

PALM BEACH COUNTY
BOARD OF COUNTY COMMISSIONERS

AGENDA ITEM SUMMARY

Meeting Date: November 16, 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: A) Agreement with the Center for Creative Education, Inc. for the period November 16, 2010, through May 16, 2012, in an amount not-to-exceed \$800,000 for funding of construction costs for the John and Tussie Kluge Center for Creative Education; and B) Budget Transfer of \$800,000 within the \$25M GO Parks and Cultural Improvements Bond Fund - 2005 from Reserves to Center for Creative Education construction project.

Summary: This Agreement provides funding to help offset costs for the completion of construction costs for the already started John and Tussie Kluge Center for Creative Education in the Northwood Area of West Palm Beach. Funding is from the 2002 \$50 Million Recreational and Cultural Facilities Bond referendum District 2 (\$350,000) and District 7 (\$450,000). District 7 (PK)

Background and Justification: On March 23, 2010, the Board approved reallocation of \$800,000 from South Florida Science Museum Improvements (\$350,000) and Gramercy Park Community Center (\$450,000) within the 2002 \$50 Million Recreational and Cultural Facilities Bond to Center for Creative Education, Inc. (CCE) for the completion of the already underway multicultural arts center in West Palm Beach. This multicultural arts and education facility will contain multiple venues open to the public. It will also offer arts programming that is now being provided through the Palm Beach County school system in a central location accessible not only to the Northwood Area community, but to participants from throughout Palm Beach County via available public transportation.

Project elements for the Center include a 300-seat black box theater/main hall/dance rehearsal studio, three classroom studios, a computer lab, a theatre shop, artist workrooms, a community board room, an art gallery, a community service office, CCE administrative offices, CCE program offices, and an artist consignment shop/cafe. The total cost to complete the project is estimated to be \$3,006,407, with the County providing \$800,000 of that amount. CCE will provide the remaining \$2,206,407.

The Agreement's specified project completion date is May 16, 2012. Construction to finish renovating this former skating rink will re-commence in the near future and is anticipated to be completed within the year. The Agreement contains specific project milestone completion dates, which are anticipated to be exceeded. The term of the Agreement is the standard 30 year term for Bond Agreements. The Agreement has been executed on behalf of the Center for Creative Education, Inc., and now needs to be approved by the Board of County Commissioners.

Attachments:

1. Agreement
2. Budget Transfer

Recommended by: _____

Department Director

Date

Approved by: _____

Assistant County Administrator

Date

10/20/10

10/27/10

II. FISCAL IMPACT ANALYSIS

A. Five Year Summary of Fiscal Impact:

Fiscal Years	2011	2012	2013	2014	2015
Capital Expenditures	<u>800,000</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>
NET FISCAL IMPACT	<u>800,000</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 X
 Budget Account No.: Fund Department Unit
 Object Program

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

FUND: \$25.0M GO 05, Recreational & Cultural Facilities
 UNIT: Reserves

Res-New Projects 3020-821-9817-9908 \$800,000

C. Departmental Fiscal Review: chopelakis

III. REVIEW COMMENTS

A. OFMB Fiscal And/Or Contract Development and Control Comments:

 Jan R.
 OFMB

 Dr. J. Jones 10/26/10
 Contract Development and Control
E. Jones 10/26/10

B. Legal Sufficiency:

 Paul F. 10/27/10
 Assistant County Attorney

This Contract complies with our
 contract review requirements.

C. Other Departmental Review:

REVISED 09/2003

ADM FORM 01

G:\SYINGER\Bond2002\Center for Creative Education\agd.doc

**AGREEMENT BETWEEN PALM BEACH COUNTY AND THE CENTER FOR
CREATIVE EDUCATION, INC. FOR FUNDING OF CONSTRUCTION COSTS FOR
THE JOHN AND TUSSIE KLUGE CENTER FOR CREATIVE EDUCATION**

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 Center for Creative Education, Inc., a Florida not-for-profit corporation authorized to do business in the State of Florida, hereinafter referred to as "AGENCY".

