

PALM BEACH COUNTY
BOARD OF COUNTY COMMISSIONERS

AGENDA ITEM SUMMARY

Meeting Date: **October 16, 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: **A)** Agreement with Caldwell Theatre Company, Inc. for the period October 16, 2007, through October 16, 2008, in an amount not-to-exceed \$750,000 for funding of the Caldwell Theatre construction; and **B)** Budget Transfer of \$750,000 within the \$25M GO Parks and Cultural Improvements Bond Fund - 2003 from Reserves to Caldwell Theatre Construction.

Summary: This Agreement provides funding for construction of the Caldwell Theatre located at 7901 North Federal Highway in Boca Raton. The Agreement allows for the reimbursement of eligible pre-Agreement expenses incurred subsequent to October 1, 2007. Funding is from the 2002 \$50 Million Recreational and Cultural Facilities Bond referendum – District 2 (\$500,000) and District 5 (\$250,000). District 4 (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 recreational/cultural project.

Funding is for the construction of the new Caldwell Theatre building, to be named the Count de Hornle Theatre. The theatre has 335 seats, and features a lobby, founder's room, warming kitchen, concession area, box office, men's and women's lounges, light and sound booth, auditorium, stage with expansive wing space, dressing rooms, green room, rehearsal hall, design studio, and storage areas. Total cost of the facility is estimated to be \$7,608,717. The scheduled opening for the facility is in December 2007.

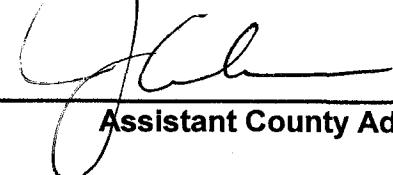
The required project completion date for construction of the theatre and submission of reimbursement documentation is October 16, 2008. The term of the Agreement is until October 16, 2037, which is the standard 30 year term for Bond Agreements. The Agreement has been executed on behalf of Caldwell Theatre Company, Inc., and now needs to be approved by the Board of County Commissioners.

Attachments:

1. Agreement
2. Budget Transfer

Recommended by: 
Department Director

9/20/07
Date

Approved by: 
Assistant County Administrator

10-4-07
Date

II. FISCAL IMPACT ANALYSIS

A. Five Year Summary of Fiscal Impact:

Fiscal Years	2008	2009	2010	2011	2012
Grant Expenditures	<u>750,000</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>750,000</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 X
 Budget Account No.: Fund ___ Department ___ Unit ___
 Object ___ Program ___

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

\$25M GO 03, Parks & Cultural Facilities
 3019-581-9900-9908 Reserves-New Projects \$750,000

C. Departmental Fiscal Review: ckopelakis

III. REVIEW COMMENTS

A. OFMB Fiscal And/Or Contract Development and Control Comments:

Jan Drl 9-26-07
 OFMB
 9/26/07
 B. Legal Sufficiency:

An S. [Signature] 9/27/07
 Contract Development & Control
 9/27/07

Paul F. [Signature] 10/4/07
 Assistant County Attorney

This Contract complies with our contract review requirements.

C. Other Departmental Review:

AGREEMENT BETWEEN PALM BEACH COUNTY AND CALDWELL THEATRE COMPANY, INC. FOR FUNDING OF CALDWELL THEATRE CONSTRUCTION

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 Caldwell Theatre Company, Inc., a Florida not-for-profit corporation authorized to do business in the State of Florida, hereinafter referred to as "AGENCY".

WITNESSETH:

WHEREAS, AGENCY owns property located at 7901 North Federal Highway in Boca Raton; and

WHEREAS, AGENCY desires to construct the Caldwell Theatre, hereinafter referred to as "the Project" at said location; and

WHEREAS, AGENCY has asked COUNTY to financially participate in the 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, as amended; 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, both 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.

Section 1.02 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 \$750,000 for the 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.

Section 1.04 AGENCY agrees to provide funding in an amount of \$6,858,717 or greater to complete the Project. The parties agree that COUNTY shall provide its portion of the funding only after AGENCY has expended \$6,858,717.

