

PALM BEACH COUNTY
BOARD OF COUNTY COMMISSIONERS

AGENDA ITEM SUMMARY

Meeting Date: January 9, 2007

☒ Consent

☐ Regular

☐ Ordinance

☐ Public Hearing

Department: Parks and Recreation

Submitted By: Parks and Recreation Department

Submitted For: Parks and Recreation Department

I. EXECUTIVE BRIEF

Motion and Title: Staff recommends motion approve: Restrictive Covenant for Veterans Park with the State of Florida, Department of State, Division of Cultural Affairs and the Village of Royal Palm Beach.

Summary: In 2006, the Village of Royal Palm Beach applied for and received a \$250, 000 State of Florida, Division of Cultural Affairs, and Cultural Facilities Program Grant to install lighting and sound equipment in the Veterans Park Amphitheater. The grant requires recordation of a restrictive covenant to ensure that the amphitheater will be used as a cultural facility for at least 10 years. (District 6) AH)

Background and Justification: On June 19, 2001, the Board approved a fifteen (15) year Lease Agreement (R2001-0930) with the Village of Royal Palm Beach for the 6.5 acre Veterans Park. On August 19, 2003 (R-2003-1238) the BCC approved \$1,000,000 in funding from the \$50 Million Recreation and Cultural Facilities Bond to help fund this project. The Village completed construction of the park approximately three years ago. The park features a large and small amphitheater, Cafe' on the Green, bocce court, walking path, waterfall, interactive fountain, two picnic pavilions, tot lot, open area, and two restroom facilities. The Cultural Facilities Program Grant requires the owner of the property to record a restrictive covenant, which requires the amphitheater be used as a cultural facility for at least 10 years. The Village of Royal Palm Beach, as Lessee of Veterans Park, is also executing the restrictive covenant.

Attachments:

1. Interlocal Agreement between PBC and Village of Royal Palm Beach (R-2001-0930)
2. Restrictive Covenant
3. Location Map

Recommended by: 

Department Director

12/20/06
Date

Approved by: 

Assistant County Administrator

12/28/06
Date

II. FISCAL IMPACT ANALYSIS

A. Five Year Summary of Fiscal Impact:

Fiscal Years	2007	2008	2009	2010	2011
Capital Expenditures	<u>-0-</u>	<u>-0-</u>	<u>-0-</u>	<u>-0-</u>	<u>-0-</u>
Operating Costs	<u>-0-</u>	<u>-0-</u>	<u>-0-</u>	<u>-0-</u>	<u>-0-</u>
External Revenues	<u>-0-</u>	<u>-0-</u>	<u>-0-</u>	<u>-0-</u>	<u>-0-</u>
Program Income (County)	<u>-0-</u>	<u>-0-</u>	<u>-0-</u>	<u>-0-</u>	<u>-0-</u>
In-Kind Match (County)	<u>-0-</u>	<u>-0-</u>	<u>-0-</u>	<u>-0-</u>	<u>-0-</u>
NET FISCAL IMPACT	<u>-0-</u>	<u>-0-</u>	<u>-0-</u>	<u>-0-</u>	<u>-0-</u>

ADDITIONAL FTE

POSITIONS (Cumulative) _____

Is Item Included in Current Budget? Yes _____ No _____
Budget Account No.: Fund _____ Department _____ Unit _____
Object _____ Program _____

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

There is no fiscal impact associated with this item.

C. Departmental Fiscal Review: ckopelakis

III. REVIEW COMMENTS

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

John D. 12-14-06
OFMB
12/11/06
12-12-06
12/18/06
Contract Development and Control

B. Legal Sufficiency:

Anne Helgenst 12/27/06
Assistant County Attorney

C. Other Department Review:

Department Director

REVISED 10/95
ADM FORM 01

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

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AGREEMENT BETWEEN
THE STATE OF FLORIDA, DEPARTMENT OF STATE
AND
VILLAGE OF ROYAL PALM BEACH

This Agreement is by and between the State of Florida, Department of State, Division of Cultural Affairs hereinafter referred to as the "Division," and the Village of Royal Palm Beach, hereinafter referred to as the "Grantee."

The Grantee has been awarded a Cultural Facilities Program Grant (CSFA 45.014) by the Division; grant number 07-9033, for the project "**Veterns Park Amphitheatre**," in the amount of **\$250,000**.

Unless there is a written notice of change of address, any notice required by this Agreement shall be delivered to:

Florida Department of State
Division of Cultural Affairs
R. A. Gray Building, 3rd Floor
500 South Bronough Street
Tallahassee, Florida 32399-0250

for the Division, and to Village of Royal Palm Beach, 1050 Royal Palm Beach Boulevard, Royal Palm Beach, FL 33411 for the Grantee.

In consideration of the mutual covenants and promises contained herein, the parties agree as follows:

(1) Grant:

- (a) The Grantee shall, prior to the disbursement of funds:
 - 1. Sign a Grant Award Agreement and agree to comply with its terms; and
 - 2. Provide an update of the project narrative and budget, hereafter referred to as Attachment A, and perform the work described therein. Attachment A shall be attached hereto and made a part of this Agreement.
 - 3. Provide the legal description of the Property, as Attachment B, on which the Facility is or will be located.
 - 4. The Property Owner and Grantee shall be required to record a Restrictive Covenant or purchase a Bond to ensure that the Facility continues to be used as a Cultural Facility for a period of 10 years following the date on which the Grant Award Agreement was executed. If the Facility ceases to be used as a Cultural Facility during the (10) ten years following the execution date of the Grant Award Agreement, the grant funds shall be repaid to the Division

according to the Restrictive Covenant Amortization Schedule set forth in Addendum # 1 to Contract, or the Bond Amortization Schedule set forth in Addendum #2 to Contract.

