

II. FISCAL IMPACT ANALYSIS

A. Five Year Summary of Fiscal Impact:

Fiscal Years	2011	2012	2013	2014	2015
Capital Expenditures					
Expenditure	\$822,451				
Operating Cost					
External Revenue	(\$822,451)				
Program Income (PBC)					
In-Kind Match (PBC)					
NET FISCAL IMPACT	\$0				
# ADDITIONAL FTE					
POSITIONS					
(Cumulative)					

Is Item Included In Current budget? Yes X No

Budget Account Numbers:

Fund 1540 Dept. 764 Unit 2000 Object Various (Avenue A Section 108 Loan)


Fund 1539 Dept. 764 Unit 2001 Object 8201 (BEDI Grant)

Fund 1541 Dept. 764 Unit 2109 Object 8201 (EECBG Revolving Loan)

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

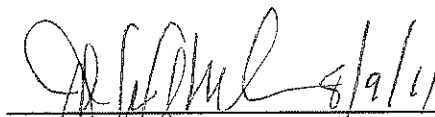
The sources of funding will be the existing Avenue A Section 108 Loan pool and the existing Avenue A BEDI Grant pool.

C. Departmental Fiscal Review:



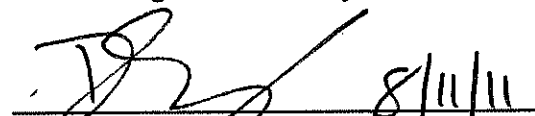
III. REVIEW COMMENTS

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


OFMB
8/8/11 WS
8/9/11
8/15/11


Contract Dev. and Control
8/11/11

B. Legal Sufficiency:


Assistant County Attorney
8/11/11

C. Other Department Review:

Department Director

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

**SECTION 108 LOAN PROGRAM AGREEMENT
BETWEEN
PALM BEACH COUNTY
AND
AMERICA'S SOUND, INC.**

THIS AGREEMENT is made as of the ____ day of ____, 2011 by and between Palm Beach County, Florida, a political subdivision of the State of Florida, by and through its Board of County Commissioners, herein referred to as COUNTY, and America's Sound, Inc., a corporation authorized to do business in the State of Florida, hereinafter referred to as COMPANY, whose physical address is 3379 S. Military Trail, Lake Worth, Florida 33463, whose mailing address is 15653 Bent Creek Road, Wellington, FL 33414, and whose Federal I.D. number is 043655471.

WITNESSETH:

WHEREAS, the COUNTY is administering various Section 108 Loan Programs (its "Section 108 Loan Program") under the Rules and Regulations of the U.S. Department of Housing and Urban Development (hereinafter referred to as "HUD"); and

WHEREAS, the COUNTY and the COMPANY are required to follow such Rules and Regulations of HUD and the national purpose of the program which is to eliminate slums or blight or provide job opportunities to persons of low and moderate income or provide for an urgent need as defined by HUD; and

WHEREAS, the COUNTY has determined that the Section 108 loan is an eligible loan to the COMPANY under CFR 570.201, 570.203(b) and 570.703 (i)(1); and

WHEREAS, COUNTY intends to grant financing to COMPANY in an amount not to exceed FIVE HUNDRED NINETY TWO THOUSAND DOLLARS (\$592,000) subject to the terms and conditions outlined in the Loan Commitment dated ____ as well as those certain loan documents which include, but are not limited to the Section 108 Promissory Note, the Loan Agreement, the Mortgage and Security Agreement with Assignment of Leases and Rents, the Guaranty Agreement, UCC-1 Financing Statements and all other documents required by the Loan Agreement (collectively the "Loan Documents"); and

WHEREAS, COUNTY may grant additional funding to COMPANY in an amount not to exceed ONE HUNDRED EIGHTY TWO THOUSAND FOUR HUNDRED FIFTY ONE DOLLARS (\$182,451) in connection with its Section 108 Loan Program pursuant to HUD's Brownfields Economic Development Initiative ("BEDI Grant") as may be awarded to COUNTY in order to further stimulate and promote economic and community development. The BEDI Grant and Section 108 Loan funds must be used in conjunction with the same economic development project.

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

**ARTICLE I
AGREEMENTS**

Anti-Piracy Provisions

The COMPANY hereby certifies that it is in compliance with Section 105H of U.S.C. 5305 and 24 CFR 570.210 and 570.482 and 507.506 in that neither the Section 108 Loan nor a BEDI Grant will cause the COMPANY to locate a facility, plant or operation, including the expansion of a business that will result in the loss of jobs from one Labor Market Area to another.

