County Attorney

C. Other Department Review:

This summary is not to be used as a basis for payment.

AN INCUBATION PROGRAM GRANT AGREEMENT BETWEEN
PALM BEACH COUNTY
AND
**BUSINESS & ECONOMIC DEVELOPMENT & REVITALIZATION
(BEDR) CORPORATION OF PALM BEACH COUNTY, INC.**

THIS Grant Agreement, entered into this _____ day of _____, 2007, by and between Palm Beach County, a political subdivision of the State of Florida, hereinafter referred to as "COUNTY" and the **Business & Economic Development & Revitalization (BEDR) Corporation of Palm Beach County, Inc.**, a non-profit corporation duly organized and existing by virtue of the laws of the State of Florida, having its principal office at **5725 Corporate Way, Suite 201, West Palm Beach, FL 33407**, hereinafter referred to as the "GRANTEE", whose Federal I.D. number is **650499595**.

WHEREAS, Palm Beach County and the GRANTEE desire to assist small and start-up businesses by providing the services specified in Exhibit A of this Agreement; and

WHEREAS, Palm Beach County desires to engage the GRANTEE to implement such undertakings of the Palm Beach County Incubation Program, hereinafter referred to as "PROGRAM" in order to foster a stronger and more balanced economy in Palm Beach County.

NOW, THEREFORE, in consideration of the mutual promises and covenants herein contained, the parties agree as follows:

Recitals

The foregoing recitals are correct and true at the time of execution of this Agreement and are incorporated herein by reference:

**PART I
TERMS OF THE AGREEMENT**

Scope of Services

The GRANTEE shall, in a satisfactory and proper manner as determined by the COUNTY, perform the tasks necessary to complete the Scope of Services outlined in Exhibit "A", submit invoices using the cover sheet as shown in Exhibit "B", and provide reports as shown in Exhibit "C", which are attached hereto and made a part hereof.

Effective Date and Term

The effective date of this Agreement shall be the 1st day of **October, 2007**. The term of this Agreement shall be twelve (12) months from the effective date of this Agreement. This Agreement shall end on the 30th day of **September, 2008**.

Grant Amount

The GRANTEE will be eligible for a grant amount not to exceed **\$88,000 (eighty eight thousand dollars)**, which shall be payable in accordance with the terms of this Agreement and the eligible expenses outlined in Exhibit "A." Any funds not obligated by the expiration date of this Agreement shall automatically revert to the COUNTY.

Performance Period

The GRANTEE shall have twelve (12) months from the effective date of this Agreement to fulfill the obligations as scheduled in Exhibit "A." Said services shall be performed in a manner satisfactory to COUNTY. **In any event, all services required hereunder shall be completed by the GRANTEE no later than September 30, 2008.**

Eligible Reimbursements

The grant funds available under this Agreement shall be provided only for reimbursement expenses associated with the GRANTEE's operational expenses as set forth in Exhibit "A."

Method of Payment

The COUNTY agrees to make payments and to reimburse the GRANTEE for all eligible expenses, as described in Exhibit "A", permitted by COUNTY guidelines up to the maximum compensation set

forth above. Payments of the COUNTY shall be made to GRANTEE as reimbursement for eligible expenditures, upon submission of invoices by GRANTEE to COUNTY, and a determination by COUNTY that the reimbursement requests are a COUNTY-approved budget line item under this Agreement. Each invoice submitted by GRANTEE shall be itemized in sufficient detail for audit thereof, and shall be supported by copies of the corresponding vendor invoices and proof of receipt of the goods or services invoiced. In no event shall the COUNTY provide advance funding to the GRANTEE or any subcontractor hereunder. The GRANTEE will bill the COUNTY on a monthly basis, or as otherwise provided, for expenses actually incurred and paid. **The amount billed in any month shall not, however, exceed 1/12th of the total Agreement amount or \$7,333.33** However, the GRANTEE may submit a cumulative billing request for more than the sum of \$7,333.33, if the preceding month's billing did not equal the 1/12th share, or if requested in writing by the GRANTEE and agreed to by the COUNTY's Economic Development Director.

