

PALM BEACH COUNTY  
BOARD OF COUNTY COMMISSIONERS

AGENDA ITEM SUMMARY

Meeting Date: June 3, 2008

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: License Agreement with American Society of Composers, Authors and Publishers ("ASCAP") for the period March 15, 2008, through March 14, 2009, in an amount not-to-exceed \$7,968 to provide public performances including live performances, recorded performances, and music, in the ASCAP repertory, in accordance with the copyright laws of the United States.

**Summary:** Title 17 of the United States Code establishes property rights in musical works and grants creators and owners of copyrighted musical works the exclusive right to perform or authorize the performance of their works publically. Under the law, owners and operators of facilities or presenters of concerts and other events are responsible for performances on the premises. The property owners must obtain a license to present musical performances in order to be in compliance with the copyright law. This Agreement provides for the County to present an entire musical spectrum of performances in the ASCAP repertory, within various venues in the County, in accordance with copyright laws. Countywide (AH)

**Background and Justification:** ASCAP is a performing rights licensing organization representing over eight million copyrighted musical works. ASCAP and the International Municipal Lawyers Association jointly developed the license agreement, designed specifically to cover public performances of music by local governments including pop, rock, alternative, country, R&B, rap, hip hop, Latin, film music, television music, folk, roots, blues, jazz, reggae, gospel, contemporary Christian, new age, theater, cabaret, dance, electronic, symphonic, chamber, choral, band, concert, educational and children's music at multiple venues including but not limited to amphitheaters, recreation centers, equestrian centers, swimming pools, waterparks, tennis centers, festivals, special events, employee functions, and museums and background music. This licensing agreement is for an initial one year term with automatic annual renewals requiring an annual license fee adjusted in accordance with the increase in the consumer Price Index. The agreement can be terminated by either party at any time, but no later than 30 days prior to the end of each renewal term.

The Agreement has been executed on behalf of American Society of Composers, Authors and Publishers, and now needs to be approved by the Board of County Commissioners.


**Attachment:** License Agreement

Recommended by:

  
Department Director

5/5/08  
Date

Approved by:

  
Assistant County Administrator

5/20/08  
Date

**II. FISCAL IMPACT ANALYSIS**

**A. Five Year Summary of Fiscal Impact:**

Fiscal Years	2008	2009	2010	2011	2012
Grant Expenditures	<u>-0-</u>	<u>-0-</u>	<u>-0-</u>	<u>-0-</u>	<u>-0-</u>
Operating Costs	<u>7,968</u>	<u>8,128</u>	<u>8,452</u>	<u>8,791</u>	<u>9,142</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>7,968</u></b>	<b><u>8,128</u></b>	<b><u>8,452</u></b>	<b><u>8,791</u></b>	<b><u>9,142</u></b>
# ADDITIONAL FTE POSITIONS (Cumulative)	_____	_____	_____	_____	_____

Is Item Included in Current Budget? Yes X No \_\_\_\_\_  
 Budget Account No.: Fund 0001 Department 580 Unit 5206  
 Object 4909 Program N/A

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

**C. Departmental Fiscal Review:** Chopelakis

**III. REVIEW COMMENTS**

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

Per the contract, there would be an additional 1% fee charged to parks for any special event exceeding \$25,000 in revenues although no such events are anticipated.

Amwhite 5.15.08  
 OFMB 5/15/08 5/14/08 5/18/08

Am J. Jones 5/16/08  
 Contract Development and Control  
 E. Jones 5/16/08  
 This Agreement is retroactive in effective date.