Benefit to Persons of Low and Moderate Income

The COMPANY has met this test by meeting the presumption rule in compliance with 24 CFR 570.208B v (a) & (b) and (c) (1) & (2) in which case no further action need be taken. The definition of low and moderate-income persons shall be a family whose income is below or at 80% of median income as established by HUD and as published by www.huduser.org. The COMPANY shall document the household income level at the time of recruiting, by conducting a survey among the job applicants using the form attached hereto and made a part hereof as Exhibit B. Each year or as requested by the COUNTY, the COMPANY shall report its achievements in job creation to the COUNTY on the forms attached hereto and made a part hereof as Exhibit A and Exhibit B. Further, the COMPANY shall permit the COUNTY to investigate its books and payroll records and interview employees to ensure that the information contained in the reports is true and correct.

Job Creation

In compliance with 24 CFR 570.209(b)(1) the COMPANY agrees to make a good faith effort to create thirty five (35) new full time equivalent (FTE) jobs within the five (5) year period immediately following the Loan Closing. Year one shall begin on the date of the issuance of a certificate of occupancy upon completion of the renovation project.

A new FTE job shall be a position that requires employment for a minimum of 40 hours per week or 2,080 hours annually. A FTE job may include permanent, salaried part-time employees whose hours total 2,080 hours annually.

Job Audit

The COMPANY shall report its compliance with the job creation requirement by submitting an Annual Report certified by the Payroll Officer or Lead Accountant as shown in Exhibit A of this Agreement attached hereto and made a part hereof. The Annual Report shall be submitted to the COUNTY (attn: Palm Beach County Economic Development Office). COMPANY will be informed by the COUNTY when the COUNTY has made the determination that there are deficiencies with the audit and/or invoice documentation. Under these circumstances, the audit and invoice documentation cannot be processed pending COMPANY resolving the identified deficiencies. Upon receipt by the COUNTY from COMPANY of the appropriate audited and/or invoiced documentation, processing of the audit and invoices may proceed. Further the COMPANY shall permit the COUNTY to investigate its books and records and interview employees to insure compliance with this provision. When the COMPANY has achieved its job goals, it shall have satisfied this requirement.

Inspection

Upon ten (10) business days notice and at any time during normal business hours and as often as the COUNTY deems necessary, there shall be made available by COMPANY to the COUNTY for examination, all its records with respect to all matters covered by this Agreement. The COUNTY reserves the right to require copies of such records and/or to conduct an inspection of COMPANY'S records regarding performance measures at any time for any period covered by this Agreement.

ARTICLE II **GENERAL CONDITIONS**

Employee: Bona Fide

COMPANY warrants that it has not employed or retained any company or person, other than a bona fide employee working solely for COMPANY to solicit or secure this Agreement 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 COMPANY, any fee, commission, percentage, gift, or any other consideration contingent upon or resulting from the award or making of this Agreement.

Non-discrimination

COMPANY agrees that no person shall on the grounds of race, color, religion, disability, sex, age, national origin, ancestry, marital status, familial status, sexual orientation, gender identity and expression, be excluded from the benefits of, or be subjected to discrimination under, any activity carried out by the performance of this Agreement.

Worker's Compensation & Employer's Liability

COMPANY shall agree to maintain Worker's Compensation Insurance & Employers Liability in accordance with Florida Statute Chapter 440. COMPANY shall provide this coverage on a primary basis.

Convicted Vendor List; Debarment

(a) As provided in F.S. 287.132-133, by entering into this Agreement or performing any work in furtherance hereof, COMPANY certifies that neither COMPANY, its affiliates nor its principals who will perform hereunder have been placed on the Convicted Vendor List maintained by the State of Florida Department of Management Services within thirty-six (36) months immediately preceding the date of execution of this Agreement by the COUNTY. This notice is required by F.S. 287.133(3)(a).

Florida Department of Management Services, Division of Purchasing
4050 Esplanade Way, Tallahassee, FL 32399-0950
(850) 488-8440

http://dms.myflorida.com/dms/purchasing/convicted_suspended_discriminatory_vendor_lists/convicted_vendor_list

(b) By entering into this Agreement or performing any work in furtherance hereof, COMPANY certifies that neither COMPANY, its affiliates nor its principals who will perform hereunder is presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participation in this transaction by any Federal department or agency, as such terms are defined in Executive Order 12549, nor is any such action pending or proposed.

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 COMPANY, 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 punished pursuant to Section 125.69, Florida Statutes, in the same manner as a second-degree misdemeanor.

Compliance with HUD Regulations

The COMPANY shall be responsible for complying with all HUD Regulations, including the Davis-Bacon Act of 1931 and Section 3 of the U.S. Housing and Urban Development Act of 1968 Regulations.