- (b) The Grantee agrees to return the signed Grant Award Agreement and Attachments to the Division of Cultural Affairs within 60 days after the receipt of the Grant Award Agreement. A Grant Award Agreement which is not signed and returned by the Grantee within 60 days shall be considered declined by the Grantee.
 - (c) Along with the Grant Award Agreement and Attachments, the Grantee shall complete an Assurance of Compliance and Signature Authorization Form (Form CA2E059, eff. 8/02, incorporated by reference and available from the Division) and return all the above to the Division.
 - (d) The Grantee shall not obligate state funds until the date on which this Agreement is fully executed.
 - (e) The Grantee shall maintain its not-for-profit eligibility, as a public entity or a tax-exempt Florida corporation, for the duration of the Grant Award Agreement as determined at the time of application.
- (2) Cash Release:
- (a) To initiate release of grant funds, the Grantee must:
 - 1. Complete a Request for Warrant (Form CA2E001, eff. 8/02, incorporated by reference and available from the Division), and submit it to the Division of Cultural Affairs. The amount requested by the Grantee shall not exceed the anticipated expenditures for the project within 90 days or the amount permitted in (2)(b) or (c) below, whichever is less.
 - 2. Submit a Schedule of Expenses using Cultural Facilities Report Form CA2EO48, eff. 8/02, incorporated by reference and available from the Division. The Schedule of Expenses shall include actual project expenses paid to date including expenses charged to both match and state grant funds.
 - (b) If advance payment of grant funds is approved by the Department of Financial Services, the payment schedule shall be subject to any special conditions stipulated by that Office.
 - (c) In the case of Cultural Facilities grants, grant funds shall be released in accordance with the Project Completion Schedule, provided by the Grantee, and attached as Attachment C. Certification of completion of each phase of the project must be received by the Division prior to the release of any funds for subsequent phases of the project.
 - (d) Request for Warrant forms received from Grantees who are not in compliance with the reporting and interest payment requirements of this Agreement, or any

other past or present Grant Award Agreement with this Division or any other Division within the Department of State, shall not be processed for payment until the compliance issues are resolved.

(3) **Investment of Grant Funds.** The Grantee shall invest any surplus grant funds in an interest bearing account pursuant to Section 216.181(16)(b), Florida Statutes, and the interest earned on such investments shall be returned to the Division with each Interim Status Report, or the Final Report which is due 45 days following completion of the project.

(4) **Project Status Reporting Requirements:** The Grantee shall provide the Division with a series of reports according to the following schedule using Cultural Facilities Report Form CA2E048, eff. 8/02, incorporated by reference and available from the Division:

- (a) Interim Status Report by January 31, 2007, for the period ending December 31, 2006;
- (b) Interim Status Report by July 31, 2007, for the period ending June 30, 2007;
- (c) Interim Status Report by January 31, 2008, for the period ending December 31, 2007.
- (d) Interim Status Reports shall be submitted in addition to any Schedule of Expenses as described in section (2) of this Agreement.
- (e) Interim Status Report shall be submitted at six (6) month intervals until the project is complete.
- (f) Final Report within 45 days of completion of the project. The project shall be considered to be complete when all grant dollars and match as described in Attachment A have been expended. However, the Final Report must be submitted no later than May 15 of the Fiscal Year following the Fiscal Year the Grant Awards Funds were awarded.

(5) **Expenditures:**

- (a) All expenditures must be directly related to the purpose of the grant as specified in Attachment A. Funds shall be used for expenditures directly related to renovation, construction, or acquisition of the designated Cultural Facility. Expenditures for general operating expenses (such as but not limited to salaries, travel, personnel, office supplies, etc.) are not allowable. Payment for costs associated with representation, proposal, and application preparation shall not be made with funds provided under this Agreement. Payment for costs for lobbying the Legislature, the judicial branch, or any state agency shall not be made with funds provided under this Agreement.
- (b) If the Grantee finds it necessary to expend state dollars for allowable project costs not described in Attachment A, the Grantee shall submit a completed Grant Amendment

Request (Form CA2E047, eff. 8/02, incorporated by reference and available from the Division), to the Division for approval before the work is started.

- (c) If the Grantee expends state dollars for non-allowable costs or for work not described in Attachment A, the Division shall have the right to terminate this Agreement and demand the return of all or a part of any funds already delivered, and/or withhold funds from subsequent grants. Factors which will be considered by the Division in making this decision include: the amount of state dollars spent for non-allowable costs, the percentage of the grant funds spent for non-allowable costs, and whether the expenditure of state dollars for non-allowable costs was intentional.
- (d) Reimbursement for travel expenses is not allowed under this Agreement.
- (e) Payment for expenditures incurred prior to the execution of this Agreement shall not be made with funds provided under this Agreement.
- (f) All grant funds shall be expended on the work described in this Agreement by April 1, 2008. If the Grantee cannot expend the funds by April 1, 2008, the Grantee shall submit a Grant Amendment Request (Form CA2E047) which must be received by the Division not later than 30 days prior to the expenditure date.
- (g) Funds provided under this Agreement shall not be used for planning purposes, including preliminary and schematic drawings, and design development documents necessary to carry out the project.
- (h) Funds provided shall not be used for projects that are restricted to private or exclusive participation, which shall include restricting access on the basis of sex, race, religion, national origin, disability, age, or marital status.

(6) Matching Funds. For the purposes of this Agreement, matching funds will be defined and governed as follows:

- (a) Matching funds shall directly relate to the specific construction work to be done as described in Attachment A and shall not be operational funds.
- (b) Matching funds shall be clearly accounted for through documentation maintained at the Grantee's office. Match must consist of at least 50% cash as detailed in Attachment A.
- (c) Matching funds for the grant shall not consist of state dollars from any source, nor shall matching funds claimed for any other state grant be used to match this grant.
- (d) Matching funds may have been expended prior to the effective date of this Agreement as long as they are clearly a part of the project described in Attachment A.

- (e) If the Grantee's Total Support and Revenue for the last completed fiscal year is \$500,000 or more, as documented in the audit submitted with the application, the Grantee shall provide \$2.00 in matching funds for every \$1.00 of state funds received under this Agreement.
- (f) If the Grantee's Total Support and Revenue for the last completed fiscal year is less than \$500,000, as documented in the audit or review submitted with the application, the Grantee shall provide \$1.00 in matching funds for every \$1.00 of state funds received under this Agreement.
- (g) Documentation of in-kind contributions shall substantiate fair market value. Goods and services must be received and utilized by June 30, 2007.
- (h) The matching requirement on grants for rural communities that have been designated in accordance with Section 288.0656, Florida Statutes, and requested the reduction according to 288.06561, Florida Statutes by the application deadline is 1:1. Grantees shall provide \$1.00 in matching funds for every \$1.00 of state funds received under this Agreement.

