

PALM BEACH COUNTY  
BOARD OF COUNTY COMMISSIONERS

3A-3

AGENDA ITEM SUMMARY

Meeting Date: December 16, 2008

Consent  
 Workshop

Regular  
 Public Hearing

Department: Administration  
Submitted By: Administration  
Submitted For: Economic Development Office

I. EXECUTIVE BRIEF

**Motion and Title:** Staff recommends motion to: Approve a Brownfield Economic Development Initiative (BEDI) Grant Agreement between Palm Beach County and the U.S. Department of Housing and Urban Development (HUD) in the amount of \$1.2 million for the Avenue "A" Revitalization Project.

**Summary:** On December 18, 2007, the Palm Beach County Board of County Commissioners (BCC) adopted a Resolution (R2007-2307) authorizing the submittal of a BEDI grant application for \$1.2 million and a Section 108 Loan Program Application for \$2.6 million to fund the Avenue A Project in Belle Glade. HUD submitted Notifications of Application Approvals for the BEDI grant in June 2008 and the Section 108 Loan in September 2008. On November 14, 2008, HUD submitted the BEDI Contract for execution. These are Federal funds that require no local match.  
Countywide (DW)

**Background and Policy Issues:** HUD published a Notice of Funding Availability for the Brownfield Economic Development Initiative (BEDI) for Fiscal Year 2007. This was a national competition for Federal grant and low interest loan dollars. The BEDI is coupled with a Federal low interest loan allocation from the HUD Section 108 Program, which was previously endorsed by the BCC in 2002. The Avenue A Revitalization Project will regenerate environmentally blighted properties adjacent to the Hillsboro Canal in downtown Belle Glade.

**Attachments:**  
BEDI Grant Agreement

Recommended By: [Signature]  
Economic Development Director

12/11/08  
Date

Approved By: [Signature]  
Assistant County Administrator

12/15/08  
Date



Grant No. B-07-BD-12-0012

**BROWNFIELDS ECONOMIC DEVELOPMENT (BEDI) GRANT AGREEMENT  
U. S. DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT**

**Date of Grant Agreement \_\_\_\_\_**

This Agreement is made and entered into by and between THE SECRETARY OF HOUSING AND URBAN DEVELOPMENT, acting by and through the Assistant Secretary for Community Planning and Development, ("HUD"), and the County of Palm Beach, Florida (the "Recipient").

1. Background; Purpose. This Agreement is authorized by section 108(q) of the Housing and Community Development Act of 1974, as amended by section 232(a) of the Multifamily Housing Property Disposition Reform Act of 1994, codified at 42 U.S.C. 5308(q) (collectively, "the Act"). Pursuant to the Act, on January 18, 2007 at 72 FR 2396 and on September 24, 2007 at 72 FR 54324 and on November 2, 2007 at 72 FR 62252, HUD published a Notice of Funding Availability and Program Guidelines for the Brownfields Economic Development Initiative (the "NOFA"), which set forth the terms and conditions under which units of general local government could apply for and receive grants under section 108(q) of the Act ("BEDI Grants") and related section 108 loan guarantees from HUD for Brownfields Economic Development Projects ("BEDI Projects"), as defined in the NOFA. Pursuant to the NOFA, the Recipient has applied for, and HUD has approved, a BEDI Grant for the Recipient. The purpose of this Agreement is to set forth the terms and conditions under which HUD will provide BEDI Grant funds to the Recipient in connection with the Approved BEDI Projects described in the Recipient's Approved Application, as further defined herein. The terms and conditions of the related Section 108 Guarantee (as defined in paragraph 3 hereof) are set forth in the Recipient's separate Section 108 loan guarantee application, Funding Approval, and Contract for Loan Guarantee Assistance.

2. Approved Grant Amount, Projects, and Uses of Funds.

a. By execution of this Agreement on behalf of the Secretary in the space provided below, HUD agrees, subject to the terms of this Agreement, to provide BEDI Grant funds in the amount of \$1,200,000 ("BEDI Grant").

b. This grant is approved for the following approved BEDI project described in the Approved Application: the Avenue A Revitalization Project ("Approved Project").

c. The grant funds shall be used in connection with the Approved Project for one or more of the following specifically approved uses ("Approved Uses"):

- (1) site preparation for an economic development purpose, pursuant to §570.703(f)(2);
- (2) the establishment of a business loan pool, pursuant to §570.703(i)(1), special economic development activities eligible under §570.203;

3. Relationship to Section 108 Loan Guarantee Application. This approved BEDI Grant is conditioned upon the Recipient's receipt of Section 108 guaranteed loan proceeds for the Approved Project in an amount not less than \$2,600,000 (the "Section 108 Guarantee").