WITNESSETH:

WHEREAS, AGENCY owns property located at 424 24th Street in West Palm Beach; and

WHEREAS, AGENCY desires to construct renovations to its facility which, when complete will become the John and Tussie Kluge Center for Creative Arts ("CCE Center"), hereinafter referred to as "the Project" at said location; and

WHEREAS, AGENCY has asked COUNTY to financially participate in the construction of said project; and

WHEREAS, on November 5, 2002, a bond referendum was passed by the voters of Palm Beach County for the issuance of general obligation bonds for the purpose of financing the acquisition, construction, and/or improvements to certain recreation and cultural facilities, in the principal amount of \$50 Million "the \$50 Million Recreation and Cultural Facilities Bond"; and

WHEREAS, COUNTY has approved a recreation and cultural facilities project list, as amended, and proposed funding allocations for the \$50 Million Recreation and Cultural Facilities Bond; and

WHEREAS, the Project represents one such recreation/cultural project; and

WHEREAS, AGENCY desires to operate and maintain the Project upon its completion; and

WHEREAS, the Project shall be open to and benefit all residents of Palm Beach County; and

WHEREAS, both parties desire to increase the recreational and cultural opportunities for residents of Palm Beach County and to enter into this Agreement.

NOW, THEREFORE, in consideration of the mutual covenants, promises and representations contained herein, the parties hereto agree as follows:

ARTICLE 1: GENERAL

Section 1.01 The foregoing recitals are true and correct and are incorporated herein as if fully set forth.

Section 1.02 The purpose of this Agreement is to enhance recreational and cultural opportunities for use by the public and thereby provide a mechanism for COUNTY to assist AGENCY in the funding of the Project.

Section 1.03 COUNTY will pay to AGENCY a total amount not to exceed \$800,000 for the construction of the Project as more fully described in the Project Description, Conceptual Site Plan, and Cost Estimate attached hereto and made a part hereof as Exhibit "A".

AGENCY recognizes that COUNTY's funding of the Project is being paid from the proceeds of tax-exempt bonds issued by COUNTY. AGENCY agrees to provide COUNTY with a certification, in a form acceptable to COUNTY, from AGENCY's chief financial officer or independent accountant that each cost item for which COUNTY funding is requested under Article 3 of this Agreement constitutes a capital expenditure. In that regard, an item is considered a capital expenditure where the item has a useful life and benefit beyond one year or extends the Project's use beyond one year.

Section 1.04 AGENCY agrees to provide funding in an amount of \$2,206,407 or greater to complete the Project. The parties agree that COUNTY shall provide its portion of the funding only after AGENCY has expended \$2,206,407.

Section 1.05 COUNTY's representative during the design and construction of the Project shall be the Director of Parks and Recreation, Palm Beach County Parks and Recreation Department, telephone no. 561-966-6685. AGENCY's representative during the construction of the Project shall be Thomas Pilecki, Executive Director, Center for Creative Education, Inc., at telephone no. 561-805-9927.

Section 1.06 AGENCY shall design and construct the Project upon property owned by AGENCY as more fully described in Exhibit "B" attached hereto and made a part hereof.

Section 1.07 AGENCY shall utilize its procurement process for all design and construction services required for the Project. Said procurement process shall be consistent with all federal, state and local laws, rules and regulations. COUNTY shall have no contractual obligation to any person retained by AGENCY with regard to the Project. Any dispute, claim, or liability that may arise as a result of AGENCY's procurement is solely the responsibility of AGENCY and AGENCY hereby holds COUNTY harmless for same to the extent permitted by law.

ARTICLE 2: DESIGN AND CONSTRUCTION

Section 2.01 AGENCY shall be responsible for the design and construction of the Project. AGENCY shall design and construct the Project in accordance with Exhibit "A", attached

hereto and made a part hereof, and with all applicable federal, state and local laws, rules and regulations.

Section 2.02 Prior to or upon execution of this Agreement by the parties hereto, AGENCY shall initiate its procurement process to select the necessary professional engineer and/or architect to perform all engineering and/or architectural design work, including, but not limited to, the preparation of plans, permits and specifications necessary for the design and construction of the Project.