**B. Legal Sufficiency:**  
Arne Delgent 5/19/08  
 Assistant County Attorney

**C. Other Department Review:**  
 \_\_\_\_\_  
 Department Director

## LICENSE AGREEMENT - LOCAL GOVERNMENTAL ENTITIES

# Agreement

between American Society of Composers, Authors and Publishers ("SOCIETY"), located at 2675 Paces Ferry Road, SE, Suite 350, Atlanta, GA 30339

and Palm Beach County, FL

("LICENSEE"), located at

Parks & Recreation/Recreation Services  
2700 Sixth Avenue South Lake Worth FL 33461

as follows:

### 1. Grant and Term of License

(a) ASCAP grants and LICENSEE accepts a license to perform publicly on the "Premises" and at "Events" and "Functions," and not elsewhere or otherwise, non-dramatic renditions of the separate musical compositions in the "ASCAP repertory." The performances licensed under this Agreement may be by means of "Live Entertainment" or "Mechanical Music". For purposes of this Agreement,

- (i) "LICENSEE" shall include the named entity and any of its constituent bodies, departments, agencies or leagues.
- (ii) "Mechanical Music" means music which is performed at the Premises by means other than by live musicians who are performing at the Premises, including, but not limited to (A) compact disc, audio record or audio tape players (but not including "jukeboxes"), (B) videotape, videodisc or DVD players; (C) the reception and communication at the premises of radio or television transmissions which originate outside the Premises; and which are not exempt under the Copyright Law; or (D) a music-on-hold telephone system operated by LICENSEE at the Premises.
- (iii) "Live Entertainment" means music that is performed at the Premises by musicians, singers or other performers.
- (iv) "Premises" means buildings, hospitals, airports, zoos, museums, athletic facilities, and recreational facilities, including, but not limited to, community centers, parks, swimming pools, and skating rinks owned or operated by LICENSEE and any site which has been engaged by LICENSEE for use by LICENSEE.
- (v) "ASCAP repertory" means all copyrighted musical compositions written or published by ASCAP members or members of affiliated foreign performing rights societies, including compositions written or published during the term of this Agreement and of which ASCAP has the right to license non-dramatic public performances.
- (vi) "Events" and "Functions" means any activity conducted, sponsored, or presented by or under the auspices of LICENSEE. Except as set forth in paragraph 2.(d) below, "Events" and "Functions" shall include, but are not limited to, aerobics and exercise classes, athletic events, dances and other social events, concerts, festivals, arts and crafts fairs, and parades held under the auspices of or sponsored or promoted by LICENSEE on the Premises.
- (vii) "Special Events" means musical events, concerts, shows, pageants, sporting events, festivals, competitions, and other events of limited duration presented by LICENSEE for which the "Gross Revenue" of such Special Event exceeds \$25,000 (as defined in paragraph 4.(d) below).

(b) This Agreement shall be for an initial term of one year, commencing March 15, 2008, which shall be considered the effective date of this Agreement, and continuing thereafter for additional terms of one year each. Either party may give notice of termination to the other no later than thirty (30) days prior to the end of the initial or any renewal term. If such notice is given, the agreement shall terminate on the last day of the term in which notice is given.

### 2. Limitations On License

(a) This license is not assignable or transferable by operation of law or otherwise. This license does not authorize LICENSEE to grant to others any right to perform publicly in any manner any of the musical compositions licensed under this agreement, nor does it authorize any public performances at any of the Premises in any manner except as expressly herein provided.

(b) This license does not authorize (i) the broadcasting, telecasting or transmission or retransmission by wire, Internet, website or otherwise, of renditions of musical compositions in ASCAP's repertory to persons outside of the Premises, other than by means of a music-on-hold telephone system operated by LICENSEE at the Premises; and (ii) performances by means of background music (such as *Muzak*) or other services delivered to the Premises. Nothing in this paragraph shall be deemed to limit LICENSEE's right to transmit renditions of musical compositions in the ASCAP repertory to those who attend Events or Functions on the Premises by means of teleconferencing, videoconferencing or similar technology.

(c) This license is limited to non-dramatic performances, and does not authorize any dramatic performances. For purposes of this agreement, a dramatic performance shall include, but not be limited to, the following:

- (i) performance of a "dramatico-musical work" (as hereinafter defined) in its entirety;
- (ii) performance of one or more musical compositions from a "dramatico-musical work (as hereinafter defined) accompanied by dialogue, pantomime, dance, stage action, or visual representation of the work from which the music is taken;