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 Clive Cholerton, President, Caldwell Theatre Company, Inc. at telephone no. 561-347-6662.

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

Section 1.07 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

Section 2.01 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.

Section 2.02 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.

Section 2.05 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.

Section 2.06 AGENCY agrees to totally complete the Project and open same to the public for its intended use within twelve (12) 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 on a reimbursable basis. Any costs incurred in connection with the Project in excess of that amount shall be the sole responsibility of AGENCY. Should the total cost of the Project exceed the amount as projected by AGENCY, AGENCY shall obtain and expend the excess funds required for completion of the Project. COUNTY shall not dispense any funds to AGENCY for the Project until AGENCY has obtained and expended said excess funds for the Project.

Section 3.02 COUNTY shall reimburse project costs under the terms of this Agreement to AGENCY on a quarterly basis from the date of execution of this Agreement; however, should the need arise for AGENCY to be reimbursed on a more frequent basis, then COUNTY will, at AGENCY 's specific request for each instance, make its best efforts to reimburse AGENCY within forty five (45) days of such special request. 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 as paid by AGENCY and shall include the vendor invoice number; invoice date; and the amount paid by AGENCY along with the number and date of the respective check for said payment. AGENCY shall attach a copy of each vendor invoice paid by AGENCY along with a copy of each respective check and shall make reference thereof to the applicable item listed on the Contractual Services Purchase Schedule Form. Further, AGENCY's Project Administrator and Project Financial Officer shall certify the total funds spent by AGENCY on the Project and shall also certify that each vendor invoice as listed on the Contractual Services Purchase Schedule Form was paid by AGENCY as indicated.

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.

Section 3.04 AGENCY shall provide a request for final reimbursement 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.

Section 3.05 COUNTY agrees to reimburse AGENCY an amount not to exceed \$750,000 for those approved pre-agreement costs accruing to the Project subsequent to October 1, 2007, as more fully described in Exhibit "D", Pre-Agreement Cost List.

Section 3.06 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.

Section 3.07 COUNTY shall reimburse project costs only after AGENCY has expended its share of project funding in its entirety. AGENCY shall provide COUNTY with a certification, in a form acceptable to COUNTY, from AGENCY's President, CEO, Chairman of the Board, Chief Financial Officer, or independent auditor that AGENCY has complied with this Project funding provision. COUNTY will be entitled to rely on that certification in reimbursing Project costs to AGENCY under this Agreement.

ARTICLE 4: OWNERSHIP, OPERATION AND MAINTENANCE OF THE PROJECT

Section 4.01 Upon completion, the Project shall remain the property of AGENCY.

COUNTY shall not be required to pay AGENCY any additional funds for any other capital improvement required by or of AGENCY.

Section 4.02 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.

Section 4.03 AGENCY 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.

Section 4.04 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 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 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 shall not transfer management of the Project to a third party without the written consent of COUNTY.

ARTICLE 5: USE OF THE PROJECT

Section 5.01 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.

Section 5.02 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.

Section 5.03 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 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 AGENCY:

President
Caldwell Theatre Company, Inc.
7873 North Federal Highway (before December 1, 2007)
Boca Raton, FL 33487

7901 North Federal Highway (after December 1, 2007)
Boca Raton, FL 33487

ARTICLE 8: TERMINATION FOR NON-COMPLIANCE

COUNTY may terminate this Agreement upon written notice to AGENCY 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. In the event a claim or lawsuit is brought against COUNTY or any of its officers, agents or employees AGENCY shall indemnify, save and hold harmless and defend 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 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. **Commercial General Liability.** 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. **Worker's Compensation Insurance & Employers Liability.** AGENCY shall maintain Worker's Compensation & Employers Liability in accordance with Florida Statute Chapter 440. AGENCY shall provide this coverage on a primary basis.
- D. **Additional Insured.** AGENCY shall endorse COUNTY 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.