Section 2.03 AGENCY shall be responsible for completing engineering and architectural design and securing all permits and approvals necessary to construct the Project no later than three (3) months from the date of execution of this Interlocal Agreement by the parties hereto.

Section 2.04 AGENCY shall award the bid for construction of the Project and commence Project construction no later than six (6) months from the date of execution of this Interlocal Agreement by the parties hereto. Prior to AGENCY commencing construction of the Project, AGENCY shall provide a copy of all plans and specifications, along with the associated costs thereof, to COUNTY's Representative for review to ensure consistency with the intent of this Interlocal Agreement.

Section 2.06 AGENCY shall totally complete the Project and open same to the public for its intended use within eighteen (18) months from the date of execution of this Interlocal Agreement by the parties hereto.

Section 2.07 AGENCY shall submit quarterly project status reports to COUNTY's Representative on or before January 10, April 10, July 10, and October 10 as well as separate Status Reports at such times that design and construction milestones have been met during the design and construction of the Project. These Quarterly reports shall include but not be limited to, a summary of the work accomplished, problems encountered, percentage of completion, and other information as deemed appropriate by COUNTY's Representative.

ARTICLE 3: FUNDING

Section 3.01 The total not to exceed amount as set forth in Section 1.03 hereinabove shall be paid by COUNTY to AGENCY on a reimbursable basis. Any costs incurred in connection with the Project in excess of that amount shall be the sole responsibility of AGENCY. Should the total cost of the Project exceed the amount as projected by AGENCY, AGENCY shall obtain and expend the excess funds required for completion of the Project. COUNTY shall not disburse any funds to AGENCY for the Project until AGENCY has obtained and expended said excess funds for the Project

Section 3.02 COUNTY shall reimburse project costs under the terms of this Agreement to AGENCY on a quarterly basis from the date of execution of this Agreement; however, should the need arise for AGENCY to be reimbursed on a more frequent basis, then COUNTY will, at AGENCY's specific request for each instance, make its best efforts to reimburse AGENCY within forty five (45) days of such special request. For each requested payment, AGENCY shall provide to COUNTY's Representative a fully completed and executed Contract Payment Request Form and a Contractual Services Purchase Schedule Form, attached hereto and made a part hereof as Exhibit "C". Said forms shall include information listing each invoice as paid by AGENCY and shall include the vendor invoice number; invoice date; and the amount paid by AGENCY along with the number and date of the respective check for said payment. AGENCY shall attach a copy of each vendor invoice paid by AGENCY along with a copy of each respective check and shall make reference thereof to the applicable item listed on the Contractual Services Purchase Schedule Form. Further, AGENCY's Project Administrator and Project Financial Officer shall certify the total funds spent by AGENCY on the Project and shall also certify that each vendor invoice as listed on the Contractual Services Purchase Schedule Form was paid by AGENCY as indicated.

Section 3.03 COUNTY shall retain not less than ten percent (10%) of the total amount allocated to AGENCY for the Project until AGENCY completes the Project and provides COUNTY with either a Certificate of Occupancy or a Project Completion Certification as determined by COUNTY, and COUNTY receives and approves all documentation as required in accordance with this Agreement.

COUNTY's representative shall visit the Project site to verify and approve said final reimbursement.

Section 3.04 AGENCY shall provide a request for final reimbursement to COUNTY no later than ninety (90) days following completion of the Project and provision of either a Certificate of Occupancy or Project Completion Certification to COUNTY.

Section 3.05 COUNTY agrees to reimburse AGENCY an amount not to exceed \$0 for those approved pre-agreement costs accruing to the Project subsequent to March 23, 2010.

Section 3.06 For construction projects fully funded by COUNTY, no more than 10% of COUNTY's funding for the project shall be used for design and engineering costs for the project and be eligible for reimbursement under this Agreement. For construction projects not fully funded by COUNTY, all design and engineering costs associated with the project shall be borne by AGENCY, and will not be eligible for reimbursement from COUNTY.