All requests for reimbursements shall include copies of invoices, canceled checks, or other documentation acceptable to the Palm Beach County Economic Development Office and the Finance Department of the Clerk of the Circuit Court, and shall be sufficient to adequately describe the expenses and establish that the expense was actually incurred directly by the GRANTEE. When submitting copies of invoices, GRANTEE shall provide to COUNTY on a quarterly basis verification of payment for approved invoices in the form of canceled checks or other documentation acceptable to COUNTY. Invoices should be submitted to the COUNTY for approval **within thirty (30) days** following the month in which the expense was incurred. Invoices shall **not** be honored if received by the Palm Beach County Finance Department **later than forty-five (45) days** after the expiration date of this Agreement, nor will any invoices be honored that predate the effective date of this Agreement. COUNTY reserves the right to withhold reimbursement if the deliverables are not completed as specified in Exhibit "A."

Budget Changes

GRANTEE may change each budget line item, as described in Exhibit "A", up to ten percent (10%) without written approval. For budget line item changes of more than ten percent (10%), GRANTEE must submit a letter of request to the Economic Development Office prior to the budget change. The Economic Development Office shall submit a written approval to GRANTEE before proceeding with the budget changes. The total budget amount and the budget line items shall remain the same.

Conditions on which Payment is Contingent

- A. **Financial Accountability**
The COUNTY as it deems necessary, may at any time review the GRANTEE's financial systems, or conduct an audit of the GRANTEE or any of its subcontractors, to determine the capability of the GRANTEE to fiscally manage the Scope of Services in accordance with COUNTY requirements.
- B. **Subcontracts**
None of the work or services covered by this Agreement, including but not limited to consultant work or services, shall be subcontracted or reimbursed without the prior written approval of the COUNTY.
- C. **Reports**
Reports shall be submitted to the COUNTY, postmarked no later than fourteen (14) days after the end of the reporting period, as outlined in Exhibit "C". 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.
- D. **Prior Written Approvals**
The following, among others, require the prior written approval of the COUNTY to be eligible for reimbursement or payment:
 - (i) All subcontracts and/or agreements pursuant to this Agreement; and
 - (ii) All capital equipment expenditures of \$1,000 or more.

**PART II
GENERAL CONDITIONS**

Opportunities for Residents and Civil Rights Compliance

The GRANTEE agrees that no person shall, on the grounds of race, color, disability, national origin, religion, age, familial status, sex, or sexual orientation be excluded from the benefits of, or be subjected 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. To the greatest extent feasible, low-income residents of the COUNTY shall be given opportunities for training and employment; and to the greatest extent feasible, businesses located in or owned by persons residing in the COUNTY shall be awarded contracts in connection with this Grant.

Opportunities for Small and Minority/Women-Owned Business Enterprises

In the procurement of supplies, equipment, construction, or services to implement this Agreement, the GRANTEE shall make a positive effort to utilize small and minority/women-owned business enterprises as sources of supplies and services, and provide these enterprises the maximum feasible opportunity to compete for contracts to be performed pursuant to this Agreement. To the maximum extent feasible, these small and minority/women-owned business enterprises shall be located in and/or owned by residents of Palm Beach County.

Contract Documents

The following documents are herein incorporated by reference or made part hereof, and shall constitute and be referred to as the Agreement; and all of said documents taken as a whole constitute the Agreement between the parties hereto and are as fully a part of the Agreement as if they were set forth verbatim and at length herein:

- A. This Agreement including its Exhibits;
- B. Title VI of the Civil Rights Act of 1964, Age Discrimination Act of 1975, and Title II of the Americans with Disabilities Act of 1990;
- C. The Drug-Free Workplace Act of 1988, as amended;
- D. The GRANTEE's Policies and Procedures Manuals, and Job Descriptions;
- E. The GRANTEE's Articles of Incorporation and Bylaws;
- F. The GRANTEE's Certificate of Insurance;
- G. Current list of the GRANTEE's Officers and members of Board of Directors;
- H. Proof of GRANTEE's 501(c)(3) certification from Internal Revenue Service (IRS); and
- I. Florida Statute 112.061, relating to per diem, travel.