- E. **Builder's Risk and Property Insurance.** 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.
- F. **Umbrella or Excess Liability.** 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.
- G. **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.
- H. **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 ten (10) 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: Administrative Support Manager.
- I. **Right to Review.** 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.

J. 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.

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 Services 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 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

By: _____
Deputy Clerk

PALM BEACH COUNTY, FLORIDA BY ITS
BOARD OF COUNTY COMMISSIONERS

By: _____
Commissioner Addie L. Greene, Chairperson

WITNESSES:

Dorcas W. Yung

Jessica Kenneth

By: **CALDWELL THEATRE COMPANY, INC.**
FEI Number: 591929742

By: CLIVE CHOLERTON
Name (Type or Print)

Title: CHAIRMAN - BOARD OF TRUSTEES

By: _____
Signature

APPROVED AS TO TERMS AND
CONDITIONS

By: *Dennis L. Eshleman*

Dennis L. Eshleman, Director
Parks and recreation Department

APPROVED AS TO FORM AND
LEGAL SUFFICIENCY

By: _____
Agency Attorney

APPROVED AS TO FORM AND LEGAL
SUFFICIENCY

By: _____
County Attorney

LIST OF EXHIBITS

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

- EXHIBIT B Legal Description of Property (Provided by Agency)

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

- EXHIBIT D Pre-Agreement Costs List

EXHIBIT A

PROJECT DESCRIPTION, COST ESTIMATE, AND CONCEPTUAL SITE PLAN

EXHIBIT A

PROJECT DESCRIPTION, COST ESTIMATE, SITE PLAN

PROJECT DESCRIPTION

Caldwell Theatre Company is building a 335 seat proscenium theater on its own land on North Federal Highway in Boca Raton. In keeping with a previous agreement with Newman Commercial, Caldwell will have access to parking in perpetuity. The theater facility will have a lobby, founder's room, warming kitchen, concession area, box office, men's and women's lounges, light and sound booth, auditorium, stage with expansive wing space, dressing rooms, green room, rehearsal hall, design studio, and storage areas. The facility is completely handicap accessible.

