Agenda Item #: 3.M.7.

### **PALM BEACH COUNTY BOARD OF COUNTY COMMISSIONERS**

### **AGENDA ITEM SUMMARY**

Meeting Date: January 9, 2007

[X] Consent [] Ordinance [] Regular

[] 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 to approve: A) Tri-party Agreement with the Village of Wellington and Cultural Trust of the Palm Beaches, Inc. for the period January 9, 2007, through January 9, 2009, in an amount not-to-exceed \$1,000,000 for funding of the Cultural Trust Outdoor Entertainment Pavilion; and B) Budget Transfer of \$1,000,000 within the \$25M GO Parks and Cultural Improvements Bond Fund - 2005 to Cultural Trust Outdoor Entertainment Pavilion.

Summary: This Agreement provides funding for construction of the Cultural Trust Outdoor Entertainment Pavilion to Cultural Trust of the Palm Beaches, Inc., which leases property on which the entertainment pavilion will be constructed from the Village of Wellington. Project elements include the construction of an amphitheater with dressing rooms, restrooms, infrastructure for future second story and kitchen expansion, parking, landscaping, and site work. Funding is from the 2002 \$50 Million Recreation and Cultural Facilities Bond referendum. District 6 (PK)

Background and Justification: On November 5, 2002, a bond referendum was passed by the voters of Palm Beach County in the amount of \$50 Million for the issuance of general obligation bonds for the purpose of financing the acquisition, construction of, and/or improvements to certain recreation and cultural facilities. This project represents one such recreation/cultural project.

Cultural Trust of the Palm Beaches, Inc. plans to design, build and operate an outdoor entertainment pavilion in the Village of Wellington that will serve as an amphitheater, classrooms, and concert hall as well as supporting a small administrative wing. The 11,000 square foot facility will feature six dressing rooms with restrooms, sound/lighting space, a 3,400 square foot stage with loading and storage space, and restrooms for patrons. An access road will lead in from the main road allowing trucks to load in all production needs and guests will have an additional road for access to programs. The amphitheater will serve 2,500 patrons for such performances as concerts, dance, film, opera, jazz festivals, and other events. Programming will be offered year-round.

The specified completion date for construction and submission of reimbursement documentation for the project is January 9, 2009. The term of the Agreement is until January 9, 2039, which is the standard 30 year term for Bond Agreements. Because of severe cash flow issues on the part of Cultural Trust, the Agreement allows for County payment to Cultural Trust of invoices stamped "approved" by Cultural Trust for the first 90% of expenses incurred, rather than paying on a reimbursement basis as in standard Bond Agreements. The final 10%, however, will be paid to Cultural Trust on a reimbursement basis upon project completion, as is the standard County practice for Bond projects. The Agreement has been executed by the Village of Wellington and Cultural Trust of the Palm Beaches, Inc., and now needs to be approved by the Board of County Commissioners.

### Attachments:

- 1. Triparty Agreement
- 2. Budget Transfer

Recommended by: Immi Julianum	12/7/06
Department Director	Date
Approved by: Shann & Ry	12/27/06
Assistant County Administrator	Date /

### II. FISCAL IMPACT ANALYSIS

A. Five Year Summar	of Fiscal Im	pact:			
Fiscal Years	2007	2008	2009	2010	2011
Capital Expenditures Operating Costs External Revenues Program Income (County In-Kind Match (County)	-0- 1,000,000 -0- -0- -0-	-0- -0- -0- -0-	-0- -0- -0- -0-	-0- -0- -0- -0-	-0- -0- -0- -0-
NET FISCAL IMPACT	1,000,000	0-	0	<u>-0-</u>	0
# ADDITIONAL FTE POSITIONS (Cumulative)		· .			
Is Item Included in Currer Budget Account No.:		Department	No <u>X</u> Unit		
B. Recommended So	urces of Fund	ls/Summary	of Fiscal Impa	ct:	
\$25M GO 05 Parks	& Cultural Imp	<u>rvmts</u>			
3020-821-9817-990	8	Reserves-l	New Projects	\$1,000,000	
C. Departmental Fisca		ckopela			
	<u>III. R</u>	EVIEW CON	<u>IMENTS</u>		
A. OFMB Fiscal And/C	or Contract De	evelopment a	ind Control Co	mments:	
OFMB 12-BL Legal Sufficiency:	19-06 ON 12/11	1420	Contract Devel	t complies with our	<u> 12/21/00</u> trol
0.15	٠. /	60	contract revi	ew requirements.	
Assistant County Attorney	1 12/22	106			
C. Other Departmenta	l Review:				

REVISED 09/2003 ADM FORM 01

(THIS SUMMARY IS NOT TO BE USED AS A BASIS FOR PAYMENT.)

G:\SYINGER\Bond2002\FWCCA - Cultural Center at Wellington Green Mall\agd.doc

### **BOARD OF COUNTY COMMISSIONERS** PALM BEACH COUNTY, FLORIDA **BUDGET TRANSFER**

Page 1 of 1

BGEX 581 120506\*600

FUND 3020 - 25M GO 05, Parks & Cultural imprvmts

ACCT NUMBER ACCOUNT NAME	ORIGINAL BUDGET	CURRENT BUDGET	INCREASE	DECREASE	ADJUSTED BUDGET	EXPENDED/ ENCUMBERED AS OF 12/05/06	REMAINING BALANCE
					·		
Cultural Trust Outdoor Entertainment Pavilion 3020-581-P578-8201 Contributions-Non-Govts Agnces	0	0	1,000,000		1,000,000	0	1,000,000
Reserves - Fund 3020 3020-821-9817-9908 Res- New Projects	15,840,445	10,280,445		1,000,000	9,280,445	0	9,280,445
TOTAL			1,000,000	1,000,000			

	Signatures	Date
Parks and Recreation Department INITIATING DEPARTMENT/DIVISION	Denis / se	12/7/06
Administration/Budget Department Approval		
OFMB Department - Posted		

**By Board of County Commissioners** At Meeting of January 9, 2007 **Deputy Clerk to the Court** 

## AGREEMENT BETWEEN PALM BEACH COUNTY, THE VILLAGE OF WELLINGTON, AND CULTURAL TRUST OF THE PALM BEACHES, INC. FOR THE CULTURAL TRUST OUTDOOR ENTERTAINMENT PAVILION

THIS AGREEMENT is made and entered into on \_\_\_\_\_\_, by and between PALM BEACH COUNTY, a political subdivision of the State of Florida, hereinafter referred to as "COUNTY", the Village of Wellington, a Florida municipal corporation, hereinafter referred to as MUNICIPALITY, and Cultural Trust of the Palm Beaches, Inc., a Florida not-for-profit corporation authorized to do business in the State of Florida, hereinafter referred to as "AGENCY".