Section 108 Guarantee proceeds shall be advanced and disbursed to carry out eligible activities under the Section 108 Contract for Loan Guarantee Assistance executed concurrently herewith in a ratio not less than \$2.17 of such proceeds for each \$1.00 of BEDI Grant funds disbursed for Approved Uses (the "Ratio").

4. Regulations; Approved Application. This Agreement will be governed and controlled by the following in effect as of the date of notification to the Recipient of award of this grant: the Act, the NOFA, and HUD regulations codified at 24 CFR Part 570 or incorporated therein (provisions for use of CDBG funds, to the extent applicable) (hereafter collectively referred to as the "Regulations"). The Recipient's application submissions, including the certifications and assurances and any documentation required to meet any grant award conditions, and including any amendments made in accordance with this Agreement, are hereby incorporated in this Agreement as finally approved by HUD (herein referred to as the "Approved Application"). Unless the context otherwise requires, a reference to "this Agreement" herein shall be deemed to include the Act, the Regulations, and the Approved Application.

5. Performance Agreement of Recipient. By execution of this Agreement on its behalf in the space provided below, the Recipient agrees to carry out the Approved Project on a timely basis and otherwise in compliance with this Agreement (including the Act, the NOFA, the Regulations, and the Approved Application, except as otherwise specifically provided in this Agreement). The Recipient agrees to assure, and to accept responsibility for, such compliance by any other entities to which it makes grant funds available for, or which it otherwise allows to participate in, the Approved Project covered by this Agreement.

6. Release, Deposit, and Timing of Expenditure of Grant Funds and Program Income.

a. The Recipient agrees to comply with environmental review procedures under 24 CFR 570.200(a)(4) and 24 CFR Part 58 in order to obtain releases of grant funds under this Agreement. In particular, the Recipient must not commit local or Federal funds for the approved activities prior to obtaining HUD approval of

its request for release of funds, except as provided in 24 CFR 58.22(c), 58.34 or 58.35(b).

b. Notwithstanding any other provision of the Regulations or this Agreement, the Recipient may not withdraw grant funds from the U.S. Treasury on account of the BEDI Grant under this Agreement until after execution on behalf of HUD of the Guarantee and Contract for Loan Guarantee Assistance for the applicable Approved Project described in paragraph 2 of this Agreement.

c. This BEDI Grant must be entirely withdrawn and expended for Approved Uses for the applicable Approved Project on or before September 30, 2014.

d. All program income from this BEDI Grant is deemed to be program income of the Approved Project, which is jointly financed by the Section 108 Guarantee. The Recipient agrees that all such program income constitutes security for the repayment of the Section 108 Guarantee, shall be initially deposited in, the Loan Repayment Account established by the Recipient or its designated public agency under paragraph 6 of the Contract(s) for Loan Guarantee Assistance for the Section 108 Guarantee, and shall be disbursed for the purposes and within the time period specified in said paragraph 6 of such Contract. Upon full and complete repayment of the Section 108 Guarantee, all such program income shall be used in accordance with 24 CFR 570.504.

7. Pre-Award Costs. Notwithstanding any other provision of this Agreement or the Regulations, "the effective date of the grant agreement" for this BEDI Grant for purposes of 24 CFR 570.200(h) is the date of award of this BEDI Grant by HUD, which was June 9, 2008. "Pre-award costs" may be incurred by the Recipient prior to such date and reimbursed with BEDI Grant funds hereunder, to the extent such costs comply with 24 CFR 570.200(h) and this Agreement. The BEDI Grant funds provided hereunder may be used to pay for costs incurred on or after such date, provided such costs otherwise comply with this Agreement. However, the timing of use and the availability of the BEDI Grant funds to actually pay for such costs are subject to paragraph 6 of this Agreement.

