

PALM BEACH COUNTY
BOARD OF COUNTY COMMISSIONERS

AGENDA ITEM SUMMARY

Meeting Date: August 15, 2017 Consent Regular
 Ordinance Public Hearing

Department: Department of Housing and Economic Sustainability

I. EXECUTIVE BRIEF

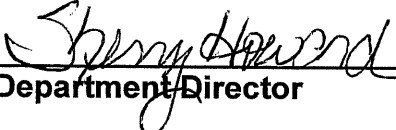
Motion and Title: Staff recommends motion to approve:

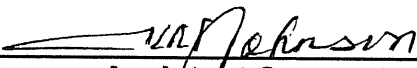
- A) a waiver of PPM CW-F-049 (Contract Development PPM) with regard to the attorney fees provision in an agreement with U.S. Department of Agriculture (USDA);
- B) a Promissory Note, USDA Form RD 4274-3 to accommodate the provision of the note in connection with satisfaction of reasonable attorney's fees to USDA in the event of a default; and
- C) a waiver of the Contract Development PPM with regard to all future agreements with USDA that are in substantially similar form as this Note.

Summary: Approval of this form allows the County to enter in an agreement with USDA and execute the promissory note under this agreement. This is required to execute the closing documents. This promissory note requires the County to indemnify USDA for "all expenses, whether incurred in or out of court, whether incurred before or after this note shall become due at its maturity date or otherwise, which USDA may deem necessary or proper in connection with obtaining satisfaction of the indebtedness, including but not limited to reasonable attorney's fees". Pursuant to the Contract Development PPM, the County should not agree to the indemnity provision concerning attorney fees. However, a recent Florida Supreme Court decision recognizes that contractual indemnity arrangements are enforceable, thus Staff is requesting approval of a waiver of the Contract Development PPM in this instance. **These are Federal loan funds which require no local match.** District 6 (JB)

Background and Justification: On February 23, 2016, USDA awarded Palm Beach County an Intermediary Relending Program (IRP) loan totaling \$1,000,000. The IRP is a low interest loan program provided to intermediaries such as Palm Beach County to improve rural economies by providing capital to small and emerging businesses. Eligible borrowers of these low interest loans include individuals, corporations, partnerships, limited liability companies, or non-profit corporations. IRP economic development projects must be located in the rural areas of the County and work to alleviate poverty and increase economic activity and employment.

Attachment(s):
1. Promissory Note

Recommended By:  7-20-17
 Department Director Date

Approved By:  8/2/17
 Assistant County Administrator Date

II. FISCAL IMPACT ANALYSIS

A. Five Year Summary of Fiscal Impact:

Fiscal Years	2017	2018	2019	2020	2021
Grant Expenditures					
Operating Costs					
External Revenues					
Program Income					
In-Kind Match (County)					
NET FISCAL IMPACT	*				

# ADDITIONAL FTE POSITIONS (Cumulative)					
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Is Item Included In Current Budget? Yes _____ No _____
 Budget Account No.:

Fund _____ Dept _____ Unit _____ Object _____ Program Code/Period _____

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

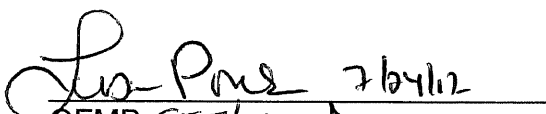
* Source of funding will be USDA Intermediary Relending Program funds. The fiscal impact associated with this item is indeterminable at this time. Lending fees collected will depend on the number of loan applications and value of projects approved for financing.


C. Departmental Fiscal Review:


 Beverley Reid, Fiscal Manager I

III. REVIEW COMMENTS

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


 Lisa Pines 7/24/17
 OFMB ET 7/21 11/21


 George Stuenkel for 2017
 Contract Development and Control
 7/27/17

B. Legal Sufficiency:


 James Burk 8/1/17
 Assistant County Attorney

C. Other Department Review:

 Department Director

**INTERMEDIARY RELENDING PROGRAM
RURAL MICROENTREPRENEUR ASSISTANCE PROGRAM
PROMISSORY NOTE**

1. FOR VALUE RECEIVED, Palm Beach County, a political subdivision of the State of FL (Borrower) promises to pay to the order of the United States of America, acting through the U.S. Department of Agriculture (USDA) through principal office at 420 S SR 7, Ste 166; Royal Palm Beach, Fl 33414, or through such place as the USDA may designate in writing, the principal sum of one million dollars (\$ 1,000,000.00), plus interest on the unpaid principal balance at the rate of 100% per annum. The said principal and interest shall be paid in the following installments on or before the following dates:

(a) Intermediary Relending Program (IRP)

Interest only on _____, 2018,
Interest only on _____, 2019,
Interest only on _____, 2020,

Commencing on _____ and, thereafter, _____ on each year, principal and interest payments in an amount to fully
MM/DD/YY MM/DD/YY
amortize the loan 30 years from the date of this note until the principal and interest are fully paid. The amortized payments will be billed to the Borrower by the Government at least 30 days in advance of the payment due date and shall be based on the actual amount then owed to the Government;

(b) Rural Microentrepreneur Assistance Program (RMAP)

Principle and Interest on _____,
(2 years from date of loan closing - last day of the month)

Commencing on _____ and, thereafter, on the last day of each month, principal and interest payments in an amount to
MM/DD/YY
fully amortize the loan 20 years from the date of this note until the principal and interest are fully paid. The amortized payments will be billed to the Borrower by the Government at least 30 days in advance of the payment due date and shall be based on the actual amount then owed to the Government;

The final installment of the entire indebtedness evidenced hereby, if not sooner paid, shall be due and payable thirty (30) years (IRP)/
twenty (20) years (RMAP) from the date of this note, and prepayments may be made at anytime. The consideration herefore shall
(Circle One)
support any agreement modifying the foregoing schedule of payments.

