



FILE

CITY COUNCIL 345 6th Street, Suite 600, Bremerton, WA 98337 ☐ Phone (360) 473-5280

**SEPTEMBER 2, 2009
CITY COUNCIL MEETING AGENDA**

1. **BRIEFING:** 5:00 – 5:30 P.M. in **COUNCIL CONFERENCE ROOM 603**
 - A. General Council Business
2. **CALL TO ORDER:** 5:30 P.M. in **FIRST FLOOR CHAMBERS**
 - A. Pledge of Allegiance
 - B. Invocation
3. **MAYOR'S REPORT**
4. **ANNOUNCEMENTS & PUBLIC RECOGNITION**
5. **CONSENT AGENDA**
 - A. Claims & Check Register
 - B. Minutes of Meeting – August 19, 2009
 - C. Minutes of Study Session – August 26, 2009
 - D. Lease Agreement between EMERALD BAY YACHTS LLC and the City of Bremerton
6. **GENERAL BUSINESS**
 - A. Acceptance of Brownfields Economic Development Initiative (BEDI) Grant from the U. S. Department of Housing and Urban Development (HUD) for the Bremerton Boardwalk Project
7. **PUBLIC HEARINGS** – *There are no Public Hearings tonight...*
8. **COUNCIL MEMBER REPORTS**
9. **ADJOURNMENT OF CITY COUNCIL BUSINESS MEETING**



CITY COUNCIL MEETING MINUTES

Wednesday, August 19, 2009

The weekly meeting of the City Council of the City of Bremerton was called to order Wednesday, August 19, 2009, at 5:00 PM in Council Conference Room 603 of the NORM DICKS GOVERNMENT CENTER, 345 6th Street, Bremerton, Washington, with Council President Cecil McConnell presiding. Council Members present were Nick Wofford, Will Maupin, Carol Arends, Dianne Robinson, Mike Shepherd, Roy Runyon, and Adam Brockus. Council Member Brad Gehring was absent. Also present were City Attorney Roger Lubovich, City Clerk Carol Etgen, and Council Assistant Christine Grenier.

A COUNCIL BRIEFING was held to discuss General Council Business; and at 5:30 PM the meeting moved to the First Floor Meeting Chambers.

The Pledge of Allegiance was led by **Council Member Adam Brockus** followed by the invocation provided by **Reverend Paul Meeker** of Our Saviour's Lutheran Church.

MAYOR'S REPORT – *There was no Mayor's Report tonight...*

PUBLIC RECOGNITION & ANNOUNCEMENTS

Roy Runyon announced that there will be a free movie showing of "Evergreen: The Washington Clean Tech Story on Monday, August 31 from 6:30 to 8:30 PM in the Meeting Chambers; and a disaster preparedness workshop on Friday, September 4 from 6:00 to 8:00 PM at the Kitsap Historical Society Museum located at 280 4th Street.

Adam Brockus invited the public to attend Manette Fest on September 12 which will include a 2K race and children's play area.

Ruth Bond provided an update on the Kitsap Regional Library for the Sylvan Way Branch; and announced that there will be a "Strategic Planning" Meeting on September 9 beginning at 6:30 PM at the Sylvan Way Branch and a "West Sound Reads" event which will feature a reading of "The Other Boleyn Girl" by Phillipa Gregory on September 26 from 4:00 to 6:00 PM at Bremerton High School.

Carolyn Neal thanked Public Works Staff for helping keep up the downtown library's appearance; and was pleased that the children's library is now fully developed.

Bill Eley was proud to announce that the City's IT Department received an "Honorable Mention" Award at the 22nd Annual Governmental Computer News (GCN) Awards for "Outstanding Information Technology Achievement in Government", and the Department will be formally recognized at the GCN Awards Gala on October 22, 2009 in Washington, D.C. He expressed his appreciation for the recognition on behalf of his Department and his staff.

CONSENT AGENDA

- A. Check Numbers 333134 through 333392; and EFT-9004 through EFT-9040 in the amount of \$2,297,832.97; and Regular Payroll in the amount of \$730,178.92 for the pay period ending August 15, 2009.
- B. Minutes of Meeting – August 5, 2009
- C. Minutes of Study Session – August 12, 2009
- D. Appointment of Geoff Wentlandt to the Design Review Board
- E. Purchase of one Street Sweeper from OWEN EQUIPMENT COMPANY of Portland, Oregon

- F. Purchase of Temporary Construction Easement from Raymond Gardner, Greg Hunt, and Joan Hunt for Pump Station SB-4 and Sewer Mains as part of the Gorst Sewerage Project
- G. Authorize the City Attorney to hire an Assistant City Attorney I at Payband 13, Rate 6; and a Prosecutor I at Payband 7, Rate 2

Geoff Wentlandt thanked the Council for allowing him the opportunity to serve on the Design Review Board and for supporting the Design Review Process.

05:42:00 M/S/C/U (Runyon/Wofford) Move to approve the CONSENT AGENDA as presented.

PUBLIC HEARING

7A – ORDINANCE NO. 5088 CREATING BREMERTON HARBORSIDE REVITALIZATION AREA; AND REPEALING ORDINANCE NO. 5052: Gary Sexton, Redevelopment Projects

Administrator, explained that the creation of a new revitalization area under Substitute Senate Bill 5045 is needed in order to utilize the Local Revitalization Funds within that Bill to implement the proposed following projects: parking structure of approximately 175 spaces within a platform for retail development at Burwell Street and Park Avenue; sidewalk improvements on Pacific Avenue between Burwell and 5th Streets; street and sidewalk improvements on Pacific Avenue between 6th and 11th Streets; and added street and sidewalk improvements and other public open space improvements.

President McConnell opened the public hearing.

There were no comments from the public...

President McConnell then closed the public hearing.

05:54:41 Main Motion was made and discussion by Council Members continued...

Roy Runyon asked for clarification on tax increment financing. **Andy Parks** answered that redevelopment will ultimately generate more property tax and sales tax revenue from local and state sources. The amount of revenue returned to the revitalization area would be for the period of 25 years until the bonds are repaid.

Nick Wofford asked if creating the revitalization area would involve any new taxes. **Mr. Parks** responded that there are no tax increases involved and that it would allow a reallocation of current resources.

Dianne Robinson asked how staff came up with the boundaries for the area. **Mr. Sexton** answered that Public Works and Parks Departments have specific project and program interests in downtown and that information was included in the discussion regarding where projects may be potentially located and what services would be needed. He added that there were limitations on the type of area that could benefit from grant funding and the downtown area fell within those guidelines.

06:05:40 M/S/C/U (Arends/Shepherd) Move to approve Ordinance No. 5088 creating the Bremerton Harborside Revitalization Area; and repealing Ordinance No. 5052 as presented.

COUNCIL MEMBER REPORTS

Nick Wofford expressed his displeasure at the low voter turnout during the current Elections Primary.

