

PALM BEACH COUNTY  
BOARD OF COUNTY COMMISSIONERS

AGENDA ITEM SUMMARY

---

Meeting Date: January 13, 2009

Consent  
 Ordinance

Regular  
 Public Hearing

Department: Parks and Recreation

Submitted By: Parks and Recreation Department

Submitted For: Parks and Recreation Department

---

I. EXECUTIVE BRIEF

**Motion and Title:** Staff recommends motion to approve: Agreement with the City of Delray Beach for the period January 13, 2009, through May 15, 2009, in an amount not-to-exceed \$5,000 for the 2009 First Night Event.

**Summary:** This funding is to offset the cost of the 2009 First Night Event held by the City of Delray Beach on December 31, 2008. The Delray Beach First Night Event featured local entertainers and artists at a community New Year's Eve celebration. The Agreement allows for the reimbursement of eligible project costs incurred subsequent to October 1, 2008. Funding is from the Recreation Assistance Program (RAP) District 7 Funds. District 7 (AH)

**Background and Justification:** The City of Delray Beach offers an annual First Night Event to provide a family oriented community celebration that is both affordable and non-alcoholic. The 2009 First Night Event took place on Atlantic Avenue and side streets, Veterans Park, Old School Square, and the Delray Beach Tennis Center, and was attended by approximately 15,000 participants.

The total cost of the 2009 First Night Event was estimated to be \$132,000 for contractual services (entertainers and artists), equipment rentals, promotions/marketing, production costs, and other administrative costs for the project. The \$5,000 from District 7 RAP funding will offset a portion of the cost of the event. The Agreement has been executed on behalf of the City of Delray Beach, and now needs to be approved by the Board of County Commissioners.

Attachment: Agreement

---

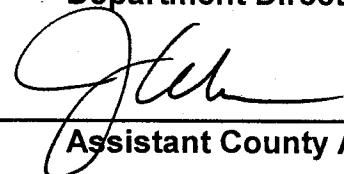
Recommended by:

  
Department Director

Date

12-17-08

Approved by:

  
Assistant County Administrator

Date

1/5/09

**II. FISCAL IMPACT ANALYSIS**

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

Fiscal Years	2009	2010	2011	2012	2013
Capital Expenditures	<u>5,000</u>	<u>-0-</u>	<u>-0-</u>	<u>-0-</u>	<u>-0-</u>
Operating Costs	<u>-0-</u>	<u>-0-</u>	<u>-0-</u>	<u>-0-</u>	<u>-0-</u>
External Revenues	<u>-0-</u>	<u>-0-</u>	<u>-0-</u>	<u>-0-</u>	<u>-0-</u>
Program Income (County)	<u>-0-</u>	<u>-0-</u>	<u>-0-</u>	<u>-0-</u>	<u>-0-</u>
In-Kind Match (County)	<u>-0-</u>	<u>-0-</u>	<u>-0-</u>	<u>-0-</u>	<u>-0-</u>
<b>NET FISCAL IMPACT</b>	<u><b>5,000</b></u>	<u><b>-0-</b></u>	<u><b>-0-</b></u>	<u><b>-0-</b></u>	<u><b>-0-</b></u>
<b># ADDITIONAL FTE POSITIONS (Cumulative)</b>	<u><b>0</b></u>				

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

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

FUND: Park Improvement Fund/Recreation Assistance Program  
 UNIT: RAP/District 7

3600-583-R907-167-8101                      \$5,000

C. Departmental Fiscal Review: ckopelakis

**III. REVIEW COMMENTS**

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

<p><u>Jan D. 12-24-08</u>                  OFMB</p>	<p><u>Adv 12/22</u>  <u>SJ 12/23/08</u></p>	<p><u>Dr. J. Jacob 12/15/08</u>                  Contract Development and Control</p>
---	---	---

**B. Legal Sufficiency:**

*This Contract complies with our contract review requirements.*

[Signature] 1-5-09  
 Assistant County Attorney

**C. Other Department Review:**

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

REVISED 10/95  
 ADM FORM 01

**AGREEMENT BETWEEN PALM BEACH COUNTY AND  
THE CITY OF DELRAY BEACH FOR FUNDING OF THE 2009 FIRST NIGHT EVENT**

**THIS AGREEMENT** is made and entered into on \_\_\_\_\_, by and between Palm Beach County, a political subdivision of the State of Florida, hereinafter referred to as "County", and the City of Delray Beach, a Florida Municipal Corporation, hereinafter referred to as "Delray Beach".

