

PALM BEACH COUNTY
BOARD OF COUNTY COMMISSIONERS

AGENDA ITEM SUMMARY

Meeting Date: September 14, 2010

☒ 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: License Agreement with SESAC LLC for the period January 1, 2010, through January 1, 2011, in an amount not-to-exceed \$5,001 to provide public performances including live performances, recorded performances, and music, in the SESAC (Society of European Stage Authors and Composers) repertory, in accordance with the copyright laws of the United States.

Summary: Title 17 of the United States Code establishes property rights in musical works and grants creators and owners of copyrighted musical works the exclusive right to perform or authorize the performance of their works publicly. Under the law, owners and operators of facilities or presenters of concerts and other events are responsible for performances on the premises. The property owners must obtain a license to present musical performances in order to be in compliance with the copyright law. This Agreement provides for the County to present an entire musical spectrum of performances in the SESAC repertory, within various venues in the County, in accordance with copyright laws. Countywide (AH)

Background and Justification: The SESAC is one of three performing rights licensing organizations representing copyrighted musical works in the United States. The County currently has an agreement with American Society of Composers, Authors and Publishers (ASCAP). The third agency is Broadcast Music, Inc. (BMI). SESAC and the International Municipal Lawyers Association jointly developed the license agreement, designed specifically to cover public performances of music by local governments including pop, rock, alternative, country, R&B, rap, hip hop, Latin, film music, television music, folk, roots, blues, jazz, reggae, gospel, contemporary Christian, new age, theater, cabaret, dance, electronic, symphonic, chamber, choral, band, concert, educational and children's music at multiple venues including but not limited to amphitheaters, recreation centers, equestrian centers, swimming pools, waterparks, tennis centers, senior centers, Head Start centers, festivals, special events, employee functions, museums and background music. This licensing agreement is for an initial one year term with automatic annual renewals requiring an annual license fee adjusted in accordance with the increase in the Consumer Price Index. The agreement can be terminated by either party at any time, with 30 days written notice prior to the start of each renewal term.

The Agreement has been executed on behalf of SESAC LLC, and now needs to be approved by the Board of County Commissioners.

Attachment: SESAC Performance License for Municipalities

Recommended by: _____

Department Director

8-20-10
Date

Approved by: _____

Assistant County Administrator

8/30/10
Date

II. FISCAL IMPACT ANALYSIS

A. Five Year Summary of Fiscal Impact:

Fiscal Years	2010	2011	2012	2013	2014
Grant Expenditures	-0-	-0-	-0-	-0-	-0-
Operating Costs	5,001	-0-	-0-	-0-	-0-
External Revenues	-0-	-0-	-0-	-0-	-0-
Program Income (County)	-0-	-0-	-0-	-0-	-0-
In-Kind Match (County)	-0-	-0-	-0-	-0-	-0-
NET FISCAL IMPACT	5,001	-0-	-0-	-0-	-0-

ADDITIONAL FTE

POSITIONS (Cumulative) 0

Is Item Included in Current Budget? Yes X No
 Budget Account No.: Fund 0001 Department 580 Unit 5207
 Object 4909 Program N/A

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

FUND: General Fund
UNIT: Amphitheaters

Licenses & Permits	0001-580-5207-4909	\$5,001
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C. Departmental Fiscal Review: ckopelakis

III. REVIEW COMMENTS

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

Upon date of termination, agent will be paid year's fee

CFMB

In J. Jones 8/20/10
Contract Development and Control
E Jones 8/27/10

B. Legal Sufficiency: *SN 8/20/10*

Anne Delgant 8/27/10
Assistant County Attorney

C. Other Department Review:

Department Director

REVISED 10/95
ADM FORM 01

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SESAC PERFORMANCE LICENSE for MUNICIPALITIES

Agreement made in ~~New York~~ ^{Florida} by and between SESAC LLC ("SESAC"), a Delaware limited liability company, with offices at 55 Music Square East, Nashville, TN 37203 and

Palm Beach County, a political subdivision of the state of Florida ("LICENSEE")

Billing Address 2700 6th Ave South

City Lake Worth State FL ZIP 33461

Telephone: 561-963-6732 Fax: 561-966-7050 E-mail: scirillo@pbcgov.org

SESAC and LICENSEE hereby mutually agree as follows:

1. GRANT OF RIGHTS: Effective as of January 1 2010, (the "Effective Date") SESAC grants to LICENSEE the non-exclusive right and license to publicly perform live or "recorded" non-dramatic renditions of the musical compositions, the performance rights to which SESAC controls and/or is empowered to license (the "Compositions") solely on and in connection with the following:

Name: Palm Beach County

Location: Palm Beach County (the "Municipality")

As used herein, Municipality shall include those locations owned, operated, and/or leased by LICENSEE which are used as governmental offices or for related purposes; those locations at which events are held under LICENSEE's sole control and attended by LICENSEE's employees, their families, social acquaintances, citizens, and other members of the public; and those areas owned, operated, and/or leased by LICENSEE which are under LICENSEE's sole control.