Dianne Robinson mentioned that she learned a great deal at the Municipal Budgeting Workshop she attended last week and hoped to provide more information during next week's Study Session.

Mike Shepherd announced that he had placed 16th overall in the National Senior Games in the San Francisco Bay Area.

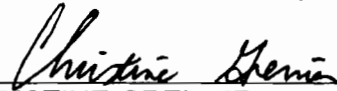
Roy Runyon provided a briefing on two recent events: Project Porchlight and the Bremerton Foodline School Supply & Clothing Drive; and provided a follow-up report regarding several handicap parking complaints.

Adam Brockus shared information about the decline in the local unemployment rate and encouraged the unemployed to visit Work Source located on Sylvan Way.

Cecil McConnell announced that the Transportation Benefit District Board would be meeting immediately following the Council Meeting tonight.

With no further business, **President McConnell** adjourned the Council Meeting at 6:13 PM.

Prepared and Submitted by:



CHRISTINE GRENIER
Council Assistant

Attest:

CAROL ETGEN, City Clerk

CECIL McCONNELL, City Council President

CM:CE:ls:cg

5C

DATE SUBMITTED:

AGENDA BILL
CITY OF BREMERTON
CITY COUNCIL

SUBJECT: City Council Meeting Minutes
for meeting of *August 26, 2009*

Committee Meeting Date: N/A
COUNCIL MEETING Date: *September 2, 2009*
Department: City Council
Presenter: Cecil McConnell
Council President
Phone: (360) 473-5280

SUMMARY: Attached is a summary of the City Council Meeting held *August 26, 2009*

ATTACHMENTS: Meeting Minutes for *August 26, 2009*

FISCAL IMPACTS (Include Budgeted Amount): N/A

APPROVALS:

DEPARTMENT DIRECTOR: Council President
CITY ATTORNEY: N/A
FINANCE DIRECTOR: N/A
MAYOR: N/A

COMMITTEE CHAIR N/A
COUNCIL PRESIDENT: *Cecil McConnell*

CONSENT AGENDA	<input checked="" type="checkbox"/>
GENERAL BUSINESS	<input type="checkbox"/>
PUBLIC HEARING	<input type="checkbox"/>

RECOMMENDED MOTION: Move to approve the Consent Agenda as presented.

COUNCIL ACTION: Approve Deny Table Continue No Action

CITY COUNCIL STUDY SESSION MINUTES

Wednesday, August 26, 2009

The weekly meeting of the City Council of the City of Bremerton was called to order in the City Council Conference Room 603, of the NORM DICKS GOVERNMENT CENTER, 345 6th Street, Bremerton, Washington, Wednesday, August 26, 2009, at 5:00 PM, with Council Vice-President Nick Wofford presiding. Council Members present were Will Maupin, Carol Arends, Dianne Robinson, Roy Runyon, and Adam Brockus. Council Members Cecil McConnell, Brad Gehring, and Mike Shepherd were absent. Council Assistant Christine Grenier was present to provide staff support.

Vice-President Wofford emphasized that the Study Session was open to the public, however there would be no opportunities for input or participation; that no action will be taken, and the content of these items is subject to change.

1. HUD – BEDI Grant Acceptance for Bremerton Boardwalk Project – Tom Knuckey, Utilities Managing Engineer; and Brad Gehring, Chair of the Public Works Committee
Consent Agenda
2. Briefing on Regional Fire Authority (RFA) – Fire Chief Al Duke **No Action**
3. Lease Agreement with Emerald Bay Yachts and City of Bremerton – Gary Sexton, Redevelopment Projects Administrator; and Nick Wofford, Chair of Finance Committee
Consent Agenda

Dianne Robinson left the meeting at approximately 5:25 PM to attend a CDBG Citizen Advisory Committee Meeting...

4. Briefing on AWC Municipal Budgeting Workshop – Council Members Nick Wofford and Dianne Robinson **No Action**
5. Council Committee Chair Reports:

Carol Arends, Chair of the Audit Committee, announced that the Audit Committee moved its regularly scheduled meeting to this afternoon and that the remaining members are still meeting at this time.

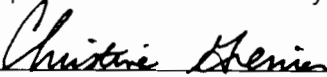
Adam Brockus, Vice-Chair of the Finance Committee, stated that one of the topics at today's Finance Committee meeting was PILOT which could be used to support the General Fund and that the committee will be discussing the issue again at the next meeting.

Nick Wofford, Chair of the Finance Committee, mentioned that the proposed parking garage was also discussed during Finance Committee. He believed that while the proposed parking garage would be a good source of revenue and would allow for more available on-street parking spaces, the city should consider focusing efforts on filling spaces in its garage located at 4th Street and Washington Avenue.

6. Other General Council Business (*as necessary and as time allows...*)

Vice-President Wofford adjourned the Study Session at 5:40 PM.

Prepared and Submitted by:



CHRISTINE GRENIER
Council Assistant

Attest:

CAROL ETGEN, City Clerk

CECIL McCONNELL, City Council President

CM:CE:ls:cg

DATE SUBMITTED:

5D

AGENDA BILL
CITY OF BREMERTON
CITY COUNCIL

SUBJECT: Lease Agreement between the City of Bremerton and Emerald Bay Yachts, LLC

Committee Meeting Date: August 26, 2009
COUNCIL MEETING Date: September 2, 2009
Department: Econ. Development
Presenter: Gary Sexton
Phone: 360-473-5282

SUMMARY: The proposed lease between the City of Bremerton and Emerald Bay Yachts, LLC is a 5-year lease with an option for and additional 5-year term for commercial sales operations at 140 Washington Avenue.

ATTACHMENTS: Proposed lease.

FISCAL IMPACTS (Include Budgeted Amount): The City will receive \$650.00 per month not including leasehold tax. The lease payment adjustments will be 3% per year.

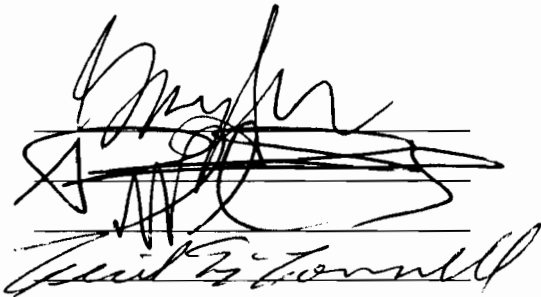
APPROVALS:

DEPARTMENT DIRECTOR:

CITY ATTORNEY:

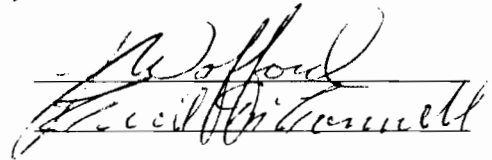
FINANCE DIRECTOR:

MAYOR:



COMMITTEE CHAIR

COUNCIL PRESIDENT:



CONSENT AGENDA	<input checked="" type="checkbox"/>
GENERAL BUSINESS	<input type="checkbox"/>
PUBLIC HEARING	<input type="checkbox"/>

RECOMMENDED MOTION: Move to approve the lease between the City of Bremerton and Emerald Bay Yachts and authorize the Mayor to finalize and execute the agreement with substantially the same terms and conditions as presented.