All of these documents will be maintained on file by the GRANTEE. The GRANTEE shall keep an original of this Agreement, including its Exhibits, and all amendments thereto, on file at its principal office.

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 GRANTEE. GRANTEE shall not be exempted from paying sales tax to its suppliers for materials used to fulfill contractual obligations with the COUNTY, nor is the GRANTEE authorized to use the COUNTY'S Tax Exemption Number in securing such materials. The GRANTEE shall be responsible for payment of its own and its share of its employees' payroll, payroll taxes, and benefits with respect to this contract.

Governing Law and Venue

This Agreement shall be performed in accordance with applicable Federal, State, COUNTY laws, ordinances and codes. These represent minimum regulations which may be supplemented by more restrictive guidelines set forth by the COUNTY. Venue in any action, suit or proceeding in connection with this Agreement shall lie in a Florida State Court of competent jurisdiction located in Palm Beach County.

Binding Effect

This Agreement shall be binding upon and shall inure to the benefit of the parties hereto and their respective legal representatives, successors, and assigns.

Construction of Agreement

No party shall be considered the author of this Agreement since the parties hereto have participated in extensive negotiations and drafting and redrafting of this document to arrive at this final Agreement. Thus, the terms of this Agreement shall not be strictly construed against one party as opposed to the other party based on who drafted it. In the event that any section, paragraph, sentence, clause, or provision hereof shall be held by a court of competent jurisdiction to be invalid, such shall not affect the remaining portions of this Agreement and the same shall remain in full force and effect.

Recognition

The GRANTEE shall include a reference to the financial support herein provided by the COUNTY in all publications and publicity. In addition, the GRANTEE shall make a good faith effort to recognize the COUNTY's support for all activities made possible with funds available under this Agreement.

No Forfeiture

The rights of the COUNTY under this Agreement shall be cumulative and failure on the part of the COUNTY to exercise promptly any rights given hereunder shall not operate to forfeit or waive any of the said rights.

Default

In the event the GRANTEE fails or refuses to perform any term, covenant, or condition of this Agreement for which a specific remedy is not set forth in the Agreement, the COUNTY shall, in addition to any other remedies provided at law or in equity, have the right of specific performance thereof.

Failure to Comply

If the GRANTEE fails to comply with any of the provisions of this Agreement, the COUNTY may withhold, temporarily or permanently, all, or any, unpaid portion of the Grant Award upon giving written notice to the GRANTEE, terminate this Agreement and/or demand a refund of the Grant Award and the COUNTY shall have no further funding obligation to the GRANTEE under this Agreement.

Waiver

No waiver of any provision of this Agreement shall be effective against any party hereto unless it is in writing and signed by the party(s) waiving such provision. A written waiver shall only be effective as to the specific instance for which it is obtained and shall not be deemed a continuing or future waiver.

Termination

This Agreement may be terminated by the GRANTEE 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 Agreement through no fault of the GRANTEE. It may also be terminated, in whole or in part, by the COUNTY, with or without cause, immediately upon written notice to the GRANTEE. Unless the GRANTEE is in breach of this Agreement, the GRANTEE shall be paid for services rendered to the COUNTY's satisfaction through the date of termination. After receipt of a Termination Notice and except as otherwise directed by the COUNTY the GRANTEE shall stop work on the date and to the extent specified.

Amendments

The COUNTY may, at its discretion, amend this Agreement to conform to changes required by Federal, State, or COUNTY guidelines, directives, and objectives. Such amendments shall be incorporated by written amendment as a part of this Agreement and shall be subject to approval of the Board of County Commissioners. Except as otherwise provided herein, no amendment to this Agreement shall be binding on either party unless in writing, approved by the Board of County Commissioners and signed by both parties.

Personnel

The GRANTEE represents that it has, or will secure at its own expense, all necessary personnel required to perform the services under this Agreement. 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 GRANTEE 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. The GRANTEE warrants that all services shall be performed by skilled and