

66-1

Agenda Item:

PALM BEACH COUNTY
BOARD OF COUNTY COMMISSIONERS
AGENDA ITEM SUMMARY

Meeting Date: February 3, 2009

Consent

Regular

Ordinance

Public Hearing

Department: Public Affairs Department

Submitted By: Public Affairs Department

EXECUTIVE BRIEF

Motion and Title: Staff recommends motion to approve: An Agreement with Palm Beach County Cultural Council regarding the Centennial Bell Project.

Summary: Palm Beach County is celebrating its centennial in 2009. The BCC appointed Centennial Committee has proposed a legacy project to create and construct an artistic plaza area housing a large, bronze bell ("Bell") and pedestal in the plaza area between the Governmental Center and the 1916 Historic Courthouse. The Cultural Council ("Council") has agreed to raise the money to fund the design, manufacture, installation and maintenance of the Bell and the pedestal ("the Project"), which is estimated to cost \$112,631 ("Project Income"). Under this Agreement, Council shall raise at least Ninety Thousand Two Hundred and Eighteen Dollars (\$90,218) ("Minimum Project Income") which is 80.10% of the Project Income on or about August 1, 2009. Council understands and agrees that neither Council nor County shall enter into any contract related to the design or purchase of the Bell or Bell Pedestal until Council raises at least the Minimum Project Income. County shall have no obligation to perform any of its duties under this Agreement prior to the Council raising the Minimum Project Income.

If Council fails to raise at least the Minimum Project Income as provided herein, County shall not be responsible to any donor for any monies paid to Council for the Project, and Council shall indemnify and hold County harmless from and against any claims, actions, or damages arising out of failure to proceed with the Project. If the Project is successful, Council shall gift the Bell to the County for the use and benefit of the citizens of Palm Beach County and remit the balance of Project Income to the County for future maintenance of the Project. Countywide (SF)

Background and Policy Issues: The Countywide History Committee, now known as the Centennial Committee, was established by the Board of County Commissioners on May 6, 2003 (R 2003-0658). The Committee was created to guide and advise County staff in planning and preparing activities and events to observe and celebrate the Centennial. The theme, "Rediscover Palm Beach County" is available for use by established events to promote the County's Centennial. A partnership packet has been sent to municipalities, historical societies, area chambers and several existing community events. The partnership packet identifies the theme, logo and historical facts of Palm Beach County to encourage incorporation of the Centennial theme into existing events for public awareness of the County's 100th anniversary. The Centennial Bell and Pedestal are proposed as a permanent structure to celebrate the significance of the County's 100th anniversary.

Attachment:

- 1. Agreement with PBC Cultural Council (2 copies)

Recommended by:


Department Director

1/22/09
Date

Approved by:


Deputy County Administrator

1/22/09
Date

II. FISCAL IMPACT ANALYSIS

A. Five Year Summary of Fiscal Impact:

Fiscal Years	2009	2010	2011	2012	2013
Capital Expenditures	<u>\$60,000</u>	<u>-0-</u>	<u>-0-</u>	<u>-0-</u>	<u>-0-</u>
Operating Costs	<u>5,000</u>	<u>-0-</u>	<u>-0-</u>	<u>-0-</u>	<u>-0-</u>
External Revenues	<u>(65,000)</u>	<u>-0-</u>	<u>-0-</u>	<u>-0-</u>	<u>-0-</u>
Program Income (County)	<u>-0-</u>	<u>-0-</u>	<u>-0-</u>	<u>-0-</u>	<u>-0-</u>
In-Kind Match (County)	<u>-0-</u>	<u>-0-</u>	<u>-0-</u>	<u>-0-</u>	<u>-0-</u>
NET FISCAL IMPACT	<u>-0-</u>	<u>-0-</u>	<u>-0-</u>	<u>-0-</u>	<u>-0-</u>
# ADDITIONAL FTE POSITIONS (Cumulative)	<u>0</u>	<u> </u>	<u> </u>	<u> </u>	<u> </u>

Is Item Included in Current Budget? Yes No
 Budget Account No.: Fund Dept Unit
 Object Program

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

PBC Facilities Department	\$65,000
PBC Cultural Council (Council)	<u>47,631</u>
Total Project Cost	\$112,631

\$60,000 is for the bell pedestal and \$5,000 is for Art in Public Places Administrator staff charges and maintenance in support of the project/installation. The Council will fund the costs of the bell and administration of the project in the amount of \$47,631.