COUNCIL ACTION: Approve Deny Table Continue No Action

LEASE

This Lease is entered into this _____ day of _____, 2009, between the **CITY OF BREMERTON**, a municipal corporation, (hereinafter referred to as "Lessor"), and **EMERALD BAY YACHTS, LLC**, a Washington corporation, (hereinafter referred to as "Lessee").

WHEREAS, Lessor owns certain real property and a building situate thereon, and

WHEREAS, Lessee desires to lease a portion of the building for retail space for the purchase, sale and lease of boats.

NOW, THEREFORE, the Lessor and Lessee agree as follows:

1. PREMISES. Lessor does hereby lease to the Lessee that portion of a building consisting of approximately 450 square feet located at 140 Washington Avenue, Bremerton, Washington ("Premises") and situated on real property owned by Lessor. The location of the Premises is depicted on Exhibit A attached hereto and incorporated by reference.

2. TERM. The term of this lease shall be for five years commencing August 1, 2009, ("Commencement Date") and ending July 31, 2014, unless otherwise extended or terminated. Lessee and Lessor, by and through the Mayor, may extend this Lease for one additional five year term, subject to mutual agreement of the lease payment and other terms and conditions. To exercise this option, Lessee shall deliver to Lessor a notice to exercise said option within 90 days prior to the expiration of the original term of this lease. If Lessee remains in possession of the Premises or any part thereof after the expiration of the term of this Lease, including any exercised option, without the express written consent of Lessor, such occupancy shall be a tenancy from month-to-month which may be terminated by either Lessor or Lessee by delivering written thirty (30) day notice of termination.

3. LEASE PAYMENT.

(a) Monthly Payment. During the term of this Lease, Lessee agrees to pay Lessor, without notice or demand, the sum of Six Hundred Fifty Dollars and No/100 (\$650.00) per month ("Lease Payment") plus the leasehold tax as set forth in Section 3(e) below, in advance, on or before the first day of the first full calendar month of the term hereof and a like sum on or before the first day of each and every successive calendar month thereafter during the term hereof.

(b) Lease Payment Adjustments. The monthly Lease Payment shall be adjusted every year during the term(s) of this Agreement in the amount of three percent (3%) per year. The adjustment will occur on the anniversary date of this Lease each year.

(c) **Overdue Lease Payment.** Unpaid installments of the Lease Payment or other sums due hereunder shall, if not timely paid, be subject to a later charge of Fifty and No/100 Dollars (\$50.00) to cover the excess costs of administration and shall bear interest from the date due of 12 percent (12%) until all rent and interest has been paid in full. Lessee hereby further agrees to pay any attorneys' fees and expenses incurred by Lessor by reason of Lessee's failure to pay Lease Payment or other charges when due hereunder.

(d) **Holding Over.** If Lessee remains in possession of the Premises or any part thereof after the expiration of the term of this Lease without the express written consent of Lessor, such occupancy shall be a tenancy from month-to-month at a Lease Payment in the amount of 120% of the last Lease Payment, plus all other charges and additional amounts payable hereunder, and upon all the terms hereof applicable to a month-to-month tenancy.

(e) **Leasehold Excise Tax, Other Taxes and Assessments.** In addition to the Lease Payment, Lessee shall pay a leasehold excise tax, pursuant to RCW 82.29A.030, on all Lease Payment amounts paid to the City, currently in the amount of 12.84 percent of the base Lease Payment and as may be adjusted pursuant to Ch. 82.29A RCW. Lessee shall pay the Leasehold tax with the monthly payment. Lessee shall also pay all taxes assessments, and all other governmental charges, of any kind whatsoever, applicable or attributable to the Premises, Lessee's leasehold interest, the improvements, or Lessee's use and enjoyment of the Premises. Lessee shall pay these taxes and assessments when due or as otherwise requested by the Lessor.

(f) **Payment Place.** Payment is to be made to the City of Bremerton, Attn: Director of Financial Services, 345 Sixth Street, Suite 600 Bremerton, Washington 98337.

4. **USE OF PREMISES.** Lessee's use and occupancy of the Premises shall be for retail space for the purchase, sale and lease of boats.

5. **UTILITIES.** Lessee agrees to pay all charges for water and sewer service, power, garbage pickup, janitorial, telephone and for all other utilities which shall be used in the Premises during the full term of this Lease.

6. **IMPROVEMENTS.**

(a) **Specifically.** Lessee accepts the Premises "as is". Lessee may install signage subject to Lessor's approval.

(b) **Generally.** Lessee shall not make or allow to be made any alterations, improvements, or changes to or of the Premises or any part thereof without the prior written consent of Lessor, *and all improvements, alterations, or changes so made shall become a part of the lease Premises and shall belong to Lessor upon expiration or sooner termination of this Lease.* With respect to such alterations, improvements or changes to the Premises requested by Lessee, Lessor's consent shall not be unreasonably withheld. In the event Lessor consents to the making of any alterations, additions, or improvements to the Premises by Lessee, the same shall

be made by Lessee at Lessee's sole cost and expense, the Premises and Lessee's leasehold interest therein shall remain free from any lien of any kind whatsoever, and construction of such alterations, additions or improvements shall be done in compliance with all laws and governmental requirements by qualified city staff or licensed and bonded contractors.

(c) **Removal.** Unless otherwise agreed by the City in writing, Lessee-Owned Improvements shall not be removed by Lessee during the Lease term or upon expiration or termination of this Lease and upon expiration or termination of this Lease, shall become the property of the City without payment by the City.

(d) **Unauthorized Improvements.** Improvements made on the Premises without the City's prior written consent shall immediately become the property of the City, unless the City elects otherwise. Regardless of ownership of Unauthorized Improvements, the City may, at its option, require Lessee to sever, remove, and dispose of them, charge Lessee rent for the use of them, or both. If Lessee fails to remove an Unauthorized Improvement upon request, the City may remove it and charge Lessee for the cost of removal and disposal.

(e) **Liens.** Lessee shall keep the Property and Lessee's leasehold interest free from any liens arising out of any work performed, materials furnished, or obligations incurred by Lessee.

7. MAINTENANCE AND REPAIRS.

(a) **Lessee's Obligations.** By taking possession of the Premises, Lessee shall be deemed to have accepted the Premises as being clean and in good order, condition, and repair. Lessee shall, at Lessee's expense, keep the Premises and every part thereof in good condition and repair (except as hereinafter provided with respect to Lessor's obligations set forth in paragraph 7(b) below). Lessee shall, upon the expiration or sooner termination of this Lease, surrender the Premises to Lessor in good condition, clean, excepting only ordinary wear and tear and destruction or damage by such conditions over which Lessee has no control, or such damage as may be due to the failure of Lessor to comply with any covenant herein contained to be performed by Lessor. Damage caused by Lessee's use of the Premises shall be repaired at the sole cost and expense of Lessee.

