

Lee County Board Of County Commissioners
Agenda Item Summary

Blue Sheet No: 20041010

1. **REQUESTED MOTION**

ACTION REQUESTED: Amendment to Lee County Contracts: C-2624, C-2742 and C-2837 to incorporate the U. S. Dept of Housing and Urban Development's (HUD) new interpretation of rules regarding secondary financing.
WHY ACTION IS NECESSARY: The county provided supplemental State Housing Initiatives Partnership (SHIP) funding to two HUD financed developments for low-income elderly residents. HUD considers this supplemental funding as secondary financing and requires that the county incorporate the attached amendments into its contracts.
WHAT ACTION ACCOMPLISHES: Allows the county to provide supplemental funds for the construction of two HUD financed developments for low-income elderly residents in Lee County.

2. **DEPARTMENTAL CATEGORY:** 04
COMMISSION DISTRICT #: CW

C4E

3. **MEETING DATE:** 08-17-2004

4. **AGENDA:**
 CONSENT
 ADMINISTRATIVE
 APPEALS
 PUBLIC
 WALK ON
 TIME REQUIRED:

5. **REQUIREMENT/PURPOSE:**
(Specify)
 STATUTE
 ORDINANCE
 ADMIN. CODE
 OTHER HUD

6. **REQUESTOR OF INFORMATION:**
 A. COMMISSIONER N/A
 B. DEPARTMENT Community Development
 C. DIVISION Planning
 BY: Paul O'Connor, AICP, Planning Director
 ROC 8/4/04

7. **BACKGROUND:** Lee County has provided SHIP funds to two (2) HUD financed projects.
Woodward Manor: On February 25, 2003 per Blue Sheet 20030181 the Board of County Commissioners authorized the issuance of two commitment letters to provide SHIP funding for a proposed 90-unit very low-income elderly housing complex in Lehigh Acres called Woodward Manor. For this development Woodward Manor Inc. received a \$6,850,200 grant through the HUD Sec 202 Supportive Housing program. On the basis of these commitment letters, the county entered into the following agreements: August 25, 2003 C- 2624 for \$366,000 and July 27, 2004 C-2837 for \$66,000.

Hatton B Rogers: On March 9, 2004 per Blue Sheet 20040184 the Board of County Commissioners executed a grant award agreement to provide SHIP funding for a proposed 54-unit very low-income elderly housing complex in North Fort Myers called Hatton B. Rogers. For this development Southwest Florida GWI Housing VIII, Inc. received a \$4,298,200 grant through the HUD Sec 202 Supportive Housing Program. On the basis of this Blue Sheet, the county entered into the following agreement: March 9, 2004 C-2742 for \$154,213.

To date no funds have been drawn against these agreements. For Lee County to make these SHIP funds available, HUD is requiring that the county amend each of the three agreements with the attached language. Over the last 23 years there have been three (3) different HUD Chief Counsels in the Jacksonville, FL. HUD office. Each had a slightly different approach to the interpretation of HUD regulations. The current Chief Counsel, Earl Cox, initiated a more strict interpretation of the HUD regulations regarding secondary financing; the proposed amendments comply with this stricter interpretation.

No additional funds are being requested.
 Attachment: Proposed amendment to Contracts: C-2624, C-2742 and C-2837.

8. **MANAGEMENT RECOMMENDATIONS:**

9. **RECOMMENDED APPROVAL:**

A Department Director	B Purchasing or Contracts	C Human Resources	D Other	E County Attorney	F Budget Services	G County Manager
		N/A	N/A		Agon 8/5/04 OM 8/5/04 Risk 8/5/04 GC 8/5/04	

10. **COMMISSION ACTION:**
 APPROVED
 DENIED
 DEFERRED
 OTHER

Rec. by CoAtty
 Date: 8/4/04
 Time: 3:40
 8/4/04

RECEIVED BY
 COUNTY ADMIN
 8/4/04
 4:30 pm 8/4
 COUNTY ADMIN
 FORWARDED TO: [Signature]

AMENDMENT TO THE
AGREEMENT BETWEEN THE
LEE COUNTY BOARD OF COUNTY COMMISSIONERS
AND
WOODWARD MANOR, INC.