#### WITNESSETH:

WHEREAS, MUNICIPALITY owns property located at 1275 Wellington Green Drive, Wellington, Florida 33414, which it leases to AGENCY under a long term lease; and

WHEREAS, AGENCY desires to design and construct the Cultural Trust Outdoor Entertainment Pavilion, hereinafter referred to as "the Project" at said location; and

WHEREAS, AGENCY has asked COUNTY to financially participate in the design and construction of said project; and

WHEREAS, on November 5, 2002, a bond referendum was passed by the voters of Palm Beach County for the issuance of general obligation bonds for the purpose of financing the acquisition, construction, and/or improvements to certain recreation and cultural facilities, in the principal amount of \$50 Million "the \$50 Million Recreation and Cultural Facilities Bond"); and

WHEREAS, COUNTY has approved a recreation and cultural facilities project list and proposed funding allocations for the \$50 Million Recreation and Cultural Facilities Bond; and

WHEREAS, the Project represents one such recreation/cultural project; and

WHEREAS, AGENCY desires to operate and maintain the Project upon its completion; and

WHEREAS, the Project shall be open to and benefit all residents of Palm Beach County; and

**WHEREAS**, all parties desire to increase the recreational and cultural opportunities for residents of Palm Beach County and to enter into this Agreement.

**NOW, THEREFORE,** in consideration of the mutual covenants, promises and representations contained herein, the parties hereto agree as follows:

### **ARTICLE 1: GENERAL**

Section 1.01 The foregoing recitals are true and correct and are incorporated herein as if fully set forth.

<u>Section 1.02</u> The purpose of this Agreement is to enhance recreational and cultural opportunities for use by the public and thereby provide a mechanism for COUNTY to assist AGENCY in the funding of the Project.

Section 1.03 COUNTY will pay to AGENCY a total amount not to exceed \$1,000,000 for the design and construction of the Project as more fully described in the Project Description, Conceptual Site Plan, and Cost Estimate attached hereto and made a part hereof as Exhibit "A". AGENCY recognizes that COUNTY's funding of the Project is being paid from the proceeds of tax-exempt bonds issued by COUNTY. AGENCY agrees to provide COUNTY with a certification, in a form acceptable to COUNTY, from AGENCY's chief financial officer or independent accountant that each cost item for which COUNTY funding is requested under Article 3 of this Agreement constitutes a capital expenditure. In that regard, an item is considered a capital expenditure where the item has a useful life and benefit beyond one year or extends the Project's use beyond one year.

<u>Section 1.04</u> The parties agree that COUNTY shall provide its portion of the funding only after the AGENCY has demonstrated that it has sufficient funding to complete the project and to satisfy the conditions of Section 3.03 related to retainage.

Section 1.05 COUNTY's representative during the design and construction of the Project shall be the Director of Parks and Recreation, Palm Beach County Parks and Recreation Department, telephone no. (561) 966-6685. AGENCY's representative during the construction of the Project shall be Manuel Bornia, CEO, Cultural Trust of the Palm Beaches, Inc., at telephone no. 561-333-4948.

<u>Section 1.06</u> AGENCY shall design and construct the Project upon property leased by AGENCY as more fully described in Exhibit "B" attached hereto and made a part hereof.

<u>Section 1.07</u> AGENCY shall utilize its procurement process for all design and construction services required for the Project. Said procurement process shall be consistent with all federal, state and local laws, rules and regulations. COUNTY shall have no contractual obligation to any person retained by AGENCY with regard to the Project. Any dispute, claim, or liability that may arise as a result of AGENCY's procurement is solely the responsibility of AGENCY and AGENCY hereby holds COUNTY harmless for same to the extent permitted by law.

### **ARTICLE 2: DESIGN AND CONSTRUCTION**

<u>Section 2.01</u> AGENCY shall be responsible for the design and construction of the Project. AGENCY shall design and construct the Project in accordance with Exhibit "A", attached hereto and made a part hereof, and with all applicable federal, state and local laws, rules and regulations.

<u>Section 2.02</u> Prior to or upon execution of this Agreement by the parties hereto, AGENCY shall initiate its procurement process to select the necessary professional engineer and/or architect to perform all engineering and/or architectural design work, including, but not limited to, the preparation of plans, permits and specifications necessary for the design and construction of the Project.

Section 2.03 AGENCY shall provide a copy of the engineer's and/or architect's programming phase documents (i.e., site plan, floor plan, elevations, etc.) to COUNTY's Representative for review. COUNTY's Representative shall review said programming phase documents to ensure consistency with the intent of this Agreement.

Section 2.04 AGENCY shall be responsible for securing all permits and approvals necessary to construct the Project.

<u>Section 2.05</u> Prior to AGENCY commencing construction of the Project, AGENCY shall provide a copy of all plans and specifications, along with the associated costs thereof, to COUNTY's Representative for review to ensure consistency with the intent of this Agreement.

<u>Section 2.06</u> AGENCY agrees to totally complete the Project and open same to the public for its intended use within thirty six (36) months from the date of execution of this Agreement by the parties hereto. Upon notification to COUNTY at least ninety (90) days prior to that date, AGENCY may request an extension beyond this period for the purpose of completing the Project. COUNTY shall not unreasonably deny AGENCY's request for said extension.

Section 2.07 AGENCY shall submit quarterly project status reports to COUNTY's Representative on or before January 10, April 10, July 10, and October 10 during the design and construction of the Project. These Quarterly reports shall include but not be limited to, a summary of the work accomplished, problems encountered, percentage of completion, and other information as deemed appropriate by COUNTY's Representative.

#### **ARTICLE 3: FUNDING**

Section 3.01 The total not to exceed amount as set forth in Section 1.03 hereinabove shall be paid by COUNTY to AGENCY in accordance with the fiscal procedures of COUNTY for actual costs for authorized design and construction services, upon submission of proper invoices by AGENCY to the Director of Parks and Recreation, after determination by the Director that the AGENCY has incurred eligible design and construction services expenses in the designated amounts for work as described in the contract and Exhibit A and that such work covered by the invoices has been provided to the satisfaction of the COUNTY. Each invoice submitted by the AGENCY shall be itemized in sufficient detail for audit thereof, and shall be supported by copies of corresponding vendor invoices and proof of performance of the invoiced design and construction services. Any expenses incurred in connection with the Project in excess of the amounts authorized by this Contract and Exhibit A shall be the sole responsibility of the AGENCY. Should the projected total cost of the Project exceed the total amount as authorized by this Contract, the AGENCY shall obtain and expend the excess funds required for completion of the Project.

