

PALM BEACH COUNTY  
BOARD OF COUNTY COMMISSIONERS

AGENDA ITEM SUMMARY

Meeting Date: February 6, 2007

☒ 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:** Agreement with the City of Delray Beach for the period February 6, 2007, through April 15, 2007, in an amount not-to-exceed \$5,000 for the 2007 First Night Event.

**Summary:** This funding is to offset the cost of 2007 First Night Event held by the City of Delray Beach on December 31, 2006. The Delray Beach First Night Event features local entertainers and artists at a non-alcoholic accessible and affordable community New Year's Eve celebration geared toward families. The Agreement allows for the reimbursement of eligible project costs incurred subsequent to November 1, 2006. Funding is from the Recreation Assistance Program (RAP). District 7 (AH)

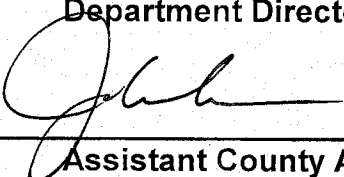
**Background and Justification:** The City of Delray Beach offers an annual First Night Event to provide a family oriented community celebration that is both affordable and non-alcoholic. The Event took place on Atlantic Avenue and side streets, Veterans Park, Old School Square, Worthing Park, the Delray Beach Tennis Center, the Delray Beach Community Center, and the Delray Beach Public Library, and was attended by approximately 20,000 participants.

The total cost of the First Night Event was estimated to be \$91,560 for production (sound, lighting, tents, tables, fireworks, and supplies), programs (entertainers and artists), marketing/promotions (postage and printing), and administration and supplies. The \$5,000 from the District 7 RAP Program will offset a portion of the cost of the First Night Event. The Agreement has been executed on behalf of the City of Delray Beach, and now needs to be approved by the Board of County Commissioners.

Attachment: Agreement

Recommended by:   
Department Director

1/12/07  
Date

Approved by:   
Assistant County Administrator

1/30/07  
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>5,000</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>
<b>NET FISCAL IMPACT</b>	<b><u>5,000</u></b>	<b><u>-0-</u></b>	<b><u>-0-</u></b>	<b><u>-0-</u></b>	<b><u>-0-</u></b>
# ADDITIONAL FTE POSITIONS (Cumulative)	_____	_____	_____	_____	_____

Is Item Included in Current Budget? Yes X No \_\_\_\_\_  
 Budget Account No.: Fund 3600 Department 583 Unit R907  
 Object 8101 Program N/A

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

Recreation Assistance Program

District 7      3600-583-R907-103-8101      \$5,000

C. Departmental Fiscal Review: Chapelakis

## III. REVIEW COMMENTS

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

Jim Doherty 1-23-07  
 OFMB  
 1/24/07  
 B. Legal Sufficiency: mg DM 1-18-07

Jim J. Jacobus 1/29/07  
 Contract Development and Control  
 6. James 1/29/07

This Contract complies with our  
contract review requirements.

Anne Helgert 1-30-07  
 Assistant County Attorney

### C. Other Department Review:

\_\_\_\_\_  
 Department Director

REVISED 10/95  
 ADM FORM 01

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**AGREEMENT BETWEEN PALM BEACH COUNTY AND  
THE CITY OF DELRAY BEACH FOR FUNDING OF THE 2007 FIRST NIGHT EVENT**

**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", and the City of Delray Beach, a Florida Municipal Corporation, hereinafter referred to as "Delray Beach".

**W I T N E S S E T H:**

**WHEREAS**, Delray Beach sponsored its annual First Night Event (the Event) on December 31, 2006, which provided a non-alcoholic accessible and affordable community New Year's Eve celebration geared to families; and

**WHEREAS**, the Event and featured local entertainers and artists; and

**WHEREAS**, approximately 20,000 people participated in the Event; and

**WHEREAS**, the Event took place on Atlantic Avenue and side streets, Veterans Park, Old School Square, Worthing Park, the Tennis Center, the Community Center, and the Delray Public Library; and

**WHEREAS**, the budget for the Event was \$91,560 for production (sound, lighting, tents, tables, fireworks and supplies), programs (entertainers and artists), marketing/promotions (postage and printing), and administration and supplies; and

**WHEREAS**, Delray Beach has requested from County an amount not to exceed \$5,000 to help offset costs for Event expenses; and

**WHEREAS**, County desires to provide funding to help offset costs for the Event; and

**WHEREAS**, funding for the Event in an amount not to exceed \$5,000 is available from the Recreation Assistance Program (RAP) – District 7; and

**WHEREAS**, Delray Beach's cultural arts, recreational, and community events are deemed to serve a public purpose; and

**WHEREAS**, both parties desire to enter into this Agreement.

**NOW THEREFORE**, in consideration of the covenants and promises contained herein, the parties hereby agree to the following terms and conditions:

1. County agrees to fund an amount not to exceed \$5,000 to Delray Beach for the First Night Event held on December 31, 2006, for production (sound, lighting, tents, tables, fireworks and supplies), programs (entertainers and artists), marketing/promotions (postage and printing), and administration and supplies, as specifically set forth in Exhibit "A", attached hereto and incorporated herein, hereinafter referred to as the "Project".