(b) **Lessor's Obligations.** Lessor shall, at Lessor's expense, repair and maintain the structural portions of the Building, including the roof, foundation, bearing and exterior beams and supports and exterior walls (excluding glass). There shall be no abatement of Rent and no liability for Lessor by reason of any injury to or interference with Lessee's business arising from the making of any repairs, alterations, or improvements in or to any portion of the Building or the Premises or in or to fixtures, appurtenances, and equipment if Lessor shall have taken every reasonable measure to avoid any such injury and interference.

8. LIENS. Lessee shall keep the Premises, Lessee's leasehold interest therein and the Building and Land on which the Premises are situated free from any liens arising out of any work performed, materials furnished, or obligations incurred by Lessee.

9. INDEMNIFICATION. Lessee shall indemnify, defend and hold Lessor harmless from all loss damage, liability or expense resulting from any injury to any person or any loss of or damage to any property caused by or resulting from any act or omission of Lessee or any officer, agent, employee, guest, invitee or visitor of Lessee in or about the Premises or the Building, but the foregoing provision shall not be construed to make Lessee responsible for injuries to third parties caused by the negligence of Lessor or any officer, agent, employee, guest, invitee or visitor of Lessor. Lessor shall not be liable for any loss or damage to person or property sustained by Lessee, or other persons, which may be caused by theft or any act of neglect of Lessee or occupant of the building, or of any other person, or by any other cause, unless caused by the negligence of Lessor or its officers, licensees, agents, employees, guests, invitees or visitors.

10. LIABILITY INSURANCE; HAZARD INSURANCE.

(a) Liability Insurance. Lessee, at its own expense, shall provide and keep in force comprehensive general liability insurance in the amount of not less than One Million Dollars (\$1,000,000.00) per occurrence for bodily injury and property damage. Lessee shall furnish Lessor with a certificate of such policy within thirty (30) days of the Commencement Date of this Lease and whenever required shall satisfy Lessor that such policy is in full force and effect. Such policy shall name Lessor as an additional insured and shall be primary and noncontributing with any insurance carried by Lessor. The policy shall further provide that it shall not be canceled without twenty (20) days prior written notice to Lessor.

(b) Hazard Insurance. Throughout the term of this Lease, Lessor shall procure and maintain fire, hazard and extended coverage insurance on the Improvements. Should the property become uninhabitable due to loss or become uninhabitable for any other reason the City shall have the option of terminating this lease.

11. PERSONAL PROPERTY. Where furnished by or at the expense of Lessee, all movable property, furniture, furnishings and trade fixtures, other than those affixed to the Premises so that they cannot be removed without material damage, shall remain the property of and be removable by Lessee, and in case of damage by reason of such removal, Lessee shall restore the Premises, Building or common areas to good order and condition. Lessee shall pay or cause to be paid before delinquency any and all taxes levied or assessed and which become payable during the term hereof upon all Lessee's Improvements, equipment, furniture, fixtures, and other personal property located in the Premises. Lessee shall be responsible for all personal property insurance coverage during the term of this Lease.

12. ENTRY BY LESSOR. At any and all reasonable times during regular business hours, upon one (1) day's prior notice to Lessee, Lessor reserves and shall have the right to enter

the Premises to inspect the same a reasonable number of times, to submit the Premises to prospective purchasers or Lessees, to repair the Premises and any portion of the Building that Lessor may deem necessary or desirable, without abatement of Rent, and may for the purpose erect scaffolding and other necessary structures where reasonably required by the character of the work to be performed, always providing that the entrance to the Premises shall not be blocked thereby and further providing that the business of Lessee shall not be interfered with unreasonably. Lessee hereby waives any claim for damages or for any injury or inconvenience to or interference with Lessee's business or any loss of occupancy or quiet enjoyment of the Premises, and any other loss occasioned thereby, if Lessor shall have taken every reasonable measure to avoid any such injury, inconvenience or interference. Lessor shall have the right to use any and all means which Lessor may deem proper to open any doors or otherwise obtain access to the Premises in an emergency, without liability to Lessee except for any failure to exercise due care for Lessee's property, and any entry to the Premises obtained by Lessor by any of said means or otherwise shall not under any circumstances be construed or deemed to be a forcible or unlawful entry into or a detainer of the Premises or an eviction of Lessee from the Premises or any portion thereof.

13. ASSIGNMENT AND SUBLETTING.

(a) **City Consent Required.** Lessee shall not either voluntarily or by operation of law assign, transfer, mortgage, pledge hypothecate, or encumber this Lease or any interest therein and shall not sublet the Premises or any part thereof or any right or privilege appurtenant thereto or allow any person (the employees, agents, servants, and invitees of Lessee excepted) to occupy or use the Premises or any portion thereof, without the prior written consent of Lessor, which consent by Lessor shall not be unreasonably withheld. Any such assignment or subletting without compliance with the terms of this paragraph shall be void and shall, at the option of Lessor, constitute a default under the terms of this Lease. Consent to one assignment, subletting, occupation, or use by any other person shall not be deemed to be consent to any subsequent assignment, subletting, occupation, or use by another person. Consent to any such assignment or subletting shall in no way relieve Lessee of any liability under this Lease. Lessor may assign the Rent herein provided to any person, partnership, corporation, or bank, and Lessee agrees when notified in writing by the assignee of such assignment to make the Rent payments to assignee under the terms of said assignment.

(b) **Rent Payments Following Assignment.** The acceptance by the City of the payment of rent following an assignment or other transfer shall not constitute consent to any assignment or transfer.

14. LESSEE'S DEFAULT. The occurrence of any one or more of the following events shall constitute a default and breach of this Lease by Lessee.

(a) **Abandonment.** Lessee vacates or abandons the Premises;

(b) **Failure to Pay Lease Payment.** Lessee fails to make any payment of the

Lease Payment or any other payment required to be made by Lessee hereunder;

(c) **Failure to Observe Other Covenants.** Lessee fails to observe or perform any of the covenants, conditions, or provisions of this Lease to be observed or performed by Lessee where such failure shall continue for a period of thirty (30) days after written notice thereof by Lessor to Lessee; provided, however, that if the nature of Lessee's default is such that more than thirty (30) days are reasonably required for such cure, then Lessee shall not be deemed to be in default if Lessee commences such cure within said thirty (30) days and thereafter, diligently prosecutes such cure to completion.

15. REMEDIES ON DEFAULT.

(a) **Termination.** In the event Lessee fails to cure such default, Lessor may, at any time thereafter, terminate this Lease by written notice to Lessee. Lessor may also seek any other remedy provided by law.