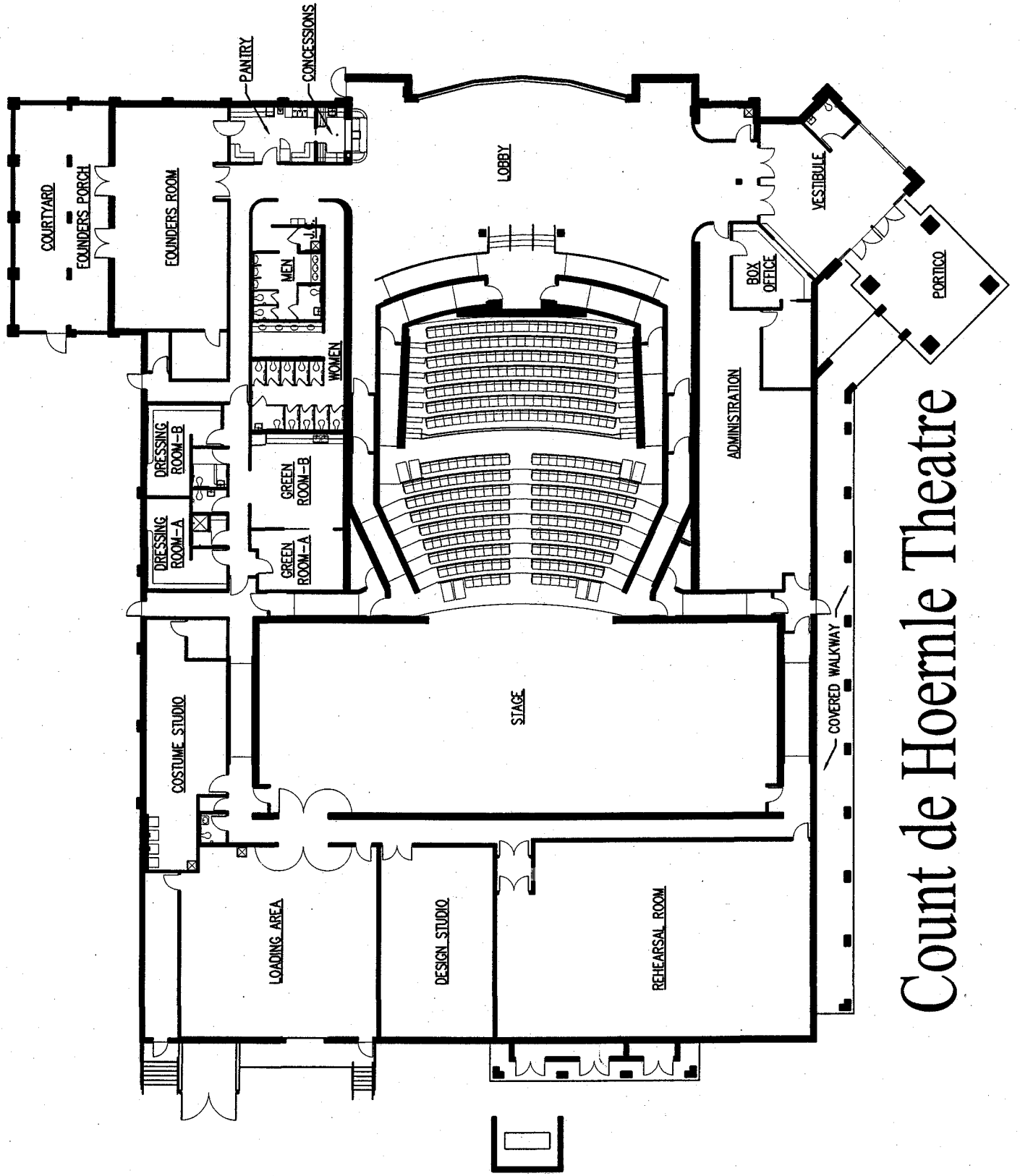
The project has received all necessary building permits. Construction began in August by BSA Corporation, a general contracting firm in Delray Beach. Robert W. Wolff, a professional theater consultant, formerly with Artec (an international theatrical consulting firm), is Caldwell's on-site project director.

Scheduled opening is December 2007.