2. County will use its best efforts to provide said funds to Delray Beach on a reimbursement basis within forty-five (45) days of receipt of the following information:

a. A written statement that the Project, as specified herein, was carried out in accordance with this Agreement; and

b. A Contract Payment Request Form and a Contractual Services Purchases Schedule Form, attached hereto and made a part hereof as Exhibit "B", which are required for each and every reimbursement requested by Delray Beach. Said information shall list each invoice paid by Delray Beach and shall include the vendor invoice number; invoice date; and the amount paid by Delray Beach along with the number and date of the respective check or proof of payment for said payment. Delray Beach shall attach a copy of each vendor invoice paid by Delray Beach along with a copy of the respective check or proof of payment and shall make reference thereof to the applicable item listed on the Contractual Services Purchases Schedule. Further, Delray Beach's Program Administrator and Project Financial Officer shall certify the total funds spent by Delray Beach on the Project and shall also certify that each vendor invoice, as listed on the Contractual Services Purchases Schedule was paid by Delray Beach and approved by Delray Beach as indicated.

3. Delray Beach incurred expenses for the Project beginning on November 1, 2006. Those costs incurred by Delray Beach for the Project, approved and submitted accordingly by Delray Beach subsequent to November 1, 2006, are eligible for reimbursement by County pursuant to the terms and conditions hereof.

4. RAP funds may be used as a match for other local, state, or federal grant programs, but Delray Beach may not submit reimbursement requests for the same expenses to the County as other fund sources to receive duplicate reimbursement for the same expenses.

5. Delray Beach agrees, warrants, and represents that all of the employees and participants in the Project will be treated equally during employment, and for the provision of services without regard to residency, race, color, religion, disability, sex, age, national origin, ancestry, marital status, or sexual orientation.

6. Delray Beach shall be responsible for all costs of operation and maintenance of the Project.

7. The term of this Agreement shall be until April 15, 2007, commencing upon the date of execution by the parties hereto.

8. The parties agree that, in the event Delray Beach is in default of its obligations under this Agreement, the County shall provide Delray Beach thirty (30) days written notice to cure the default. In the event Delray Beach fails to cure the default within the thirty (30) day cure period, the County shall have no further obligation to honor reimbursement requests submitted by Delray Beach for the Project deemed to be in default and Delray Beach shall return any County RAP funds already collected by Delray Beach for the Project.

9. Notwithstanding any provision of this Agreement to the contrary, this Agreement may be terminated by the County, without cause, upon thirty (30) days prior written notice to the other party. This Agreement may be terminated by the County with cause, upon expiration of the thirty (30) day cure period provided for in Section 8 above.

10. Delray Beach shall complete the Project by January 15, 2007, and invoices and checks submitted for reimbursement must be dated within the project time frame of November 1, 2006, through January 15, 2007. Delray Beach shall provide its final reimbursement request(s), including a project completion statement and reimbursement documentation as indicated in Section 2 above on or before April 15, 2007. Upon written notification to County at least ninety (90) days prior to that date Delray Beach may request an extension beyond this period for the purpose of completing the Project. County shall not unreasonably deny Delray Beach's request for said extension .

11. In the event Delray Beach ceases to exist, or ceases or suspends the Project for any reason, any remaining unpaid portion of the Agreement shall be retained by County, and County shall have no further obligation to honor reimbursement requests submitted by Delray Beach. The determination that Delray Beach has ceased or suspended the Project shall be made by County and Delray Beach agrees to be bound by County's determination.

12. Delray Beach agrees to abide by, and be governed by, all applicable federal, state, county, and municipal laws, including but not limited to, Palm Beach County's ordinances, as said laws and ordinances exist and are amended from time to time. In entering into this Agreement, Palm Beach County does not waive the requirements of any County or local ordinance or the requirements of obtaining any permits or licenses normally required to conduct business or activity conducted by Delray Beach. Failure to comply may result in County's refusal to honor reimbursement requests for the Project.