Section 3.07 COUNTY shall reimburse project costs only after AGENCY has expended its share of project funding in its entirety. AGENCY shall provide COUNTY with a certification, in a form acceptable to COUNTY, from AGENCY's President, CEO, Chairman of the Board, Chief Financial Officer, or independent auditor that AGENCY has complied with this

Project funding provision. COUNTY will be entitled to rely on that certification in reimbursing Project costs to AGENCY under this Agreement.

ARTICLE 4: OWNERSHIP, OPERATION AND MAINTENANCE OF THE PROJECT

Section 4.01 Upon completion, the Project shall remain the property of AGENCY. COUNTY shall not be required to pay AGENCY any additional funds for any other capital improvement required by or of AGENCY.

Section 4.02 AGENCY hereby warrants and represents that it has full legal authority and financial ability to operate and maintain said Project. AGENCY shall be responsible for all costs, expenses, fees and charges, and liability related to the operation and maintenance of the Project.

Section 4.03 AGENCY shall operate and maintain the Project for its intended use by the general public for a term of thirty (30) years from the execution of this Agreement by the parties hereto. AGENCY shall maintain the Project in accordance with industry standards for such facilities to prevent undue deterioration and to encourage public use.

Section 4.04 The rights and duties arising under this Agreement shall inure to the benefit of and be binding upon the parties hereto and their respective successors and assigns. AGENCY may not assign this Agreement or any interest hereunder without the express prior written consent of COUNTY.

Section 4.05 It is the intent of COUNTY to issue this funding assistance to AGENCY for the purpose set forth hereinabove. In the event AGENCY transfers ownership of the Project to a party or parties not now a part of this Agreement, other than another governmental entity that agrees to assume, in writing, AGENCY's obligations hereunder, COUNTY retains the right to reimbursement from AGENCY for its participation to the full extent of the funding assistance awarded to accomplish the Project. Should AGENCY transfer management of the project to a party or parties not now a part of this Agreement, AGENCY shall continue to be responsible for the liabilities and obligations as set forth herein. Further, AGENCY shall not transfer management of the Project to a third party without the written consent of COUNTY.

ARTICLE 5: USE OF THE PROJECT

Section 5.01 AGENCY warrants that the Project shall serve a public recreational or cultural purpose and be open to and benefit all residents of Palm Beach County and shall be available thereto on the same cost and availability basis. AGENCY shall not discriminate on the basis of race, color, sex, national origin, age, disability, religion, ancestry, marital status, sexual orientation, or gender identity and expression with respect to use of the Project.

Section 5.02 The term of this Agreement shall be for a period of thirty (30) years commencing upon the date of execution of this Agreement by the parties hereto. AGENCY

shall restrict its use of the Project to recreational, cultural, civic, community and social purposes only unless otherwise agreed to in writing by the parties hereto.

Section 5.03 AGENCY shall affix a permanent plaque or marker in a prominent location at the completed Project indicating that COUNTY was a contributor to the development of the Project. Said plaque or marker shall include the COUNTY seal and a list of County Commissioners, unless otherwise directed by COUNTY's Representative.

ARTICLE 6: ACCESS, AUDITS, AND INSPECTOR GENERAL

AGENCY shall maintain adequate records to justify all charges, expenses, and costs incurred in estimating and performing the acquisition/design/construction of the Project for at least five (5) years after the end of the fiscal year in which the final payment is released by COUNTY, except that such records shall be retained by AGENCY until final resolution of matters resulting from any litigation, claim, or special audit that starts prior to the expiration of the five (5) year period. COUNTY reserves the right, upon reasonable request and during normal business hours, to inspect said Project and shall have access to such books, records, and documents as required in this section for the purpose of inspection or audit.