(7) **Undisturbed Use and Access:** The Grantee shall maintain undisturbed use of the property for (10) years following the execution date of this agreement. The Division may, from time to time, require certification from the Grantee or the Property Owner that the lease is in full force and effect, that it has not been modified or terminated, and that the Grantee is not in default of the lease's terms and conditions, or in the case of an owner/grantee, documentation of unrestricted ownership. Failure to provide such certification shall constitute a default hereunder which shall give the Division the right to terminate this Agreement and demand the return of all or a part of any funds already delivered or withhold funds from subsequent grants.

(8) **Notices, Schedules and Sponsorship.** All publications, media productions, and exhibit graphics concerning the project shall include the following statement in the same size, type, style, and location as credit to major donors to the project:

"This project is sponsored in part by the State of Florida through the Florida Division of State, Division of Cultural Affairs, and the Florida Arts Council."

(9) **Grant Amendment Requests.** The Grantee agrees to file, in a timely manner and prior to the fact, a Grant Amendment Request for any and all changes in work, including completion dates, other general information, and changes in dollar amounts, as described in this Grant or Attachment A. Requests to amend authorized personnel, contact person, or address may be accomplished by notifying the Division.

(10) **Project Extensions:**

- (a) Encumbrance Date: If the Grantee finds it necessary to request an extension of the encumbrance date for a single-phase project or a multiphase project, the extension shall not exceed 120 days for any single-phase project or 120 days for any phase of a multiphase project.
- (b) Expenditure Date: If the Grantee finds it necessary to request an extension of the expenditure date for a single phase project or a multiphase project, the extension shall not exceed 120 days for any single phase project or 120 days for any phase of a multiphase project.

(11) Changes in Project Scope or Venue: No changes in project scope or venue shall be permitted.

(12) Project Completion:

- (a) The project shall be considered complete when all grant dollars as described in Attachment A have been expended.
- (b) The Grantee shall encumber all funds prior to June 30, 2007 and submit verification of the same, unless a completed Grant Amendment Request form submitted by the Grantee for the extension of the encumbrance date is approved in advance by the Division. To encumber all funds means that the Grantee has executed one or more contracts with involved parties for all work to be accomplished with grant funds. A fully executed contract with an architect or contractor for an amount equal to or in excess of the total grant amount will satisfy the encumbrance requirement. The Division will release no more than 25% of the total grant amount until the executed contract with an architect or contractor has been submitted.
- (c) Upon completion of the project as described in Attachment A, a Final Report shall be submitted to the Division within 45 days of the completion of the project.

(13) Post Audit: Each nonstate entity that expends a total amount of state awards (i.e., financial assistance from state resources provided to the recipient to carry out a state project) equal to or in excess of \$500,000 in any fiscal year of such nonstate entity shall be required to have a state single audit or project-specific audit for such fiscal year in accordance with the requirements of Section 215.97, Florida Statutes, applicable rules of the Executive Office of the Governor, Division of Financial Services, and Rules of the Auditor General. The audit must be submitted within nine calendar months following the end of the organization's fiscal year [see Addendum # 3 to Contract].

(14) Accounting Requirements. The Grantee shall maintain an accounting system, which provides for a complete record of the use of all grant funds. This accounting system shall provide for:

- (a) The accounting system utilized must be able to specifically identify, and provide audit trails that trace the receipt, maintenance, and expenditure of state funds;

- (b) Records that identify adequately the sources and application of funds for all activities related to the grant. These accounting records shall classify and identify grant funds by the same budget categories as approved in the grant application. In cases where Grantee's accounting system accumulates data in a different format than in the grant application, subsidiary records should be used to document and reconcile amounts shown in the Grantee's accounting records to amounts reported to the Division.
- (c) An interest bearing checking account or accounts in a state or federally chartered institution shall be used for revenues and expenses as described in Attachment A. This account shall be used solely for grant expenditures. Any use other than this purpose will be considered to be a violation of this agreement;
- (d) The name of the account or accounts shall include the grant award number;
- (e) Effective control over and accountability for all funds, property, and other assets; and
- (f) Accounting records that are supported by source documentation and are in sufficient detail to allow for a proper pre-audit and post-audit (such as invoices, bills, and canceled checks).

(15) Retention and Availability of Accounting Records:

- (a) Financial records, executed construction or other project related contracts, supporting documents, interest documentation, statistical records, and all other records pertinent to the grant shall be retained for a period of five years after the filing of the Final Report. If any litigation or an audit is started, or claim made, before the expiration of the five year period, the records shall be retained until the litigation, claim, or audit questions involving the records have been resolved or for five years, whichever is longer.
- (b) The Grantee shall make all grant records of expenditures, copies of reports, books, and related documentation available to the Division or a duly authorized representative of the State of Florida for inspection at reasonable times for the purpose of making audits, examinations, excerpts, and transcripts.
- (c) The State of Florida shall cancel this Agreement, and the Grantee shall be obligated to return, in full, the grant amount in the event of such cancellation, should the Grantee refuse to allow public access to all documents, papers, letters, or other materials subject to the provisions of Chapter 119, Florida Statutes, and made or received by the Grantee.

(16) Entire Agreement. This instrument embodies the whole Agreement of the parties. There are no provisions, terms, conditions, or obligations other than those contained herein; and this Agreement shall supersede all previous communication, representations, or Agreement, either verbal or written, between the parties. No amendment shall be effective unless reduced in writing and signed by the parties.

(17) Governing Law:

- (a) The Agreement is executed and entered into in the State of Florida, and shall be construed, performed, and enforced in all respects in accordance with the laws of the State of Florida. Each party shall perform its obligations hereunder in accordance with the terms and conditions of this Agreement.
- (b) If any term or provision of the Agreement is found to be illegal and unenforceable, the remainder of the Agreement shall remain in full force and effect and such term of provision shall be deemed stricken.

(18) Conformity. The Grantee agrees that all acts to be performed by it in connection with this Agreement shall be performed in strict conformity with all applicable laws of the State of Florida.

(19) No Discrimination. Grantee shall not discriminate against any employee employed in the performance of this Agreement, or against any applicant for employment because of age, race, religion, color, disability, national origin, marital status, or sex. The Grantee shall insert a similar provision in all subcontracts for services by this Agreement.