13. County reserves the right to withhold reimbursement if the Project is not completed as specified in Exhibit "A".

14. It is understood and agreed that Delray Beach 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. It is further acknowledged that the County only contributes funding under this Agreement and operates no control over the Project. To the extent permitted by law and without waiving the right to sovereign immunity as provided by Section 768.28, Florida Statutes, in the event a claim or lawsuit is brought against County or any of its officers, agents or employees, Delray Beach shall indemnify, save and hold harmless and defend the County, its 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 act or omission of Delray Beach, its agents, servants and/or employees in the performance of this Agreement. The foregoing indemnification shall survive termination of this Agreement.

In consideration for reimbursement of costs incurred prior to the term of this Agreement, the foregoing indemnification shall apply not only during the term of this Agreement but also for the period prior to the Agreement for which Delray Beach is eligible to receive reimbursement from the County.

15. Without waiving the right to sovereign immunity as provided by Section 768.28, Florida Statutes, Delray Beach acknowledges to be self-insured for General Liability and Automobile Liability under Florida sovereign immunity statutes with coverage limits of \$100,000 Per Person and \$200,000 Per Occurrence; or such monetary waiver limits that may change and be set forth by the legislature.

In the event Delray Beach maintains third-party commercial General Liability and Business Auto Liability in lieu of exclusive reliance on self-insurance under Section 768.28, Florida Statutes, Delray Beach shall agree to maintain said insurance policies at limits not less than \$500,000 combined single limit for bodily injury or property damage.

Delray Beach agrees to maintain or to be self-insured for Worker's Compensation & Employer's Liability insurance in accordance with Florida Statutes 440.

Prior to execution of this Agreement by the County, Delray Beach shall deliver to the County an affidavit or Certificate of Insurance evidencing insurance, self-insurance, and/or sovereign immunity status, which County agrees to recognize as acceptable for the above mentioned coverages. Certificate holder's address shall read Palm Beach County, c/o Parks and Recreation Department, 2700 Sixth Avenue South, Lake Worth, FL 33461, Attention: Administrative Support Manager.

Compliance with the foregoing requirements shall not relieve Delray Beach of its liability and obligations under this Agreement.

16. Upon request by County, Delray Beach shall demonstrate financial accountability through

the submission of acceptable financial audits performed by an independent auditor.

17. Delray Beach shall maintain books, records, documents and other evidence that sufficiently and properly reflect all costs of any nature expended in the performance of this Agreement for a period of not less than five (5) years. Upon advance notice to Delray Beach, County shall have the right to inspect and audit said books, records, documents and other evidence during normal business hours.

18. The County and Delray Beach 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.

19. This Agreement shall be governed by the laws of the State of Florida and any and all legal action necessary to enforce this Agreement shall be held in Palm Beach County.

20. As provided in Section 287.132-133, Florida Statutes, by entering into this Agreement or performing any work in furtherance hereof, Delray Beach 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 Services within the thirty six (36) months immediately preceding the date hereof. This notice is required by Section 287.133 (3) (a), Florida Statutes.

21. This Agreement represents the entire agreement between the parties and supersedes all other negotiations, representations, or agreements, either written or oral, relating to this Agreement. The Agreement may be modified and amended only by written instrument executed by the parties hereto.

22. Any notice given pursuant to the terms of this Agreement shall be in writing and hand delivered or sent by U.S. mail. All notices shall be addressed to the following:

As to the County:

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

As to Delray Beach:

City Manager  
City of Delray Beach  
100 N.W. 1st Avenue  
Delray Beach, FL 33444

23. This Agreement is made solely and specifically among and for the benefit of the parties hereto, 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 undersigned parties have signed this

Agreement on the date first above written.

ATTEST:  
SHARON R. BOCK, Clerk &  
Comptroller

By: \_\_\_\_\_  
Deputy Clerk

ATTEST:  
By: \_\_\_\_\_  
Deputy Clerk

APPROVED AS TO FORM AND  
LEGAL SUFFICIENCY

By: \_\_\_\_\_  
County Attorney

PALM BEACH COUNTY, FLORIDA, BY ITS  
BOARD OF COUNTY COMMISSIONERS

By: \_\_\_\_\_  
Commissioner Addie L. Greene, Chairperson

CITY OF DELRAY BEACH

By: \_\_\_\_\_  
Mayor

APPROVED AS TO TERMS AND CONDITIONS

By: \_\_\_\_\_  
Dennis L. Eshleman, Director  
Parks and Recreation Department

Attest:  
Chenelle D. Nolin  
City Clerk  
DeLay Beach





PALM BEACH COUNTY  
PARKS AND RECREATION DEPARTMENT

EXHIBIT B

CONTRACT PAYMENT REQUEST

\_\_\_\_\_  
Date

Grantee \_\_\_\_\_ Project Name: \_\_\_\_\_

Submission #: \_\_\_\_\_ Reimbursement Period: \_\_\_\_\_

Item	Key	Project Costs This Submission	Cumulative Project Costs
Contractual Services	(C)	_____	_____
Salary & Wages (% of salaries)	(S)	_____	_____
Materials, Supplies, Direct Purchases	(M)	_____	_____
Equipment	(E)	_____	_____
Travel	(T)	_____	_____
Indirect Costs	(I)	_____	_____
TOTAL PROJECT COSTS		=====	=====