C. Departmental Fiscal Review:

III. REVIEW COMMENTS:

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

As soon as the Council raises the minimum project income, the Council will retain sufficient monies to pay for the Bell and remit to the County \$65,000, prior to the County performing any of its duties under this agreement. At that time, the Facilities Department will address any budget issues.


 OFMB 11/29/09


 Contract Dev. and Control 11/30/09

B. Legal Sufficiency:

This Contract complies with our contract review requirements.


 Assistant County Attorney

At the time of OAC's review, the contract was not executed.

C. Other Department Review:

 Department Director

AGREEMENT
BETWEEN
PALM BEACH COUNTY CULTURAL COUNCIL
AND PALM BEACH COUNTY
FOR
CENTENNIAL BELL PROJECT

THIS AGREEMENT ("Agreement") is made this ____ day of _____ 2009, by and between **PALM BEACH COUNTY CULTURAL COUNCIL, INC.**, a Florida not-for-profit corporation ("Council"), and **PALM BEACH COUNTY**, a political subdivision of the State of Florida ("County"), both being collectively referred to as "the parties".

RECITALS:

A. WHEREAS, County will celebrate its centennial in 2009, and as part of its planned commemoration of the centennial, County desires to install a bronze bell ("Bell") and pedestal ("Bell Pedestal") in the plaza area between the Governmental Center at 301 North Olive Avenue and the historic 1916 Courthouse at 300 North Dixie Highway in West Palm Beach, Florida; and

B. WHEREAS, County has requested Council's professional assistance in executing the Project (defined below), and Council desires to assist County in the execution of the Project in accordance with the terms and conditions of this Agreement; and

C. WHEREAS, County and Council desire to enter into this Agreement for the purpose of effectuating the raising of money for and the design, manufacture, installation, and maintenance of the Bell and Bell Pedestal (defined below), commemorating County's centennial (collectively, the "Project").

AGREEMENT:

NOW, THEREFORE for and in consideration of these recitals and mutual covenants set forth herein, the parties hereto agree as follows:

1. Recitals. The above recitals are true and correct and incorporated herein.
2. Purpose. The purpose of this Agreement is to establish Council's intent to raise the monies necessary to commemorate the County's centennial with the installation of a bronze Bell and Bell Pedestal in plaza between the 1916 Courthouse and the Palm Beach County Governmental Center and to set forth each party's responsibilities with regard to the Project. The parties agree that in order to successfully complete the Project in a timely manner, all of the Project Income (defined below) or at least Ninety Thousand Two Hundred and Eighteen and 00/100 Dollars (\$90,218) ("Minimum Project Income"), which is 80.10% of the Project Income, must be raised by no later than August 1, 2009. Receipt of all Project Income or at least the Minimum Project Income by August 1, 2009, will allow Council and County to enter into contracts for creation and installation of the Bell and Bell Pedestal during the 2009 centennial year.
3. Budget. Council and County hereby agree to the budget for income and expenses related to the Project shown on **Exhibit "A"** attached hereto ("Project Budget"). As set forth in **Exhibit "A"**, the Project Budget shall be categorized as follows: (a) the "County Budget",

which shall consist of the costs of the Bell Pedestal (as defined in Section 8 below), which also includes project management by the Palm Beach County Art in Public Places Division (“APP”), and the ongoing maintenance of the Bell and Bell Pedestal, all totaling \$65,000; and (b) the “Council Budget”, which shall consist of the costs of the Bell and Administration of the Project by Council, all totaling \$47,631.