The COUNTY has established the Office of the Inspector General, Ordinance R2009-049, which is authorized and empowered to review past, present and proposed COUNTY contracts, transactions, accounts and records. All parties doing business with the COUNTY and receiving COUNTY funds shall fully cooperate with the Inspector General including receiving access to records relating to this Interlocal Agreement. The Inspector General has the power to subpoena witnesses, administer oaths, require the production of records, and audit, investigate, monitor, and inspect the activities of the parties hereto, their officers, agents, employees, and lobbyists in order to ensure compliance with contract specifications and detect corruption and fraud.

ARTICLE 7: NOTICES

Any notice given pursuant to the terms of this Agreement shall be in writing and hand delivered or sent by Certified Mail, Return Receipt Requested. All notices shall be addressed to the following:

As to COUNTY:

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

With a Copy to:

County Attorney
301 North Olive Avenue, Suite 601
West Palm Beach, FL 33401

As to AGENCY:
Executive Director
Center for Creative Education, Inc.
425 24th Street
West Palm Beach, FL 33407

ARTICLE 8: TERMINATION FOR NON-COMPLIANCE

Upon occurrence of one or more of the following events set forth below, COUNTY may find AGENCY in non-compliance and shall use any and all rights and remedies to this Interlocal Agreement as indicated in Article 9 for non-compliance by AGENCY in the performance of any of the terms and conditions as set forth herein:

1. Failure to complete engineering and architectural design and securing all permits and approvals necessary to construct the Project no later than three (3) months from the date of execution of this Interlocal Agreement.
2. Failure to award the bid for construction of the Project and commence Project construction no later than six (6) months from the date of execution of this Interlocal Agreement.
3. Failure to totally complete the Project and open same to the public for its intended use within eighteen (18) months from the date of execution of this Interlocal Agreement.
4. Failure in the performance of any of the material terms and conditions as set forth herein.

ARTICLE 9: REMEDIES

In the event of any non-compliance by AGENCY in the performance of any of the terms and conditions as set forth in Article 8 and if AGENCY does not cure said non-compliance within ninety (90) days of receipt of written notice from COUNTY to do so, COUNTY may at any time thereafter elect to pursue any and all remedies available pursuant to this Interlocal Agreement, either in whole or in part, including interest paid by COUNTY to retire bond funds during the term of this Interlocal Agreement.

This Interlocal Agreement shall be governed by the laws of the State of Florida. Any and all legal action necessary to enforce the Interlocal Agreement will be held in Palm Beach County. No remedy herein conferred upon any party is intended to be exclusive of any other remedy, and each and every such remedy shall be cumulative and shall be in addition to every other remedy given hereunder or now or hereafter existing at law or in equity or by statute or otherwise. No single or partial exercise by any party of any right, power, or remedy hereunder shall preclude any other or further exercise thereof. The parties hereto may pursue any and all actions available under law to enforce this Interlocal Agreement including, but not limited to, actions arising from the breach of any provision set forth herein.

ARTICLE 10: INDEMNIFICATION

It is understood and agreed that AGENCY 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. In the event a claim or lawsuit is brought against COUNTY or any of its officers, agents or employees AGENCY shall indemnify, save and hold harmless and defend 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 intentional or negligent act or omission of AGENCY, its agents, servants and/or employees in the performance of this Agreement.

ARTICLE 11: INSURANCE

- A. AGENCY shall, at its sole expense, agree to maintain in full force and effect at all times during the life of this Contract, insurance coverages and limits (including endorsements), as described herein. The requirements contained herein, as well as COUNTY's review of acceptance of insurance maintained by AGENCY are not intended to and shall not in any manner limit or qualify the liabilities and obligations assumed by AGENCY under the contract.
- B. **Commercial General Liability.** AGENCY 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. AGENCY shall provide this coverage on a primary basis.
- C. **Business Automobile Liability.** AGENCY shall maintain Business Automobile Liability at a limit of liability not less than \$500,000 Each Occurrence for all owned, non-owned and hired automobiles. In the event AGENCY doesn't own any automobiles, the Business Auto Liability requirement shall be amended allowing AGENCY to agree to maintain only Hired & Non-Owned Auto Liability. This amended requirement may be satisfied by way of endorsement to the Commercial General Liability, or separate Business Auto coverage form. AGENCY shall provide this coverage on a primary basis.
- D. **Worker's Compensation Insurance & Employers Liability.** AGENCY shall maintain Worker's Compensation & Employers Liability in accordance with Florida Statute Chapter 440. AGENCY shall provide this coverage on a primary basis.
- E. **Additional Insured.** AGENCY shall endorse 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." AGENCY shall provide the Additional Insured endorsements coverage on a primary basis.

