

PALM BEACH COUNTY
BOARD OF COUNTY COMMISSIONERS

AGENDA ITEM SUMMARY

Meeting Date: **September 9, 2008**

Consent Regular
 Ordinance Public Hearing

Department: **Parks and Recreation**

Submitted By: **Parks and Recreation Department**

Submitted For: **Parks and Recreation Department**

I. EXECUTIVE BRIEF

Motion and Title: Staff recommends motion to approve: **A) Tri-Party Agreement with the City of West Palm Beach and Palm Beach Photographic Centre, Inc. for the period September 9, 2008, through September 8, 2010, in an amount not-to-exceed \$500,000 for funding of construction of the Palm Beach Photographic Centre; and B) Budget Transfer of \$500,000 within the \$25M GO Parks and Cultural Improvements Bond Fund - 2003 from Reserves to Palm Beach Photographic Centre.**

Summary: This Agreement provides funding for construction of a 20,210 square foot facility by the Photographic Centre in space leased from the City within its City Center at 415 Clematis Street. The Photographic Centre will utilize an additional 6,000 square feet of common space for bathrooms, storage, shipping and receiving areas to be shared with City facilities. This Agreement has eliminated obligations typically contained in the standard bond project agreement that would be imposed on the City of West Palm Beach including: the obligation to operate and maintain the project for public recreational or cultural purposes for a 30-year period; and the obligation to reimburse the County in the event that the Palm Beach Photographic Centre or the City fail to complete, operate and maintain the project or convert the project to an alternate use that is not approved by the County. All of the Agreement's obligations remain applicable to the Palm Beach Photographic Centre, Inc. Funding is from the 2002 \$50 Million Recreational and Cultural Facilities Bond referendum, as amended – District 2. District 2 (PK)

Background and Policy Issues: On November 5, 2002, a bond referendum, as amended, 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, with \$500,000 allocated from the Recreational and Cultural Bond.

Palm Beach Photographic Centre, Inc. has entered into a 30-year lease with the City for 20,210 feet in the new West Palm Beach City Center. The Photographic Centre will have exclusive use of and be responsible for interior build-out of approximately 8,300 square feet on the first floor of City Center and 11,910 square feet on the second floor. The City will provide the shell, including electric and HVAC. The Photographic Centre's ProShop and exhibition area/museum will occupy the first floor, along with the shared restrooms, storage, hallways, and shipping and receiving areas. The second floor includes the administrative areas (open office area, show preparation and framing area, staff offices, storage and hallways) and the school area (office/reception area, classrooms, computer and print/graphics labs, storage, conference room and library, dressing room and lounge, studio and studio storage, and hallways). The cost for the construction of the Photographic Centre is estimated to be approximately \$1,800,000, with \$1,300,000 to be provided by the Photographic Centre and \$500,000 from the County bond funding.

The specified completion date for construction of the project and submission of reimbursement documentation is September 8, 2010. The term of the Agreement is until September 8, 2038, which is the standard 30-year term for bond agreements. The Agreement has been executed by the City and Palm Beach Photographic Centre, Inc., and now needs to be approved by the Board of County Commissioners.

- Attachments:**
- 1. Tri-Party Agreement
 - 2. Budget Transfer

Recommended by: 
Department Director

8/29/08
Date

Approved by: 
Assistant County Administrator

9/3/08
Date

BOARD OF COUNTY COMMISSIONERS
 PALM BEACH COUNTY, FLORIDA
 BUDGET TRANSFER

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

ACCT NUMBER	ACCOUNT NAME	ORIGINAL BUDGET	CURRENT BUDGET	INCREASE	DECREASE	ADJUSTED BUDGET	EXPENDED/ ENCUMBERED 8/27/2008	REMAINING BALANCE
Reserves								
3019-581-9900-9908	Res-New Projects	4,760,887	1,225,361		500,000	725,361	0	725,361
Palm Beach Photographic Ctr/Pass-Through								
3019-581-P563-8201	Contributions-Non-Govts Agncs	0	0	500,000		500,000	0	500,000
TOTAL				500,000	500,000			

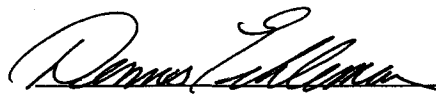
Signatures

Date

Parks and Recreation Department
INITIATING DEPARTMENT/DIVISION

Administration/Budget Department Approval

OFMB Department - Posted

 8/26/08

By Board of County Commissioners
 At Meeting of
 September 9, 2008
 Deputy Clerk to the Court

Res 355-08

AGREEMENT BETWEEN PALM BEACH COUNTY, THE CITY OF WEST PALM BEACH, AND PALM BEACH PHOTOGRAPHIC CENTRE, INC. FOR FUNDING OF THE PALM BEACH PHOTOGRAPHIC CENTRE AT THE WEST PALM BEACH CITY CENTER

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 City of West Palm Beach, a Florida Municipal Corporation, hereinafter referred to as "MUNICIPALITY", and Palm Beach Photographic Centre, Inc., a Florida not-for-profit corporation authorized to do business in the State of Florida, hereinafter referred to as "AGENCY".