Key Legend

C = Contractual Services  
S = Salary & Wages  
M = Materials, Supplies, Direct Purchases  
E = Equipment  
T = Travel  
I = Indirect Costs

Certification: I hereby certify that the above expenses were incurred for the work identified as being accomplished in the attached progress reports.

Certification: I hereby certify that the documentation has been maintained as required to support the project expenses reported above and is available for audit upon request.

\_\_\_\_\_  
Administrator Date

\_\_\_\_\_  
Financial Officer Date

PBC USE ONLY

County Funding Participation \$ \_\_\_\_\_

Total Project Costs To Date: \$ \_\_\_\_\_

County Obligation To Date \$ \_\_\_\_\_

County Retainage ( \_\_\_\_\_ %) \$ \_\_\_\_\_

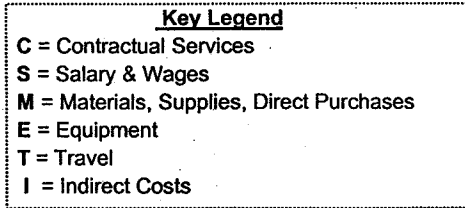
County Funds Previously Disbursed \$ \_\_\_\_\_

County Funds Due this Billing \$ \_\_\_\_\_

Reviewed and Approved By:

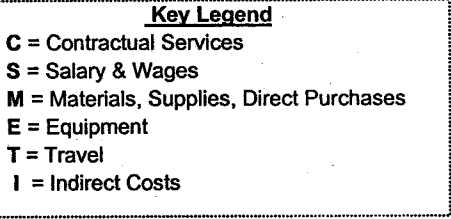
\_\_\_\_\_  
PBC Project Administrator Date

\_\_\_\_\_  
Department Director Date

**EXHIBIT B**

Contract Reimbursement Period: \_\_\_\_\_

Date \_\_\_\_\_



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

Certification: I hereby certify that the purchases noted above were used in accomplishing this project.


Certification: I hereby certify that bid tabulations, executed contract, cancelled checks, and other purchasing documentation have been maintained as required to support the costs reported above and are available for audit upon request.

**Date**

Date \_\_\_\_\_

<b>ACORD™ CERTIFICATE OF LIABILITY INSURANCE</b>		DATE (MM/DD/YYYY) 10/31/06
PRODUCER 1-561-995-6706 Arthur J. Gallagher Risk Management Services Arthur J. Gallagher & Co. (Florida) 2255 Glades Road Suite 400E Boca Raton, FL 33431		THIS CERTIFICATE IS ISSUED AS A MATTER OF INFORMATION ONLY AND CONFERS NO RIGHTS UPON THE CERTIFICATE HOLDER. THIS CERTIFICATE DOES NOT AMEND, EXTEND OR ALTER THE COVERAGE AFFORDED BY THE POLICIES BELOW.
INSURED City Of Delray Beach  100 Northwest 1st Ave  Delray Beach , FL 33444		INSURERS AFFORDING COVERAGE INSURER A: State Natl Ins Co Inc INSURER B: INSURER C: INSURER D: INSURER E:
		NAIC # 12831

