

PALM BEACH COUNTY  
BOARD OF COUNTY COMMISSIONERS

AGENDA ITEM SUMMARY

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Meeting Date: September 23, 2008 [X] Consent [ ] Regular  
[ ] Workshop [ ] Public

Department: Administration  
Submitted By: Administration  
Submitted For: Economic Development Office

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I. EXECUTIVE BRIEF

**Motion and Title:** Staff recommends motion to approve a Grant Agreement with The Palm Beach International Film Festival, Inc. (PBIFF) in the amount of \$100,000 from October 1, 2008 to September 30, 2009.

**Summary:** The scope of services included in this Grant Agreement falls within four categories: A) Operations: Recruit 250 films for the Film Festival, with the goal of 10% of being international; Obtain the participation and commitment from 50 talent-industry professionals with the objective of raising awareness of the Film Festival, and feedback for future expansion strategies; and Provide operational support services for all aspects of the Film Festival, B) Revenue Generation: Match 100% of COUNTY grant with private funds; and Develop fundraising/awareness events in 2008-2009, (C) Education: Provide scholarships to the winners of the Student Showcase of Films and develop student liaisons between the PBIFF and the Palm Beach County public school system to encourage participation in the Film Festival, D) Economic Development: Offer a seminar on film industry issues; Meet with the business community through the Business Development Board and Chambers of Commerce to encourage local production companies to participate in the Film Festival activities; and Assist the Tourist Development Council and the PBC Economic Development Office in updating the economic impact of the Film Festival in the County. The reported 2008 economic impact on tourism from out of County visitors was \$1,026,999. The International Film Festival is scheduled from April 23-30, 2009. Funding is included in the 2009 budget. (DW)

**Background and Policy Issues:** The PBIFF was founded in 1996 as a public-private partnership to further develop the film and television industry in Palm Beach County, promote tourism, enhance the artistic appreciation of film in the community, and sponsor education programs in film, television and related media arts. PBIFF is in its 13<sup>th</sup> annual season and has realized significant accomplishments in fulfilling its goals. It is recognized as one of the top 25 film festivals. PBIFF gives back to the community by supporting the County's film, television and production education programs at public schools and colleges.

**Attachments:**  
Grant Agreement

**Recommended by:** [Signature] 9/16/08  
Economic Development Director Date

**Approved by:** [Signature] 9/18/08  
Assistant County Administrator Date

**II. FISCAL IMPACT ANALYSIS**

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

Fiscal Years	2008	2009	2010	2011	2012
Capital Expenditures	_____	_____	_____	_____	_____
Grant Expenditure	_____	<u>100,000</u>	_____	_____	_____
Operating Revenues	_____	_____	_____	_____	_____
Program Income (PBC)	_____	_____	_____	_____	_____
In-Kind Match (PBC)	_____	_____	_____	_____	_____
<b>NET FISCAL IMPACT</b>	_____	<u>100,000</u>	_____	_____	_____
<b># ADDITIONAL FTE POSITIONS</b>	_____	_____	_____	_____	_____
<b>(Cumulative)</b>	_____	_____	_____	_____	_____

Is Item Included In Proposed Budget?      Yes   X   No \_\_\_\_\_

**Budget Account Number:**

Fund 1539    Department 764    Unit 1082    Object 8201

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

The source of funds for the \$100,000 is the Film and Television budget line item.

C. Departmental Fiscal Review: *[Signature]* 9/8/08

**III. REVIEW COMMENTS**

A. OFMB Fiscal and/or Contract Dev. and Control Comments:

*Abuelhita* 9.11.08  
OFMB  
*[Stamp]* 9/15/08  
CN 9/9/08

*Dr. J. Javel* 9/15/08  
Contract Dev. and Control  
9/12/08

This Contract complies with our contract review requirements.

B. Legal Sufficiency:

*[Signature]* 9/17/08  
Assistant County Attorney

C. Other Department Review:

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

This summary is not to be used as a basis for payment.