WITNESSETH:

WHEREAS, AGENCY leases from MUNICIPALITY property which is located within the West Palm Beach City Center at 415 Clematis Street in West Palm Beach; and

WHEREAS, AGENCY desires to design and construct the Palm Beach Photographic Centre, 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, the parties desire to increase the recreational and cultural opportunities for residents of Palm Beach County and to enter into this Agreement.

WHEREAS, MUNICIPALITY is a nominal party to this Agreement and is a signatory solely for the purpose of permitting AGENCY to use COUNTY funding for the Project on premises owned by MUNICIPALITY and not for the purpose of assuming any obligations hereunder.

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 \$500,000 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 \$1,300,000 or greater to complete the Project. The parties agree that COUNTY shall provide its portion of the funding only after AGENCY has expended \$1,300,000.

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 Fatima Nejame, President, Palm Beach Photographic Centre, Inc., at telephone no. 561-276-9797.

Section 1.06 AGENCY shall design and construct the Project upon property owned by MUNICIPALITY 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 twenty four (24) 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 or proof of payment for said payment. AGENCY shall attach a copy of each vendor invoice paid by AGENCY along with a copy of each respective check or proof of payment 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.

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. COUNTY's representative shall visit the Project site to verify and approve said final reimbursement.

Section 3.05 COUNTY agrees to reimburse AGENCY an amount not to exceed \$0 for those approved pre-agreement costs accruing to the Project subsequent to November 5, 2002.

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 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.

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 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:

City Administrator
City of West Palm Beach
Post Office Box 3366
West Palm Beach, FL 33402

With a Copy to:

City Attorney
Post Office Box 3366
West Palm Beach, FL 33402

As to AGENCY:

Before May 1, 2009
Executive Director
Palm Beach Photographic Centre, Inc.
55 N.E. 2nd Avenue
Delray Beach, FL 33444

After May 1, 2009
Executive Director
Palm Beach Photographic Centre, Inc.
415 Clematis Street
West Palm Beach, FL 33401

Any changes in the above Notice information shall be given by mail by the changing party to the other parties to this Agreement.

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.
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 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, 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

By: _____
Deputy Clerk

PALM BEACH COUNTY, FLORIDA BY ITS
BOARD OF COUNTY COMMISSIONERS

By: _____
Commissioner Addie L. Greene,
Chairperson

ATTEST:
CITY CLERK

By: [Signature]
City Clerk

CITY OF WEST PALM BEACH

By: [Signature]
Mayor Presiding Officer

WITNESSES:

[Signature]
[Signature]

PALM BEACH PHOTOGRAPHIC CENTRE, INC.

Tax I.D. # 59-2801420

By: FATIMA NEJAME
Name (Type or Print)

Title: EXECUTIVE DIRECTOR/PRESIDENT

By: [Signature]
Signature

APPROVED AS TO TERMS AND
CONDITIONS

By: [Signature]
Dennis L. Eshleman, Director
Parks and recreation Department

APPROVED AS TO FORM AND
LEGAL SUFFICIENCY

By: N/A
Agency Attorney

APPROVED AS TO FORM AND
LEGAL SUFFICIENCY

By: _____
County Attorney

APPROVED AS TO FORM
AND LEGAL SUFFICIENCY

By: [Signature] 8/20/08
Municipality Attorney

LIST OF EXHIBITS

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

EXHIBIT A

PROJECT DESCRIPTION, COST ESTIMATE, AND CONCEPTUAL SITE PLAN

Project Description

Palm Beach Photographic Centre

Mission Statement

The Palm Beach Photographic Centre is a non-profit visual arts organization dedicated to the enrichment of life through exhibitions, community programs, workshops & other educational activities that promote the arts of photography & digital imaging.