- F. **Builder's Risk and Property Insurance.** AGENCY agrees to maintain property insurance, which would include builder's risk insurance while the project is in the course of construction in an amount at least equal to the estimated completed project value as well as subsequent modifications of that sum; thereafter, AGENCY agrees to maintain All-Risk property insurance for adequate limits based on AGENCY's replacement cost or probable maximum loss estimates for the perils of either fire, wind, or flood. AGENCY shall agree to be fully responsible for any deductible or self-insured retention.
- G. **Umbrella or Excess Liability.** If necessary, AGENCY may satisfy the minimum limits required above for either Commercial General Liability, Business Auto Liability, and Employer's Liability coverage under Umbrella or Excess Liability. The Umbrella or Excess Liability shall have an Aggregate limit not less than the highest "Each Occurrence" limit for either Commercial General Liability, Business Auto Liability, or Employer's Liability. COUNTY shall be specifically endorsed as an "Additional Insured" on the Umbrella or Excess Liability, unless the Certificate of Insurance notes the Umbrella or Excess Liability provides coverage on a "Follow-Form" basis.
- H. **Waiver of Subrogation.** AGENCY hereby waives any and all rights of Subrogation against 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 AGENCY 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, which a condition to the policy specifically prohibits such an endorsement, or voids coverage should AGENCY enter into such an agreement on a pre-loss basis.
- I. **Certificate(s) of Insurance.** Prior to execution of this Agreement by COUNTY, AGENCY shall deliver to COUNTY a Certificate(s) of coverage evidencing that all types and amounts of insurance coverages required by this Contract have been obtained and are in full force and effect. Such Certificate(s) of Insurance shall include a minimum thirty (30) 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.
- J. **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 Contract. 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.
- K. AGENCY shall require each Contractor engaged by AGENCY for work associated with this Agreement to maintain:
1. Workers' Compensation coverage in accordance with Florida Statutes

including endorsements for U.S. Longshore and Harbor Workers Compensation Act and the Merchant Marine Act (Jones Act) in the event any portion of the scope of services/work occurs over, near, or contiguous to any navigable bodies of water.

2. Commercial General Liability Insurance at not less than \$1,000,000 Each Occurrence. COUNTY shall be named in the coverage as an additional insured.
3. Business Auto Insurance with limits of not less than \$1,000,000 each accident.
4. If the construction work being performed exceeds \$200,000, a payment and performance bond for the total amount of their construction contract, in accordance with Florida Statute 255.05.

ARTICLE 12: PUBLIC ENTITY CRIMES

As provided in Section 287.132-133, Florida Statutes, by entering into this contract or performing any work in furtherance hereof, AGENCY 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 36 months immediately preceding the date hereof. This notice is required by Section 287.133 (3) (a), Florida Statutes.

ARTICLE 13: CAPTIONS

The captions and section designations herein set forth are for convenience only and shall have no substantive meaning.

ARTICLE 14: SEVERABILITY

If any term or provision of this Agreement, or the application thereof to any person or circumstance, shall to any extent be held invalid or unenforceable, the remainder of this Agreement, or the application of such term or provision, to any person or circumstance other than those as to which it is held invalid or unenforceable, shall not be affected, and every other term and provision of this Agreement shall be deemed valid and enforceable to the extent permitted by law.

ARTICLE 15: ENTIRETY OF AGREEMENT

This Agreement represents the entire understanding between COUNTY and AGENCY, and supersedes all other negotiations, representations or agreements, either written or oral, relating to this Agreement. None of the provisions, terms and conditions contained in this Agreement may be added to, modified, superseded or otherwise altered, except by written instrument executed by the parties hereto.