WITNESSETH:

WHEREAS, the referenced Parties to Contract No. C-2624 desire to amend the Contract to include the subrecipient agreement addendum as required by the U.S. Department of Housing and Urban Development (HUD Notice 95-38 and HUD Handbook 4571.5 Rev).

NOW, THEREFORE IN CONSIDERATION OF THE MUTUAL PROMISES STATED HEREIN, the referenced contract is amended as follows adding a new Attachment 3:

ATTACHMENT 3

ADDENDUM TO SUBRECIPIENT AGREEMENT

WHEREAS, the parties hereto entered into an Agreement for LEE COUNTY SHIP RENTAL/SPECIAL NEEDS FUNDS in connection with the construction and implementation of the Project known as "WOODWARD MANOR, INC.", HUD Project No. 067-EE088, pursuant to the Capital Advance issued by HUD;

WHEREAS, per HUD Notice 95-38 and HUD Handbook 4571.5 Rev., HUD requires a Mortgage, Regulatory Agreement, Use Agreement and other security instruments for the construction and implementation of said Capital Advance, and further requires when secondary financing contemplated by the Subrecipient Agreement is utilized, an agreement be established to provide for certain terms in the event of conflict between the HUD Capital Advance instruments of security and the secondary financing for the Subrecipient Agreement; and

WHEREAS, the parties desire to evidence compliance with the HUD regulations;

NOW, THEREFORE, this Addendum is made and incorporated into the Subrecipient Agreement for the Project known as "WOODWARD MANOR, INC." as follows:

1. HUD has:
 - (a) The right to approve construction draws and/or reimbursement after considering any reported noncompliance by the County if the project is proceeding in compliance with approved plans and specifications.
 - (b) Sole authority to resolve differences in the inspection process and draws and/or reimbursement of grant/loan proceeds.
2. Subrecipient will concurrently furnish HUD and the County with copies of Form HUD-92448, Contractor's Requisition, and form HUD-92403, Application for Insurance of Advances of Mortgage Proceeds.
3. The County agrees to process the draw and/or reimbursement promptly and without adjustment.
4. The County assumes the risk for any reimbursement of grant/loan funds disbursed in excess of the amount approved by HUD, and Woodward Manor, Inc. agrees to replenish the excess funds within ten (10) working days of notification of HUD.
5. If a default occurs under the HUD instruments of security, before completion of construction, and the project, scope and purpose remains unchanged, the County must disburse the remaining funds so long as the request for funds remains in the same ratio as previously authorized.
6. The County's attorney will render an opinion that the agreement and grant/loan commitment is legally binding on present and all future administrations.
7. The Subrecipient must post either a cash escrow or an unconditional, irrevocable letter of credit equal to no less than 10 percent of the grant/loan proceeds.
 - (a) Subrecipient must draw upon the escrow if the County fails to reimburse the grant/loan proceeds in a timely manner.
 - (b) The Subrecipient must reinstate any portion of the escrow drawn during the term of the construction loan, within ten (10) days of the draft for payment.
 - (c) HUD must establish control of the escrow in a separate agreement.
 - (d) The escrow may be released at final endorsement.

The Parties hereby executed this Amendment on _____, 2004.

CHARLIE GREEN, CLERK

BOARD OF COUNTY COMMISSIONERS
LEE COUNTY, FLORIDA

BY _____
DEPUTY CLERK

BY: _____
CHAIRMAN

Witness (Signature)

BY: _____
Laura Miller

Witness (Name, Address)

Title: President, Woodward Manor, Inc.