2. LIMITATIONS OF RIGHTS: The Rights granted pursuant to Paragraph 1 above shall specifically exclude:

A. the right to perform, broadcast, televise or otherwise transmit the Compositions to any location (unless and to the extent otherwise expressly permitted in Schedule "A");

B. the right to grant the Rights to any third party;

C. "Grand Rights" in and to the Compositions ("Grand Rights" include, but are not limited to, the right to perform in whole or in part, dramatico-musical and dramatic works in a dramatic setting);

D. performances of the Compositions (i) which are part of a background music service originating from any location including the Municipality, for which performance license fees are otherwise paid, regardless of the means by which such performances are transmitted on or to the Municipality, (ii) by coin-operated phonorecord players ("jukeboxes"), as defined in 17 U.S.C. § 116, and/or (iii) transmitted by computer on-line services or electronic bulletin boards and received on the Municipality (unless and to the extent otherwise expressly permitted in Schedule "A").

E. This license shall specifically exclude concerts. "Concerts" are those performances by an entertainer, group, or performer for which an admission or other fee is charged and which are not solely promoted by LICENSEE.

F. This license shall specifically exclude "Sporting events." "Sporting events" are professional, semi-professional, major or minor league athletic competitions.

G. This license shall specifically exclude Colleges and/or Universities.

3. TERM OF LICENSE:

A. The term of the Agreement shall be for an initial period that commences upon the Effective Date and continues for a period of one (1) year (the "Initial Period"). Thereafter, the Agreement shall automatically continue in full force and effect for successive additional periods of one (1) year ("Renewal Period(s)"). SESAC and /or LICENSEE shall have the right to terminate this Agreement as of the last day of the Initial Period or as of the last day of any Renewal Period(s) upon giving written notice to the other party by certified mail, return receipt requested, at least thirty (30) days prior to the commencement of any Renewal Period(s). The Initial Period and Renewal Period(s) are sometimes collectively referred to herein as the "Term."

B. Notwithstanding anything to the contrary contained herein, SESAC shall have the right to terminate this Agreement upon thirty (30) days written notice by reason of any law, rule, decree, or other enactment having the force of law, by any authority, whether federal, state, local, territorial or otherwise, which shall result in substantial interference in SESAC's operation or any substantial increase in the cost of conducting its business.

4. LICENSE FEE:

A. As consideration for the Rights granted herein, LICENSEE shall pay to SESAC the annual "License Fee" then in effect in accordance with the "Fee Schedule" set forth in Schedule "A" attached hereto.

B. In the event that SESAC is determined by the taxing authority or courts of any state, territory, or possession in which LICENSEE conducts its operation to be liable for the payment of a gross receipts, sales, use, business use or other tax which is based on the amount of SESAC's receipts from LICENSEE, then LICENSEE shall reimburse SESAC, within thirty (30) days of notification therefor, for LICENSEE's pro rata share of any such tax derived from receipts received from LICENSEE, unless by constitution or statute, LICENSEE is exempt from any such tax whether applied directly or indirectly to LICENSEE.

C. SESAC shall have the right to impose a late payment charge of one and one-half percent (1.5%) per month for any License Fee payment that is more than thirty (30) days past due. In the event that SESAC incurs any costs or fees in connection with the collection of any amounts past due to SESAC hereunder, including without limitation reasonable attorney's fees, then LICENSEE shall be responsible for paying such amounts to SESAC unless by constitution or statute, LICENSEE is exempt from any such charge whether applied directly or indirectly to LICENSEE.

D. Effective January 1 of each calendar year the License Fee may be increased by five percent (5%), rounded to the nearest dollar. In the event that the percent increase in the Consumer Price Index - All Urban Consumer (CPI-U) as published by the Bureau of Labor Statistics, U.S. Department of Labor, between the most recent October and the preceding October exceeds five percent (5%), then the License Fee may be increased by that amount.