(20) Termination of Agreement. The Division shall terminate this Agreement due to failure of the Grantee to fulfill its obligations under this Agreement or any other past or present grant award agreement with the Division or any other Division within the Division of State in a timely or satisfactory manner. The Division shall determine satisfaction of obligations by the Grantee. The Division shall provide the Grantee a written notice of default letter. The Grantee shall have 15 calendar days to cure the default. If the default is not cured by the Grantee within the stated period, the Division shall terminate this Agreement. Notice shall be sufficient if it is delivered to the party personally or mailed to its specified address. In the event of termination of this Agreement, the Grantee will be compensated for any work completed in accordance with this Agreement prior to the notification of termination. Grant funds previously advanced and not expended on work completed in accordance with the Agreement shall be returned to the Division, with interest, upon termination of the Agreement.

(21) Preservation of Remedies. No delay or omission to exercise any right, power, or remedy accruing to either party upon breach or default by either party under this Agreement, shall impair any such right, power, or remedy of either party; nor shall such delay or omission be construed as a waiver of any such breach or default, or any similar breach or default.

(22) Revenue Shortfall. The State of Florida's performance and obligation to pay under this Agreement is contingent upon an annual appropriation by the Legislature. In the event that the state funds on which this Agreement is dependent are withdrawn, this Agreement is terminated and the Division has no further liability to the Grantee, beyond that already incurred by the termination date. In the event of a State revenue shortfall, the total grant will be reduced accordingly. Such termination shall not affect the responsibility of the Grantee under this Agreement as to those funds previously distributed.

(23) Attorney Fees. The Division shall not be liable to pay attorney fees, interest, or cost of collection.

(24) Liability:

- (a) The Division shall not assume any liability for the acts, omissions to act or negligence of the Grantee, its agents, servants, or employees; nor shall the Grantee exclude liability for its own acts, omissions to act, or negligence to the Division.
- (b) The Grantee agrees to be responsible for claims of any nature, including but not limited to injury, death, and property damage, arising out of activities related to this Agreement by the Grantee, its agents, servants, employees, and subcontractors. Unless the Grantee is a State agency or subdivision of the State, the Grantee agrees to indemnify and hold the Division harmless from claims of any nature and agrees to investigate such claims at its own expense.
- (c) The Grantee shall be responsible for all work performed and all expenses incurred in connection with the project. The Grantee may subcontract as necessary to perform the services set forth in this Agreement, including entering into subcontracts with vendors for services and commodities, PROVIDED THAT it is understood by the Grantee that the Division shall not be liable to the subcontractor for any expenses or liabilities incurred under the subcontract and that the Grantee shall be solely liable to the subcontractor for all expenses and liabilities incurred under the subcontract.
- (d) Neither the State nor any agency or subdivision of the State waives any defense of sovereign immunity, or increase the limits of its liability, upon entering into this contractual relationship.

(25) Independent Capacity of Grantee. The parties hereto agree that the Grantee, its officers, agents, and employees, in performance of this Agreement, shall act in the capacity of an independent contractor and not as an officer, employee, or agent of the Division. Grantee is not entitled to accrue any benefits of state employment, including retirement benefits and any other rights or privileges connected with employment in the State Career Service. Grantee agrees to take such steps as may be necessary to ensure that each subcontractor of Grantee will be deemed to be an independent contractor and will not be considered or permitted to be an agent, servant, joint venturer, or partner of the Division.

(26) Non-Assignment. The Grantee shall not assign, sublicense, or otherwise transfer its rights, duties, or obligations under this Agreement without the prior written consent of the Division, which consent shall not be unreasonably withheld. No assignment consent shall be given to the Grantee when the Agreement will be used as collateral or security for a loan. The Agreement transferee must also demonstrate compliance with the requirements of the program. If the Division approves a transfer of the Grantee's obligations, the Grantee remains responsible for all work performed and all expenses incurred in connection with the Agreement. In the event the Legislature transfers the rights, duties, and obligations of the Division to another governmental entity pursuant to section

20.06 Florida Statutes, or otherwise, the rights, duties, and obligations under this Agreement shall also be transferred to the successor governmental entity as if it were an original party to the Agreement.

(27) Binding of Successors. This Agreement shall bind the successors, assigns, and legal representatives of the Grantee and of any legal entity that succeeds to the obligation or the Florida Division of State.

(28) Historic Preservation. In accordance with Section 267.061(2)(a) and (b), Florida Statutes, the Grantee agrees to submit information to the Division of State, Division of Historical Resources, Bureau of Historic Preservation, for determination of historic significance of the project. This will be completed prior to the release of state funds covered under this Agreement. Should the Bureau of Historic Preservation deem the facility to have historic significance, the release of state funds will occur when the Bureau notifies, in writing, the Division of Cultural Affairs that the Grantee has satisfied the requirements communicated to the Grantee by the Bureau. Should the facility not be deemed to be of historic significance, release of state funds shall be governed by other sections within this Agreement.

(29) The Organization must meet the standards of the Americans with Disabilities Act of 1990.

In acknowledgment of Grant Number 07-9033, provided for from funds appropriated in the 2006 Appropriation Act, in the amount of \$250,000, Village of Royal Palm Beach, certifies that each section has been read and agrees to comply with the requirements set forth in this Grant Award Agreement, and to carry out the work described in Attachment A, attached hereto and made a part of this Agreement.

Department of State:

By: _____
Secretary of State

Witness

Date

Grantee:

By: David A. Lodwick
Authorizing Official*

David A. Lodwick, Mayor

Typed name and title
Doree DeSanto
Witness

Date 11/16/06

***If the authorizing official signing above on behalf of the grantee organization is not the president of the board, then another authorized board member or other equivalent official must sign below.**

On behalf of the board of directors, trustees or commission that governs the Grantee, I hereby acknowledge awareness of, and agree to comply with, the conditions of this Agreement.

Signature

Typed name and title

Witness

Date

RESTRICTIVE COVENANT

(Grantee owns building, leases land.)

THIS RESTRICTIVE COVENANT is hereby entered into this ____ day of _____, 20____, by **Palm Beach County**, hereinafter referred to as "the Land Owner"; **Village of Royal Palm Beach**, hereinafter referred to as "the Grantee;" and the State of Florida, Department of State, Division of Cultural Affairs, hereinafter referred to as the "Division".

WHEREAS, the Land Owner is the fee simple title holder of the land located at **1050 Royal Palm Beach Boulevard, Royal Palm Beach, Florida 33411**. A legal description of the subject property is attached as Exhibit A and is made a part of this covenant.