FEIN#: 02-0657192

Witness (Signature)

Witness (Name, Address)

APPROVED AS TO FORM
OFFICE OF COUNTY ATTORNEY

BY: _____
Lee County Attorney's Office

AMENDMENT TO THE
AGREEMENT BETWEEN THE
LEE COUNTY BOARD OF COUNTY COMMISSIONERS
AND
SOUTHWEST FLORIDA GWI HOUSING VIII

WITNESSETH:

WHEREAS, the referenced Parties to Contract No. C-2742 desire to amend the Contract to include the subrecipient agreement addendum as required by the U.S. Department of Housing and Urban Development (HUD Notice 95-38 and HUD Handbook 4571.5 Rev).

NOW, THEREFORE IN CONSIDERATION OF THE MUTUAL PROMISES STATED HEREIN, the referenced contract is amended as follows adding a new attachment 3:

ATTACHMENT 3

ADDENDUM TO SUBRECIPIENT AGREEMENT

WHEREAS, the parties hereto entered into an Agreement for LEE COUNTY SHIP RENTAL/SPECIAL NEEDS FUNDS in connection with the construction and implementation of the Project known as "Hatton B. Rogers Apartments ", HUD Project No. 066-EE082, pursuant to the Capital Advance issued by HUD;

WHEREAS, per HUD Notice 95-38 and HUD Handbook 4571.5 Rev., HUD requires a Mortgage, Regulatory Agreement, Use Agreement and other security instruments for the construction and implementation of said Capital Advance, and further requires when secondary financing contemplated by the Subrecipient Agreement is utilized, an agreement be established to provide for certain terms in the event of conflict between the HUD Capital Advance instruments of security and the secondary financing for the Subrecipient Agreement; and

WHEREAS, the parties desire to evidence compliance with the HUD regulations;

NOW, THEREFORE, this Addendum is made and incorporated into the Subrecipient Agreement for the Project known as "Hatton B. Rogers Apartments." as follows:

1. HUD has:
 - (a) The right to approve construction draws and/or reimbursement after considering any reported noncompliance by the County if the project is proceeding in compliance with approved plans and specifications.
 - (b) Sole authority to resolve differences in the inspection process and draws and/or reimbursement of grant/loan proceeds.
2. Subrecipient will concurrently furnish HUD and the County with copies of Form HUD-92448, Contractor's Requisition, and form HUD-92403, Application for Insurance of Advances of Mortgage Proceeds.
3. The County agrees to process the draw and/or reimbursement promptly and without adjustment.
4. The County assumes the risk for any reimbursement of grant/loan funds disbursed in excess of the amount approved by HUD, and Woodward Manor, Inc. agrees to replenish the excess funds within ten (10) working days of notification of HUD.
5. If a default occurs under the HUD instruments of security, before completion of construction, and the project, scope and purpose remains unchanged, the County must disburse the remaining funds so long as the request for funds remains in the same ratio as previously authorized.
6. The County's attorney will render an opinion that the agreement and grant/loan commitment is legally binding on present and all future administrations.
7. The Subrecipient must post either a cash escrow or an unconditional, irrevocable letter of credit equal to no less than 10 percent of the grant/loan proceeds.
 - (a) Subrecipient must draw upon the escrow if the County fails to reimburse the grant/loan proceeds in a timely manner.
 - (b) The Subrecipient must reinstate any portion of the escrow drawn during the term of the construction loan, within ten (10) days of the draft for payment.
 - (c) HUD must establish control of the escrow in a separate agreement.
 - (d) The escrow may be released at final endorsement.

The Parties hereby executed this Amendment on _____, 2004.

CHARLIE GREEN, CLERK

BOARD OF COUNTY COMMISSIONERS
LEE COUNTY, FLORIDA

BY _____
DEPUTY CLERK

BY: _____
CHAIRMAN

Witness (Signature)

BY: _____
Thomas L. Feurig

Witness (Name, Address)

Title: President, Southwest FL GWI
Housing VIII

FEIN#: _____

Witness (Signature)

Witness (Name, Address)

APPROVED AS TO FORM
OFFICE OF COUNTY ATTORNEY

BY: _____
Lee County Attorney's Office

AMENDMENT TO THE
AGREEMENT BETWEEN THE
LEE COUNTY BOARD OF COUNTY COMMISSIONERS
AND
WOODWARD MANOR, INC.