(b) **Removal of Personal Property.** In the event of a retaking of possession of the Premises by Lessor, Lessee shall remove all personal property located thereon and upon failure to do so upon demand of Lessor, Lessor may remove and store the same in any place selected by Lessor, including but not limited to a public warehouse, at the expense and risk of Lessee. If Lessee shall fail to pay the cost of storing any such property after it has been stored for a period of thirty (30) days or more, Lessor may sell any or all of such property at a public or private sale and shall apply the proceeds of such sale first to the cost of such sale, secondly to the payment of the charges for storage, if any, and thirdly to the payment of any other sums of money which may be due from Lessee to Lessor under the terms of this Lease, and the balance, if any, to Lessee. Lessee hereby waives all claims for damages that may be caused by Lessor's lawfully reentering and taking possession of the Premises or lawfully removing and storing the property of Lessee as herein provided and will save Lessor harmless from loss or damages occasioned by Lessor thereby, whether such lawful reentry shall be considered or construed to be a forcible entry.

(c) **Remedies Cumulative.** The remedies hereinafter described shall be cumulative and Lessor shall be entitled to pursue any other remedy now or hereafter available to Lessor under the law or judicial decisions of the State of Washington.

16. **LESSOR'S DEFAULT.** Lessor is in default if Lessor fails to observe or perform any of the covenants, conditions, or provisions of this Lease to be observed or performed by Lessor, where such failure shall continue for a period of thirty (30) days after written notice thereof by Lessee to Lessor; provided, however, that if the nature of Lessor's default is such that more than thirty (30) days are reasonably required for such cure, then Lessor shall not be deemed to be in default if Lessor commences such cure within said thirty (30) days and thereafter, diligently prosecutes such cure to completion. In the event Lessor fails to cure such default, Lessee may, at any time thereafter, terminate this Lease by written notice to Lessor. Lessee may also seek any other remedy provided by law.

17. EMINENT DOMAIN. If the whole of the Premises (or the whole or part of the Building or Improvements) shall be acquired or condemned by eminent domain for any public or quasi-public use, or if a part of the Premises is so taken so that the Premises are rendered unsuitable for the business of Lessee, then the term of this Lease shall terminate as of the date title or possession shall be transferred in such proceeding, whichever shall occur first. In the event of a partial taking or condemnation which is not extensive enough to render the Premises unsuitable for the business of Lessee, then Lessor shall restore the Premises to a condition comparable to its condition immediately prior to such taking less the portion lost in the taking, and this Lease shall continue in full force and effect provided, however, that the monthly Rent shall abate in the same ratio that the portion of the Premises so taken bears to the whole of the Premises.. Lessor shall have the right to receive the compensation of damages awarded upon either such total or partial taking and Lessee shall have no claim thereto; provided that Lessee may independently pursue an award or compensation to Lessee for the taking of Lessee's personal property or fixtures or for the interruption of or damage to Lessee's business and for any other interest of Lessee.

18. HAZARDOUS SUBSTANCES. Lessee shall not generate, release, spill, store, deposit, transport, or dispose of (collectively "Release") any hazardous substances, sewage, petroleum products, hydrocarbons, radioactive substances, medicinal, bacteriological, or disease-producing substances, hazardous materials, toxic substances or any pollutants or substances defined as hazardous or toxic in accordance with applicable federal, state, and local laws and regulations ("Hazardous Substances") in, on or about the Premises. Lessee shall indemnify, defend and hold Lessor harmless from any and all claims, liabilities, losses, damages, cleanup costs, response costs, and expenses (including reasonable attorneys' fees) arising out of or in any way related to the Release by Lessee, or any of its agents, representatives, or employees, or the presence of such Hazardous Substances in, on or about the Premises occurring at any time after the Commencement Date and arising out of the activities of Lessee, or any of its agents, representatives or employees. The provisions of this paragraph shall survive termination or expiration of this Lease.

19. GENERAL PROVISIONS. Lessor and Lessee agree to the following general provisions:

(a) Waiver. No waiver of default by either party of any of the terms, covenants and conditions hereof to be performed, kept and observed by the other party shall be construed as, or operate as, a waiver of any subsequent default of any of the terms, covenants and conditions herein contained, to be performed, kept and observed by the other party. The subsequent acceptance of Rent hereunder by Lessor shall not be deemed to be a waiver of any preceding default by Lessee of any term, covenant, or condition of this Lease other than the failure of Lessee to pay the particular rental so accepted, regardless of Lessor's knowledge of such preceding default at the time of the acceptance of such Rent.

(b) Time. Time is of the essence of this Lease and each and all of its

provisions in which performance is a factor.

(c) **Paragraph Headings.** The paragraph or section headings of this Lease are not a part of this Lease and shall have no effect upon the construction or interpretation of any part hereof.

(d) **Successors and Assigns.** The covenants and conditions herein contained, subject to the provisions as to assignment, apply to bind the heirs, successors, executors, administrators, and assigns of the parties hereto.

(e) **Recordation.** Neither Lessor nor Lessee shall record this Lease, but a short form memorandum hereof may be recorded at the request of Lessor.

(f) **Quiet Possession.** Upon Lessee paying the Rent reserved hereunder and performing all of the covenants, conditions, and provisions on Lessee's part to be observed and performed hereunder, Lessee shall have quiet possession of the Premises for the entire term hereof, subject to all the provisions of this Lease. The Premises are leased subject to any and all existing encumbrances, conditions, rights, covenants, easements, restrictions, rights-of-way, and any matters of record, applicable zoning and building laws, and such matters as may be disclosed by inspection or survey.

(g) **Prior Agreements.** This Lease contains all of the agreements of the parties hereto with respect to any matter covered or mentioned in this Lease and no prior agreements or understandings pertaining to any such matters shall be effective for any purpose. No provision of this Lease may be amended or added to except by agreement in writing signed by the parties hereto or their respective successors in interest. This Lease shall not be effective or binding upon any party until fully executed by both parties hereto.

(h) **Inability to Perform.** The time period within which any party is to fulfill an obligation of such the party under this Lease shall be extended by such time period that any party is unable to fulfill any of its obligations hereunder or is delayed in doing so, if such inability or delay is caused by reason of strike, labor troubles, acts of God, or any other cause beyond the reasonable control of such party.

(i) **Severability.** Any provisions of this Lease which shall prove to be invalid, void, or illegal shall in no way affect, impair, or invalidate any other provision hereof and such other provision shall remain in full force and effect.

(j) **Cumulative Remedies.** No remedy or election hereunder shall be deemed exclusive but shall whenever possible be cumulative with all other remedies at law or in equity.

(k) **Choice of Law.** This Lease shall be construed under all of the applicable laws, statutes, ordinances, rules and regulations of the United States, the State of Washington, County of Kitsap, and the City of Bremerton. In the case of a dispute between the parties, venue

over such dispute shall be with the Superior Court of Kitsap County, Washington.