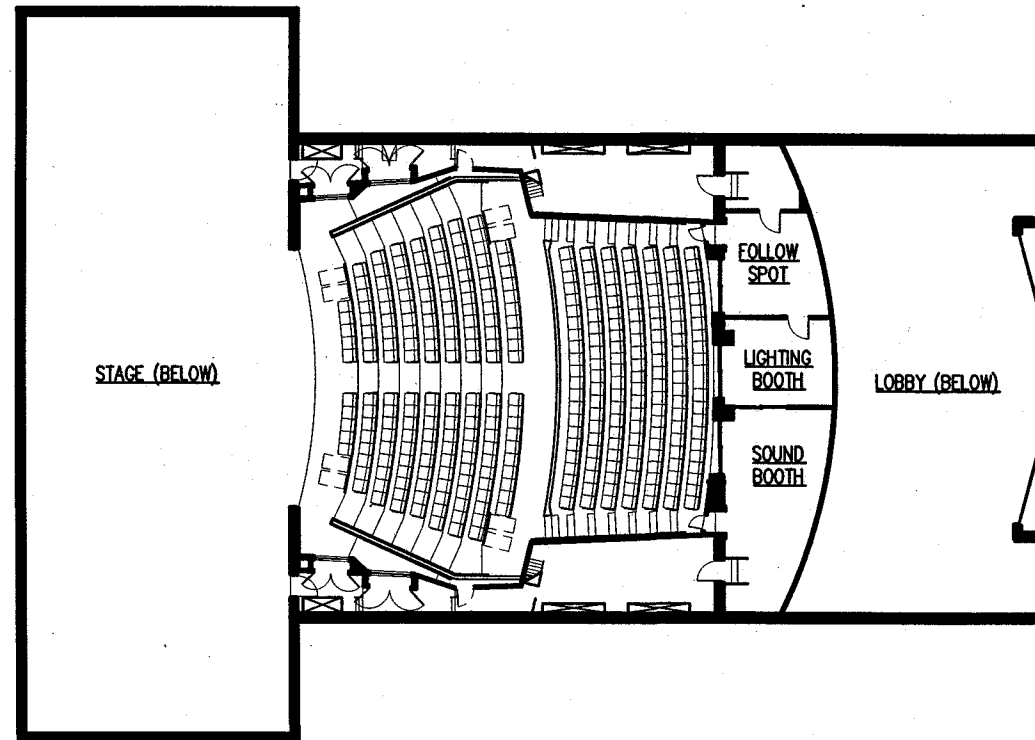
EXHIBIT A

COST ESTIMATE

Lobby	
Founder's Room	
Warming Kitchen	
Concession Area	
Box Office	
Men's and Women's Lounges	
Light and Sound Booth	
Auditorium,	
Stage	
Dressing Rooms	
Green Room	
Rehearsal Hall	
Design Studio	
Storage Areas	
Total Cost	\$7,608,717



Count de Hoemle Theatre



Count de Hoernle Theatre

EXHIBIT B

LEGAL DESCRIPTION OF PROPERTY

EXHIBIT  B

A PARCEL OF LAND IN THE NORTHEAST ONE-QUARTER OF SECTION 32, TOWNSHIP 46 SOUTH, RANGE 43 EAST, BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS:

COMMENCING AT THE INTERSECTION OF THE NORTH LINE OF THE SOUTH ONE-HALF OF THE NORTHEAST ONE-QUARTER OF SAID SECTION 32 WITH THE WEST RIGHT-OF-WAY LINE OF STATE ROAD NO.5 (US HIGHWAY NO.1), SAID POINT LYING ON THE ARC OF A CIRCULAR CURVE TO THE LEFT, AT WHICH THE RADIUS POINT BEARS NORTH 80°30'33" WEST;

THENCE NORTHERLY ALONG THE ARC OF SAID CURVE, ALSO BEING SAID WEST RIGHT-OF-WAY LINE, HAVING A RADIUS OF 22,876.30 FEET AND A CENTRAL ANGLE OF 00°06'04", A DISTANCE OF 40.340 FEET TO THE POINT OF BEGINNING;

THENCE NORTH 80°36'36" WEST, ALONG A LINE RADIAL TO THE LAST AND NEXT DESCRIBED CURVES, A DISTANCE OF 85.72 FEET TO A POINT ON THE ARC OF CIRCULAR CURVE TO THE LEFT;

THENCE NORTHERLY AND WESTERLY ALONG THE ARC OF SAID CURVE, HAVING A RADIUS OF 29.00 FEET AND A CENTRAL ANGLE OF 90°35'18", A DISTANCE OF 45.85 FEET TO THE POINT OF TANGENCY;

THENCE NORTH 81°11'53" WEST, A DISTANCE OF 95.56 FEET;

THENCE NORTH 33°58'16" WEST, A DISTANCE OF 119.21 FEET;

THENCE NORTH 00°21'20" WEST, A DISTANCE OF 111.18 FEET;

THENCE NORTH 89°38'41" EAST, ALONG A LINE 350.00 FEET SOUTH OF AND PARALLEL WITH SAID NORTH LINE OF THE SOUTH ONE-HALF OF THE NORTHEAST ONE-QUARTER OF THE NORTHEAST ONE-QUARTER, A DISTANCE OF 314.08 FEET TO A POINT ON SAID WEST RIGHT-OF-WAY LINE OF STATE ROAD NO.5, ALSO BEING ON THE ARC OF A CIRCULAR CURVE TO THE RIGHT, AT WHICH THE RADIUS POINT BEARS NORTH 81°18'18" WEST;

THENCE SOUTHERLY ALONG SAID WEST RIGHT-OF-WAY LINE AND THE ARC OF SAID CIRCULAR CURVE, HAVING A RADIUS OF 22,876.30 FEET AND A CENTRAL ANGLE OF 00°41'41", A DISTANCE OF 277.42 FEET TO THE POINT OF BEGINNING.