**A GRANT AGREEMENT BETWEEN  
PALM BEACH COUNTY  
AND  
THE PALM BEACH INTERNATIONAL FILM FESTIVAL, INC.**

THIS Grant Agreement, entered into this \_\_\_\_\_ day of \_\_\_\_\_, 2008, by and between Palm Beach County, a political subdivision of the State of Florida, hereinafter referred to as COUNTY and the **Palm Beach International Film Festival, Inc.**, a non-profit corporation duly organized and existing by virtue of the laws of the State of Florida, having its principal office at **289 Via Naranjas, Royal Palm Plaza, Suite #48, Boca Raton, Florida 33432**, hereinafter referred to as the GRANTEE, whose Federal Employer Identification Number is **650599763**.

WHEREAS, the development of the film and television cluster industry was identified at the 2005 Palm Beach County Economic Summit as a "branding priority" and a key international marketing tool; and

WHEREAS, the Palm Beach International Film Festival, hereinafter referred to as the PROJECT, is recognized to be an important component of Palm Beach County's artistic, education, tourism, and business development life.

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

**Recitals**

The foregoing recitals are correct and true at the time of execution of this Agreement and are incorporated herein by reference:

**PART I  
TERMS OF THE CONTRACT**

**Scope of Services**

The GRANTEE shall, in a satisfactory and proper manner as determined by the COUNTY, perform the tasks necessary to complete the Scope of Services outlined in Exhibit "A", submit invoices using the cover sheet as shown in Exhibit "B", and provide reports as shown in Exhibit "C", which are attached hereto and made a part hereof. In order to provide the services set forth in Exhibit "A", GRANTEE may enter into contracts with various firms or individuals to assist GRANTEE in its performance of the activities or functions described in this Agreement, provided that the funds necessary to perform such duties, activities or functions are included in the budgeted amount set forth in Exhibit "A". The term of any such contract shall not extend beyond the expiration or earlier termination of this Agreement or any renewal thereof, and all such contracts shall expressly so provide. No such contract or agreement shall obligate the COUNTY in any manner to any third party.

**Effective Date & Term**

The effective date of this Agreement shall be the **1<sup>st</sup>** day of **October 2008**. The term of this Agreement shall be **twelve (12) months** from the effective date of this Agreement. This Agreement shall end on the **30<sup>th</sup>** day of **September 2009**.

**Grant Amount**

The GRANTEE will be eligible for a grant amount not to exceed **\$100,000 (one hundred thousand dollars)**, which shall be payable in accordance with the terms of this Agreement and the eligible expenses outlined in Exhibit "A." Any funds not obligated by the expiration date of this Agreement shall automatically revert to the COUNTY.

**Performance Period**

The GRANTEE shall have twelve (12) months from the effective date of this Agreement to fulfill the obligations as scheduled in Exhibit "A." Said services shall be performed in a manner satisfactory to COUNTY. **In any event, all services required hereunder shall be completed by the GRANTEE no later than September 30, 2009.**

**Eligible Reimbursements**

The grant funds available under this Agreement shall be provided only for reimbursement expenses associated with the GRANTEE's scope of services as set forth on Exhibit "A."

### **Method of Payment**

GRANTEE incurred expenses for the PROJECT beginning on October 1, 2008. Those costs incurred by GRANTEE for the PROJECT, approved and submitted accordingly by GRANTEE subsequent to October 1, 2008, are eligible for reimbursement by COUNTY pursuant to the terms and conditions hereof. The COUNTY agrees to make a **lump sum payment of \$100,000** upon receipt of documentation satisfactory to COUNTY. The request for reimbursements shall include copies of paid invoices, canceled checks, or other documentation acceptable to the Palm Beach County Office of Financial Management & Budget and the Finance Department of the Clerk of the Circuit Court, and shall be sufficient to adequately describe the expenses and establish that the expense was actually incurred directly by the GRANTEE. Invoices shall not be honored if received by the Palm Beach County Finance Department **later than forty-five (45) days** after the expiration date of this Agreement.

## **PART II GENERAL CONDITIONS**

### **Opportunities for Residents and Civil Rights Compliance**

The GRANTEE agrees that no person shall, on the grounds of race, color, disability, national origin, religion, age, familial status, sex, sexual orientation, gender identity or expression be excluded from the benefits of, or be subjected to discrimination under, any activity carried out by the performance of this Agreement. Upon receipt of evidence of such discrimination, the COUNTY shall have the right to terminate this Agreement. To the greatest extent feasible, low-income residents of the COUNTY shall be given opportunities for training and employment; and to the greatest extent feasible, businesses located in or owned by persons residing in the COUNTY shall be awarded contracts in connection with this Grant.