WHEREAS, the Grantee is the lessee of the land for **15 years**, but owns or will own the building(s) used or to be used as a cultural facility. "Facility" refers herein to the building(s) and associated land to be used as the "cultural facility," as defined herein.

WHEREAS, the Grantee has been approved to receive a Cultural Facilities Grant in the amount of **\$250,000**, to be administered by the Division and used only for the acquisition, renovation, and construction of the cultural facility as required by Section 265.701(1), Florida Statutes.

WHEREAS, the Division has authority under Section 265.701(4), Florida Statutes, to require the recordation of this restrictive covenant to ensure that the facility will be used as cultural facility, as defined herein, for at least ten (10) years following execution of the grant award agreement.

NOW THEREFORE, in partial consideration for the Cultural Facilities Grant and in accordance with Section 265.701(4), Florida Statutes, the Parties agree to the following:

1.) This restrictive covenant shall run with the title to the facility and the associated land, shall encumber them, and shall be binding upon the Grantee, the Land Owner, and their successors in interest for the period of (10) ten years following execution of the grant award agreement.

2.) The grant award shall only be expended for:

Project Title: Veterans Park Amphitheatre (07-9033)

3.) For the required duration of this covenant, the Parties agree that the Grantee shall own all improvements to the facility and to the associated land, funded in whole or in part by grant funds

4.) The Division has the right to inspect the facility and the associated land at all reasonable times to determine whether the conditions of the agreement and this covenant are being complied with.

5.) The facility shall be maintained as a "cultural facility," defined as a building which shall be used primarily for the programming, production, presentation, exhibition or any combination of the above functions of any of the cultural disciplines, such as: music, dance, theatre, creative writing, literature, painting, sculpture, folks arts, photography, crafts, media arts, and historical and science museums."

6.) This restrictive covenant will be violated if the Grantee, the Land Owner, or their successors in interest do not use or cease to use the facility as a cultural facility, as defined herein, within ten (10) years following execution of the grant award agreement as required by Section 265.701(4), Florida Statutes. If the Grantee violates this restrictive covenant, it shall repay the grant funds to the Division pursuant to the amortization schedule set forth below:

- a. If the violation occurs within five (5) years following the execution of the grant award agreement, 100% of the grant amount;
- b. If the violation occurs more than five (5) but less than six (6) years following execution of the grant award agreement, 80% of the grant amount;
- c. If the violation occurs more than six (6) but less than seven (7) years following execution of the grant award agreement, 65% of the grant amount;
- d. If the violation occurs more than seven (7) but less than eight (8) years following execution of the grant award agreement, 50% of the grant amount;
- e. If the violation occurs more than eight (8) but less than nine (9) years following execution of the grant award agreement, 35% of the grant amount; and
- f. If the violation occurs more than nine (9) but less than ten (10) years following execution of the grant award agreement, 20% of the grant amount.

7.) Any amount due from the Grantee as a result of a violation of this restrictive covenant shall be due in full within 90 days of the violation, or some other period of time as agreed upon by the Parties.

8.) If the entire amount due under the paragraph (6) is not repaid by the Grantee within the time allotted, the Parties agree that the Division may obtain a stipulated judgment against the Grantee for the amount due plus interest at the current legal rate, and record it in the public records of the county where the property is located. The Parties further agree that such a judgment shall be a stipulated judgment by virtue of full execution of this restrictive covenant; that it shall not require further approval of the Grantee or the Land Owner to obtain; and that no trial or hearing shall be necessary to make such a stipulated judgment legally effective. Such a stipulated judgment, when recorded, shall be considered a valid lien upon the Grantee's interest in the facility and the leased land, including improvements to the facility and the land, funded in whole or in part by grant funds.

9.) As a condition to receipt of grant funds, the Grantee shall:

- a. Record this covenant in the public records with the Clerk of the Circuit Court of **Palm Beach** County, Florida;
- b. Pay all fees associated with its recording; and
- c. Provide certified copy of the recorded covenant to the Division and to the Land Owner.

10.) The Parties agree that the Division shall incur no tax liability as a result of this covenant.

IN WITNESS WHEREOF, the Grantee and the Land Owner hereby affirm that they have read this restrictive covenant; that they understand and agree to its terms; and that they hereby affix their signatures accordingly.

Florida Department of State
Division of Cultural Affairs
500 S. Bronough Street
Tallahassee, Florida 32399

Louis F. Recchio

Preparer

Village of Royal Palm Beach
1050 Royal Palm Beach Boulevard

Preparer Address

Royal Palm Beach, FL 33411

City

State

Zip

WITNESSES:

John Cronk
First Witness Signature

Robin Cronk
First Witness Name (print)

Jacqueline Dary
Second Witness Signature

Jacqueline Dary
Second Witness Name (print)

PARTIES:

David A. Lodwick
GRANTEE SIGNATURE

David A. Lodwick, Mayor
Village of Royal Palm Beach
GRANTEE NAME (print)

1050 Royal Palm Beach Boulevard
GRANTEE ADDRESS

Royal Palm Beach, FL 33411
City State Zip

The State of Florida
County of FLORIDA Palm Beach

I certify that on this date before me, an officer duly authorized in the state
and county named above to take acknowledgments, that

DAVID A. LODWICK personally
(Name)

appeared as MAYOR for Village of ROYAL PALM BEACH
(Position) (Name of Qualifying Entity)

known to me to be or proved to my satisfaction that
he/she is the person described in and who executed the
foregoing instrument.

Type of Identification Produced

Executed and sealed by me at 1050 Royal Palm Bch, Florida on November
16, 2006.



Notary Public in and for

The State of FLORIDA

My commission expires: 5/19/2010

[SEAL]

First Witness Signature

LAND OWNER SIGNATURE
Addie L. Greene, Chairperson

First Witness Name (print)

Addie L. Greene, Chairperson
LAND OWNER NAME (Print)

Second Witness Signature

301 N. Olive Avenue
LAND OWNER ADDRESS

Second Witness Name (print)

West Palm Beach, FL 33404

City State Zip

APPROVED AS TO FORM AND LEGAL SUFFICIENCY

APPROVED AS TO TERMS AND CONDITIONS

By: _____
Assistant County Attorney

By: Dennis E. Miller
Director,
Parks and Recreation Department

The State of Florida
County of _____

I certify that on this date before me, an officer
duly authorized in the state and county named above to
take acknowledgments, that

_____ personally
(Name)

appeared as _____ for _____
(Position) (Name of Qualifying Entity)

known to me to be or proved to my satisfaction that he/she is the person de-
scribed in and who executed the foregoing instrument.