**WITNESSETH:**

**WHEREAS**, Delray Beach is sponsoring its annual First Night Event (the Event) on December 31, 2008, which will offer a non-alcoholic accessible and affordable community New Year's Eve celebration geared to families; and

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

**WHEREAS**, approximately 15,000 people are anticipated to participate in this annual community Event; and

**WHEREAS**, the Event takes place on Atlantic Avenue and side streets, Veterans Park, Old School Square, and the Delray Beach Tennis Center; and

**WHEREAS**, the budget for the Event is approximately \$132,000 for contractual services (entertainers and artists) equipment rentals, promotions/marketing, production costs, and other administrative costs for the project; and

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

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

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

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

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

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

1. County agrees to fund an amount not to exceed \$5,000 to Delray Beach for the 2009 First Night Event for contractual services (entertainers and artists) equipment rentals,

promotions/marketing, production costs, and other administrative costs for the project, as set forth in Exhibit "A", attached hereto and incorporated herein, hereinafter referred to as the "Project".

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

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

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

3. Delray Beach incurred expenses for the Project beginning on October 1, 2008. Those costs incurred by Delray Beach for the Project, approved and submitted accordingly by Delray Beach subsequent to October 1, 2008, are eligible for reimbursement by County pursuant to the terms and conditions hereof.

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

5. Delray Beach agrees, warrants, and represents that all of the employees and participants in the Project will be treated equally during employment, and for the provision

of services without regard to residency, race, color, religion, disability, sex, age, national origin, ancestry, marital status, or sexual orientation, gender identity or expression.

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

7. The term of this Agreement shall be until May 15, 2009, commencing upon the date of execution by the parties hereto.

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

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

10. Delray Beach shall complete the Project by February 15, 2009, and invoices and checks submitted for reimbursement must be dated within the project time frame of October 1, 2008, through February 15, 2009. Delray Beach shall provide its final reimbursement request(s), including a project completion statement and reimbursement documentation as indicated in Section 2 above on or before May 15, 2009. Upon written notification to County at least ninety (90) days prior to that date Delray Beach may request an extension beyond this period for the purpose of completing the Project. County shall not unreasonably deny Delray Beach's request for said extension.

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

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

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

14. It is understood and agreed that Delray Beach is merely a recipient of County funding and is an independent contractor and is not an agent, servant or employee of County or its Board of County Commissioners. It is further acknowledged that the County only contributes funding under this Agreement and operates no control over the Project. To the extent permitted by law and without waiving the right to sovereign immunity as provided by Section 768.28, Florida Statutes, in the event a claim or lawsuit is brought against County or any of its officers, agents or employees, Delray Beach shall indemnify, save and hold harmless and defend the County, its officers, agents, and/or employees from and against any and all claims, liabilities, losses, judgments, and/or causes of action of any type arising out of or relating to any act or omission of Delray Beach, its agents, servants and/or employees in the performance of this Agreement. The foregoing indemnification shall survive termination of this Agreement.

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

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

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

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

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

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

16. Upon request by County, Delray Beach shall demonstrate financial accountability through the submission of acceptable financial audits performed by an independent auditor.

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

18. The County and Delray Beach may pursue any and all actions available under law to enforce this Agreement including, but not limited to, actions arising from the breach of any provision set forth herein.

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

20. As provided in Section 287.132-133, Florida Statutes, by entering into this Agreement or performing any work in furtherance hereof, Delray Beach certifies that it, its

affiliates, suppliers, subcontractors and consultants who will perform hereunder, have not been placed on the convicted vendor list maintained by the State of Florida Department of Management Services within the thirty six (36) months immediately preceding the date hereof. This notice is required by Section 287.133 (3) (a), Florida Statutes.

