

PALM BEACH COUNTY  
BOARD OF COUNTY COMMISSIONERS

AGENDA ITEM SUMMARY

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Meeting Date: May 19, 2009

Consent  
 Ordinance

Regular  
 Public Hearing

Department: Parks and Recreation

Submitted By: Parks and Recreation Department

Submitted For: Parks and Recreation Department

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I. EXECUTIVE BRIEF

**Motion and Title:** Staff recommends motion to approve: Agreement with Palm Beach County Cultural Council, Inc. for the period May 19, 2009, through December 30, 2009, in an amount not-to-exceed \$25,000 for funding of the centennial bell project.

**Summary:** This funding is to assist with the cost of the Palm Beach County Cultural Council, Inc.'s centennial bell project to be located between the Palm Beach Governmental Center and the 1916 Courthouse. This public art project will be viewed by thousands of people who utilize this public area. The Agreement allows for the reimbursement of eligible project costs incurred subsequent to April 1, 2009. Funding is from the Recreation Assistance Program (RAP) District 5 Funds. COUNTYWIDE

**Background and Justification:** Palm Beach County Cultural Council, Inc. is a not-for-profit community-based organization that enhances the quality of life in Palm Beach County by creating a cultural destination through support, education, and the promotion of arts and culture within the County. Cultural Council seeks to preserve cultural heritage and traditions through the arts, significantly advance cultural opportunities for children and youth, and create opportunities for Palm Beach County residents to experience culturally diverse, innovative, and excellent cultural programs and projects.

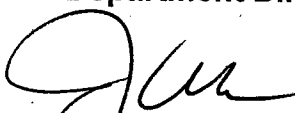
The placement of a bronze bell on a pedestal in the plaza between the 1916 Courthouse and the Palm Beach County Governmental Center is an Art in Public Places project to commemorate the County's 100<sup>th</sup> anniversary. The total cost of the project is anticipated to be \$112,631 for the design, manufacture, installation, and maintenance of the bell and pedestal. The \$25,000 from District 5 RAP funding will help offset expenses. The Agreement has been executed on behalf of Palm Beach County Cultural Council, Inc., and now needs to be approved by the Board of County Commissioners.

Attachment: Agreement

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Recommended by:   
Department Director

4/30/09  
Date

Approved by:   
Assistant County Administrator

5/13/09  
Date



**AGREEMENT BETWEEN PALM BEACH COUNTY AND THE PALM BEACH COUNTY CULTURAL COUNCIL, INC. FOR THE CENTENNIAL BELL PROJECT**

**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 Palm Beach County Cultural Council, Inc., a Florida not-for-profit corporation authorized to do business in the State of Florida, hereinafter referred to as "Cultural Council."

**WITNESSETH:**

**WHEREAS**, Cultural Council is a not-for-profit community-based organization that enhances the quality of life by creating a cultural destination through support, education, and the promotion of arts and culture within Palm Beach County; and

**WHEREAS**, Cultural Council has undertaken an art in public places project which consists of placing a bronze centennial bell on a pedestal in the plaza between the 1916 Courthouse and the Palm Beach County Governmental Center in honor of the County's one hundredth anniversary in 2009; and

**WHEREAS**, the centennial bell project (the "Project") is anticipated to cost approximately \$112,631 for the design, manufacture, installation, and maintenance of a the bronze bell and pedestal; and

**WHEREAS**, the Project will be viewed by thousands of people who utilize the public area between the 1916 Courthouse Museum and the Palm Beach County Governmental Center; and

**WHEREAS**, Cultural Council has requested funding in the amount of \$25,000 to help offset costs for the Project; and

**WHEREAS**, funding for the Cultural Council in the amount of \$25,000 is available from the Recreation Assistance Program (RAP) – District 5; and

**WHEREAS**, enhancement of the cultural life of South Floridians through placement of art in public places serves 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 \$25,000 to Cultural Council for the Project for the design, manufacture, installation, and maintenance of a bronze bell and

pedestals 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 Cultural Council 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 Cultural Council. Said information shall list each invoice paid by Cultural Council and shall include the vendor invoice number; invoice date; and the amount paid by Cultural Council along with the number and date of the respective check or proof of payment for said payment. Cultural Council shall attach a copy of each vendor invoice paid by Cultural Council 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, Cultural Council's Program Administrator and Project Financial Officer shall certify the total funds spent by Cultural Council on the Project and shall also certify that each vendor invoice, as listed on the Contractual Services Purchases Schedule was paid by Cultural Council and approved by Cultural Council as indicated.

3. Cultural Council incurred expenses for the Project beginning on April 1, 2009. Those costs incurred by Cultural Council for the Project, approved and submitted accordingly by Cultural Council subsequent to April 1, 2009, 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 Cultural Council 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. Cultural Council warrants that it is an active not-for-profit corporation, duly chartered and registered with the Florida Department of State, Division of Corporations.

6. Cultural Council 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, sexual orientation, gender identity or expression.

7. Cultural Council shall be responsible for operation and maintenance of the Project, including all associated costs.

8. The term of this Agreement shall be until December 30, 2009, commencing upon the date of execution by the parties hereto.

9. The parties agree that, in the event Cultural Council is in default of its obligations under this Agreement, the County shall provide Cultural Council thirty (30) days written notice to cure the default. In the event Cultural Council 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 Cultural Council for the Project deemed to be in default and Cultural Council shall return any County RAP funds already collected by Cultural Council for that Project.

10. 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 9 above.

11. Cultural Council shall complete the Project by September 30, 2009, and invoices and checks submitted for reimbursement must be dated within the project time frame of April 1, 2009, through September 30, 2009. Cultural Council shall provide its final reimbursement request(s), including a project completion statement and reimbursement documentation as indicated in Section 2 above on or before December 30, 2009. Upon written notification to County at least ninety (90) days prior to that date Cultural Council may request an extension beyond this period for the purpose of completing the Project. County shall not unreasonably deny Cultural Council's request for said extension.

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

13. Cultural Council 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 Cultural Council. Failure to comply may result in County's refusal to honor reimbursement requests for the Project.

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

15. It is understood and agreed that Cultural Council 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. In the event a claim or lawsuit is brought against County or any of its officers, agents or employees, Cultural Council 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 Cultural Council, 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 Cultural Council is eligible to receive reimbursement from the County.

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

**Commercial General Liability.** Cultural Council 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.

Cultural Council shall provide this coverage on a primary basis.

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

**Additional Insured.** Cultural Council 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." Cultural Council shall provide the Additional Insured endorsements coverage on a primary basis.

**Waiver of Subrogation.** Cultural Council hereby waives any and all rights of Subrogation against the 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 Cultural Council 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 when a condition to the policy specifically prohibits such an endorsement, or voids coverage should Cultural Council enter into such an agreement on a pre-loss basis.

**Certificate(s) of Insurance.** Prior to execution of this Agreement by the County, Cultural Council shall deliver to the County a Certificate(s) of coverage evidencing that all types and amounts of insurance coverages 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) 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.

**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

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.

17. Upon request by County, Cultural Council shall demonstrate financial accountability through the submission of acceptable financial audits performed by an independent auditor.

18. Cultural Council 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 Cultural Council, County shall have the right to inspect and audit said books, records, documents and other evidence during normal business hours.

19. The County and Cultural Council 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.

20. 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.

21. As provided in Section 287.132-133, Florida Statutes, by entering into this Agreement or performing any work in furtherance hereof, Cultural Council 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.

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

23. 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