- (iii) performance of one or more musical compositions as part of a story or plot, whether accompanied or unaccompanied by dialogue, pantomime, dance, stage action, or visual representation;
- (iv) performance of a concert version of a "dramatico-musical work" (as hereinafter defined).  
The term "dramatico-musical work" as used in this Agreement, shall include, but not be limited to, a musical comedy, opera, play with music, revue, or ballet.
- (d) This license does not authorize performances:
  - (i) at any convention, exposition, trade show, conference, congress, industrial show or similar activity presented by LICENSEE or on the Premises unless it is presented or sponsored solely by and under the auspices of LICENSEE, is presented entirely on LICENSEE'S Premises, and is not open to the general public;
  - (ii) by or at colleges and universities;
  - (iii) at any professional sports event or game played on the Premises;
  - (iv) at any permanently situated theme or amusement park owned or operated by LICENSEE;
  - (v) by any symphony or community orchestra;
  - (vi) by means of a coin operated phonorecord player (jukebox) for which a license is otherwise available from the Jukebox License Office.

### 3. License Fee

- (a) In consideration of the license granted herein, LICENSEE agrees to pay ASCAP a license fee which includes the total of the "Base License Fee" and any applicable "Special Events License Fees", all of which shall be calculated in accordance with the Rate Schedule attached to and made part of this Agreement. For purposes of this Agreement,
  - (i) "Base License Fee" means the annual fee due in accordance with Schedule A of the Rate Schedule and based on LICENSEE's population as established in the most recent published U.S. Census data. It does not include any fees due for Special Events.
  - (ii) "Special Events License Fees" mean the amount due in accordance with Schedule B of the Rate Schedule when Special Events are presented by or on behalf of LICENSEE. It does not include any Base License Fees due.
  - (iii) LICENSEES who are legally organized as state municipal and/or county leagues or state associations of municipal and/or county attorneys shall be required to pay only the fee under Schedule C of the Rate Schedule. Such leagues or associations are not subject to Schedule A or Schedule B of the Rate Schedule. Fees paid by such leagues or associations do not cover performances of the municipality, county or other local government entity represented by the league or association. Schedule C fees are not applicable to municipal, county or other local government entities.

Unless otherwise limited by law, LICENSEE shall pay a finance charge of 1.5% per month from the due date, or the maximum amount permitted by law, whichever is less, on any required payment that it is not made within thirty days of its due date.

### 4. Reports and Payments

- (a) Upon the execution of this Agreement, LICENSEE shall submit:
  - (i) a report stating LICENSEE's population based on the most recent published U.S. Census data. The population set forth in the report shall be used to calculate the Base License Fee under this Agreement; and (ii) a report containing the information set forth in paragraph 4.(d) below for all Special Events that were presented between the effective date of this Agreement and the execution of this Agreement.
- (b) The Base License Fee for the first year of this Agreement and any license fees due for Special Events that were presented between the effective date of this Agreement and the execution of this Agreement shall be payable upon the execution of this Agreement.
- (c) Base License Fees for subsequent years shall be due and payable within 30 days of the renewal date of this Agreement and shall be accompanied by a statement confirming whether any Special Events were presented during the previous calendar year.
- (d) Ninety days after the conclusion of each Special Event, LICENSEE shall submit to ASCAP payment for such Special Event and a report in printed or computer readable form stating:
  - (i) the date presented;
  - (ii) the name of the attraction(s) appearing;
  - (iii) the "Gross Revenue" of the event. "Gross Revenue" means all monies received by LICENSEE or on LICENSEE'S behalf from the sale of tickets for each Special Event. If there are no monies from the sale of tickets, "Gross Revenue" shall mean contributions from sponsors or other payments received by LICENSEE for each Special Event;
  - (iv) the license fee due for each Special Event.
- (e) If LICENSEE presents, sponsors or promotes a Special Event that is reportable under Rate Schedule B with another person or entity licensed under an ASCAP License Agreement, LICENSEE shall indicate the name, address, phone number and ASCAP account number of the other person(s) or entity(ies) and the party responsible for payment for such Special Event. If the other party is not licensed by ASCAP, LICENSEE shall pay the license fee due hereunder, notwithstanding any agreement to the contrary between LICENSEE and the other party.