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

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

As to the County:

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

As to Delray Beach:

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

23. This Agreement is made solely and specifically among and for the benefit of the parties hereto, and no other person shall have any rights, interest, or claims hereunder or be entitled to any benefits under or on account of this Agreement as a third-party beneficiary or otherwise.

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

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

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

**ATTEST:**

By: Donald D. Nelson  
City Clerk

**APPROVED AS TO FORM AND  
LEGAL SUFFICIENCY**

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

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

By: \_\_\_\_\_  
John F. Koons, Chair man

**CITY OF DELRAY BEACH**

By: John F. Koons  
Mayor

**APPROVED AS TO TERMS AND CONDITIONS**

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



**Recreation Assistance Program (RAP)  
Exhibit "A" to Agreement**

Mailing Address: **City of Delray Beach  
100 N.W. First Avenue  
Delray Beach, FL 33444**

Name of Mayor: Rita Ellis

Name of City Manager: David T. Harden

**Project Liaison Information:**

**Name: Bob Barcinski, Assistant City Manager**

**Telephone #: 561-243-7011**

**Fax #: 561-243-7199**

**e-mail: barcinski@ci.delray-beach.fl.us**

**PROJECT INFORMATION**

1. **Name of Project: 2008 First Night Celebration 2009**
2. **Project Description**
  - **General (Project Scope):** Family oriented alcohol free celebration of New Year featuring local entertainers and artists
  - **Public Purpose:** Enhance economic activity downtown, provide safe family oriented New Years Eve program
  - **Location and Date:** Atlantic Ave NW/SW 5th to NE/SE 7th, Old School Square,
  - **Anticipated Number of Participants/Users:** Veterans Park & Tennis Center on  
12,000 - 15,000 December 31, 2008
3. **Project Elements: List anticipated broad categories of Expenditure Items such as capital outlay, contractual services, personnel costs, operational expenses, equipment, and "Other Miscellaneous Project expenses". Do not include expenditure line item budget/ amounts.**
  - Contract Services (Entertainers/Artists)
  - Equipment Rentals
  - Promotions/Marketing
  - Production Costs
  - Other Administrative
4. **Estimated Lump Sum Total for Project: \$132,000**
5. **Project Initiation date (date of first invoice for which reimbursement will be requested) and anticipated End date (date which project will be completed and all invoices paid): 10/1/08 to 2/15/09**

**Note: Invoices and copies of proof of payment documents will be required for Project/Program reimbursement after the RAP Agreement is approved by the Board of County Commissioners. Do not submit reimbursement documentation at this time. After the Agreement is approved, and the reimbursement request is submitted, all invoices and checks must be dated within the stated project time frame AND Categories for Project Elements must be listed in Section 3 above in order to be eligible for RAP reimbursement.**

6. **Required Attachments:- Certificate of Insurance     X**

Amount of Recreation Assistance Program Funding awarded **\$ 5,000**  
District **7**  
(filled in by County)

Form available online by request. Contact Susan Yinger at [syinger@pbccgov.com](mailto:syinger@pbccgov.com)



PALM BEACH COUNTY  
PARKS AND RECREATION DEPARTMENT

EXHIBIT B

CONTRACT PAYMENT REQUEST

Date \_\_\_\_\_

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

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

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

Key Legend

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

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

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

\_\_\_\_\_  
Administrator

\_\_\_\_\_  
Date

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

\_\_\_\_\_  
Date

**PBC USE ONLY**

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

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

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

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

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

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

Reviewed and Approved By: \_\_\_\_\_  
PBC Project Administrator Date

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



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

**PALM BEACH COUNTY  
 PARKS AND RECREATION DEPARTMENT  
 CONTRACTUAL SERVICES PURCHASE SCHEDULE**

**EXHIBIT B**

Grantee: \_\_\_\_\_

Submittal #: \_\_\_\_\_

\_\_\_\_\_ Date

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

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

#	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.

\_\_\_\_\_  
 Date



STAR INSURANCE COMPANY

CERTIFICATE OF INSURANCE

DATE ISSUED: 10/31/08

**PRODUCER**  
 Arthur J. Gallagher & Co.  
 2255 Glades Road  
 Suite 400 E.  
 Boca Raton, FL 33431

**INSURED**  
 City of Delray Beach  
 100 Northwest 1<sup>st</sup> Ave.  
 Delray Beach, FL 33444

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.