Executive Director
Fatima NeJame

Managing Director
Art NeJame

Board of Directors
Christopher J. Brown
Raymond Buza
Katie Deits
Harrison Funk
Joan Goldberg
Harriet Himmel
Jay Koenigsberg
Sam Leder
Janice McVay
Elaine Morris
Fatima NeJame
Carol Roberts
Gary Schweikert

Master Programs
FOTOfusion®
FOTOtravel Workshops
Photography Workshops
Digital Imaging Workshops

Community Programs
FOTObasics
FOTOcamp for Kids
FOTOfunTours
FOTOinsights
Picture My World

Museum

Websites
www.fotofusion.org
www.workshop.org

E-mail
cs@workshop.org

The Palm Beach Photographic Centre is the only photographic arts center of its kind in America, attracting internationally acclaimed photographers, digital imaging artists and industry professionals. The Centre's programs have also proven to be a significant attraction for tourists and a valuable continuing education resource for the local community. Since its inception, over 55,000 artists have been served by the Centre and its FOTOfusion® festival, making it one of the nation's most recognized education centers for photography and digital imaging. The Columbia Journalism Review named the Centre and FOTOfusion among the 28 most important photography educational resources in the world!

By integrating program content across artistic development, technical capabilities and business practices, the Palm Beach Photographic Centre has established itself as a leading resource for the photographic community.

The new facility, with enlarged studio and digital lab space along with enhanced Digital Imaging Master Workshops, will continue to offer the concepts and technology essential for anyone working with the photographic arts today. The enlarged Photography Master Workshop program will continue to offer professional expertise in a highly charged learning environment ... where creative exploration and technological expertise are given equal weight ... and in classes personalized to meet individual needs.

The Photographic Centre has entered into a 30 year lease with the City of West Palm Beach for space at the new City Center in downtown West Palm Beach. City Center will house the City Hall, the Library and the Photographic Centre. The Photographic Centre will have exclusive use and be responsible for the interior buildout of approx. 8300 sq. ft. in the first floor and 11,910 sq. ft. in the second floor. The City of West Palm Beach will provide the shell, including the ~~restroom, elevator, and stairs~~ electric and HVAC. An additional 6,000 sq. ft. are considered shared space and will be completely finished out by the city of West Palm Beach.

The following will describe each of our projected spaces and their uses:

1st Floor: The Proshop and the museum will occupy the first floor. The ProShop will consist of approximately 2900 square feet along Clematis. This will include the retail shop, a customer print center and a photography gallery.

The Museum will have approximately 4,000 square feet of exhibition area and an additional 1400 square feet will consist of bathrooms, storage and shipping and receiving areas for the retail shop and Museum.

55 Northeast Second Avenue
Delray Beach, FL 33444
561.276.9797 fax 561.276.1932
www.fotofusion.org www.workshop.org
e-mail: cs@workshop.org

Cost Estimate

Palm Beach Photographic Centre

<i>Description</i>	<i>Square Footage (approx.)</i>
Museum	4000
ProShop	2900
Bathrooms, storage, shipping and receiving area	1400

2nd floor: The 11,910 square feet on the second floor will be broken up into two distinct parts, Administrative and School. The school will be allocated approximately 8,770 square feet and the remaining 3,140 square feet will be divided into office, storage and other necessary miscellaneous functions!

The offices, administration, and storage areas of the Centre will house the following:

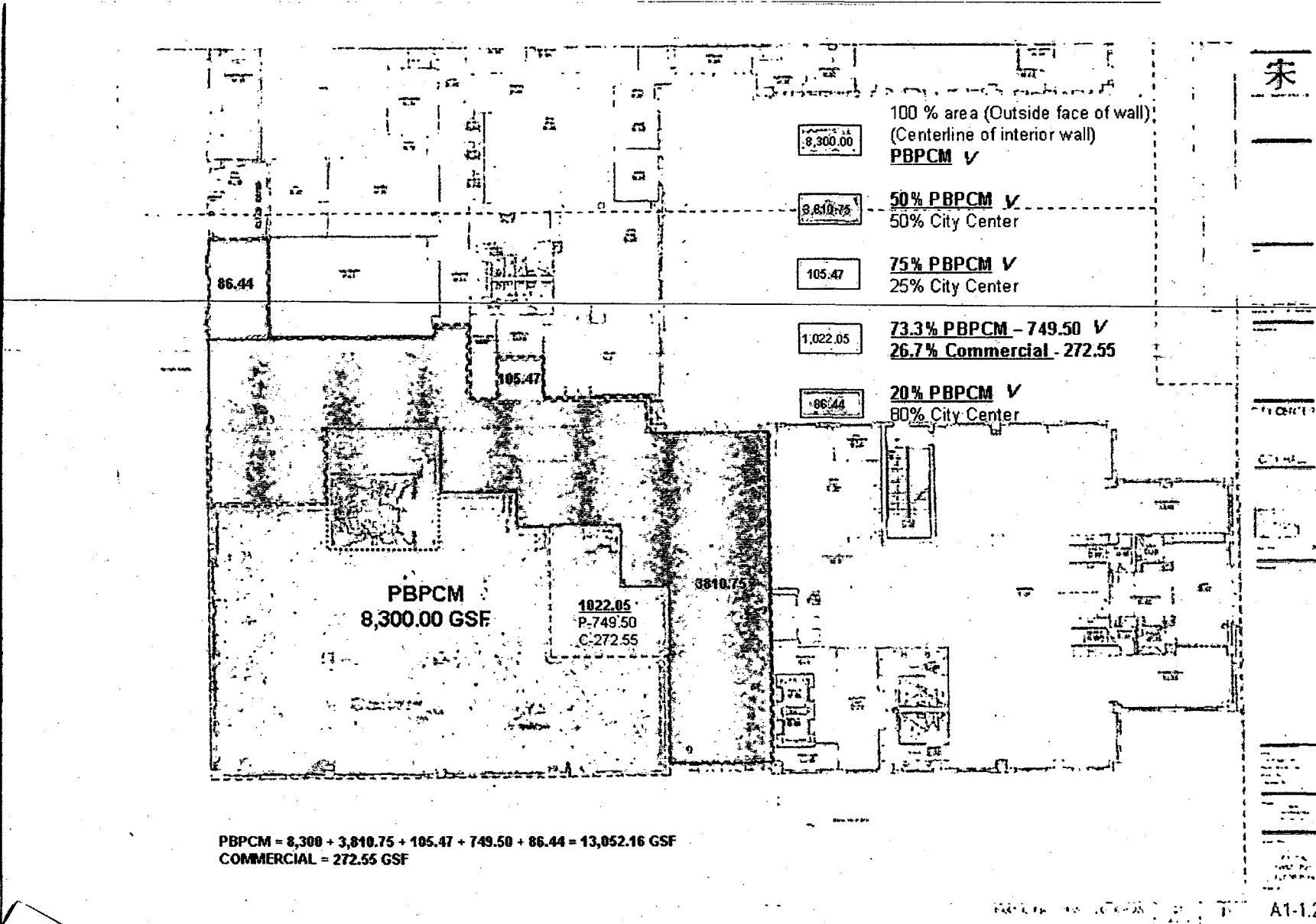
<i>Description</i>	<i>Square Footage (approx.)</i>
Open Office Area	612
Show Prep & Framing Area	576
Executive Director	249
Pro Shop Director	242
Development Director	150
FotoFusion Director	149
Storage	912
Hallways	250

The Area for the School, approximately 8,770 Sq Ft., will be divided into the following:

<i>Description</i>	<i>Square Footage (approx.)</i>
Classroom 1	453
Computer Lab 1	688
Computer Lab 2	666
Computer Lab 3	688
Computer Lab 4	812
Computer Storage	160
Conference Room & Library	387
Studio Dressing Room	98
Entry Hall	183
Furniture Storage	190
Lounge	454
Office/reception Area	388
Print & Graphics Lab	170
Studio	1709
Studio Storage	241
Hallways	1482

The estimated cost for our interior buildout and other miscellaneous expenses is \$1,800,000.

55 Northeast Second Avenue
Delray Beach, FL 33444
561.276.9797 fax 561.276.1932
www.fotofusion.org www.workshop.org
e-mail: cs@workshop.org



COMMERCIAL
4,021.00 GSF + (Shared)