Section 3.02 AGENCY may bill the COUNTY no more frequently than monthly. For each requested payment, AGENCY shall provide to COUNTY's representative a fully completed and executed Contract Payment Request Form and a Contractual Services Purchase Schedule Form, attached hereto and made a part hereof as Exhibit "C". Said forms shall include information listing each invoice received and approved by AGENCY and shall include the vendor invoice number; invoice date; and the amount of each invoice. AGENCY shall attach original copies of each vendor invoice approved for payment by AGENCY. Vendor invoices approved for payment by AGENCY shall be clearly stamped "APPROVED FOR PAYMENT" and signed and dated by AGENCY's Project Administrator or Project Financial Officer. Additionally, to insure timely payment of contractors and vendors, AGENCY shall provide with each payment request, documentation sufficient to establish that all invoices submitted to COUNTY in the previous billing period were paid in full consistent with COUNTY approvals. Failure to provide proof of payment will result in adjustment of subsequent or final payment.

Section 3.03 COUNTY shall retain not less than ten percent (10%) of the total amount allocated to AGENCY for the Project until AGENCY completes the Project and provides COUNTY with either a Certificate of Occupancy or a Project Completion Certification as determined by COUNTY, and COUNTY receives and approves all documentation as required in accordance with this Agreement. COUNTY's representative shall visit the Project site to verify and approve said final reimbursement. The COUNTY shall not release the retainage amount without sufficient documentation to establish that AGENCY has made payment for qualified services in an amount equal to or exceeding the total payment amount committed by the COUNTY.

<u>Section 3.04</u> AGENCY shall provide a final invoice to COUNTY no later than ninety (90) days following completion of the Project and provision of either a Certificate of Occupancy or Project Completion Certification to COUNTY.

<u>Section 3.05</u> For construction projects fully funded by COUNTY, no more than 10% of COUNTY's funding for the project shall be used for design and engineering costs for the project and be eligible for reimbursement under this Agreement. For construction projects not fully funded by COUNTY, all design and engineering costs associated with the project shall be borne by AGENCY, and will not be eligible for reimbursement from COUNTY.

### ARTICLE 4: OWNERSHIP, OPERATION AND MAINTENANCE OF THE PROJECT

<u>Section 4.01</u> Upon completion, the Project shall remain the leased property of AGENCY. COUNTY shall not be required to pay AGENCY any additional funds for any other capital improvement required by or of AGENCY.

<u>Section 4.02</u> AGENCY hereby warrants and represents that it has full legal authority and financial ability to operate and maintain said Project. AGENCY shall be responsible for all costs, expenses, fees and charges, and liability related to the operation and maintenance of the Project.

<u>Section 4.03</u> AGENCY and MUNICIPALITY shall operate and maintain the Project for its intended use by the general public for a term of thirty (30) years from the execution of this Agreement by the parties hereto. AGENCY shall maintain the Project in accordance with industry standards for such facilities to prevent undue deterioration and to encourage public use.

<u>Section 4.04</u> The rights and duties arising under this Agreement shall inure to the benefit of and be binding upon the parties hereto and their respective successors and assigns. AGENCY and MUNICIPALITY may not assign this Agreement or any interest hereunder without the express prior written consent of COUNTY.

Section 4.05 It is the intent of COUNTY to issue this funding assistance to AGENCY for the purpose set forth hereinabove. In the event AGENCY or MUNICIPALITY transfers ownership of the Project to a party or parties not now a part of this Agreement, other than another governmental entity that agrees to assume, in writing, AGENCY's obligations hereunder, COUNTY retains the right to reimbursement from AGENCY for its participation to the full extent of the funding assistance awarded to accomplish the Project. Should AGENCY transfer management of the project to a party or parties not now a part of this Agreement, AGENCY shall continue to be responsible for the liabilities and obligations as set forth herein. Further, AGENCY or MUNICIPALITY shall not transfer management of the Project to a third party without the written consent of COUNTY.

### **ARTICLE 5: USE OF THE PROJECT**

<u>Section 5.01</u> AGENCY warrants that the Project shall serve a public recreational or cultural purpose and be open to and benefit all residents of Palm Beach County and shall be available thereto on the same cost and availability basis. AGENCY shall not discriminate on the basis of race, color, sex, national origin, age, disability, religion, ancestry, marital status or sexual orientation with respect to use of the Project.

<u>Section 5.02</u> The term of this Agreement shall be for a period of thirty (30) years commencing upon the date of execution of this Agreement by the parties hereto. AGENCY shall restrict its use of the

Project to recreational, cultural, civic, community and social purposes only unless otherwise agreed to in writing by the parties hereto.

<u>Section 5.03</u> AGENCY shall affix a permanent plaque or marker in a prominent location at the completed Project indicating that COUNTY was a contributor to the development of the Project. Said plaque or marker shall include the COUNTY seal and a list of County Commissioners, unless otherwise directed by COUNTY's Representative.

### **ARTICLE 6: ACCESS AND AUDITS**

AGENCY shall maintain adequate records to justify all charges, expenses, and costs incurred in estimating and performing the acquisition/design/construction of the Project for at least five (5) years after the end of the fiscal year in which the final payment is released by COUNTY, except that such records shall be retained by AGENCY until final resolution of matters resulting from any litigation, claim, or special audit that starts prior to the expiration of the five (5) year period. COUNTY reserves the right, upon reasonable request and during normal business hours, to inspect said Project and shall have access to such books, records, and documents as required in this section for the purpose of inspection or audit.

#### **ARTICLE 7: NOTICES**

Any notice given pursuant to the terms of this Agreement shall be in writing and hand delivered or sent by Certified Mail, Return Receipt Requested. All notices shall be addressed to the following:

#### As to COUNTY:

Director of Parks and Recreation Palm Beach County Parks and Recreation Department 2700 Sixth Avenue South Lake Worth, FL 33461

With a Copy to:

County Attorney 301 North Olive Avenue, Suite 601 West Palm Beach, FL 33401

As to MUNICIPALITY:

Village Manager Village of Wellington 14000 Greenbriar Boulevard Wellington, FL 33414

As to AGENCY:

CEO Cultural Trust of the Palm Beaches 10300 W Forest Hill Boulevard, Suite 220A Wellington, FL 33414

#### **ARTICLE 8: TERMINATION FOR NON-COMPLIANCE**

COUNTY may terminate this Agreement upon written notice to AGENCY and MUNICIPALITY for non-compliance by AGENCY in the performance of any of the terms and conditions as set forth herein and where AGENCY does not cure said non-compliance within ninety (90) days of receipt of written notice from COUNTY to do so. Further, if AGENCY does not cure said non-compliance within the time frame specified above, then upon written notice, COUNTY may require AGENCY to reimburse any funds provided to AGENCY pursuant to this Agreement either in whole or in part once COUNTY has reasonably determined that no other remedy is available.