4. Fundraising. Council agrees to undertake the raising of money to fund the Project, which is estimated to cost One Hundred Twelve Thousand Six Hundred and Thirty One and 00/100 Dollars (\$112,631) (“Project Income”). Both Council and County acknowledge and agree that raising the Project Income will be challenging in the current economic conditions and there are no assurances that Council will be successful in raising all of the Project Income. Notwithstanding, Council shall use its best efforts to raise all Project Income or at least the Minimum Project Income by no later than August 1, 2009. Council understands and agrees that neither Council nor County or APP shall enter into any contract related to the design or purchase of the Bell or Bell Pedestal until Council raises at least the Minimum Project Income. County shall have no obligation to perform any of its duties under this Agreement prior to the Council raising the Minimum Project Income and providing sufficient monies to County as provided herein.

5. Custody and Expenditure of Project Income. Council shall deposit all Project Income raised by Council, or placed in the possession of Council, in the regular bank accounts of Council. Council shall account for the Project Income through a separate line item in Council’s operating budget. Monies raised for the Project by Council shall not be used for any other purpose. As soon as the Council raises the Minimum Project Income, which shall be no later than August 1, 2009, Council shall retain sufficient monies to pay for the Bell and shall remit to County, prior to County performing any of its duties under this Agreement, at least Sixty-Five Thousand and 00/100 Dollars (\$65,000) to be used to purchase the Bell Pedestal and for future maintenance. The balance of any monies raised by Council shall be retained by Council to pay for Council’s administration of the Project and for purchase of the Bell.

6. Bell Production. After the Minimum Project Income is raised, Council shall contract directly with the manufacturer of the Bell, as selected by County (“Bell Manufacturer”), and shall pay the Bell Manufacturer from the Project Income in accordance with the terms and conditions of the contract between the Council and the Bell Manufacturer. The size, type, material, quality, warranty, and manufacturer of the Bell shall be selected solely by County and Council shall have no liability for same. Council makes no representations, warranties, or guarantees with respect to the Bell, its material, workmanship, fitness for its intended purpose, delivery, or maintenance. County shall indemnify and hold Council harmless from and against any claims, costs, losses, injuries or damages resulting from the Bell’s selection, manufacture, installation, and use once County takes possession and ownership of the Bell. Council understands and agrees that since County will not be a party to the contract between Council and Bell Manufacturer, County shall not be held responsible for any sums due under said contract and shall not be bound by the terms and conditions of said contract. The contract entered into between Council and Bell Manufacturer shall require Bell Manufacturer to provide maintenance instructions for the Bell as a deliverable of said contract. In addition, Council shall ensure that County is the named beneficiary of the warranty for the Bell.

7. Gift of Bell to County. Upon the delivery of the Bell, Council shall gift the Bell to County for the use and benefit of the citizens of Palm Beach County. Council shall execute all customary and reasonable documents effectuating the transfer of title to the Bell to

County upon written request by County.

8. Bell Pedestal. Following receipt of the County Budget by County from Council, County, through APP, shall create the scope and budget plan for the design (which will include recognition of donors), manufacture, construction, and installation of the Bell Pedestal that houses the Bell, including but not limited to all structural, electrical, plumbing, permitting, engineering, and architectural aspects of the construction. County or APP shall be responsible for the solicitation, criteria, selection, contracting with, and payment to the artist(s), contractors, sub-contractors, architects, engineers, and other professionals used in the design and construction of the Bell Pedestal. County shall include in the Bell Pedestal a commemorative inscription or other design that recognizes the donors who contributed to the Project. County or APP shall contract directly for the delivery of all components of the Bell Pedestal, including but not limited to the management of the construction of the Bell Pedestal. County and Council acknowledge and agree that Council's sole role in the process of the construction of the Bell Pedestal is to raise monies and to pay the monies to County in accordance with this Agreement. Council shall have no duties or liabilities to any contractors, sub-contractors, architects, engineers, and other professionals used in the design and construction of the Bell Pedestal.

9. Maintenance of the Bell and Bell Pedestal. County shall, at all times after the gifting of the Bell by Council in accordance with paragraph 7 and after receipt of the full amount of the County Budget, be responsible for the maintenance and repair of the Bell and the Bell Pedestal. Council shall have no responsibility for same. All such monies shall be held by County for maintenance and repair of the Bell and Bell Pedestal as necessary in the future. This Agreement shall not be construed to obligate County to provide any specific maintenance for the Bell and Bell Pedestal.