COMPANIES AFFORDING COVERAGE

COMPANY (A) STAR INSURANCE COMPANY

COMPANY (B) \_\_\_\_\_

COMPANY (C) \_\_\_\_\_

COMPANY (D) \_\_\_\_\_

COVERAGES

This is to certify that 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. Limits shown may have been reduced by paid claims.

CO LTR	TYPE OF INSURANCE	POLICY NUMBER	POLICY EFFECTIVE DATE (MM/DD/YY)	POLICY EXPIRATION DATE (MM/DD/YY)	LIMITS
A	GENERAL LIABILITY <input checked="" type="checkbox"/> COMMERCIAL GENERAL LIABILITY <input type="checkbox"/> CLAIMS MADE <input checked="" type="checkbox"/> OCCUR. <input type="checkbox"/> OWNER'S & CONTRACTOR'S PROT	CP 02677 20	10/1/2007	4/1/2009	GENERAL AGGREGATE PRODUCTS-COMP/OP AGG EACH OCCURRENCE FIRE DAMAGE (any one fire) MED. EXPENSE (any one person) <u>SEE BELOW</u>
A	AUTOMOBILE LIABILITY <input checked="" type="checkbox"/> ANY AUTO <input type="checkbox"/> ALL OWNED AUTOS <input type="checkbox"/> SCHEDULED AUTOS <input type="checkbox"/> HIRED AUTOS <input type="checkbox"/> NON-OWNED AUTOS <input type="checkbox"/> GARAGE LIABILITY	CP 02677 20	10/1/2007	4/1/2009	COMBINED SINGLE LIMIT BODILY INJURY (per person) BODILY INJURY (per accident) PROPERTY DAMAGE <u>SEE BELOW</u>
A	EXCESS LIABILITY <input type="checkbox"/> UMBRELLA FORM <input checked="" type="checkbox"/> OTHER THAN UMBRELLA FORM	CP 02677 20	10/1/2007	4/1/2009	EACH OCCURRENCE AGGREGATE \$1,000,000 <u>\$3,000,000</u>
A	WORKERS' COMPENSATION AND EMPLOYERS' LIABILITY	CP 02677 20	10/1/2007	4/1/2009	STATUTORY LIMITS EACH ACCIDENT DISEASE-POLICE LIMIT DISEASE-EACH EMPLOYEE <u>Statutory</u>

Company A - Policy subject to a \$500,000. S.I.R. per occurrence.

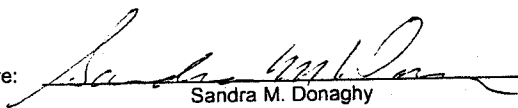
DESCRIPTION OF OPERATIONS/LOCATIONS/VEHICLES/SPECIAL ITEMS - All operations usual to a normal City Government including the Certificate Holder as additional insured but only with respects to the negligent acts of the Named Insured and only to the extent allowed by FS 768.28 and the Florida Constitution for assistance with funding for First Night Event 2009 to be held on 12/31/08.

All other terms and conditions of this policy remain unchanged.

CERTIFICATE HOLDER

Palm Beach County  
 2700 6<sup>th</sup> Ave. South  
 Lake Worth, FL 33461

Should any of the above described policies be cancelled before the expiration date thereof, the issuing company will endeavor to mail 30 days written notice to the certificate holder named to the left, but failure to mail such notice shall impose no obligation or liability of any kind upon the company, its agents or representatives.

Authorized Signature:   
 Sandra M. Donaghy

Meadowbrook Insurance Group