PBPCM
3,143.85 GSF

11,912.85

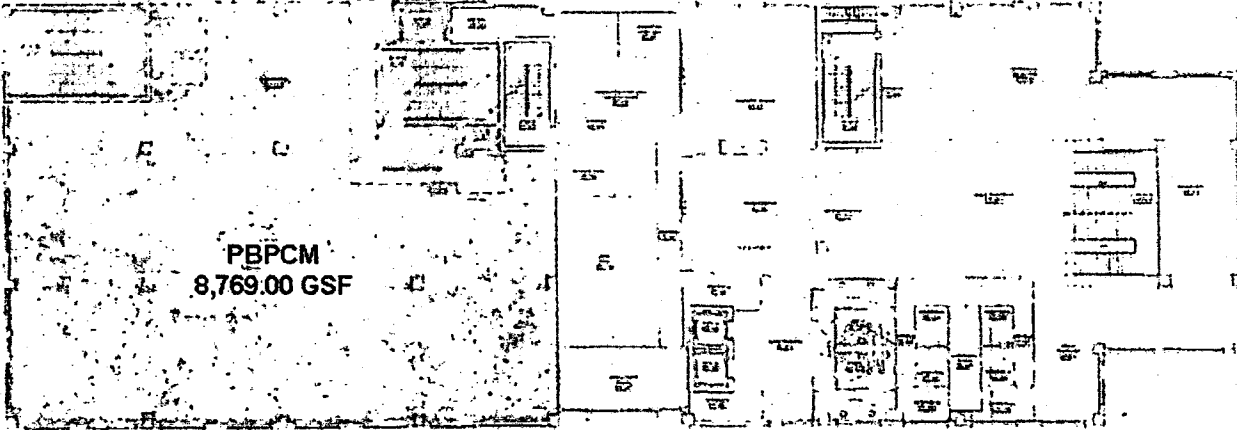
100 % area (Outside face of wall)
(Centerline of interior wall)
73.3% - **PBPCM** ✓

4,021.00

100 % area (Outside face of wall)
(Centerline of interior wall)
26.7% - **Commercial** ✓