ARTICLE 16: THIRD PARTY BENEFICIARIES

This Agreement is made solely and specifically among and for the benefit of the parties hereto, and their respective successors and assigns subject to the express provisions hereof relating to successors and assigns, 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 parties have caused this Agreement to be executed on the day and year first above written.

ATTEST:
SHARON R. BOCK
CLERK & COMPTROLLER

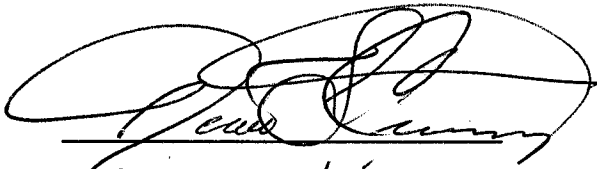
PALM BEACH COUNTY, FLORIDA BY ITS
BOARD OF COUNTY COMMISSIONERS

By: _____
Deputy Clerk

By: _____
~~Burt Aaronson~~, Chair

WITNESSES:

By: **CENTER FOR CREATIVE EDUCATION,**
INC.
FEI/EIN #65-094599



Susan W. Yinger

By: THOMAS J. PILECKI
Name (Type or Print)

Title: EXEC. DIRECTOR

By: Thomas J. Pilecki
Signature

APPROVED AS TO TERMS AND
CONDITIONS

APPROVED AS TO FORM AND
LEGAL SUFFICIENCY

By: Eric Call
Eric Call, ~~Dennis L. Eshleman~~, Director
Parks and recreation Department

By: Maura Ziska
Agency Attorney

APPROVED AS TO FORM AND LEGAL
SUFFICIENCY

By: _____
County Attorney

LIST OF EXHIBITS

EXHIBIT A	Project Description, Conceptual Site Plan, and Cost Estimate (Provided by Agency)
EXHIBIT B	Legal Description of Property (Provided by Agency)
EXHIBIT C	Contract Payment Request Form (Page 1 of 2) and Contractual Services Purchase Schedule Form) (Page 2 of 2)
EXHIBIT D	Pre-Agreement Costs List (Not Applicable)

EXHIBIT A

PROJECT DESCRIPTION, COST ESTIMATE, AND CONCEPTUAL SITE PLAN

**PROJECT DESCRIPTION AND COST ESTIMATE
CONSTRUCTION OF THE JOHN AND TUSSIE KLUGE CENTER FOR
CREATIVE EDUCATION
CENTER FOR CREATIVE EDUCATION, INC.
July 26, 2010**

Project Description

The Center for Creative Education, Inc. owns property at 425 24th Street in West Palm Beach on which it is currently constructing major renovations to an existing 20,000 square foot structure for re-use as a community Multicultural Arts and Education Facility. The facility will be named the John and Tussie Kluge Center for Creative Education (the Center), and will be operated by the Center for Creative Education, Inc. (CCE). The Center is located in the Northwood Corridor, which is currently undergoing major revitalization. It has been designated by the Urban Land Institute (ULI) Board to be a nucleus for the community with the ongoing restructuring of the Northwood District of West Palm Beach. The total cost of the project is estimated to be \$3,006,407; with CCE providing \$2,206,407 and the County contributing \$800,000 from the 2002 Recreation and Cultural Facilities Bond.

When complete, the Center will contain multiple venues open to the public, and the CCE's educational programming that is already in place throughout the Palm Beach County School system will be provided at the new facility.

The Center's Project Elements as depicted on the Conceptual Master Plan include:

- A 300-seat Black Box Theater/Main Hall/Dance Rehearsal Studio;
- Three classroom studios
- Computer lab
- Theatre shop
- Artist workrooms
- Community board room
- Art gallery
- Community Service office
- CCE administrative offices,
- CCE program offices, and
- Artist consignment shop/café