SAID LANDS SITUATE IN THE CITY OF BOCA RATON, PALM BEACH COUNTY, FLORIDA.

EXHIBIT C

CONTRACT PAYMENT REQUEST FORM AND CONTRACTUAL SERVICES
PURCHASE SCHEDULE FORM



PALM BEACH COUNTY
PARKS AND RECREATION DEPARTMENT

EXHIBIT C

CONTRACT PAYMENT REQUEST

_____ Date

Grantee: _____ Project Name: _____

Submission #: _____ Reimbursement Period: _____

Item	Key	Project Costs This Submission	Cumulative Project Costs
Consulting Services	(CS)	_____	_____
Contractual Services	(C)	_____	_____
Materials, Supplies, Direct Purchases	(M)	_____	_____
Equipment, Furniture	(E)	_____	_____
TOTAL PROJECT COSTS		=====	=====

Key Legend

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

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



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**

EXHIBIT C

Grantee: _____
 Submittal #: _____

Date _____
 Project Name: _____
 Reimbursement Period: _____

Ln	Payee (Vendor/Contractor)	Key	Check or Voucher		Invoice		Amount	Expense Description
			Number	Date	Number	Date		
1								
2								
3								
4								
5								
6								
7								
8								
9								
10								
11								
12								
13								
14								
15								
16								
						TOTAL \$		

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.

 Administrator Date

 Financial Officer Date

EXHIBIT D

PRE-AGREEMENT COST LIST

Note: Costs must be for eligible project expenses incurred subsequent to October 1, 2007

EXHIBIT

Pre-Agreement Cost Estimate
Caldwell Theatre

COST ESTIMATE

Lobby	
Founder's Room	
Founder's Porch	
Courtyard	
Pantry	
Concession Area	
Box Office	
Vestibule	
Portico	
Men's and Women's Lounges	
Light and Sound Booth	
Auditorium	
Stage	
Dressing Rooms	
Green Rooms	
Rehearsal Hall	
Design Studio	
Loading Area	
Costume Studio	
Administration Areas	
Total Cost	\$7,608,717

ACORD CERTIFICATE OF LIABILITY INSURANCE

OP ID CB
CALDTH1 DATE (MM/DD/YYYY)
08/20/07

PRODUCER Tanenbaum Harber of Florida 1111 Park Centre Blvd. Miami FL 33169 Phone: 305-620-0200 Fax: 305-620-7886	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.	
	INSURERS AFFORDING COVERAGE	NAIC #
INSURED Caldwell Theatre Company, Inc. 7873 N Federal Hwy Boca Raton FL 33487	INSURER A:	Praetorian Insurance Co
	INSURER B:	Federal Insurance Company
	INSURER C:	Mt. Hawley Insurance Co.
	INSURER D:	Chubb Custom Insurance Co.
	INSURER E:	Great Divide Insurance Co.