5. MISCELLANEOUS:

A. In the event LICENSEE fails to pay the License Fee when due or is otherwise in default of any other provision of this Agreement, then SESAC shall have the right to terminate this Agreement in addition to pursuing any and all other rights and/or remedies available if LICENSEE has not cured such breach within thirty (30) days following SESAC's written notice of such default.

B. SESAC shall have the right to withdraw from the scope of this License, upon written notice, the right to perform any musical composition licensed hereunder as to which any action has been threatened, instituted, or a claim made that SESAC does not have the right to license the performance rights in such composition.

C. This Agreement shall be binding upon and inure to the benefit of SESAC's and LICENSEE's legal representatives, successors, and assigns, but no assignment shall relieve SESAC or LICENSEE of their obligation under this Agreement.

D. This Agreement supersedes and cancels all prior negotiations and understandings between SESAC and LICENSEE in connection with the Municipality. No modification of this Agreement shall be valid or binding unless in writing and executed by SESAC and LICENSEE. If any part of this Agreement shall be determined to be invalid or unenforceable by a court of competent jurisdiction or by any other legally constituted body having the jurisdiction to make such determination, the remainder of this Agreement shall remain in full force and effect. No waiver of any breach of this Agreement shall be deemed a waiver of any preceding, continuing or succeeding breach of the same, or any other provision of this Agreement.

IN WITNESS THEREOF, the parties have caused this Agreement to be duly signed as of

(Please insert today's date)

LICENSEE

BY: _____
(please sign here)

(Type or print name)

TITLE:

SESAC LLC

BY: _____

TITLE: Senior Counsel, Licensing Operations

APPROVED AS TO FORM AND
LEGAL SUFFICIENCY

By: _____
County Attorney

APPROVED AS TO TERMS AND
CONDITIONS

By: _____
Dennis Eshleman, Director
Parks and Recreation Department

Schedule "A"
MUNICIPALITY - 2010

January 1

2010

I. **Municipality** "Municipality," as used in the SESAC Performance License effective

(the "Agreement") to which this Schedule "A" is attached, shall be defined as the following Municipality:

Name: Palm Beach County

Location: Palm Beach County Municipality")

II. Fee Schedule/License Fee

A. The annual License Fee shall be based upon the Population of the Municipality as noted below.

<u>Population</u>		<u>License Fee for calendar year 2010</u>
Under	25,000	\$ 282
25,001	- 50,000	\$ 563
50,001	- 100,000	\$ 917
100,001	- 150,000	\$1,338
150,001	- 250,000	\$1,829
250,001	- 500,000	\$2,391
500,001	And over	\$3,027 + \$282 for each additional 100,000 population

Population 1,287,344

This license will authorize **audio and/or audio/visual musical performances** (radio, records, tapes, compact discs, videocassettes, laser discs, television, and similar media), and **live musical performances**. This license will also authorize performances via **music on hold** systems operated by LICENSEE.

B. As used herein, "Population" shall mean the total population of the Municipality as of the most recent United States Census.

C. LICENSEE shall pay the license fee to SESAC upon execution of this Agreement, with license fees due and payable in advance. The initial license fee payment shall be a pro-rated amount calculated using the then current license fee rate(s) from the Effective Date through the end of the current billing period. Subsequent payments shall be made annually in one (1) payment on or before the first day of January, for the billing period of January 1 through December 31 of each calendar year of the Term.

D. Upon execution of this License, LICENSEE shall provide SESAC with a report detailing the Population as of the Effective Date. Thereafter, on or before October 1 of each calendar year, in the event that a change in the Population results in a change in fee category, LICENSEE shall submit an updated report of the Population. License fees will be adjusted effective the following January 1. SESAC retains the right to obtain these figures through United States Census Data and make appropriate adjustments to the license fee.

E. Notwithstanding anything to the contrary contained in this Agreement, upon written notice to LICENSEE, SESAC shall have the right to adjust the rates set forth in the Fee Schedule. In the event that LICENSEE's License Fee increases as a result of such adjustment to the Fee Schedule, LICENSEE shall have the right to terminate this Agreement as of the date such increase is to take effect. LICENSEE must give SESAC written notice of such termination by certified mail, return receipt requested, not later than thirty (30) days after written notice of such increase is sent to LICENSEE by certified mail. This paragraph shall not apply to paragraph 4.D of the Agreement.

III. **This Schedule** is incorporated and made part of the Agreement. Unless otherwise indicated, all capitalized terms in this Schedule "A" shall have the same meaning as set forth in the Agreement.

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