### **Opportunities for Small and Minority/Women-Owned Business Enterprises**

In the procurement of supplies, equipment, construction, or services to implement this Agreement, the GRANTEE shall make a positive effort to utilize small and minority/women-owned business enterprises as sources of supplies and services, and provide these enterprises the maximum feasible opportunity to compete for contracts to be performed pursuant to this Agreement. To the maximum extent feasible, these small and minority/women-owned business enterprises shall be located in and/or owned by residents of Palm Beach County.

### **Contract Documents**

The following documents are herein incorporated by reference or made part hereof, and shall constitute and be referred to as the Agreement; and all of said documents taken as a whole constitute the Agreement between the parties hereto and are as fully a part of the Agreement as if they were set forth verbatim and at length herein:

- A. This Agreement including its Exhibits;
- B. Title VI of the Civil Rights Act of 1964, Age Discrimination Act of 1975, and Title II of the Americans with Disabilities Act of 1990;
- C. The Drug-Free Workplace Act of 1988, as amended;
- D. The GRANTEE's Policies and Procedures Manuals, and Job Descriptions;
- E. The GRANTEE's Articles of Incorporation and Bylaws;
- F. The GRANTEE's Certificate of Insurance;
- G. Current list of the GRANTEE's Officers and members of Board of Directors;
- H. Proof of GRANTEE's 501(c)(3) certification from Internal Revenue Service (IRS); and
- I. Florida Statute 112.061, relating to per diem, travel.

All of these documents will be maintained on file by the GRANTEE. The GRANTEE shall keep an original of this Agreement, including its Exhibits, and all amendments thereto, on file at its principal office.

### **Federal and State Tax**

The COUNTY is exempt from payment of Florida State Sales and Use Taxes. The COUNTY will sign an exemption certificate submitted by the GRANTEE. GRANTEE shall not be exempted from paying sales tax to its suppliers for materials used to fulfill contractual obligations with the COUNTY, nor is the GRANTEE authorized to use the COUNTY'S Tax Exemption Number in securing such materials. The GRANTEE shall be responsible for payment of its own and its share of its employees' payroll, payroll taxes, and benefits with respect to this Agreement.

### **Governing Law and Venue**

This Agreement shall be performed in accordance with applicable Federal, State, COUNTY laws, ordinances and codes. These represent minimum regulations, which may be supplemented by more restrictive guidelines set forth by the COUNTY. Venue in any action, suit or proceeding in connection

with this Agreement shall lie in a Florida State Court of competent jurisdiction located in Palm Beach County.

**Binding Effect**

This Agreement shall be binding upon and shall inure to the benefit of the parties hereto and their respective legal representatives, successors, and assigns.

**Construction of Agreement**

No party shall be considered the author of this Agreement since the parties hereto have participated in extensive negotiations and drafting and redrafting of this document to arrive at this final Agreement. Thus, the terms of this Agreement shall not be strictly construed against one party as opposed to the other party based on who drafted it. In the event that any section, paragraph, sentence, clause, or provision hereof shall be held by a court of competent jurisdiction to be invalid, such shall not affect the remaining portions of this Agreement and the same shall remain in full force and effect.

**Recognition**

The GRANTEE shall include a reference to the financial support herein provided by the COUNTY in all publications and publicity. In addition, the GRANTEE shall make a good faith effort to recognize the COUNTY's support for all activities made possible with funds available under this Agreement.

**No Forfeiture**

The rights of the COUNTY under this Agreement shall be cumulative and failure on the part of the COUNTY to exercise promptly any rights given hereunder shall not operate to forfeit or waive any of the said rights.

**Default**

In the event the GRANTEE fails or refuses to perform any term, covenant, or condition of this Agreement for which a specific remedy is not set forth in the Agreement, the COUNTY shall, in addition to any other remedies provided at law or in equity, have the right of specific performance thereof.

**Failure to Comply**

If the GRANTEE fails to comply with any of the provisions of this Agreement, the COUNTY may withhold, temporarily or permanently, all, or any, unpaid portion of the Grant Award upon giving written notice to the GRANTEE, terminate this Agreement and/or demand a refund of the Grant Award and the COUNTY shall have no further funding obligation to the GRANTEE under this Agreement.