Type of Identification Produced _____

Executed and sealed by me at _____, Florida on _____

_____.

Notary Public in and for

The State of _____

[SEAL]

My commission expires: _____

First Witness Signature

DIVISION OF CULTURAL AFFAIRS

First Witness Name (Print)

DIV. REPRESENTATIVE NAME (print)

Second Witness Signature

R.A. Gray Building
500 S. Bronough Street
Tallahassee, Florida 32399

Second Witness Name (print)

The State of Florida

County of _____

I certify that on this date before me, an officer
duly authorized in the state and county named above to take acknowledgments, that

_____ personally
(Name)

appeared as _____ for the Florida Department of State, Division of
(Position)

Cultural Affairs known to me to be or proved to my satisfaction that he/she is the
person described in and who executed the foregoing instrument.

Type of Identification Produced _____

Executed and sealed by me at _____, Florida on _____

Notary Public in and for

The State of _____

[SEAL]

My commission expires: _____

SURETY BOND FOR CULTURAL FACILITIES GRANT

1. Any Grantee entering into a Grant Award Agreement with the Division for the acquisition, renovation, or construction of a Cultural Facility that chooses not record a Restrictive Covenant shall purchase a ten-year Surety Bond which shall initiate on the date the Grant Award Agreement is executed.
2. A certified copy of the Bond Agreement shall be provided to the Division prior to the release of the Grant Awards Funds;
3. The Bond Agreement must:
 - a. Provide that the Facility described in Attachment B of the Grant Award Agreement will be used as a Cultural Facility, as defined in Rule 1T-1.001(17)(n), F.A.C., for (10) ten years following the execution of the Grant Award Agreement;
 - b. Be purchased from a surety insurer authorized to do business in the Florida as a surety;
 - c. Provide that a violation of the Bond Agreement shall occur if the Facility ceases to be used as a Cultural Facility as required by Section 265.701(4), F.S., within ten (10) years following the execution of the Grant Award Agreement, and that the surety insurer shall immediately repay funds to the Division, pursuant to the amortization schedule set forth below:
 - 1) If the violation occurs within three (3) years following the execution of the Grant Award Agreement, 100% of the grant amount;
 - 2) If the violation occurs more than three (3) but less than four (4) years following the execution of the Grant Award Agreement, 80% of the grant amount;
 - 3) If the violation occurs more than four (4) but less than five (5) years following the execution of the Grant Award Agreement, 70% of the grant amount;
 - 4) If the violation occurs more than five (5) but less than six (6) years following the execution of the Grant Award Agreement, 60% of the grant amount;
 - 5) If the violation occurs more than six (6) but less than seven (7) years following the execution of the Grant Award Agreement, 50% of the grant amount;

**CONTRACT LANGUAGE
ADDENDUM #3**

The administration of resources awarded by the Department of State to the recipient may be subject to audits and/or monitoring by the Department of State, as described in this section.

MONITORING

In addition to reviews of audits conducted in accordance with OMB Circular A- 133 and Section 215.97, F.S., as revised (see "AUDITS" below), monitoring procedures may include, but not be limited to, on-site visits by Department of State staff, limited scope audits as defined by OMB Circular A-133, as revised, and/or other procedures. By entering into this agreement, the recipient agrees to comply and cooperate with any monitoring procedures/processes deemed appropriate by the Department of State. In the event the Department of State determines that a limited scope audit of the recipient is appropriate, the recipient agrees to comply with any additional instructions provided by the Department of State staff to the recipient regarding such audit. The recipient further agrees to comply and cooperate with any inspections, reviews, investigations, or audits deemed necessary by the Chief Financial Officer (CFO) or Auditor General.

AUDITS

PART I: FEDERALLY FUNDED

This part is applicable if the recipient is a State or local government or a non-profit organization as defined in OMB Circular A-133, as revised.

1. In the event that the recipient expends \$300,000 (*\$500, 000 for fiscal years ending after December 31, 2003*) or more in Federal awards in its fiscal year, the recipient must have a single or program-specific audit conducted in accordance with the provisions of OMB Circular A-133, as revised. EXHIBIT 1 to this agreement indicates Federal resources awarded through the Department of State by this agreement. In determining the Federal awards expended in its fiscal year, the recipient shall consider all sources of Federal awards, including Federal resources received from the Department of State. The determination of amounts of Federal awards expended should be in accordance with the guidelines established by OMB Circular A-133, as revised. An audit of the recipient conducted by the Auditor General in accordance with the provisions OMB Circular A-133, as revised, will meet the requirements of this part.
2. In connection with the audit requirements addressed in Part I, paragraph 1, the recipient shall fulfill the requirements relative to auditee responsibilities as provided in Subpart C of OMB Circular A-133, as revised.
3. If the recipient expends less than \$300,000 (*\$500,000 for fiscal years ending after December 31, 2003*) in Federal awards in its fiscal year, an audit conducted in accordance with the provisions of OMB Circular A-133, as revised, is not required. In the event that the recipient expends less than \$300,000 (*\$500,000 for fiscal years ending after December 31, 2003*) in Federal awards in its fiscal year and elects to have an audit conducted in accordance with the provisions of OMB Circular A-133, as revised, the cost of the audit must be paid from non-Federal resources (i.e., the cost of such an audit must be paid from recipient resources obtained from other than Federal entities).
4. Information related to the requirements of Section 215.97, Florida Statutes, (the Florida Single Audit Act) and related documents may be found at www.fsaa.state.fl.us.

PART II: STATE FUNDED

This part is applicable if the recipient is a nonstate entity as defined by Section 2 15.97(2), Florida Statutes.