### **ARTICLE 9: REMEDIES**

This Agreement shall be governed by the laws of the State of Florida. Any and all legal action necessary to enforce the Agreement will be held in Palm Beach County. No remedy herein conferred upon any party is intended to be exclusive of any other remedy, and each and every such remedy shall be cumulative and shall be in addition to every other remedy given hereunder or now or hereafter existing at law or in equity or by statute or otherwise. No single or partial exercise by any party of any right, power, or remedy hereunder shall preclude any other or further exercise thereof. The parties hereto may pursue any and all actions available under law to enforce this Agreement including, but not limited to, actions arising from the breach of any provision set forth herein.

### **ARTICLE 10: INDEMNIFICATION**

It is understood and agreed that AGENCY is merely a recipient of COUNTY funding and is an independent contractor and is not an agent, servant or employee of COUNTY or its Board of County Commissioners or of the MUNCIPALITY. In the event a claim or lawsuit is brought against COUNTY or any of its officers, agents or the MUNICIPALITY, AGENCY shall indemnify, save and hold harmless and defend COUNTY and MUNICIPALITY, their officers, agents, and/or employees from and against any and all claims, liabilities, losses, judgments and/or causes of action of any type arising out of or relating to any intentional or negligent act or omission of AGENCY, its agents, servants and/or employees in the performance of this Agreement.

### **ARTICLE 11: INSURANCE**

- A. AGENCY shall, at its sole expense, agree to maintain in full force and effect at all times during the life of this Contract, insurance coverages and limits (including endorsements), as described herein. The requirements contained herein, as well as COUNTY's review of acceptance of insurance maintained by AGENCY are not intended to and shall not in any manner limit or qualify the liabilities and obligations assumed by AGENCY under the contract.
- B. <u>Commercial General Liability</u>. AGENCY shall maintain Commercial General Liability at a limit of liability not less than \$500,000 Each Occurrence. Coverage shall not contain any endorsement excluding Contractual Liability or Cross Liability unless granted in writing by COUNTY's Risk Management Department. AGENCY shall provide this coverage on a primary basis.
- C. <u>Business Automobile Liability</u>. AGENCY shall maintain Business Automobile Liability at a limit of liability not less than \$500,000 Each Occurrence for all owned, non-owned and hired automobiles. In the event AGENCY doesn't own any automobiles, the Business Auto Liability requirement shall be amended allowing AGENCY to agree to maintain only Hired & Non-Owned Auto Liability. This amended requirement may be satisfied by way of endorsement to the Commercial General Liability, or separate Business Auto coverage form. AGENCY shall provide this coverage on a primary basis.

- D. <u>Worker's Compensation Insurance & Employers Liability.</u> AGENCY shall maintain Worker's Compensation & Employers Liability in accordance with Florida Statute Chapter 440. AGENCY shall provide this coverage on a primary basis.
- E. <u>Additional Insured.</u> AGENCY shall endorse COUNTY and MUNICIPALITY as an Additional Insured with a CG 2026 Additional Insured Designated Person or Organization endorsement, or its equivalent, to the Commercial General Liability. The Additional Insured endorsement shall read "Palm Beach County Board of County Commissioners, a Political Subdivision of the State of Florida, its Officers, Employees and Agents." AGENCY shall provide the Additional Insured endorsements coverage on a primary basis.
- F. <u>Builder's Risk and Property Insurance</u>. AGENCY agrees to maintain property insurance, which would include builder's risk insurance while the project is in the course of construction in an amount at least equal to the estimated completed project value as well as subsequent modifications of that sum; thereafter, All-Risk property insurance for adequate limits based on AGENCY's replacement cost or probable maximum loss estimates for the perils of either fire, wind, or flood. AGENCY shall agree to be fully responsible for any deductible or self-insured retention.
- G. <u>Umbrella or Excess Liability.</u> If necessary, AGENCY may satisfy the minimum limits required above for either Commercial General Liability, Business Auto Liability, and Employer's Liability coverage under Umbrella or Excess Liability. The Umbrella or Excess Liability shall have an Aggregate limit not less than the highest "Each Occurrence" limit for either Commercial General Liability, Business Auto Liability, or Employer's Liability. COUNTY shall be specifically endorsed as an "Additional Insured" on the Umbrella or Excess Liability, unless the Certificate of Insurance notes the Umbrella or Excess Liability provides coverage on a "Follow-Form" basis.
- H. Waiver of Subrogation. AGENCY hereby waives any and all rights of Subrogation against COUNTY, its officers, employees and agents for each required policy. When required by the insurer, or should a policy condition not permit an insured to enter into a pre-loss agreement to waive subrogation without an endorsement, then AGENCY shall agree to notify the insurer and request the policy be endorsed with a Waiver of Transfer of rights of Recovery Against Others, or its equivalent. This Waiver of Subrogation requirement shall not apply to any policy, which a condition to the policy specifically prohibits such an endorsement, or voids coverage should AGENCY enter into such an agreement on a pre-loss basis.
- I. Certificate(s) of Insurance. Prior to execution of this Agreement by COUNTY, AGENCY shall deliver to COUNTY a Certificate(s) of coverage evidencing that all types and amounts of insurance coverages required by this Contract have been obtained and are in full force and effect. Such Certificate(s) of Insurance shall include a minimum thirty (30) day endeavor to notify due to cancellation or non-renewal of coverage. Certificate holder's address shall read Palm Beach County, c/o Parks and Recreation Department, 2700 Sixth Avenue South, Lake Worth, FL 33461, Attention: Contract/Grant Coordinator.
- J. <u>Right to Review.</u> COUNTY, by and through its Risk Management Department, in cooperation with the contracting/monitoring department, reserves the right to review, modify, reject or accept any required policies of insurance, including limits, coverages, or endorsements, herein from time to time throughout the term of this Contract. COUNTY reserves the right, but not the obligation, to review and reject any insurer providing coverage because of its poor financial condition or failure to operate legally.