COVERAGES						
THE POLICIES OF INSURANCE LISTED BELOW HAVE BEEN ISSUED TO THE INSURED NAMED ABOVE FOR THE POLICY PERIOD INDICATED. NOTWITHSTANDING ANY REQUIREMENT, TERM OR CONDITION OF ANY CONTRACT OR OTHER DOCUMENT WITH RESPECT TO WHICH THIS CERTIFICATE MAY BE ISSUED OR MAY PERTAIN, THE INSURANCE AFFORDED BY THE POLICIES DESCRIBED HEREIN IS SUBJECT TO ALL THE TERMS, EXCLUSIONS AND CONDITIONS OF SUCH POLICIES. AGGREGATE LIMITS SHOWN MAY HAVE BEEN REDUCED BY PAID CLAIMS.						
INSR ADD'L LTR INSRD	TYPE OF INSURANCE	POLICY NUMBER	POLICY EFFECTIVE DATE (MM/DD/YY)	POLICY EXPIRATION DATE (MM/DD/YY)	LIMITS	
A	GENERAL LIABILITY <input checked="" type="checkbox"/> COMMERCIAL GENERAL LIABILITY <input type="checkbox"/> CLAIMS MADE <input checked="" type="checkbox"/> OCCUR  GEN'L AGGREGATE LIMIT APPLIES PER: <input type="checkbox"/> POLICY <input type="checkbox"/> PROJECT <input type="checkbox"/> LOC	MDB 02669 32	10/01/06	10/01/07	EACH OCCURRENCE	\$ SeeBelow
					DAMAGE TO RENTED PREMISES (Ea occurrence)	\$
					MED EXP (Any one person)	\$
					PERSONAL & ADV INJURY	\$
					GENERAL AGGREGATE	\$
					PRODUCTS - COMP/OP AGG	\$
A	AUTOMOBILE LIABILITY <input checked="" type="checkbox"/> ANY AUTO <input type="checkbox"/> ALL OWNED AUTOS <input type="checkbox"/> SCHEDULED AUTOS <input type="checkbox"/> HIRED AUTOS <input type="checkbox"/> NON-OWNED AUTOS	MDB 02669 32	10/01/06	10/01/07	COMBINED SINGLE LIMIT (Ea accident)	\$ SeeBelow
					BODILY INJURY (Per person)	\$
					BODILY INJURY (Per accident)	\$
					PROPERTY DAMAGE (Per accident)	\$
	GARAGE LIABILITY <input type="checkbox"/> ANY AUTO				AUTO ONLY - EA ACCIDENT	\$
					OTHER THAN AUTO ONLY: EAACC	\$
					AGG	\$
A	EXCESS/UMBRELLA LIABILITY <input checked="" type="checkbox"/> OCCUR <input type="checkbox"/> CLAIMS MADE  DEDUCTIBLE RETENTION \$	MDB 02669 32	10/01/06	10/01/07	EACH OCCURRENCE	\$ 1,000,000
					AGGREGATE	\$ 2,000,000
						\$
						\$
						\$
	WORKERS COMPENSATION AND EMPLOYERS' LIABILITY ANY PROPRIETOR/PARTNER/EXECUTIVE INCL OFFICER/MEMBER EXCLUDED? EXCL If yes, describe under SPECIAL PROVISIONS below				WC STATUTORY LIMITS	OTH-ER
					E.L. EACH ACCIDENT	\$
					E.L. DISEASE - EA EMPLOYEE	\$
					E.L. DISEASE - POLICY LIMIT	\$
A	OTHER Workers Compensation	MDB 02669 32	10/01/06	10/01/07	Statutory Limits	Statutory
DESCRIPTION OF OPERATIONS / LOCATIONS / VEHICLES / EXCLUSIONS ADDED BY ENDORSEMENT / SPECIAL PROVISIONS XXXX-Policy Subject to a \$500,000 per occurrence Self Insured Retention  For: Grant for funding for construction of Delray Beach Intracoastal Park. Certificate Holder is additional insured but only to the extent of indemnity provisions of the applicable contract and only to the extent allowed by F.S. 768.28 and the Florida constitution.						

CERTIFICATE HOLDER	CANCELLATION
Palm Beach County  Attn: Parks & Recreation 2700 6TH Ave South  Lake Worth , FL 33461  USA	SHOULD ANY OF THE ABOVE DESCRIBED POLICIES BE CANCELLED BEFORE THE EXPIRATION DATE THEREOF, THE ISSUING INSURER WILL ENDEAVOR TO MAIL 30 DAYS WRITTEN NOTICE TO THE CERTIFICATE HOLDER NAMED TO THE LEFT, BUT FAILURE TO DO SO SHALL IMPOSE NO OBLIGATION OR LIABILITY OF ANY KIND UPON THE INSURER, ITS AGENTS OR REPRESENTATIVES. AUTHORIZED REPRESENTATIVE 

## **IMPORTANT**

If the certificate holder is an ADDITIONAL INSURED, the policy(ies) must be endorsed. A statement on this certificate does not confer rights to the certificate holder in lieu of such endorsement(s).

If SUBROGATION IS WAIVED, subject to the terms and conditions of the policy, certain policies may require an endorsement. A statement on this certificate does not confer rights to the certificate holder in lieu of such endorsement(s).

## **DISCLAIMER**

The Certificate of Insurance on the reverse side of this form does not constitute a contract between the issuing insurer(s), authorized representative or producer, and the certificate holder, nor does it affirmatively or negatively amend, extend or alter the coverage afforded by the policies listed thereon.