10. Responsibility to Donors. County's sole liability to any Project donor shall be to recognize said donor on the Bell Pedestal, if Council is able to raise at least the Minimum Project Income. If Council fails to raise at least the Minimum Project Income as provided herein, County shall not be responsible to any donor for any monies paid to Council for the Project, and Council shall indemnify and hold County harmless from and against any claims, actions, or damages arising out of failure to proceed with the Project. In addition, Council shall provide County with a copy of the donor agreement to be used for the Project for review and approval prior to use by Council.

11. Litigation. Any costs or expenses (including reasonable attorney's fees) associated with the enforcement of the terms and/or conditions of this Agreement shall be borne by the respective parties. Venue for any litigation arising out of this Agreement shall lie only in the courts in and for Palm Beach County, Florida.

12. Notices. All notices and other communications relating to this Agreement shall be written and sent (a) by personal delivery, (b) by commercial courier or overnight delivery service, (c) certified United States Mail, return receipt requested, or (d) by facsimile, with delivery confirmation receipt, to the following addresses:

As to Council: Palm Beach County Cultural Council, Inc.
Attention: Rena Blades, President/CEO
1555 Palm Beach Lakes Boulevard, Suite 300
West Palm Beach, Florida 33401
Phone: (561) 471-2901

Fax: (561) 687-9484

with a copy to: Shutts & Bowen LLP
Attention: Harvey E. Oyer III
525 Okeechobee Boulevard, Suite 1100
West Palm Beach, Florida 33401
Phone: (561) 650-8517
Fax: (561) 822-5522

As to County: Palm Beach County
Attention: Verdenia Baker, Deputy County Administrator
Governmental Center
301 North Olive Avenue
West Palm Beach, Florida 33401
Phone: (561) 355-6726
Fax: (561) 355-3982

with a copy to: Palm Beach County Attorney
Attention: Shannon Fox
301 North Olive Avenue, 6th Floor
West Palm Beach, Florida 33401
Phone: (561) 355-3783
Fax: (561) 355-6461

Notices shall be effective upon actual receipt. Any party may change the address to which notices are to be sent to such party by written notice to the other party(ies) specifying such change of address.

13. Interpretation. This Agreement shall be governed, construed, and enforced in accordance with the law of the State of Florida.

14. Entire Agreement. This Agreement embodies the entire agreement between the parties and supersedes all prior and contemporaneous written, oral, implied, and express agreements and understandings. No covenant, agreement, representation or warranty, whether written or oral, made or executed by any party hereto or its agent shall bind any party hereto unless specifically set forth in this Agreement. The provisions of this Agreement may be waived or amended only by written instrument executed by both parties. Both parties to this Agreement have participated freely in the negotiation and preparation of this Agreement, and this Agreement shall not be more strictly construed against either of the parties hereto.

15. Counterparts. This Agreement may be executed in any number of counterparts, each of which shall be deemed an original and all of which together shall constitute one and the same instrument.

16. Severability. This Agreement is intended to be performed in accordance with, and only to the extent permitted by, applicable law. If any provision of this Agreement or the application thereof to any person or circumstances shall be invalid or unenforceable for any reason, the remainder of this Agreement and the application of such provision to other persons or circumstances shall not be affected and shall be enforced to the greatest extent permitted by law.

17. Relationship. Nothing contained in this Agreement shall be construed to be or to create a partnership, joint venture, or relationship between parties. This Agreement shall bind, inure to the benefit of, and be enforceable by the parties hereto and their respective heirs, personal representatives, successors and assigns.

18. Exhibits. All exhibits referenced in this Agreement are hereby incorporated into this Agreement for all purposes.

19. Default. If either party fails to timely perform this Agreement, and such failure continues for ten (10) days after receipt of written notice thereof from the non-defaulting party, the non-defaulting party may declare the non-performing party in default. In the event of a default, the non-defaulting party may pursue all rights and remedies available at law and in equity for breach of Agreement, including but not limited to actions for specific performance, damages and injunctive relief. Notwithstanding the foregoing, if Council is unable to raise the Minimum Project Income by August 1, 2009 and fails to provide the County Budget to County by said date due to lack of sufficient monies, this Agreement shall terminate in accordance with paragraph 20, but said termination shall not be considered a default of this Agreement.