- K. AGENCY shall require each Contractor engaged by AGENCY for work associated with this Agreement to maintain:
  - 1. Workers' Compensation coverage in accordance with Florida Statutes including endorsements for U.S. Longshore and Harbor Workers Compensation Act and the Merchant Marine Act (Jones Act) in the event any portion of the scope of services/work occurs over, near, or contiguous to any navigable bodies of water.
  - 2. Commercial General Liability Insurance at not less than \$1,000,000 Each Occurrence. COUNTY shall be named in the coverage as an additional insured.
  - 3. Business Auto Insurance with limits of not less than \$1,000,000 each accident.
  - 4. If the construction work being performed exceeds \$200,000, a payment and performance bond for the total amount of their construction contract, in accordance with Florida Statute 255.05.

### **ARTICLE 12: PUBLIC ENTITY CRIMES**

As provided in Section 287.132-133, Florida Statutes, by entering into this contract or performing any work in furtherance hereof, AGENCY certifies that it, its affiliates, suppliers, subcontractors and consultants who will perform hereunder, have not been placed on the convicted vendor list maintained by the State of Florida Department of Management Service within the 36 months immediately preceding the date hereof. This notice is required by Section 287.133 (3)(a), Florida Statutes.

### **ARTICLE 13: CAPTIONS**

The captions and section designations herein set forth are for convenience only and shall have no substantive meaning.

### **ARTICLE 14: SEVERABILITY**

If any term or provision of this Agreement, or the application thereof to any person or circumstance, shall to any extent be held invalid or unenforceable, the remainder of this Agreement, or the application of such term or provision, to any person or circumstance other than those as to which it is held invalid or unenforceable, shall not be affected, and every other term and provision of this Agreement shall be deemed valid and enforceable to the extent permitted by law.

### **ARTICLE 15: ENTIRETY OF AGREEMENT**

This Agreement represents the entire understanding between COUNTY, MUNICIPALITY, and AGENCY, and supersedes all other negotiations, representations or agreements, either written or oral, relating to this Agreement. None of the provisions, terms and conditions contained in this Agreement may be added to, modified, superseded or otherwise altered, except by written instrument executed by the parties hereto.

### **ARTICLE 16. THIRD PARTY BENEFICIARIES**

This Agreement is made solely and specifically among and for the benefit of the parties hereto, and their respective successors and assigns subject to the express provisions hereof relating to successors and assigns, and no other person shall have any rights, interest, or claims hereunder or be entitled to any benefits under or on account of this Agreement as a third-party beneficiary or otherwise.

**IN WITNESS WHEREOF,** the parties have caused this Agreement to be executed on the day and year first above written.

ATTEST: SHARON R. BOCK CLERK & COMPTROLLER	PALM BEACH COUNTY, FLORIDA BY ITS BOARD OF COUNTY COMMISSIONERS
By: Deputy Clerk	By:Addie L. Greene, Chair <del>man person</del>
ATTEST:	VILLAGE OF WELLINGTON
By: Jwilda Rodlique	By: Secon M. Winkans Mayor
Suffic Call	CULTURAL TRUST OF THE PALM BEACHES, INC. FEI # 65-0695796  By: Timothy A. Fox Name (Type or Print)  Title: Chairman of the Board  By: Signature
APPROVED AS TO TERMS AND CONDITIONS  By:	APPROVED AS TO FORM AND LEGAL SUFFICIENCY  By:
APPROVED AS TO FORM AND LEGAL SUFFICIENCY	APPROVED AS TO FORM AND LEGAL SUFFICIENCY
By: County Attorney	By:Agency Attorney

### **LIST OF EXHIBITS**

Project Description, Conceptual Site Plan, and Cost Estimate **EXHIBIT A** 

**EXHIBIT B** Legal Description of Property

**EXHIBIT C** 

Contract Payment Request Form (Page 1 of 2)and Contractual Services Purchase Schedule Form) (Page 2 of 2)

Pre-Agreement Costs List N/A **EXHIBIT D** 

### EXHIBIT A

### PROJECT DESCRIPTION, COST ESTIMATE, AND CONCEPTUAL SITE PLAN

# 2002 BOND ISSUE RECREATIONAL AND CULTURAL FACILITIES WELLINGTON, FLORIDA

### EXHIBIT A1

### PROJECT DESCRIPTION: OUTDOOR ENTERTAINMENT PAVILION

The Cultural Trust of the Palm Beaches will design, build and operate, a worldclass multi-purpose outdoor entertainment pavilion in the Village of Wellington. This facility will be able to serve as an Amphitheater, classrooms and concert hall as well as supporting a small administrative wing.

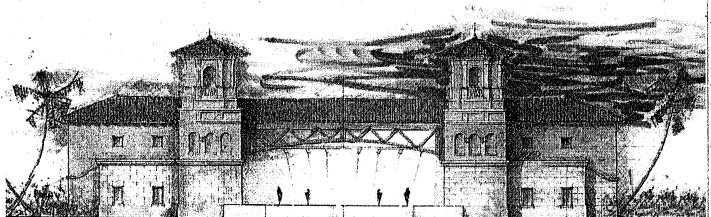
With approximately 11,000 square feet, the facility features 6 dressing rooms with restrooms, sound/lighting space, a 3,400 square foot stage and adequate loading and storage space. An access road will lead in from the main road allowing trucks to load in all production needs and guests will have an additional road for access to programs and general use of the facility. Sidewalks will provide access on the premises and temporary food and restrooms facilities will be brought in for larger events.

2,500 patrons will have the opportunity enjoy programming and performances ranging from a Concert Series, Dance, Film, Opera al Fresco, International Jazz Festival and much more. Programming will be year round, with an emphasis in the months of November through May. Summer programs will be offered for children and adults.