(l) Execution. This Lease may be executed in several counterparts, each of which shall be deemed an original instrument.

(m) Notices. All notices to be given hereunder shall be in writing and shall be personally delivered and receipt acknowledged, sent by United States certified mail, return receipt requested, sent by facsimile, with original delivered within three (3) days, or sent by overnight delivery through public or private service, delivery charge prepaid, and addressed to the party at the respective mailing address as herein set forth.

To Lessor: Mayor
City of Bremerton
345 6th Street, Suite 600
Bremerton, WA 98337

To Lessee: Scott Alprin
Emerald Bay Yachts, LLC
PO Box 2477
Gig Harbor, WA 98335

It is understood that each party may change the address to which notice may be sent by giving a written notice of such change to the other party hereto in the manner herein provided.

(n) Lessee's Corporate Authority. Lessee is a Washington corporation, and each individual executing this Lease on behalf of said corporation represents and warrants that he or she is duly authorized to execute and deliver this Lease on behalf of said corporation, in accordance with a duly adopted resolution of the board of directors of said corporation or in accordance with the bylaws of said corporation, and that this Lease is binding upon said corporation in accordance with its terms. Lessee further represents and warrants that it is fully registered and qualified to do business in the State of Washington.

IN WITNESS WHEREOF, the parties hereto have executed this Lease the day and year first above written.

LESSOR

LESSEE

CITY OF BREMERTON

EMERALD BAY YACHTS, LLC

By: Cecil McConnell
Its: Mayor Pro-Tem, City of Bremerton

By: Scott Alprin
Its: Managing Member

Notaries on Next Pages

STATE OF WASHINGTON)
) ss.
COUNTY OF KITSAP)

I certify that I know or have satisfactory evidence that Scott Alprin is the person who appeared before me, and said person acknowledged that he signed this instrument, on oath stated that he was authorized to execute the instrument, and acknowledged it as the _____ of Emerald Bay Yachts, LLC to be the free and voluntary act of such Corporation for the uses and purposes mentioned in the instrument.

DATED:

NOTARY PUBLIC in and for the State of
Washington, residing at _____.
My commission expires / /.

EXHIBIT A
PREMISES

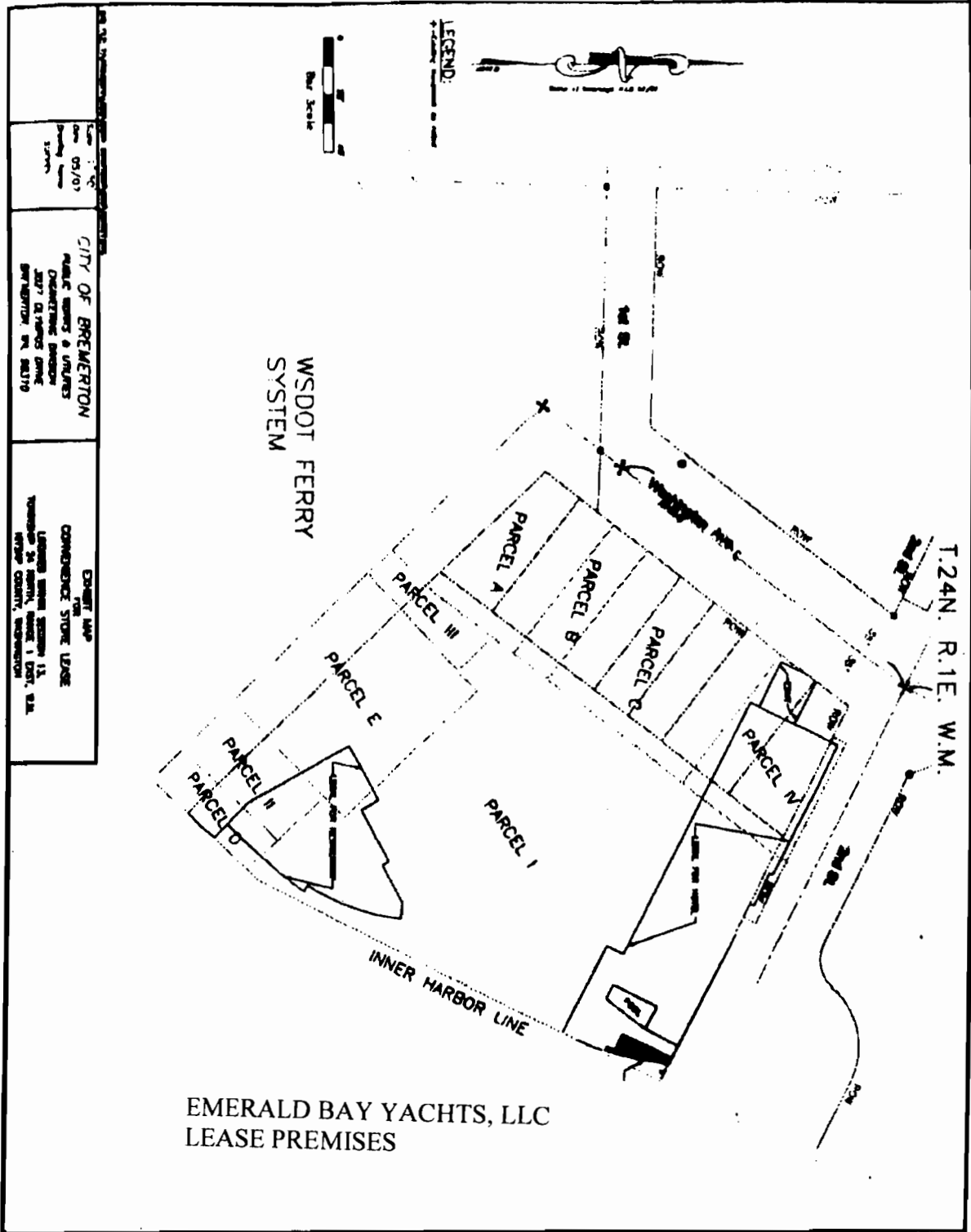


EXHIBIT A

COUNCIL SUMMARY

BEDI GRANT ACCEPTANCE FOR BREMERTON BOARDWALK CONSTRUCTION

Agenda Bill Summary

The City was verbally notified that we will be offered a \$1,750,000 Brownfields Economic Development Initiative (BEDI) grant from the Department of Housing and Urban Development (HUD,) a formal notification of award is forthcoming. HUD indicated the formal offer will require the City to accept the grant by September 14, 2009. The City's acceptance of the grant at this time allows HUD to reserve the grant funds for the project. The HUD BEDI grant is conditioned on the City's submittal and HUD's approval of a Section 108 loan guarantee application for \$2,800,000 within 60 days, and the City's acceptance of the loan. Once the loan has been executed, the City will be able to execute the BEDI Grant. Both the loan and grant provide construction funding for the Bremerton Boardwalk.