#### 8. Amendment; Record-Keeping.

a. This Agreement or the Approved Application may be amended only with the prior written approval of HUD. To request approval of an amendment, the Recipient shall attach the proposed revisions to the applicable pages of this Agreement or the Approved Application to a cover letter addressed as required below (see paragraph 11) for notices to HUD and signed by the Recipient's official representative for this grant. In considering proposed amendments to this Agreement or the Approved Application, HUD shall review, among other things, whether the amendment would have affected the ranking of the application in

the year it was approved sufficiently to have resulted in the application not ranking high enough for funding, and whether the amendment is otherwise consistent with the Act, the Regulations, and the NOFA. Any increase in the amount of the approved BEDI Grant represents a new grant obligation by HUD and must be documented by a formal amendment to this Agreement, or a new BEDI Grant Agreement, executed on behalf of the parties by officials with the authority to execute the original Agreement.

b. The Recipient shall at all times maintain an up-to-date copy of its Approved Application, including all amendments approved in writing by HUD, and all drawdowns, deposits, and expenditures of grant funds and program income under this Agreement and any other records required by 24 CFR 570.506, in its files and available for audit or inspection by duly authorized representatives of HUD or the Comptroller General of the United States.

9. Default; Remedies. A default under this Agreement shall consist of any use of grant funds other than as authorized by this Agreement, any other noncompliance with this Agreement deemed material by HUD, or any misrepresentation or omission in the application submissions which, if known to HUD, would have resulted in this grant not being provided. If HUD determines that the Recipient is in default, HUD will give the Recipient written notice of this determination and the corrective or remedial actions proposed by HUD to cure the default or mitigate its effects, to the extent possible, and to prevent a continuation or recurrence of the default (the "initial notice of default"). Further description of the processes of audit, performance monitoring, and the corrective and remedial actions available to HUD which apply to grants under the Act, including this BEDI Grant, is provided in 24 CFR 570, particularly Subpart O. No delay or omission by HUD in exercising any right or remedy under this Agreement shall impair HUD's ability to exercise such right or remedy or constitute a waiver of, or acquiescence in, any Recipient default.

10. Close-out. Except as may be otherwise specifically provided, close-out of this grant shall be subject to 24 CFR 570.509, or such close-out instructions as may hereafter be issued by HUD specifically for BEDI Grants.

11. General. HUD notifications to the Recipient under this Agreement may be addressed to the Recipient's address as stated in the Approved Application, unless the Recipient otherwise notifies HUD in writing. Recipient notifications to HUD shall be to the:

U.S. Department of Housing and Urban Development  
Attention, Director, Financial Management Division,  
451 Seventh Street, SW, Room 7180  
Washington, DC 20410,

unless the Recipient is otherwise notified in writing by HUD.

The Recipient's rights under this Agreement may not be assigned without the prior written approval of HUD. This Agreement constitutes the entire Agreement between the Recipient and HUD, and it may not be amended except in writing and executed by authorized officials of both HUD and the Recipient, as provided in paragraph 8.

12. Binding Agreement. This Agreement is binding with respect to HUD in accordance with its terms upon execution by HUD in the space provided below, subject to execution on behalf of the Recipient.

13. Special Condition(s).

a. This Grant Agreement in the amount of \$1,200,000 is incorporated in a Contract for Loan Guarantee Assistance of even date herewith under Commitment number B-07-UC-12-0004 entered into by the Recipient and the Secretary of Housing and Urban Development (the "Contract") and made a part thereof.

b. Paragraph 3 of this Grant Agreement requires that BEDI Grant funds are to be disbursed by the Recipient for Approved Uses in a ratio not to exceed \$1.00 of BEDI Grant funds to \$2.17 of Section 108 Guaranteed Loan Funds disbursed for approved activities. Notwithstanding this requirement, the Recipient may disburse its BEDI funds for Approved Uses in an amount that does not immediately comply with the required ratio. The Section 108/BEDI disbursement ratio, however, must be in substantial parity within one year of the date of the Grant Agreement. This deadline for achieving such parity may be extended by one year upon the written determination by HUD that requiring parity to be achieved by the earlier date would create an undue hardship.

c. Paragraph 3 of this Grant Agreement further requires the Recipient to use \$2,600,000 of Section 108 Guarantee proceeds for approved activities under the Contract as a condition of receiving this BEDI Grant. In the event the Recipient fails to use Section 108 Guarantee proceeds for the Approved Use in implementing the Approved Project within the time period permitted in paragraph 1(a) of the Contract (including any extensions of such period approved by HUD), the BEDI grant must be repaid to HUD to the extent that the amount of BEDI funds withdrawn and not repaid to HUD exceeds \$1.00 of BEDI funds for each \$2.17 of Section 108 Guarantee proceeds actually used for approved activities. For example, if all BEDI Grant funds have been disbursed to the Recipient and not repaid to HUD, the amount of BEDI Grant funds repaid shall be equal to the difference between the total required amount of Section 108 Guarantee proceeds (\$2,600,000) and the amount of Section 108 funds actually used for the Approved Use, divided by 2.17. Repayment shall be made within one year after the end of such time period