### 2002 BOND ISSUE RECREATIONAL AND CULTURAL FACILITIES WELLINGTON, FLORIDA

EXHIBIT A3

CONCEPTUAL RENDERING: OUTDOOR ENTERTAINMENT PAVILION



REG

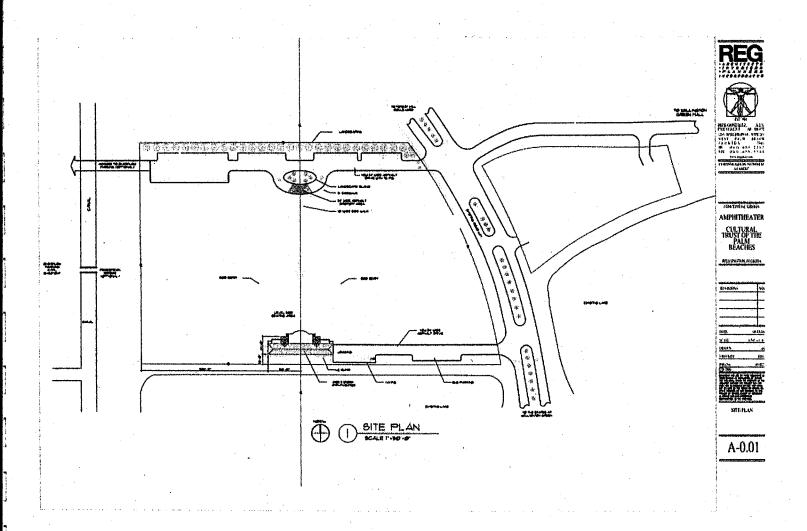
SITI H. W

A-0.01

### 2002 BOND ISSUE RECREATIONAL AND CULTURAL FACILITIES WELLINGTON, FLORIDA

**EXHIBIT A2** 

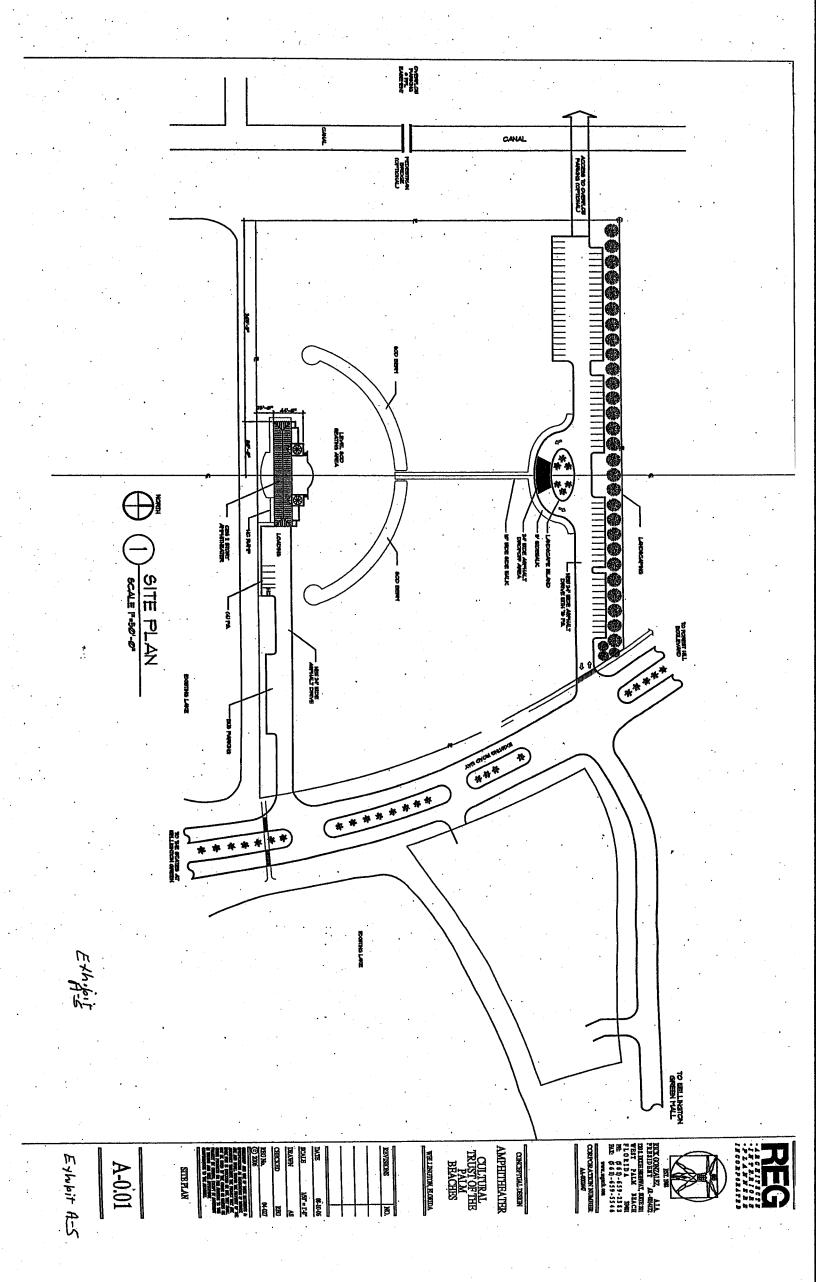
CONCEPTUAL SITE PLAN: OUTDOOR ENTERTAINMENT PAVILION

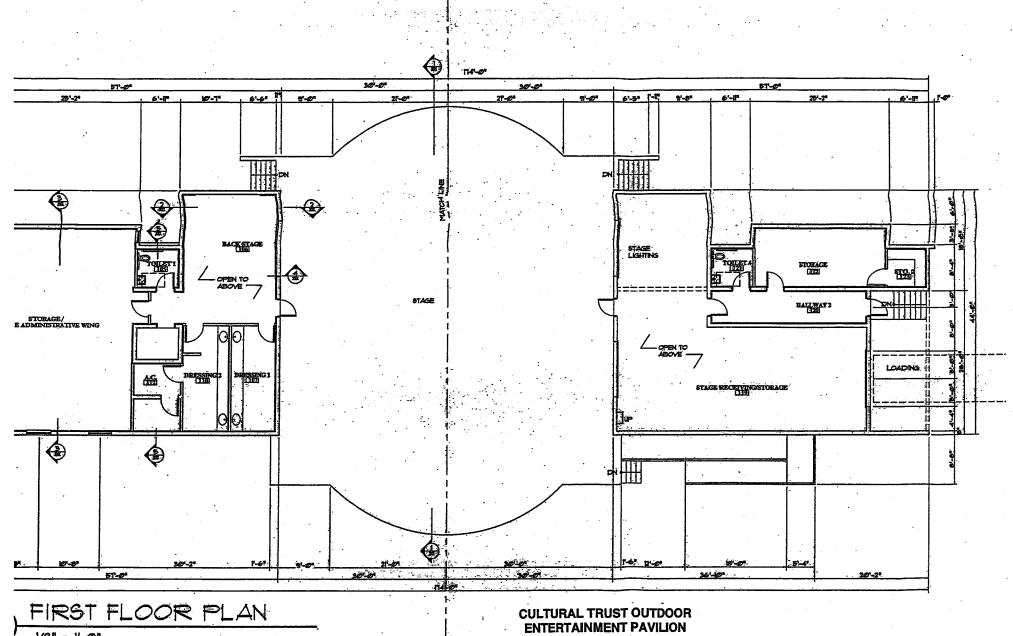


### EXHIBIT A4 COST ESTIMATE: OUTDOOR ENTERTAINMENT PAVILION

These estimates are based on the preliminary plans by REG dated 8/10/06. These estimates allow for the structure to fully function as an Amphitheater and will set the groundwork for future adjacent administrative offices additional dressing rooms on a second story and a future-catering kitchen. All of the infrastructure for potential future expansion to the buildings second story will be in place such as the elevator shaft and plumbing. First floor dressing rooms and two restrooms will be finished providing plenty of useable restroom facilities. Site development included basic drainage, landscaping and irrigation are all included.