1. In the event that the recipient expends a total amount of state financial assistance equal to or in excess of \$500,000 in any fiscal year of such recipient (for fiscal years ending September 30, 2004 or thereafter), the recipient must have a State single or project-specific audit for such fiscal year in accordance with Section 215.97, Florida Statutes; applicable rules of the Department of Financial Services; and Chapters 10.550 (local governmental entities) or 10.650 (nonprofit and for-profit organizations), Rules of the Auditor General. EXHIBIT 1 to this agreement indicates state financial assistance awarded through the Department of State by this agreement. In determining the state financial assistance expended in its fiscal year, the recipient shall consider all sources of state financial assistance, including state financial assistance received from the Department of State, other state agencies, and other nonstate entities. State financial assistance does not include Federal direct or pass-through awards and resources received by a nonstate entity for Federal program matching requirements.
2. In connection with the audit requirements addressed in Part II, paragraph 1, the recipient shall ensure that the audit complies with the requirements of Section 2 15.97(8), Florida Statutes. This includes submission of a financial reporting package as defined by Section 215.97(2), Florida Statutes, and Chapters 10.550 (local governmental entities) or 10.650 (nonprofit and for-profit organizations), Rules of the Auditor General.
3. If the recipient expends less than \$500,000 in state financial assistance in its fiscal year (for fiscal years ending September 30, 2004 or thereafter), an audit conducted in accordance with the provisions of Section 215.97, Florida Statutes, is not required. In the event that the recipient expends less than \$500,000 in state financial assistance in its fiscal year and elects to have an audit conducted in accordance with the provisions of Section 215.97, Florida Statutes, the cost of the audit must be paid from the nonstate entity's resources (i.e., the cost of such an audit must be paid from the recipient's resources obtained from other than State entities).
4. Information related to the requirements of Section 215.97, Florida Statutes, (the Florida Single Audit Act) and related documents may be found at www.fsaa.state.fl.us.

PART III: OTHER AUDIT REQUIREMENTS

If the recipient expends less than \$500,000 in state financial assistance in its fiscal year, it is not required to have an audit conducted in accordance with the provisions of Section 215.97, Florida Statutes; however, the recipient will be required by the Department of State to submit other financial information as required by the terms of the Grant Award Agreement or required by Florida law.

PART IV: REPORT SUBMISSION

1. Copies of reporting packages for audits conducted in accordance with OMB Circular A-133, as revised, and required by PART I of this agreement shall be submitted, when required by Section .320 (d), OMB Circular A-133, as revised, by or on behalf of the recipient directly to each of the following:
 - A. The Department of State at each of the following addresses:

Department of State
Division of Cultural Affairs
R. A. Gray Building, 3rd Floor
500 South Bronough Street
Tallahassee, FL 32399-0250

- B. The Federal Audit Clearinghouse designated in OMB Circular A-133, as revised (the number of copies required by Sections .320 (d)(1) and (2), OMB Circular A-133, as revised, should be submitted to the Federal Audit Clearinghouse), at the following address:

Federal Audit Clearinghouse Bureau
of the Census
1201 East 10th Street
Jeffersonville, IN 47132

- C. Other Federal agencies and pass-through entities in accordance with Sections .320 (e) and (f), OMB Circular A- 133, as revised.

2. In the event that a copy of the reporting package for an audit required by PART I of this agreement and conducted in accordance with OMB Circular A- 133, as revised, is not required to be submitted to the Department of State for the reasons pursuant to Section .320 (e)(2), OMB Circular A-133, as revised, the recipient shall submit the required written notification pursuant to Section .320 (e)(2) and a copy of the recipient's audited schedule of expenditures of Federal awards directly to each of the following:

Department of State
Division of Cultural Affairs
R. A. Gray Building, 3rd Floor
500 South Bronough Street
Tallahassee, FL 32399-0250

3. Copies of financial reporting packages required by PART II of this agreement shall be submitted by or on behalf of the recipient directly to each of the following:

- A. The Department of State at each of the following addresses:

Department of State
Division of Cultural Affairs
R. A. Gray Building, 3rd Floor
500 South Bronough Street
Tallahassee, FL 32399-0250

- B. The Auditor General's Office at the following address:

Auditor General's Office Room 401,
Pepper Building 111 West Madison
Street Tallahassee, Florida 32399-1450

4. Copies of reports or the management letter required by PART III of this agreement shall be submitted by or on behalf of the recipient directly to:

- A. The Department of State at each of the following addresses:

Department of State
Division of Cultural Affairs
R. A. Gray Building, 3rd Floor
500 South Bronough Street
Tallahassee, FL 32399-0250

5. Any reports, management letter, or other information required to be submitted to the Department of State pursuant to this agreement shall be submitted timely in accordance with OMB Circular A-133, Florida Statutes, and Chapters 10.550 (local governmental entities) or 10.650 (nonprofit and for-profit organizations), Rules of the Auditor General, as applicable.

6. Recipients, when submitting financial reporting packages to the Department of State for audits done in accordance with OMB Circular A- 133 or Chapters 10.550 (local governmental entities) or 10.650 (nonprofit and for-profit organizations), Rules of the Auditor General, should indicate the date that the reporting package was delivered to the recipient in correspondence accompanying the reporting package.

PART V: RECORD RETENTION

1. The recipient shall retain sufficient records demonstrating its compliance with the terms of this agreement for a period of five (5) years from the date the audit report is issued, and shall allow the Department of State, or its designee, CFO, or Auditor General access to such records upon request. The recipient shall ensure that audit working papers are made available to the Department of State, or its designee, CFO, or Auditor General upon request for a period of five (5) years from the date the audit report is issued, unless extended in writing by the Department of State.

EXHIBIT – 1

FEDERAL RESOURCES AWARDED TO THE RECIPIENT PURSUANT TO THIS AGREEMENT CONSIST OF THE FOLLOWING:

N/A

COMPLIANCE REQUIREMENTS APPLICABLE TO THE FEDERAL RESOURCES AWARDED PURSUANT TO THIS AGREEMENT ARE AS FOLLOWS:

NOTE: If the resources awarded to the recipient represent more than one Federal program, list applicable compliance requirements for each Federal program in the same manner as shown below.

Federal Program:

N/A

STATE RESOURCES AWARDED TO THE RECIPIENT PURSUANT TO THIS AGREEMENT CONSIST OF THE FOLLOWING:

MATCHING RESOURCES FOR FEDERAL PROGRAMS:

N/A

SUBJECT TO SECTION 215.97, FLORIDA STATUTES:

N/A

State Project Department of State CSFA No. 45.041 Cultural Facilities Program
Grant Number: **07-9033**, for the project "**Veterns Park Amphitheatre**," Grant Award: **\$250,000**.