If the total amount of the loan is not advanced at the time of loan closing, the loan shall be advanced to the Borrower as requested by the Borrower and approved by USDA and interest shall accrue on the amount of each advance from its actual date. For RMAP, the microenterprise development organization (MDO) is eligible to receive up to 25 percent of the total amount borrowed from the Agency at the time of loan closing and interest shall accrue on the amount disbursed to the MDO as of the date of disbursement.

Every payment made on any indebtedness evidenced by this note shall be applied first to interest computed to the effective date of the payment and then to principal.

Prepayments of scheduled installments, or any portion thereof, may be made at any time at the option of the Borrower. Prepayments, refunds and extra payments shall, after payment of interest, be applied to the installments last to come due under this note and shall not affect the obligation of the Borrower to pay the remaining installments as scheduled herein.

Borrower shall pay a late charge of 4% of the payment if payment is not received within 15 calendar days following the due date. The late charge shall be considered unpaid if not received within 30 calendar days of the missed due date for which it was imposed, and any unpaid late charge shall be added to principal and bear interest at the same rate as noted above for said principal and will be due at the end of the loan term. Payment of any installment of principal or interest owing on this note may be made prior to the maturity date thereof without penalty.

According to the Paperwork Reduction Act of 1995, no persons are required to respond to a collection of information unless it displays a valid OMB control number. The valid OMB control number for this information collection is 0570-0021 and 0570-0062. The time required to complete this information is estimated to average 1-1/2 hours per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information.

2. The term, "Indebtedness," shall mean the indebtedness evidenced by this note, including principal, interest, and late payment charges including any interest thereon, whether now due, or thereafter to become due.

3. If payment of the indebtedness evidenced by this note, or any part thereof, shall not be made when due and at maturity, by acceleration or otherwise, the Borrower hereby authorizes and empowers any attorney of any court of record in the United States to appear for the Borrower in court, or before any clerk thereof, and confess judgment against the Borrower in favor of the holder of this note for the amount then due with interest and costs.

4. USDA may, at its option, declare all or any part of the indebtedness immediately due and payable upon the happening of any of the following events:

- (a) Failure to pay any part of the indebtedness due;
- (b) Default under, noncompliance with, or nonperformance of any term or condition of that certain Loan Agreement or Supplemental Loan Agreement, of even date herewith, by and between the Borrower and USDA;
- (c) Criminal violations, civil fraud, misrepresentations, or regulatory violations on the part of the Borrower. USDA's failure to exercise its right to accelerate the due date of its payments shall not constitute a waiver thereof.

5. The indebtedness shall immediately become due and payable, without notice or demand, upon the appointment of a receiver or liquidator, whether voluntary or involuntary, for the Borrower or for any of its property, or upon the making by the Borrower of an assignment for the benefit of its creditors.

6. The Borrower shall pay all expenses, whether incurred in or out of court, whether incurred before or after this note shall become due at its maturity date or otherwise, which USDA may deem necessary or proper in connection with obtaining satisfaction of the indebtedness, including but not limited to reasonable attorneys fees. USDA is authorized to pay at any time and from time to time any and all of such expenses, add the amount of such payment to the indebtedness, and charge interest thereon at the applicable rate of interest specified herein with respect to the principal amount of this note.

7. The rights of USDA or its assigns hereunder shall not be impaired by USDA's sale, hypothecation, or rehypothecation of any note of the Borrower, or by any indulgence including but not limited to any renewal, extension or modification which USDA may grant with respect to the indebtedness or any part thereof, or any indulgence granted in respect of any endorser, guarantor, or surety, except of course to the extent of such indulgence. The purchaser, assignee, transferee, or pledgee of this note, any guarantee, and any other document (or any of them), sold, assigned, transferred, pledged or repledged, shall forthwith become vested with and entitled to exercise all powers and rights given by this note and by the aforesaid loan agreement and all applications of the Borrower to USDA as if said purchaser, assignee, transferee, or pledgee were originally named as payee in this note and in said loan agreement and in said application or applications, and subject to any claims and defenses of the debtor under such note, guarantee, loan agreement and any other document.

8. Any amount advanced or expended by USDA for the collection hereof or to protect any security hereto, or otherwise under the terms of any security or other instrument executed in connection with the loan evidenced by this note, at the option of USDA shall become a part and bear interest at the same rate as the principal of the debt evidenced by this note and be immediately due and payable by the Borrower to USDA without demand.

9. This note is given to evidence a loan made by USDA in connection with the implementation of the Intermediary Relending Program/Rural Microentrepreneur Assistance Program. This instrument is to be construed according to pertinent rules and regulations of USDA and is to be enforced in accordance with applicable Federal law.

10. In the event that any provision or clause in this note is not enforceable in a court of law, all other provisions and clauses shall continue to remain in effect.

(SEAL)

Name: Palm Beach County
(Name of Borrower)

By _____
(Signature of Official)

Verdenia C. Baker

(Printed or typed name of Official)

Attest: _____
(Signature of Attesting Official)

(Title of Attesting Official)

Title County Administrator
(Title of Official)

Date _____,

Date _____,