Structure	Detail	Square Feet	Cost per sq. ft.	Total
Structure		A PEC		A A COL
i diciolationer	•			
	Stage Left	1537	\$75.00	\$115,275.00
	Stage Right	1977	\$75.00	\$148,275.00
er (Systatopytál	otage riight	13,,	4,5.55	<b>4</b> - 10/21010
Hillian				
	Total Area	1170	\$60.00	\$70,200.00
16X412411411441	(			
	Stage Area	3000	\$85.00	\$255,000.00
	Cat Walk w/Ladder	L.S.		\$21,250.00
	Stage Stairs, ramps, etc	L.S.	<b>,</b>	\$39,000.00
			·	· ·
1 (21) 1 (21) 1 (21) 1 (21)		•		
	Curb Cuts	i		\$6,000.00
	Paving, Striping, Curbing		2000 sq. yards	\$58,000.00
	Site Lighting			\$30,000.00
	Sidewalks & walkways	L.S.		\$30,000.00
	Site drainage/retention	L.S.		\$40,000.00
	Signage	L.S.		\$2,000.00
	Service Drive	Shell		\$6,000.00
	Water meter, line to building	L.S.	•	\$20,000.00
	Sewer Line, tie to lift station	L.S.		\$19,000.00
	Landscaping/sod	L.S.		\$30,000.00
	Irrigation	L.S.		\$10,000.00 \$100,000.00
	Architecture/engineering	L.S.		\$100,000.00
Totals				\$1,000,000.00
LATERS				





AMPITHEATER FLOOR PLAN

1/8" = 1'-0"

EXHIBIT A-6

### **EXHIBIT B**

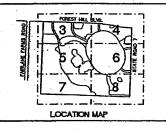
### LEGAL DESCRIPTION OF PROPERTY

### 2002 BOND ISSUE RECREATIONAL AND CULTURAL FACILITIES WELLINGTON, FLORIDA

EXHIBIT B1

LEGAL DESCRIPTION OF PROPERTY: VILLAGE OF WELLINGTON

PARK TRACT OF THE WELLINGTON GREEN, A MUPD/PVB, ACCORDING TO THE PLAT THEREOF AS RECORDED IN PLAT BOOK 87, PAGES 81-90, INCLUSIVE, OF THE PUBLIC RECORDS OF PALM BEACH COUTY, FLORIDA.



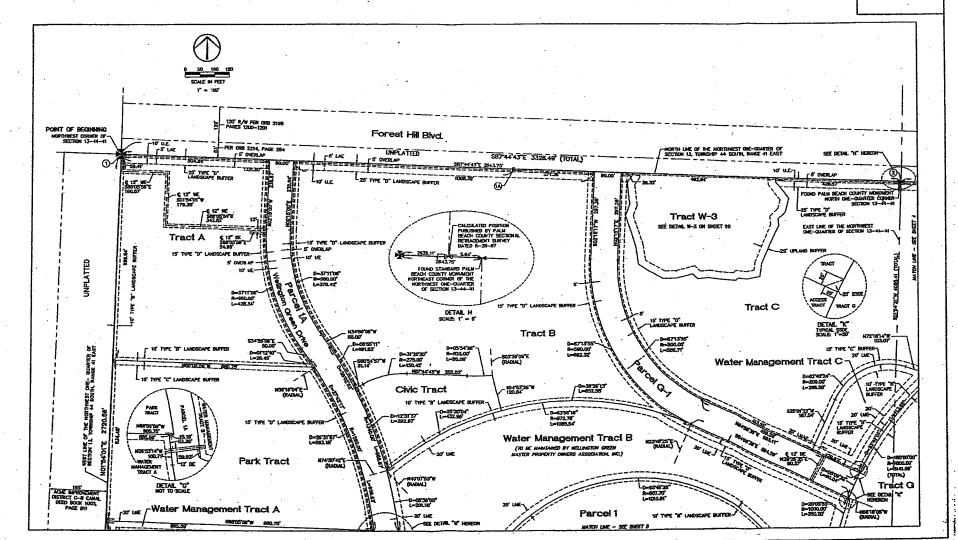
122

### WELLINGTON GREEN, A MUPD/PUD

A Portion of Section 13, Township 44 South, Range 41 East Village of Wellington, Palm Beach County, Florida This instrument prepared by James E. Park, P.S.M. (Riams, Halfield & Stoner, Inc. - Engineers Surveyors Planners Environmental Scientists 1901 South Congress Avenue, Suite 150, Boynton Beach, Florida 33426

Sheet 3 of 10

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### **EXHIBIT C**

## CONTRACT PAYMENT REQUEST FORM AND CONTRACTUAL SERVICES PURCHASE SCHEDULE FORM



### PALM BEACH COUNTY PARKS AND RECREATION DEPARTMENT

### **CONTRACT PAYMENT REQUEST**

	· · · · · · · · · · · · · · · · · · ·		Date			
Grantee:			Project	Name:		****
Submission #: _	·		Reimbursement I	Period:		
tem		Key	Project Costs This Submission		Cumulative Project Costs	. ·
Consulting Serv	rices	(CS)				
Contractual Ser	vices	(C)				<del>-</del>
Vlaterials, Supp	lies, Direct Purchases	(M)		- ·		_
Equipment, Fur	niture	(E)				<b>-</b>
	TOTAL PROJECT COSTS					<b>.</b>
Key Legend	CS = Consulting Services C = Contractual Services M = Materials, Supplies, Direct Purch E = Equipment, Furniture	:hases				
being accompli reports.	e incurred for the work identified a lished in the attached progress		expenses repor request.	orted above a	ed to support the project and is available for aud	
Administrator	Date	· 	Financial Office	er 	Date	·
		PBC USI	E ONLY			-
Cc	ounty Funding Participation		\$			
Tc	otal Project Costs To Date:		\$			
Cc	ounty Obligation To Date		\$		annumber state at the	
Co	ounty Retainage ( %)		\$		· · · · · · · · · · · · · · · · · · ·	
Co	ounty Funds Previously Disbursed	t	\$		And the same of th	
Cc	ounty Funds Due this Billing		\$			
R	Reviewed and Approved By:	PBC Proje	ect Administrator		Date	
1	· · · · · · · · · · · · · · · · · · ·	Departmen	nt Director		Date	_