4,221.70

73.3% **PBPCM** - 3,094.51
26.7% **Commercial** - 1,127.19



PBPCM = 3,143.85 + 8,769.00 + 3,094.51 = 15,007.36
COMMERCIAL = 4,021.00 + 1,127.19 = 5,148.19

DATE: 6/26/06 11:00 AM

A1-22

JUNE 26, 2006

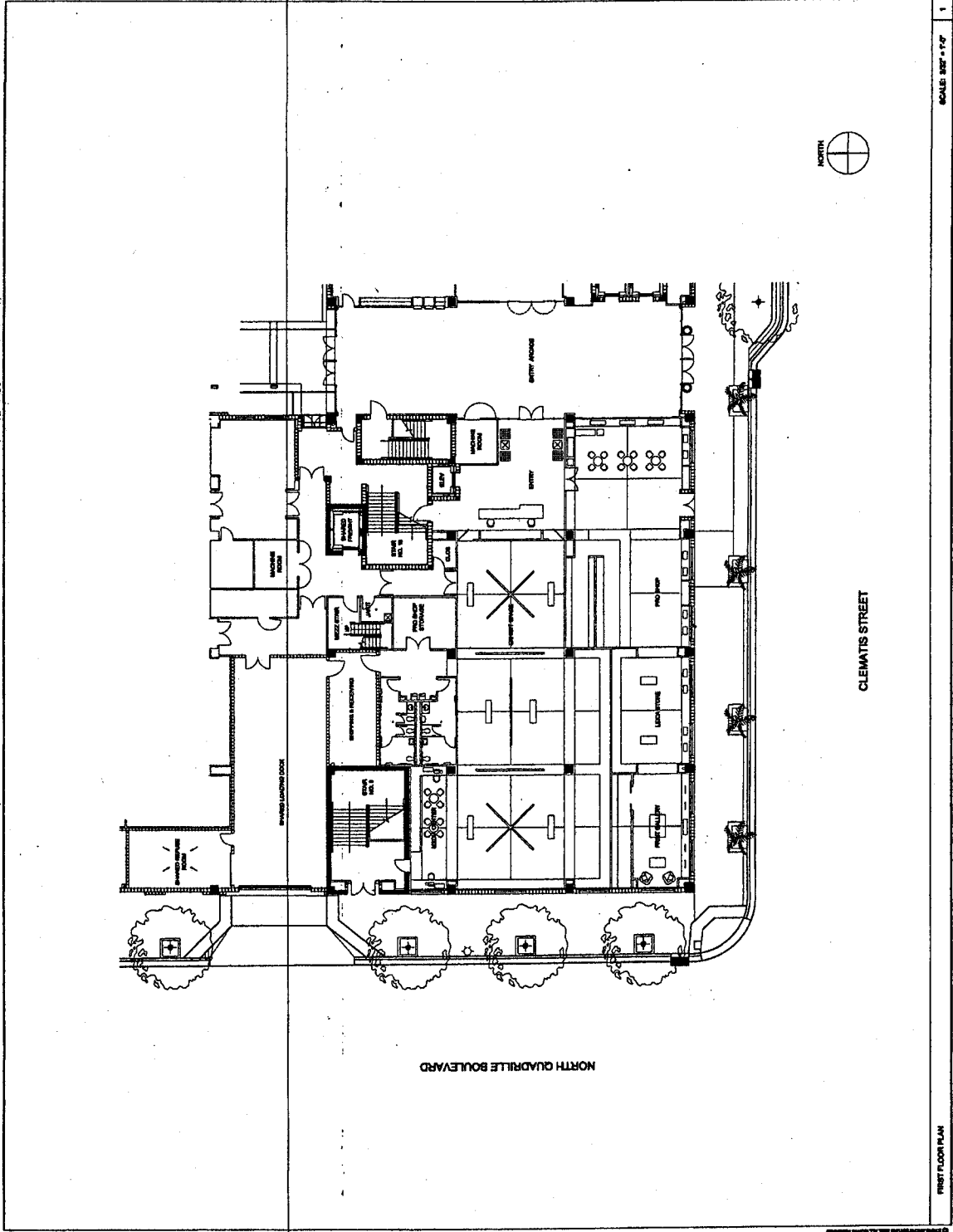
STONE

PALM BEACH
PHOTOGRAPHIC CENTRE

CITY PALM BEACH
1000 PALM BEACH, FL.

Architect: STONE
Contract No.: 88-0000000000
Project No.: 88-0000000000
Drawing No.: 88-0000000000
Date: 04/10/88