Fiscal Summary

BEDI Grant Funds = \$1,750,000
Section 108 Loan Funds = \$2,800,000

Specific Terms for the Section 108 Loan Guarantee will be provided when the loan offer is available. General Terms are provided below:

Loan Fee: None

Rate: Section 108 is a loan guarantee program; rates can either be variable or a fixed bond rate. Variable rates are LIBOR plus 0.2% (currently 0.61%). Bond rates are fixed upon sale to private investors.

Term: Maximum repayment period is 20-years. The city may cancel the bonds earlier than full maturity by posting an amount equal to what will be required for all remaining payments.

Security: The City will pledge its current and future CDBG funds to guarantee the loan.

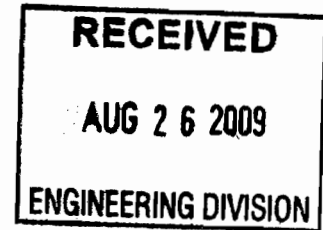


U.S. DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT
WASHINGTON, DC 20410-7000

ASSISTANT SECRETARY FOR
COMMUNITY PLANNING AND DEVELOPMENT

AUG 24 2009

Mr. Thomas Knuckey
Managing Engineer
City of Bremerton
100 Oyster Bay Avenue N
Bremerton, WA 98312



Dear Mr. Knuckey:

Congratulations! I am pleased to inform you that the City of Bremerton has been awarded a Brownfields Economic Development Initiative (BEDI) grant in the amount of \$1,750,000 based on your application submitted pursuant to the FY 2009 BEDI Notification of Funding Availability (NOFA).

Today's brownfields were once vital sources of economic growth for communities, and when cleaned up and redeveloped, can again be thriving centers of economic activity. The U.S. Department of Housing and Urban Development (HUD) is pleased to assist Bremerton in working to transform these abandoned sites into new developments that will create jobs, increase tax revenues and help revitalize communities.

This BEDI grant award is conditioned upon the submission and HUD approval of a complete Section 108 Loan Guarantee application for not less than \$2,800,000 followed by the execution and funding of a Section 108 Note and Contract for Loan Guarantee Assistance for the same project. The enclosed Instructions and Conditions for Award provide further details on the Section 108 application as well as about the Section 108 Note and Contract for Loan Guarantee Assistance.

If you accept the conditions of the BEDI grant award as stated herein, in the enclosed Instructions and Conditions for Award, and in the 2009 BEDI NOFA, please acknowledge your acceptance by signing in the space provided below on the page titled "2009 BEDI GRANT AWARD OBLIGATION". *Please return this letter and your original signature of acceptance only – the other enclosures are for your records--with your signature of acceptance on or before September 14, 2009 to:*

Robert Duncan
Associate Deputy Assistant Secretary for Economic Development
Department of Housing and Urban Development
451 7th Street S.W., Room 7136
Washington, DC 20410

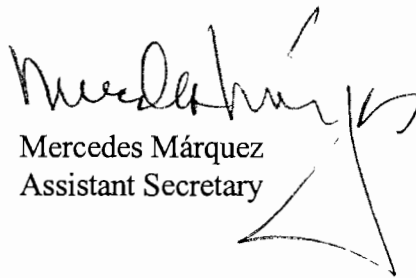
In order for HUD to obligate funds for the approved BEDI project, this office must receive

your executed acceptance below no later than September 14, 2009. **If HUD fails to receive the properly executed document by September 14, 2009, the funds are subject to cancellation.** The executed acceptance, when countersigned on behalf of the Department, shall constitute an agreement between the City of Bremerton and HUD obligating BEDI funds for the project described in the approved 2009 BEDI application submitted by Bremerton and assigned **Grant Number B-09-BD-53-8002**. A more detailed BEDI Grant Agreement will be sent to you for execution, along with a Section 108 Note and Contract for Loan Guarantee Assistance, after approval of the Section 108 Loan Guarantee application. A *draft* form of that subsequent Grant Agreement is also enclosed for your information.

If you or members of your staff have any questions concerning this matter, please contact Mr. Duncan at (202) 708-3773.

I look forward to working with you in the redevelopment of Brownfields and in the return of these sites to productive use for the community.

Sincerely,



Mercedes Márquez
Assistant Secretary

Enclosures

2009 BEDI GRANT AWARD OBLIGATION
B-09-BD-53-8002

Accepted and Agreed by the City of Bremerton:

By: _____
Signature

Title

Date

Accepted by U.S. Department of Housing and Urban Development:

By: _____
Signature

Title

Date

ENCLOSURE (A)

RECIPIENT: City of Bremerton
BEDI GRANT NUMBER: B-09-BD-53-8002
BEDI GRANT AMOUNT: \$1,750,000

INSTRUCTIONS AND CONDITIONS FOR AWARD

Pursuant to the authorizing legislation and the 2009 BEDI Notice of Funding Availability (NOFA), BEDI grants are made only in support of new, related loans guaranteed under section 108 of the Housing and Community Development Act of 1974. This approved BEDI Grant is conditioned upon receipt by Bremerton, (the Recipient) of the proceeds of a Section 108 loan guarantee, or additional guarantee, for the approved BEDI Project in the minimum amount of \$2,800,000 (hereafter referred to as the Related Section 108 Guarantee). (The Recipient may apply for a loan guarantee in a larger amount than this minimum.)

The terms and conditions of this BEDI grant will be substantially as set forth in the attached form of grant agreement (the "Agreement"), a completed copy of which will be sent to the Recipient for execution together with the promissory Note and Contract for Loan Guarantee Assistance for the Related Section 108 Guarantee after the Related Section 108 Loan Guarantee application is approved.

THE PARAGRAPHS CHECKED BY HUD BELOW APPLY TO THIS GRANT AS OF THE DATE AT THE TOP OF THE ATTACHED LETTER (the Transmittal Date):

- a. The Recipient's complete application for the Related Section 108 Guarantee has been approved by HUD (HUD-7082 commitment executed), effective on the Transmittal Date. Please execute and return three (3) copies of the enclosed HUD-7082 for the Related Section 108 Loan Guarantee together with your acceptance of this letter.
- b. The Recipient's complete application for the Related Section 108 Guarantee in the above amount or more has been received by HUD as of April 28, 2009, but has not been approved as of August 24, 2009.
- ✓ c. The Recipient's complete Section 108 guarantee application has not been received by HUD as of August 24, 2009. *If this Paragraph c. applies, HUD's obligations under this Agreement are conditioned on the Recipient's submitting a complete 108 application by October 26, 2009. As of now, approximately \$90 million in Section 108 guarantee authority remains available to all 108 applicants on a first-come-first-served basis.* The Section 108 application should be submitted to the HUD Field Office applicable to the Recipient.
- d. The Recipient's BEDI Grant application was not approved in the full amount requested. For example, all activities submitted may not have been approved, the amount of funds requested for some or all activities may have been reduced, or there may have been

insufficient funds available to approve the entire application amount. Therefore, your BEDI Grant application must be amended so that it is consistent with the terms of HUD's approval. Please contact David Kaminsky in the Office of Economic Development at (202) 708-3484 extension 4612 upon receipt of this letter to determine the required amendments. *If this Paragraph d. applies, HUD's obligations under this Agreement are conditioned on the Recipient's submitting to HUD the applicable revised pages of your BEDI application containing the required modifications on or before September 14, 2009.*