Page 1 of

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### Key Legend

CS = Consulting Services
C = Contractual Services
M = Materials, Supplies, Direct Purchases
E = Equipment, Furniture

### PALM BEACH COUNTY PARKS AND RECREATION DEPARTMENT CONTRACTUAL SERVICES PURCHASE SCHEDULE

		<del></del>		· —				
	•				Date			
	Grantee:				Proj	ect Name:		
	Submittal	<b>#•</b>			Reir	nbursement P	eriod:	
	Submittai	π			, ion	induidoinioni i		
		,						
			Check or	Voucher	Invo	ice		
n	Payee (Vendor/Contractor)	Key	Number	Date	Number	Date	Amount	Expense Description
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<u>}</u>								
						TOTAL \$		
	Certification: I hereby certify that the were used in accomplishing this property that the second sec		ases noted abo	ve ·	Certification: purchasing do and are availa	ocumentation I	have been mair	ations, executed contract, cancelled checks, and other ntained as required to support the costs reported above
	Administrator		Date			Financial Officer		Date

Key Legend

CS = Consulting Services

C = Contractual Services

M = Materials, Supplies, Direct Purchases

E = Equipment

### **PALM BEACH COUNTY** PARKS AND RECREATION DEPARTMENT CONTRACTUAL SERVICES PURCHASE SCHEDULE

**EXHIBIT C** (cont'd.)

			Check o	r Voucher	Invo	ice		
	Payee (Vendor/Contractor)	Key	Number	Date	Number	Date	Amount	Expense Description
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						TOTAL \$		
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### EXHIBIT D

### PRE-AGREEMENT COST LIST N/A

		RD. CERTIFIC	ATE OF LIABIL				0ATE (MM/0D/7777) 12/01/2006			
300	corpo	Associates Inc.	561-795-6228	ONLY AND	D CONFERS NO THIS CERTIFICA	ED AS A MATTER OF DRIGHTS UPON THE TE DOES NOT AMEND FORDED BY THE POL	CERTIFICATE EXTEND OR			
Well	ington	Florida 334	14	INSURERS A	INSURERS AFFORDING COVERAGE					
SUR				INSURER A: BUT	lington Insurance	Co	*			
		rust of the Palm		INSURER B:						
	ches I			INSURER C:		44.45				
		South Shore Blvd		INSURER D.						
vei	ıngto	n FI 33414		INSURER E:						
TH	y reqi Y per	CIES OF INSURANCE LISTED BELC UIREMENT, TERM OR CONDITION TAIN. THE INSURANCE AFFORDED	W HAVE BEEN ISSUED TO THE INSI I OF ANY CONTRACT OR OTHER D BY THE POLICIES DESCRIBED HEI Y HAVE BEEN REDUCED BY PAID C	XOCUMENT WITH R REIN IS SUBJECT TO	RESPECT TO WHICH	THIS CERTIFICATE MAY	RF バスないらり くよ			
	OO'L VSRD		POLICY NUMBER	POLICY EFFECTIVE	POLICY EXPIRATION DATE (MM/DDYYY)	LIMIT	3			
- 1		TYPE OF INSURANCE LEMERAL LIABILITY		DATE (MM/DOMM)	2/15/2007	EACH OCCURRENCE	\$ 2,000,000			
`	X		0198006585	2/16/2006	2 10/2007	DAMAGE TO RENTED PREMISES (En occurence)	s 50,000			
	Ϋ́	COMMENT OF THE PARTY OF THE PAR		1 .		MED EXP (Any one person)	s 5,000			
	$\vdash$	CLAIMS MADE X OCCUR				PERSONAL & ADV INJURY	s 1,000,000			
- 1	-			1,	1	GENERAL AGGREGATE	3 2,000,000			
	-					PRODUCTS - COMP/OP AGG	3 2,000,000			
-	g	POLICY PRO- LOC			1	PRODUCTS - COMPTOP AGG	3 2,000,000			
		UTOMOBRE LIABRUTY  ANY AUTO	0198006585	2/16/2006	2/15/2007	COMBINEO SINGLE LIMIT (Ea accident)	s 500,000			
		ALL OWNED AUTOS SCHEDULED AUTOS				BODILY INJURY (Per person)	s			
	7	HIRED AUTOS NON-OWNED AUTOS				BODILY INJURY (Per accident)	\$			
						PROPERTY DAMAGE (Fer accident)	\$			
1	9	ARAGE LIABILITY				AUTO ONLY - EA ACCIDENT	\$			
	-	OTUA YMA				OTHER THAN AUTO ONLY: AGG	\$			
	E	EXCESSAUMBRELLA LIABILITY				EACH OCCURRENCE	s			
	F	OCCUR CLAIMS MADE				AGGREGATE	<u>\$</u>			
	F	DEDUCTIBLE				A. O. L. C. M. C.	8			
ı	_ F	RETENTION \$					s			
-	woovi					WC STATU- OTH-				
		HES COMPENSATION AND IYERS LIABILITY				E.L. EACH ACCIDENT	\$			
	ANY PR	OPRIETOR/PARTNER/EXECUTIVE ERMENBER EXCLUDED?				E.L. DISEASE - EA EMPLOYEE	\$			
		lescribe under u. PROVISIONS balow			1	EL DISEASE - POLICY LIMIT	9			
	OTHER						·			
		of operations / Locations / Vehicl ch County has been named a	ES / EXCLUSIONS ADDED BY ENDORSEWE & additional insured.	 ant / epecial provien	i Onis					
	TIEC	ATE HOLDER		CANCELLA	TION					
Pa c/c 27 La	lm Be Park 00 6th ke Wo	ach County s and Recreation Departme n Ave South orth, FL 33461	ont	SHOULD ANY O DATE THEREO NOTICE TO THE	OF THE ABOVE DESCRIE F, THE ISSUING INSUR E CERTIFICATE HOLDE	HED POLICIES BE CANCELLED BY FR WILL ENDEAVOR TO MAIL R NAMED TO THE LEFT, BUT FAI TY OF ANY KIND UPON THE INS	30 DAYS WRITTEN			
		san Yinger		REPRESENTAT						
Fa	c: 561-	963-6747		AUTHORIZED RE	PRESENTATION					