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	INSRD	TYPE OF INSURANCE	POLICY NUMBER	POLICY EFFECTIVE DATE (MM/DD/YY)	POLICY EXPIRATION DATE (MM/DD/YY)	LIMITS	
C	X	X	GENERAL LIABILITY	OCP00001023	11/01/06	12/01/07	EACH OCCURRENCE	\$ 1,000,000
			<input checked="" type="checkbox"/> COMMERCIAL GENERAL LIABILITY <input type="checkbox"/> CLAIMS MADE <input checked="" type="checkbox"/> OCCUR GEN'L AGGREGATE LIMIT APPLIES PER: <input checked="" type="checkbox"/> POLICY <input type="checkbox"/> PRO-JECT <input type="checkbox"/> LOC				DAMAGE TO RENTED PREMISES (Ea occurrence) \$ N/A MED EXP (Any one person) \$ N/A PERSONAL & ADV INJURY \$ N/A GENERAL AGGREGATE \$ 2,000,000 PRODUCTS - COMP/OP AGG \$ N/A	
			AUTOMOBILE LIABILITY				COMBINED SINGLE LIMIT (Ea accident) \$ BODILY INJURY (Per person) \$ BODILY INJURY (Per accident) \$ PROPERTY DAMAGE (Per accident) \$	
			GARAGE LIABILITY				AUTO ONLY - EA ACCIDENT \$ OTHER THAN AUTO ONLY: EA ACC \$ AGG \$	
			EXCESS/UMBRELLA LIABILITY				EACH OCCURRENCE \$ AGGREGATE \$ DEDUCTIBLE \$ RETENTION \$	
B			WORKERS COMPENSATION AND EMPLOYERS' LIABILITY	RENEWAL OF 79498820	07/30/07	07/30/08	<input checked="" type="checkbox"/> WC STATUTORY LIMITS	OTHER
			E.L. EACH ACCIDENT				\$ 500000	
			E.L. DISEASE - EA EMPLOYEE				\$ 500000	
A			OTHER				E.L. DISEASE - POLICY LIMIT \$ 500000 Property \$ 7,900,000 Ded: \$ 1,000,000	

DESCRIPTION OF OPERATIONS / LOCATIONS / VEHICLES / EXCLUSIONS ADDED BY ENDORSEMENT / SPECIAL PROVISIONS
Palm Beach County is included as Additional Insured as respects any liability claim arising out of the negligence/operations of the Name Insured.

CERTIFICATE HOLDER PALM BEACH COUNTY C/O Parks & Recreation Dept. 2700 6th Avenue South Lake Worth FL 33461	CANCELLATION SHOULD ANY OF THE ABOVE DESCRIBED POLICIES BE CANCELLED BEFORE THE EXPIRATION DATE THEREOF, THE ISSUING INSURER WILL ENDEAVOR TO MAIL <u>10</u> 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 <i>Carol A. Linn-Celona</i>
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NOTEPAD

INSURED'S NAME Caldwell Theater Company, Inc

CALDWELL

PAGE 2

CPID 05

DATE 08/20/07

Property/Contents cover on Old Caldwell Theater Location:**Property/Contents Limit \$1,386,000; Deductible: \$1,000****Carrier: Chubb Custom: Eff: 07/30/07 to 7/30/08- POLICY # 79498818****Floater: \$200,000 Great Divide: 7/30/07- 08- Pol#CNA1006771-11****Commercial Liability Insurance @ the Old Theater:****Liability Limits:****\$1,000,000 Per occurrence****\$2,000,000 Aggregate****\$1,000,000 Products Completed Operations Aggregate****\$1,000,000 Personal & Advertising Injury****\$100,000 Fire Damage Legal****NO Med Pay****\$1,000,000 Liquore Liability****Aggregate Per Project****Carrier: Great Divide Policy #CNA1006771-11****Eff: 7/30/07 to 08**

BOARD OF COUNTY COMMISSIONERS
 PALM BEACH COUNTY, FLORIDA
 BUDGET TRANSFER

BGEX 581

FUND 3019 - \$25M GO Park and Cultural Improv 03

ACCOUNT NUMBER	ACCOUNT NAME	ORIGINAL BUDGET	CURRENT BUDGET	INCREASE	DECREASE	ADJUSTED BUDGET	EXPENDED/ ENCUMBERED AS OF 08/29/07	REMAINING BALANCE
Caldwell Theater Const/Pass-Through								
3019-581-P571-8201	Contributions-Non-Govts Agncs	0	0	750,000		750,000	0	750,000
Reserves								
3019-581-9900-9908	Reserves - New Projects	4,760,888	4,510,888		750,000	3,760,888	0	3,760,888
TOTAL					750,000	750,000		


Parks and Recreation Department
INITIATING DEPARTMENT/DIVISION

Administration/Budget Department Approval

OFMB Department - Posted

Signatures

Date

 9/20/07

By Board of County Commissioners
 At Meeting of
 October 16, 2007
 Deputy Clerk to the Court