*If paragraph a. above applies, the Related Section 108 Guarantee amount above is the amount of the final Section 108 Guarantee approved in relation to the Recipient's BEDI grant. If paragraph d. above is **not** also checked, your BEDI Grant application was approved as submitted. Since both your Section 108 loan guarantee and BEDI grant applications are approved, no further application submissions are required. You should contact HUD to request preparation of the Note and Contract for Loan Guarantee Assistance for the Related Section 108 Guarantee and the completed BEDI Grant Agreement at least six weeks, if possible, before you will need the funds to be provided under those documents. You will also be required to submit additional information to HUD as needed with respect to compliance with the conditions of the HUD-7082 for the Related Section 108 Guarantee. Furthermore, as described in the attached form of Grant Agreement, funds may not actually be withdrawn under this BEDI Grant until after HUD's execution of the Contract for Loan Guarantee Assistance and Guarantee for the related Section 108 Guarantee.*

If paragraph b. or c. above applies, HUD may request additional information as needed in connection with its review of the Recipient's Section 108 application and/or may REDUCE the amount of this BEDI Grant, or the amount of the Related Section 108 Guarantee above, or both, if HUD determines in connection with HUD's review of the Section 108 application or amendatory application under 24 CFR 570, Subpart M, that all or a portion of the approved BEDI Grant or the Related Section 108 Guarantee amount above is not justified. If this is done, the amount of the finally approved Section 108 guarantee will be the amount of the Section 108 Guarantee referred to in the BEDI Grant Agreement when received by the Recipient.

All additional submissions required under paragraphs c. and d. above must be postmarked or hand-delivered to this office **within sixty (60) days** from the date of this letter unless an extension is requested by you and approved by HUD pursuant to Section IV.B.1(c)(2) or (3) of the NOFA. Pursuant to Section VI.B.1(b) of the NOFA, HUD is authorized to de-obligate this BEDI award to the extent the related Section 108 application, in whatever form is applicable, is not approved by HUD with ten (10) months of the Transmittal Date.

You may not make any changes in your BEDI Grant application other than those required by the terms of this HUD approval letter, because this could affect the competitive basis on which your grant was awarded. In rating and ranking your BEDI Grant application, HUD has already assumed that any application revisions required by this letter will be made. Failure to

submit the required information within 60 days may result in de-obligation of the approved funds.

SPECIAL NOTE FOR APPLICANTS WHO APPLIED BASED ON SECTION IV.B.1(c)(4) OF THE NOFA. If you applied for a BEDI grant on the basis of requesting an additional amount of Section 108 guarantee assistance for a project assisted under a previously-approved Section 108 application, you must comply with the requirements for a complete Section 108 application as described in 24 CFR 570.704 for such additional section 108 funding. To the extent that parts of the previous application are applicable to the new application, copies thereof can be resubmitted as part of the new application.

SPECIAL NOTE TO ALL APPLICANTS ON PERFORMANCE REPORTING. Pursuant to Section VI.C of the NOFA, BEDI grant funds are included within the definition of Community Development Block Grant (CDBG) funds at 24 CFR 570.3. Accordingly, grantees must report specifically on the use of BEDI grant funds and Section 108 loan guarantee proceeds in the Consolidated Annual Performance and Evaluation Report (CAPER) required of CDBG grantees under 24 CFR 570.507 or 24 CFR.570.491. For each reporting period, as part of the required report to HUD, grant recipients must include a completed Logic Model (form HUD 96010), which identifies output and outcome achievements.

If you have questions on any aspect of these instructions or conditions, please contact David Kaminsky in the Office of Economic Development at 202.402.4612, as noted above.

ENCLOSURE (B)

Grant No. B-__-BD-__-_____

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

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 [insert City or County of _____, State] (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, **[for 1998 Grants insert "on April 30, 1998, at 63 FR 23889," for 1999 Grants insert: "on February 26, 1999, at 64 FR 9799," for 2000 Grants insert: "on February 24, 2000, at 65 FR 9813," for 2001 Grants insert: "on February 26, 2001, at 66 FR 12033," for 2002 Grants insert: "on March 26, 2002, at 67 FR 14135," for 2003 Grants insert: "on April 25, 2003, at 68 FR 21002," for 2004 Grants insert: "on May 14, 2004, at 69 FR 27331", for 2005 Grants insert: "on March 21, 2005, at 70 FR 13951, and on July 26, 2005, at 70 FR 43171, for 2006 Grants insert: "on January 20, 2006, at 71 FR 3382 and on March 8, 2006, at 71 FR 11870," and for 2007 Grants insert: "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 [insert dollar amount of BEDI award] ("BEDI Grant").

b. This grant is approved for the following Approved BEDI Projects described in the Approved Application: [insert name of Project] ("Approved Project").

c. The grant funds shall be used in connection with the Approved Project for the following specifically Approved Uses ("Approved Uses"): *[Note: if only one approved activity, eliminate the (1) and (2); if there are additional approved activities include additional provisions, (3), (4), etc.]*

- (1) *[insert description of use, including what entity will use the funds, if other than the Recipient],* pursuant to 24 CFR 570.703() *[insert appropriate citation];* and
- (2) *[insert description of use, as above],* pursuant to 24 CFR 570.703() *[insert appropriate citation].*

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 [insert dollar amount of Section 108 guaranteed loan required as a condition of the BEDI award] (the "Section 108 Guarantee").

[Include the following "ratio" provision if needed, typically this would be when BEDI funds are being used other than for interest payments on 108 loan, issuance costs, or debt service reserve.]

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 [insert dollar amount of 108 funds required for each dollar of BEDI] 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 **[Insert date appropriate for completion of the approved activities - usually two years for BEDI, depending on the nature of the approved activities. For FY 2002 and later BEDI grants, do not exceed latest date permissible under 31 USC 1552(a)(contact OGC)]**.

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 [insert date of BEDI award]. "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).

There are no special conditions. [or list special condition(s)]

[Rest of Page Intentionally Left Blank]

THE UNDERSIGNED, as authorized officials on behalf of the Recipient or the Secretary, have executed this BEDI Grant Agreement, which shall be effective as of the date of execution hereof on behalf of the Secretary.

RECIPIENT

BY: _____
(Signature)

(Name)

(Title)

(Date)

Employer Identification Number
(EIN) of Recipient

SECRETARY OF HOUSING AND URBAN
DEVELOPMENT

BY: _____
(Signature)

(Name)

(Title)

(Date)