Successors & Assigns

All covenants, agreements and conditions of this Agreement are binding upon and inure to the benefit of the COUNTY and COMPANY, and their respective partners, officers, directors, employees, agents, executors, administrators, successors and assigns. Except as otherwise permitted hereunder, neither the COUNTY nor COMPANY shall assign, convey or transfer its rights, interests, benefits, duties or obligations under this Agreement without the prior written

consent of the other party. Nothing herein shall be construed as creating any personal liability on the part of any officer, director, employee or agent of the COUNTY, nor shall it be construed as giving any rights or benefits hereunder to anyone other than the COUNTY and COMPANY.

Material Change of Circumstances

COMPANY shall immediately notify the COUNTY of any material change of circumstances of COMPANY'S business operations in Palm Beach County. For the purposes hereof, material change of circumstance shall include, but not be limited to, the failure of COMPANY to diligently and actively pursue fulfillment of the terms hereof, the sale or transfer of all or substantially all of COMPANY'S assets; the sale of a controlling interest (i.e., more than 50%) of the stock or other equity interest in COMPANY; the suspension, closing, dissolution, liquidation or cessation of business operations of COMPANY; the voluntary or involuntary filing of any petition in bankruptcy; or an assignment for the benefit of COMPANY'S creditors. In the event of a material change of circumstances, the COUNTY shall have the right to terminate this Agreement, whereupon the COUNTY shall have no further obligation to COMPANY under this Agreement.

Entire Agreement Between Parties

The COUNTY and COMPANY agree that this Agreement and all attachments hereto, including but not limited to the Section 108 Loan and BEDI Grant Documents, 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 Agreement may be added to, modified, superseded or otherwise altered, except by written instrument executed by the parties hereto.

Invalid or Unenforceable Terms

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

Remedies

In the event of a default or breach by the COMPANY hereunder, under Section 108 Loan and BEDI Grant Documents, the COUNTY shall consult with HUD as to the appropriate remedy, which may include acceleration of the principal balance due under the Section 108 Loan and/or repayment of a BEDI Grant, including defeasance provisions if applicable. The COMPANY recognizes the authority of HUD to direct and establish appropriate remedies in connection with any such default or breach.

Law and Remedy

This Agreement shall be governed by the laws of the State of Florida and the laws of the United States and the Rules and Regulations of HUD. Any and all legal action necessary to enforce the Agreement shall be held in Palm Beach County or such other jurisdiction as is directed by HUD. 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 or 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.

Indemnification and Hold Harmless

The COMPANY hereby protects, defends, reimburses, indemnifies and holds the COUNTY and HUD, its agents, employees, directors and officers (whether elected or appointed) and each of them, free and harmless at all times from and against any and all claims, liability, expenses, losses, costs, fines and damages, including attorney's fees, and suits, proceedings and

causes of action of every kind and character which may arise out of this Agreement. COMPANY recognizes the broad nature of the indemnification and hold harmless provisions set forth in this Section, voluntarily makes this agreement and covenant and expressly acknowledges the receipt of good and valuable consideration provided by COUNTY and HUD in support of this clause in accordance with the laws of the State of Florida. This Section shall survive the termination of this Agreement.

Assignability

It is recognized by the COUNTY and the COMPANY that this Agreement is part of the Loan Documents respecting the closing of the Section 108 Loan and such Loan Documents are held in trust by the Palm Beach County Clerk and Comptroller, for the benefit of HUD, and HUD has the final discretion as to its enforcement.

Amendment; No Waiver

This Agreement may not be amended or the terms or provisions hereof waived unless such amendment or waiver is in writing and signed by the parties. No delay or failure by the COUNTY to exercise any right, power, or remedy shall constitute a waiver thereof by the COUNTY, and no single or partial exercise by the COUNTY of any right, power, or remedy shall preclude other or further exercise thereof or any exercise of any other rights, powers, or remedies.

Counterparts

This Agreement may be executed in any number of counterparts, all of which together shall constitute one agreement.

Further Actions

The COMPANY shall execute and deliver such documents and instruments, and shall take such other actions as the COUNTY deems necessary to more fully carry out the terms of this Agreement.