FIRST FLOOR PLAN
Scale: 1/8" = 1'-0"
Sheet No.: 1



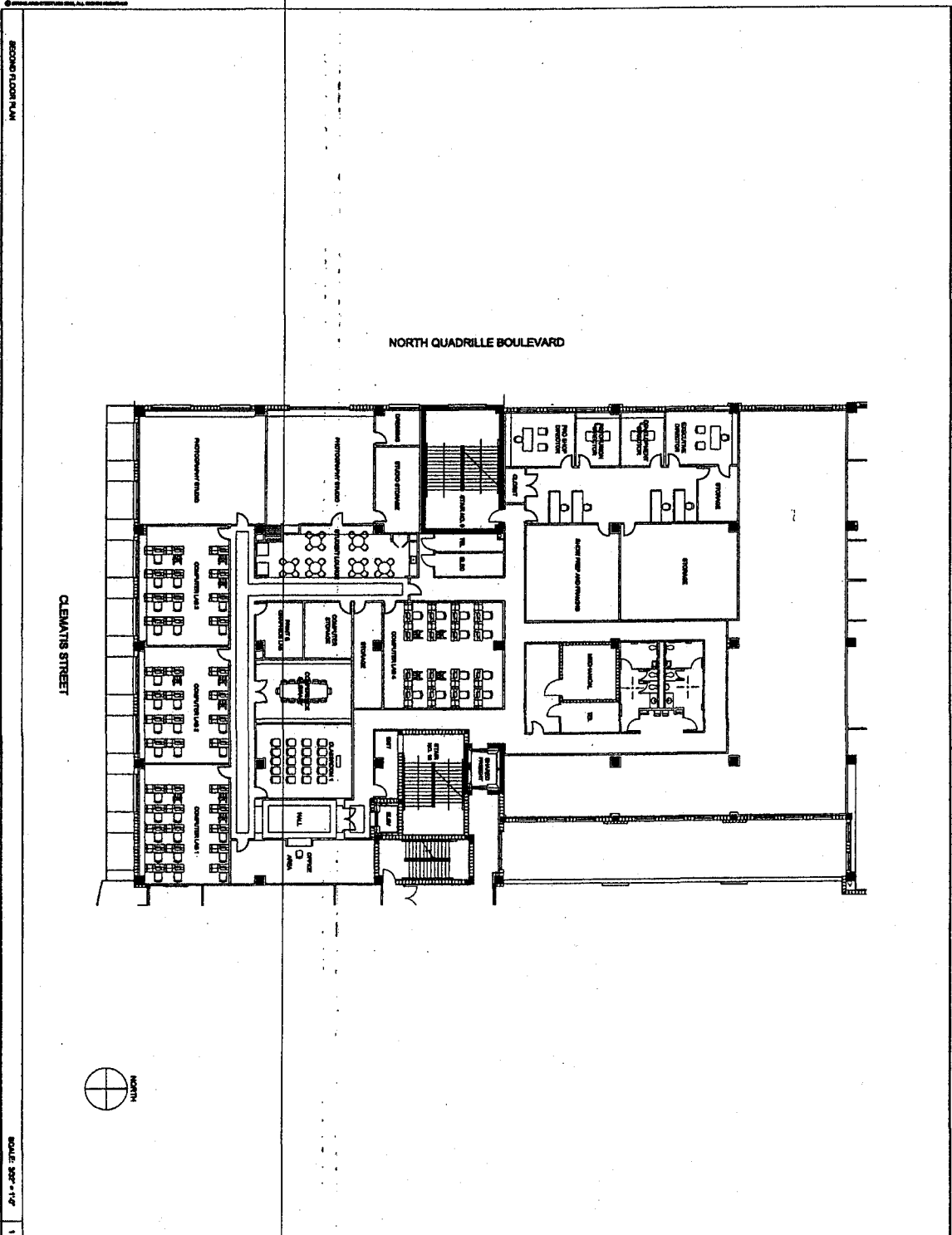
NORTH QUADRILLE BOULEVARD

CLEMATIS STREET

SCALE: 1/8" = 1'-0"

FIRST FLOOR PLAN

1



**PALM BEACH
PHOTOGRAPHIC CENTRE**

GENERAL CONTRACTOR
HUNT PALM BEACH, FL

ALTERNATE PLAN SEVEN

DESIGNED BY
ARCHITECT
DATE
PROJECT NO.
SHEET NO.

SECOND FLOOR PLAN

A1.01

DATE	BY	DATE	BY
10/11/2000	SM	10/11/2000	SM

EXHIBIT B

DESCRIPTION OF PROPERTY

DESCRIPTION OF PROPERTY

PALM BEACH PHOTOGRAPHIC CENTRE AT CITY CENTER IN WEST PALM BEACH

The leased property within the West Palm Beach City Center, more specifically described as being bounded by Quadrille Avenue, Clematis Street, Dixie Highway and Banyan Boulevard in West Palm Beach.

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: _____ Date: _____
 Submittal #: _____ 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.

 Administrator Date

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.

 Financial Officer Date

ACORD CERTIFICATE OF LIABILITY INSURANCE

OP ID IS
PALMB-1

DATE (MM/DD/YYYY)
08/26/08

PRODUCER Bruce Gendelman Insurance Svcs 340 Royal Poinciana Way #305 Palm Beach FL 33480 Phone: 800-845-4145 Fax: 262-478-1001	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 Palm Beach Photographic Centre Inc. 55 NE 2nd Avenue Delray Beach FL 33444	INSURER A: <u>Scottsdale Insurance Company</u>	
	INSURER B:	
	INSURER C:	
	INSURER D:	
	INSURER E:	

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 LTR	ADD'L INSRD	TYPE OF INSURANCE	POLICY NUMBER	POLICY EFFECTIVE DATE (MM/DD/YY)	POLICY EXPIRATION DATE (MM/DD/YY)	LIMITS
A	X	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"/> PRO-JECT <input type="checkbox"/> LOC	CLS1515131	07/08/08	07/08/09	EACH OCCURRENCE \$ 1000000 DAMAGE TO RENTED PREMISES (Ea occurrence) \$ 50000 MED EXP (Any one person) \$ 5000 PERSONAL & ADV INJURY \$ 1000000 GENERAL AGGREGATE \$ 2000000 PRODUCTS - COMPIOP AGG \$ 1000000
		AUTOMOBILE LIABILITY <input 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				COMBINED SINGLE LIMIT (Ea accident) \$ 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 EA ACC \$ AUTO ONLY: AGG \$
		EXCESS/UMBRELLA LIABILITY <input type="checkbox"/> OCCUR <input type="checkbox"/> CLAIMS MADE DEDUCTIBLE \$ RETENTION \$				EACH OCCURRENCE \$ AGGREGATE \$ \$ \$
		WORKERS COMPENSATION AND EMPLOYERS' LIABILITY ANY PROPRIETOR/PARTNER/EXECUTIVE OFFICER/MEMBER EXCLUDED? If yes, describe under SPECIAL PROVISIONS below				WC STATU-TORY LIMITS <input type="checkbox"/> OTH-ER <input type="checkbox"/> E.L. EACH ACCIDENT \$ E.L. DISEASE - EA EMPLOYEE \$ E.L. DISEASE - POLICY LIMIT \$
		OTHER				

DESCRIPTION OF OPERATIONS / LOCATIONS / VEHICLES / EXCLUSIONS ADDED BY ENDORSEMENT / SPECIAL PROVISIONS
RE: 51-55 NE 2nd Avenue, Delray Beach, FL 33444
 Certificate holder is named as additional insured as respects to General Liability.