(f) LICENSEE agrees to furnish to ASCAP, where available, copies of all programs of musical works performed, which are prepared for distribution to the audience or for the use or information of LICENSEE or any department thereof. The programs shall include all encores to the extent possible. LICENSEE shall be under no obligation to furnish programs when they have not been otherwise prepared.

(g) ASCAP shall have the right to examine LICENSEE'S books and records at LICENSEE'S place of business during normal business hours to such extent as may be necessary to verify the reports required by paragraph 4.(d) above. ASCAP shall have the right to adjust LICENSEE'S Base License Fee based upon the most recently available revised population figures and Population Estimates Program provided by the U.S. Census Department.

**5. Breach or Default**

Upon any breach or default by LICENSEE of any term or condition herein contained, ASCAP may terminate this license by giving LICENSEE thirty days notice to cure such breach or default, and in the event that such breach or default has not been cured within said thirty days, this license shall terminate on the expiration of such thirty-day period without further notice from ASCAP. In the event of such termination, ASCAP shall refund on a pro-rata basis to LICENSEE any unearned license fees paid in advance.

**6. Interference in Operations**

ASCAP shall have the right to terminate this license upon thirty days written notice if there is any major interference with, or substantial increase in the cost of, ASCAP'S operations as the result of any law in the state, territory, dependency, possession or political subdivision in which LICENSEE is located which is applicable to the licensing of performing rights. In the event of such termination, ASCAP shall refund to LICENSEE on a pro-rata basis any unearned license fees paid in advance.

**7. Non-Discrimination**

LICENSEE recognizes that ASCAP must license all similarly situated users on a non-discriminatory basis. LICENSEE agrees that any modifications to this Agreement by ASCAP, which are required by local, state or federal law for other municipalities, counties and other governmental entities shall not constitute discrimination between similarly situated users. Examples of such modifications are statements of equal employment opportunity or nondiscrimination on the basis of race, creed, color, sex or national origin.

**8. Notices**

ASCAP or LICENSEE may give any notice required by this Agreement by sending it by certified United States Mail, by generally recognized same-day or overnight delivery service or by electronic transmission (i.e., Mailgram, facsimile or similar transmission) to the appropriate person/office as listed herein. Each party agrees to notify the other of any change in contact information, such as change of address, change of person/office responsible, etc. within 30 days of such change.

AMERICAN SOCIETY OF COMPOSERS,  
AUTHORS AND PUBLISHERS

LICENSEE Palm Beach County, FL

By *Bene Bauman*

By \_\_\_\_\_

TITLE \_\_\_\_\_

(Fill in capacity in which signed: (a) If corporation, state corporate office held; (b) If partnership, write word "partner" under signature of signing partner; (c) If individual owner, write "individual owner" under signature.)

**IN WITNESS WHEREOF, the undersigned parties have signed this Agreement on the date first above written.**

**ATTEST:**

**SHARON R. BOCK,  
Clerk & Comptroller**

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

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

By: \_\_\_\_\_  
**Commissioner Addie L. Green  
Chairperson**

**APPROVED AS TO FORM AND LEGAL SUFFICIENCY**

**APPROVED AS TO TERMS AND CONDITIONS**

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

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



# LOCAL GOVERNMENT ENTITIES

## 2008 Rate Schedule and Report Form

Account Number: Premise Name: 

### SCHEDULE A: Base License Fee

Population Size			Base License Fee
1	to	50,000	\$284.00
50,001	to	75,000	\$567.00
75,001	to	100,000	\$681.00
100,001	to	125,000	\$909.00
125,001	to	150,000	\$1,136.00
150,001	to	200,000	\$1,476.00
200,001	to	250,000	\$1,816.00
250,001	to	300,000	\$2,158.00
300,001	to	350,000	\$2,499.00
350,001	to	400,000	\$2,840.00
400,001	to	450,000	\$3,180.00
450,001	to	500,000	\$3,521.00
500,001	and over		*** \$4,315.00

\*\*\* \$4,315 plus \$500 for each 100,000 of population above 500,000 to a maximum fee of \$56,781

### SCHEDULE B: Special Events

The rate for Special Events shall be 1% of Gross Revenue.