20. Termination. In the event that Council is unable to raise at least the Minimum Project Income by August 1, 2009 or fails to provide the County Budget to County by said date, this Agreement shall terminate at the end of the business day, unless amended by written agreement of the parties, and Council shall have no further liability hereunder to County and County shall have no further liability hereunder to Council or any donors who contributed monies to Council for the Project.

21. Use of County Logo. Council understands and agrees that the use of the Palm Beach County logo is to be employed only for official Palm Beach County government business. Council, therefore, shall not use the County logo in furtherance of this Agreement without prior written approval of the county administrator or his or her designee.

22. Indemnification. Each party shall be liable for its own actions and negligence. County shall indemnify, defend, and hold harmless Council against any actions, claims, or damages arising out of the County's negligence in connection with this Agreement, and Council shall indemnify, defend, and hold harmless County against any actions, claims, or damages arising out of Council's negligence in connection with this Agreement. The foregoing indemnification shall not constitute a waiver of sovereign immunity beyond the limits set forth in Florida Statute Section 768.28 nor shall the same be construed to constitute agreement by County to indemnify Council for Council's negligent, willful or intentional acts or omissions.

23. Amendment and Assignment. The provisions of this Agreement may not be waived, altered, amended, modified or repealed in whole or in part, except upon the written consent of Council and County.

IN WITNESS WHEREOF, the parties hereto have set their seals as of the ____ day of _____, 2009.

WITNESSES:

COUNCIL *Monica J. Hammett*
Print Name: MONICA HAMMETT

Yvonne Blouin
Print Name: Yvonne Blouin

COUNCIL:

PALM BEACH COUNTY CULTURAL INC., a Florida not-for-profit corporation

By: *Rena M. Blades*
Rena M. Blades, President/CEO

(CORPORATE SEAL)

Dated: 28 day of January, 2009

STATE OF FLORIDA

COUNTY OF PALM BEACH

The foregoing instrument was acknowledged before me this 28 day of January, 2009 by Rena M. Blades as President/CEO of Palm Beach County Cultural Council, Inc., a Florida not-for-profit corporation, who is personally known to me or who has produced FL Drivers License as identification and who did (did not) take an oath.

NOTARY PUBLIC-STATE OF FLORIDA
Susan M. Recchia
Commission # DD661390
Expires: APR. 10, 2011
BONDED THRU ATLANTIC BONDING CO., INC.

Susan M. Recchia
Notary Public
Susan M. Recchia
Printed Name

[Signatures continued on following page]

COUNTY:

ATTEST:
Sharon R. Bock, Clerk & Comptroller

PALM BEACH COUNTY
BOARD OF COUNTY COMMISSIONERS:

By: _____
Deputy Clerk

By: _____
John F. Koons, Chairman

APPROVED AS TO FORM
AND LEGAL SUFFICIENCY

By: 
Assistant County Attorney

APPROVED AS TO
TERMS AND CONDITIONS

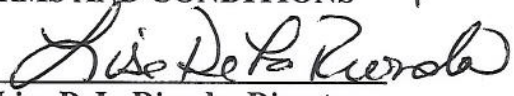
By: 
Lisa DeLaRionda, Director
Department of Public Affairs

Exhibit "A"
Project Budget

INCOME		\$112,631
59 donations in an amount of \$1,909 each		
EXPENSE		
Administration of Project by Council (staff, labor, etc.)		\$22,413
Bronze Bell		\$25,218
Bell Pedestal		\$60,000
(includes all design, manufacture, construction, installation and management by APP¹).		
Maintenance of Bell and Bell Pedestal		\$5,000
	TOTAL	\$112,631

¹ It is estimated that approximately \$6,500 of the cost of the Bell Pedestal will be spent for management by APP and that the purchase and installation of the Bell Pedestal and donor recognition will cost \$53,500.