CERTIFICATE HOLDER Palm Beach County c/o Palm Bch County Park - Rec Dept Attn: Adm Support Mngr 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>Bruce Gendelman</i>
--	--

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.

63 (Policy Provisions: WC 00 00 00 A)
50
RU **INFORMATION PAGE**
WEC **WORKERS COMPENSATION AND EMPLOYERS LIABILITY POLICY**

INSURER: TWIN CITY FIRE INSURANCE COMPANY
HARTFORD PLAZA, HARTFORD, CONNECTICUT 06115
NCCI Company Number: 14974
Company Code: 7



08092
*3500121RU50630101

POLICY NUMBER: 21 WEC RU5063
Previous Policy Number: 21 WEC RU5063

Suffix	
LARS	RENEWAL
	01

- 1. Named Insured and Mailing Address:** PALM BEACH PHOTOGRAPHERS
(No., Street, Town, State, Zip Code)

(SEE ENDT)

FEIN Number: 592801420
55 NE 2ND AVE.
DELRAY BEACH, FL 33444

State Identification Number(s):
UIN:

The Named Insured is: CORPORATION
Business of Named Insured: SCHOOL - COMMERCIAL NOC NOT FO
Other workplaces not shown above: 1255 NE 2ND AVE.
DELRAY BEACH FL 33444

- 2. Policy Period:** From 03/31/08 To 03/31/09
12:01 a.m., Standard time at the insured's mailing address.

Producer's Name: ADVANCED INS UNDERWRITERS LLC/PHS

PO BOX 29611
CHARLOTTE, NC 28229
Producer's Code: 228941

Issuing Office: THE HARTFORD
8711 UNIVERSITY EAST DRIVE
CHARLOTTE NC 28213
(866) 467-8730

Total Estimated Annual Premium: \$3,865
Deposit Premium:
Policy Minimum Premium: \$363 FL (INCLUDES INCREASED LIMIT MIN. PREM.)

Audit Period: ANNUAL **Installment Term:**
The policy is not binding unless countersigned by our authorized representative.

Countersigned by *Margie K. Pope*
Authorized Representative

02/02/08
Date

INFORMATION PAGE (Continued)

Policy Number: 21 WEC RU5063

3. A. Workers Compensation Insurance: Part one of the policy applies to the Workers Compensation Law of the states listed here: FL

B. Employers Liability Insurance: Part Two of the policy applies to work in each state listed in Item 3.A. The limits of our liability under Part Two are:

Bodily injury by Accident	\$500,000	each accident
Bodily injury by Disease	\$500,000	policy limit
Bodily injury by Disease	\$500,000	each employee

C. Other States Insurance: Part Three of the policy applies to the states, if any, listed here:

ALL STATES EXCEPT ND, OH, WA, WV, WY, AND STATES DESIGNATED IN ITEM 3.A. OF THE INFORMATION PAGE.

D. This policy includes these endorsements and schedule:

WC 09 04 03 1G2240 2D WC 00 04 14 WC 00 04 19 WC 09 06 06

4. The premium for this policy will be determined by our Manuals of Rules, Classifications, Rates and Rating Plans. All information required below is subject to verification and change by audit.

Classifications Code Number and Description	Premium Basis Total Estimated Annual Remuneration	Rates Per \$100 of Remuneration	Estimated Annual Premium
4361 PHOTOGRAPHER - ALL EMPLOYEES & CLERICAL, SALESPERSONS, DRIVERS	128,400	1.51	1,939
8868 RELIGIOUS ORGANIZATION: PROFESSIONAL EMPLOYEES & CLERICAL	321,000	.48	1,541
INCREASED LIMITS PART TWO (9807)	.80 PERCENT		28
TO EQUAL INCREASED LIMITS MINIMUM PREMIUM (9848)			22
TOTAL ESTIMATED ANNUAL STANDARD PREMIUM			3,530
EXPENSE CONSTANT (0900)			200
FOREIGN TERRORISM (9740)	449,400	.030	135
TOTAL ESTIMATED ANNUAL PREMIUM			3,865
Total Estimated Annual Premium:		\$3,865	
Deposit Premium:			
Policy Minimum Premium:		\$363 FL (INCLUDES INCREASED LIMIT MIN. PREM.)	

Interstate/Intrastate Identification Number:

Labor Contractors Policy Number:

NAICS: 611699
SIC: 8299
UIN:
NO. OF EMP: 000012

*3500121RU50630101 08093