(REMAINDER OF THIS PAGE LEFT BLANK INTENTIONALLY)

Notice

All notices required in this Agreement shall be sent by certified mail, return receipt requested, and if sent to the COUNTY shall be mailed to:

Sherry Howard, Director
Palm Beach County Economic Development Office
P.O. Box 1989
West Palm Beach, Florida 33402-1989

With a copy to:

Dawn Wynn, Senior Assistant County Attorney
Palm Beach County Attorney's Office
301 N. Olive Ave, 6th Floor
West Palm Beach, FL 33401

And if sent to the COMPANY shall be mailed to:

Nasser Halum, President
America's Sound, Inc.
15653 Bent Creek Road
Wellington, FL 33414

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

WITNESS FOR PALM BEACH COUNTY:

Signature _____
Name (type or print) _____
Title _____

**APPROVED AS TO TERMS
AND CONDITIONS:**

By: _____
Sherry Howard
Economic Development Office Director

WITNESS FOR COMPANY:

Signature _____
Name (type or print) _____
Title _____

**PALM BEACH COUNTY, FLORIDA
BY ITS BOARD OF COUNTY
COMMISSIONERS:**

By: _____
Shannon LaRocque
Assistant County Administrator

**APPROVED AS TO FORM
AND LEGAL SUFFICIENCY:**

By: _____
Dawn Wynn
Senior Assistant County Attorney

COMPANY:

AMERICA'S SOUND, INC.

Signature _____
Nasser Halum
Title _____

COMPANY SEAL
(Seal must be identical to COMPANY name. If seal is unavailable, COMPANY must draw seal. If not applicable, write N/A.)

EXHIBIT A

JOB CREATION REPORT

DATE OF REPORT: _____

COMPANY	America's Sound, Inc.
LOAN CLOSING DATE	
LOAN AMOUNT	\$592,000
NUMBER OF NEW FTE JOBS TO BE CREATED	35
START DATE (same as the Loan Closing Date)	
EXPECTED COMPLETION DATE (5 years after issuance of Certificate of Occupancy)	

[illegible]

Certified by:

Title:

Signature:

**EXHIBIT B
SURVEY FORM**

Project Location: Belle Glade, FL

Family Income Survey for America's Sound Section 108 Loan

Name: _____ Date: _____

America's Sound, Inc. is a recipient of a Section 108 Federal Loan from the U.S. Housing and Urban Development (HUD) Department through Palm Beach County and it is required by Federal Law to maintain the following information on all applicants and hires. This information will not affect the consideration of your resume/application for employment. This form will be processed separately from your resume/application. We appreciate your cooperation.

Position applied for: _____

Gender: _____ Female _____ Male

Address: _____

Ethnic Category (as defined by the U.S. Equal Employment Opportunity Commission)

- ☐ White (Not Hispanic or Latino):
Persons having origins in any of the original peoples of Europe, North Africa or the Middle East.
- ☐ Black or African American (Not Hispanic or Latino):
Persons having origins in any of the Black racial groups of Africa.
- ☐ Hispanic or Latino:
Persons of Mexican, Puerto Rican, Cuban, Central or South American or other Spanish culture or origin, regardless of race.
- ☐ Native Hawaiian or Other Pacific Islander (Not Hispanic or Latino):
Persons having origins in any of the original peoples of the Hawaii, Guam, Samoa or other Pacific Islands.
- ☐ Asian (Not Hispanic or Latino):
Persons having origins in any of the original peoples of the Far East, Southeast Asia or the Indian Subcontinent, including, for example, Cambodia, China, India, Japan, Korea, Malaysia, Pakistan, the Philippine Islands, Thailand and Vietnam
- ☐ American Indian or Alaska Native (Not Hispanic or Latino):
Persons having origins in any of the original peoples of North and South America (including Central America) and who maintain tribal affiliation or community attachment.
- ☐ Two or Races (Not Hispanic or Latino):
Persons who identify with more than one of the above five races.

Circle the appropriate answers:

1. Are you head of household? YES or NO
2. Number of household members: 1 2 3 4 5 6 7 8 more than 8

3. Based on household members, indicate (circle) the annual household (family) income:

No. Persons Living in the House	ANNUAL HOUSEHOLD (FAMILY) INCOME		
1 Member	\$0 - \$15,550	\$15,551 - \$25,900	\$25,901 - \$41,450
2 Members	\$0 - \$17,800	\$17,801 - \$29,600	\$29,601 - \$47,400
3 Members	\$ 0 - \$20,000	\$20,001 - \$33,300	\$33,301 - \$53,300
4 Members	\$ 0 - \$22,200	\$22,201 - \$37,000	\$37,001 - \$59,200
5 Members	\$0 - \$24,000	\$24,001 - \$40,000	\$40,001 - \$63,950
6 Members	\$0 - \$25,800	\$25,801 - \$42,950	\$42,951 - \$68,700
7 Members	\$0 - \$27,550	\$27,551 - \$45,900	\$45,901 - \$73,450
8 Members	\$ 0 - \$29,350	\$29,351 - \$48,850	\$48,851 - \$78,150

“Any false statements made knowingly and willfully may subject the signer to penalties under Section 1001 and 1010 of Title 18 of the United States Code.”

Signature _____ Date: _____