**Waiver**

No waiver of any provision of this Agreement shall be effective against any party hereto unless it is in writing and signed by the party(s) waiving such provision. A written waiver shall only be effective as to the specific instance for which it is obtained and shall not be deemed a continuing or future waiver.

**Termination**

This Agreement may be terminated by the GRANTEE upon sixty (60)-days prior written notice to the COUNTY's representative in the event of substantial failure by the COUNTY to perform in accordance with the terms of this Agreement through no fault of the GRANTEE. It may also be terminated, in whole or in part, by the COUNTY, with or without cause, immediately upon written notice to the GRANTEE. Unless the GRANTEE is in breach of this Agreement, the GRANTEE shall be paid for services rendered to the COUNTY's satisfaction through the date of termination. After receipt of a Termination Notice and except as otherwise directed by the COUNTY the GRANTEE shall stop work on the date and to the extent specified.

**Amendments**

The COUNTY may, at its discretion, amend this Agreement to conform to changes required by Federal, State, or COUNTY guidelines, directives, and objectives. Such amendments shall be incorporated by written amendment as a part of this Agreement and shall be subject to approval of the Board of County Commissioners. Except as otherwise provided herein, no amendment to this Agreement shall be binding on either party unless in writing, approved by the Board of County Commissioners and signed by both parties.

### **Personnel**

The GRANTEE represents that it has, or will secure at its own expense, all necessary personnel required to perform the services under this Agreement. Such personnel shall not be employees of or have any contractual relationship with the COUNTY. All of the services required herein under shall be performed by the GRANTEE or under its supervision, and all personnel engaged in performing the services shall be fully qualified and, if required, authorized or permitted under state and local law to perform such services. The GRANTEE warrants that all services shall be performed by skilled and competent personnel to the highest professional standards in the field. All of the GRANTEE's personnel (and all Subcontractors) while on COUNTY premises will comply with all COUNTY requirements governing conduct, safety and security.

### **Evaluation and Monitoring**

The GRANTEE agrees that the COUNTY will carry out periodic monitoring and evaluation activities as determined necessary by the COUNTY and that the continuation of this Agreement is dependent upon satisfactory evaluation conclusions based on the terms of this Agreement and comparisons of planned versus actual progress relating to project scheduling, budgets, audit reports, and output measures. The GRANTEE shall submit information and status reports required by the COUNTY, on forms approved by the COUNTY. The GRANTEE shall allow the COUNTY to monitor the GRANTEE on site. Such visits may be scheduled or unscheduled as determined by the COUNTY.

### **Insurance**

GRANTEE shall, at its sole expense, agree to maintain in full force and effect at all times during the life of this Agreement, insurance coverage and limits (including endorsements), as described herein. GRANTEE shall agree to provide the COUNTY with at least ten (10) days prior notice of any cancellation, non-renewal or material change to the insurance coverage. The requirements contained herein, as well as COUNTY's review or acceptance of insurance maintained by GRANTEE are not intended to and shall not in any manner limit or qualify the liabilities and obligations assumed by GRANTEE under this Agreement.

#### **A. *Commercial General Liability***

GRANTEE 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. GRANTEE shall provide this coverage on a primary basis.

#### **B. *Worker's Compensation Insurance & Employers Liability***

GRANTEE shall maintain Worker's Compensation & Employers Liability in accordance with Florida Statute Chapter 440. GRANTEE shall provide this coverage on a primary basis.

#### **C. *Additional Insured***

GRANTEE shall endorse the 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."** GRANTEE shall provide the Additional Insured endorsements coverage on a primary basis.

#### **D. *Certificate(s) of Insurance***

Prior to execution of this Agreement, GRANTEE shall deliver to the COUNTY's representative as identified in the *Notice Article*, a Certificate(s) of Insurance evidencing that all types and amounts of insurance coverage required by this Agreement have been obtained and are in full force and effect. **Such Certificate(s) of Insurance shall include a minimum ten (10) days endeavor** to notify due to cancellation or non-renewal of coverage. The **Certificate of Insurance shall be issued to "Palm Beach County, C/O Economic Development Office, 301 N. Olive Avenue, 10<sup>th</sup> Floor, West Palm Beach, FL 33401."**

#### **E. *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, coverage, or endorsements, herein from time to time throughout the term of this Agreement. 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.