"Special Events" means musical events, concerts, shows, pageants, sporting events, festivals, competitions, and other events of limited duration presented by LICENSEE for which the "Gross Revenue" of such Special Event exceeds \$25,000.

"Gross Revenue" means all monies received by LICENSEE or on LICENSEE'S behalf from the sale of tickets for each Special Event. If there are no monies from the sale of tickets, "Gross Revenue" shall mean contributions from sponsors or other payments received by LICENSEE for each Special Event.

### SCHEDULE C: State Municipal and/or County Leagues or State Associations of Attorneys

The annual license fee for LICENSEES who are legally organized as state municipal and/or county leagues or state associations of municipal and/or county attorneys shall be \$284.

#### License Fee for Year 2009 and Thereafter

For each calendar year commencing 2009, all dollar figures set forth in Schedules A, B and C above (except for \$500 add-on for populations of 500,001 or more) shall be the license fee for the preceding calendar year, adjusted in accordance with the increase in the Consumer Price Index - All Urban Consumers (CPI-U) between the preceding October and the next preceding October. Any additional license fees due resulting from the CPI adjustment shall be payable upon billing by ASCAP.

ASCAP, 2675 Paces Ferry Rd, Suite 350, Atlanta, GA 30339-3913 1-800-505-4052 770-805-3475 (FAX)

Epayment Websites: [http://www.ascap.com/gls\\_web](http://www.ascap.com/gls_web) or <http://www.ascap.com>



A S C A P

### DISCLOSURE STATEMENT

This is notice that, in compliance with Fla. Stat. §501.93(2):

(1) The performing rights license agreement you have been offered by the American Society of Composers, Authors and Publishers (ASCAP) contains a schedule of the rates and term of royalties under that contract and sets forth the basis upon which those rates were calculated;

(2) ASCAP will make available, upon your written request, and at a charge of no more than the costs incurred by ASCAP in responding to your request, the most current available listing of the copyrighted musical works in the ASCAP repertory;

(3) ASCAP has established a toll-free telephone number and a means of computer access that can be used to answer your inquiries regarding the specific musical works and copyright owners represented by ASCAP;

(4) Each form of contract or agreement offered by ASCAP to a Florida proprietor will be made available to you upon your request;

(5) The agreement you have been offered complies with federal law and orders of courts having appropriate jurisdiction regarding the rates and terms of royalties and the circumstances under which licenses for rights of public performance are offered to any proprietor;

(6) You should consider obtaining a separate license or other form of authorization from those performing rights societies or copyright owners whose copyrighted musical works are not licensed pursuant to ASCAP's license agreement; and

(7) You are entitled to the information provided in the preceding paragraphs, and ASCAP's failure to provide that information is unlawful.

Additional information about ASCAP's members and the musical works in the ASCAP repertory can be obtained in a variety of other ways. Separate databases of works that have been registered with ASCAP since January 1, 1991, or identified in ASCAP's surveys of performed works since January 1, 1978, are available online at the ASCAP Web Site, [www.ascap.com](http://www.ascap.com) (access the "ACE Database of Musical Titles" to determine whether particular songwriters or specific songs are in the ASCAP repertory). Data similar to that contained in the ACE Database is also available on DVD-ROM and is available free of charge by written request to ASCAP, One Lincoln Plaza, New York, NY 10023, attn: Director of Repertory. More comprehensive records of the titles, dates of U.S. Copyright registration (if any), writers and current publishers or other copyright owners of all known works in the ASCAP repertory are available for public inspection at ASCAP's New York office during regular business hours. A printed current list of ASCAP members can be obtained *gratis* by written request to ASCAP, 2675 Paces Ferry Road, SE, Suite 350, Atlanta, GA 30339, attn: Mr. Skinner. A computer-generated listing of copyrighted musical works in the ASCAP repertory may also be obtained by written request addressed to Mr. Skinner at a cost of \$2200.00 plus shipping and handling (the listing is over 10,000 pages in length). You can also call or write to our Repertory Department (Clearance Section) at our New York address (the toll-free telephone number is (800) 95-ASCAP).