WITNESSETH:

WHEREAS, the referenced Parties to Contract No. C-2837 desire to amend the Contract to include the subrecipient agreement addendum as required by the U.S. Department of Housing and Urban Development (HUD Notice 95-38 and HUD Handbook 4571.5 Rev).

NOW, THEREFORE IN CONSIDERATION OF THE MUTUAL PROMISES STATED HEREIN, the referenced contract is amended as follows adding a new Attachment 3:

ATTACHMENT 3

ADDENDUM TO SUBRECIPIENT AGREEMENT

WHEREAS, the parties hereto entered into an Agreement for LEE COUNTY SHIP RENTAL/SPECIAL NEEDS funds in connection with the construction and implementation of the Project known as "WOODWARD MANOR, INC.", HUD Project No. 067-EE088, pursuant to the Capital Advance issued by HUD;

WHEREAS, per HUD Notice 95-38 and HUD Handbook 4571.5 Rev., HUD requires a Mortgage, Regulatory Agreement, Use Agreement and other security instruments for the construction and implementation of said Capital Advance, and further requires when secondary financing contemplated by the Subrecipient Agreement is utilized, an agreement be established to provide for certain terms in the event of conflict between the HUD Capital Advance instruments of security and the secondary financing for the Subrecipient Agreement; and

WHEREAS, the parties desire to evidence compliance with the HUD regulations;

NOW, THEREFORE, this Addendum is made and incorporated into the Subrecipient Agreement for the Project known as "WOODWARD MANOR, INC." as follows:

1. HUD has:
 - (a) The right to approve construction draws and/or reimbursement after considering any reported noncompliance by the County if the project is proceeding in compliance with approved plans and specifications.
 - (b) Sole authority to resolve differences in the inspection process and draws and/or reimbursement of grant/loan proceeds.
2. Subrecipient will concurrently furnish HUD and the County with copies of Form HUD-92448, Contractor's Requisition, and form HUD-92403, Application for Insurance of Advances of Mortgage Proceeds.
3. The County agrees to process the draw and/or reimbursement promptly and without adjustment.
4. The County assumes the risk for any reimbursement of grant/loan funds disbursed in excess of the amount approved by HUD, and Woodward Manor, Inc. agrees to replenish the excess funds within ten (10) working days of notification of HUD.
5. If a default occurs under the HUD instruments of security, before completion of construction, and the project, scope and purpose remains unchanged, the County must disburse the remaining funds so long as the request for funds remains in the same ratio as previously authorized.
6. The County's attorney will render an opinion that the agreement and grant/loan commitment is legally binding on present and all future administrations.
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 - (a) Subrecipient must draw upon the escrow if the County fails to reimburse the grant/loan proceeds in a timely manner.
 - (b) The Subrecipient must reinstate any portion of the escrow drawn during the term of the construction loan, within ten (10) days of the draft for payment.
 - (c) HUD must establish control of the escrow in a separate agreement.
 - (d) The escrow may be released at final endorsement.

The Parties hereby executed this Amendment on _____, 2004.

CHARLIE GREEN, CLERK

BOARD OF COUNTY COMMISSIONERS
LEE COUNTY, FLORIDA

BY _____
DEPUTY CLERK

BY: _____
CHAIRMAN

Witness (Signature)

BY: _____
Laura Miller

Witness (Name, Address)

Title: President, Woodward Manor Inc.

FEIN#: 02-065792

Witness (Signature)

Witness (Name, Address)

APPROVED AS TO FORM
OFFICE OF COUNTY ATTORNEY

BY: _____
Lee County Attorney's Office