COMPLIANCE REQUIREMENTS APPLICABLE TO STATE RESOURCES AWARDED PURSUANT TO THIS AGREEMENT ARE AS FOLLOWS:

The compliance requirements of this state project may be found in Part Six (Guidance for Auditing Projects Not Included in the Compliance Supplement) of the State Projects Compliance Supplement located at www.fsaa.state.fl.us.

NOTE: Section .400(d) of OMB Circular A-133, as revised, and Section 2 15.97(5), Florida Statutes, require that the information about Federal Programs and State Projects included in Exhibit 1 be provided to the recipient.

DIVISION OF CULTURAL AFFAIRS
CULTURAL FACILITIES PROGRAM

R. A. Gray Building, 3rd Floor
500 South Bronough Street
Tallahassee, FL 32399-0250
850/245-6483

REQUEST FOR WARRANT

To: **Village of Royal Palm Beach**
a) Name of Payee

1050 Royal Palm Beach Boulevard
Royal Palm Beach, FL 33411
b) Address

c) **ATTN: Mr. Lou Recchio**

d) Grant Number: 07-9033

e) Federal Employer ID Number: 59-1082903

f) Total Grant Amount \$250,000

g) Prior Payments _____

h) Balance to Date _____

i) THIS PAYMENT _____

j) Balance Remaining _____

(DCA use only)

Fund ID			Category	
Enc.#			Pay. #	
Vendor ID		Inv.#		
59-1082903				
ORG	EO	OBJECT	CFI	AMOUNT
Description			CS	
BF ORG		BF EO	BF Obj	
Date Inv. Rc'd		Date Goods Insp. -----	BF Cat	
Date Goods Rc'd -----		Start Date 00000000		

STATE GRANT FUNDS EXPENDITURE LOG: Keep track of state grant expenditures as they are made! This is a cumulative record and should be submitted with all Reports. You are responsible for the documentation of all state grant expenditures. List ONLY those expenditures that were paid with grant funds. Duplicate the form as necessary.

On-site grant compliance reviews conducted over the last few years have revealed that grantees are having difficulty in producing internal records to substantiate the grant expenses reported to the Division. In most cases this is due to failure of their accounting system to provide for accumulation of grant related costs. The following is a simple tracking log to assist you in keeping grant financial records in the level of detail required by your grant agreements. This sample format should be easy to duplicate on your own computer tracking systems. *If you choose not to use a separate tracking document, or one of your own design, be certain you will be able to provide this level of detail when requested by Division staff.*

[illegible]



Division of Cultural Affairs
500 S. Bronough Street, 3rd Floor
Tallahassee, FL 32399-0250

Grant # _____

Assurance of Compliance and Signature Authorization Form

- By signing this form, the Grantee certifies that the documents enclosed in the Grant Award package have been read and fully understood.
- The Grantee is required to comply with all terms and conditions outlined in the documents referred to above. The undersigned assures compliance on behalf of the Grantee. This compliance includes assurance that adequate procedures will be in place to collect statistical information required for reporting purposes in the most accurate and reliable method possible.
- These Authorized Officials have the authority to enter into contractual agreements on behalf of the organization. Only those individuals signing below or their successors of similar rank may sign other documents relating to this grant.

1)

TITLE of organization head authorized to enter into
contractual agreements for the organization.

SIGNATURE

TYPED NAME OF AUTHORIZING OFFICIAL

DATE

2)

TITLE of Official with delegated authority in the
absence of official listed in #1 above.

SIGNATURE

TYPED NAME OF DELEGATED OFFICIAL

DATE

- 3) Confirmation of Grant Contact Person: Please note the name of the grant contact person as in grant award letter. Is this person still the contact person for this YES _____ NO _____
If No, please indicate new contact person: Check one:

Mr. _____ Mrs. _____ Ms. _____ Dr. _____

TYPED NAME OF GRANT CONTACT PERSON

SIGNATURE

DATE

Should the former contact person be deleted from other current grant _____ NO _____

- 4) Confirmation of address: Please note the address as it appears on the award letter. Is this the address? YES _____ NO _____ If NO, indicate new address:

(Name of Organization)

(Street)

(City)

(Zip)

SCHEDULE OF EXPENSES AND INCOME
(in accordance with project budget in the Grant Award Agreement: Attachment A)

A. EXPENSES (Actually PAID, not projected or encumbered.

	MATCH	STATE
LAND ACQUISITION*	_____	_____
BUILDING ACQUISITION*	_____	_____
ARCHITECTURAL SERVICES	_____	_____
GENERAL REQUIREMENTS	_____	_____
SITE CONSTRUCTION	_____	_____
CONCRETE	_____	_____
MASONRY	_____	_____
METALS	_____	_____
WOOD AND PLASTIC	_____	_____
THERMAL AND MOISTURE PROTECTION	_____	_____
DOORS AND WINDOWS	_____	_____
FINISHES	_____	_____
SPECIALTIES	_____	_____
EQUIPMENT	_____	_____
FURNISHINGS	_____	_____
SPECIAL CONSTRUCTION	_____	_____
CONVEYING SYSTEMS	_____	_____
MECHANICAL	_____	_____
ELECTRICAL	_____	_____
 SUBTOTALS OF EXPENSES	 _____	 _____
 TOTAL PROJECT EXPENDITURES: MATCH+STATE	 _____	 _____

B. INCOME (Actually RECEIVED to date)
CULTURAL FACILITIES PROGRAM (This Grant)
MATCHING FUNDS

Total Private Support (Cash)	_____
Total In-Kind Private Support	_____
Corporate Support (Cash)	_____
Total In-Kind Corporate Support	_____
Total Local Government Support (Cash)	_____
Total In-Kind Government Support	_____
Total Federal Government Support (Cash)	_____
Total In-Kind Federal Government Support	_____
Applicant Cash	_____

TOTAL MATCH

TOTAL PROJECT INCOME (match + grant request)

SIGNATURES

I affirm, under penalty of perjury, that this report presents an accurate and complete description of the grant financial activity.

_____ Signature of Authorized Official (Must also appear on Assurance of Compliance and Signature Authorization Form filed with the Division)	_____ Typed Name and Title
---	--------------------------------------

Date



Address 1036 Royal Palm Beach Blvd
West Palm Beach, FL 33411