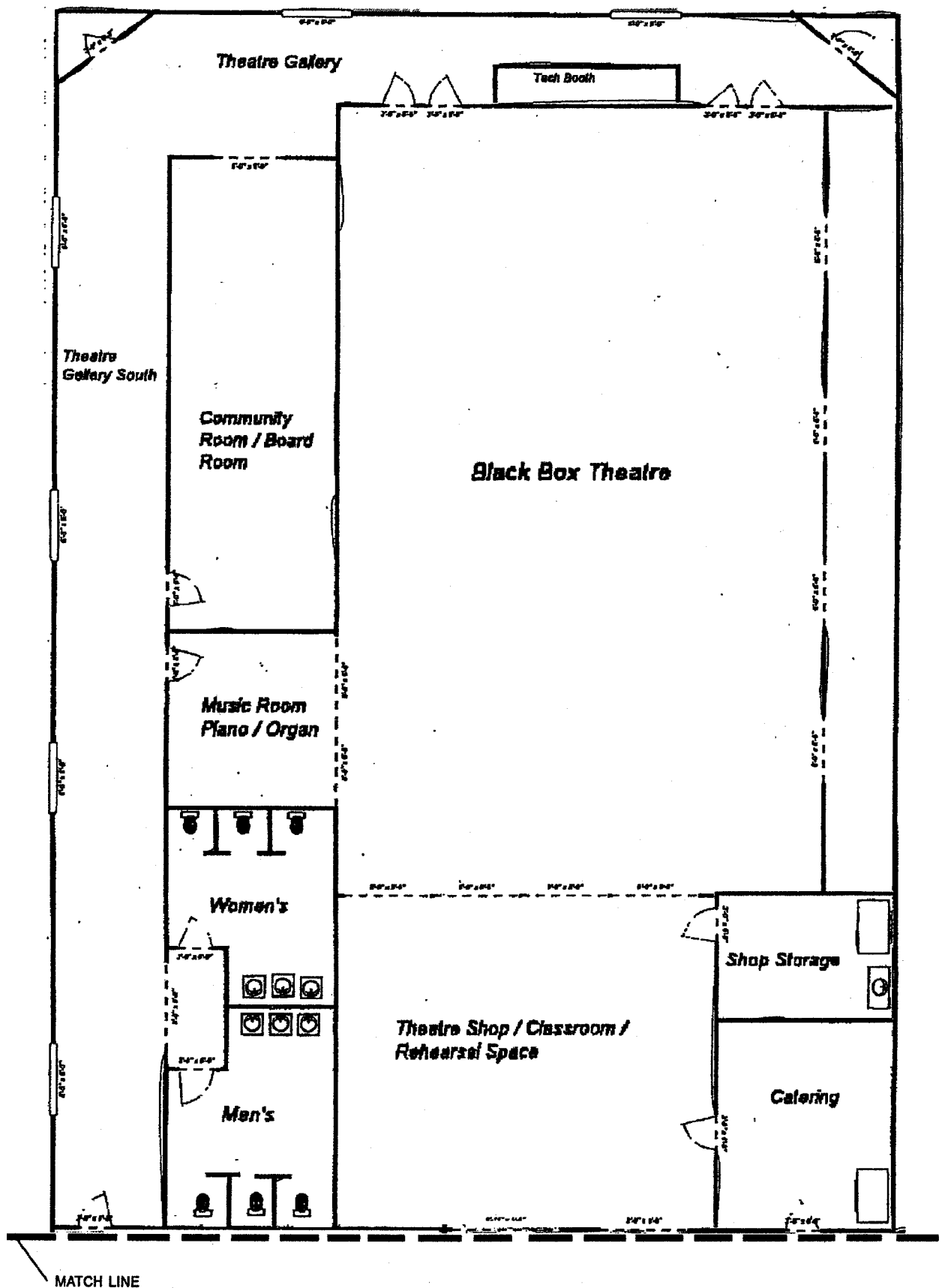
County funding will be paid for project construction and permitting costs only, and may not be utilized for design and engineering costs.

Cost Estimate for Total Project, Including Design

\$3,006,407

EXHIBIT A





FLOOR PLAN

CENTER FOR CREATIVE EDUCATION
MULTICULTURAL ARTS AND EDUCATION FACILITY

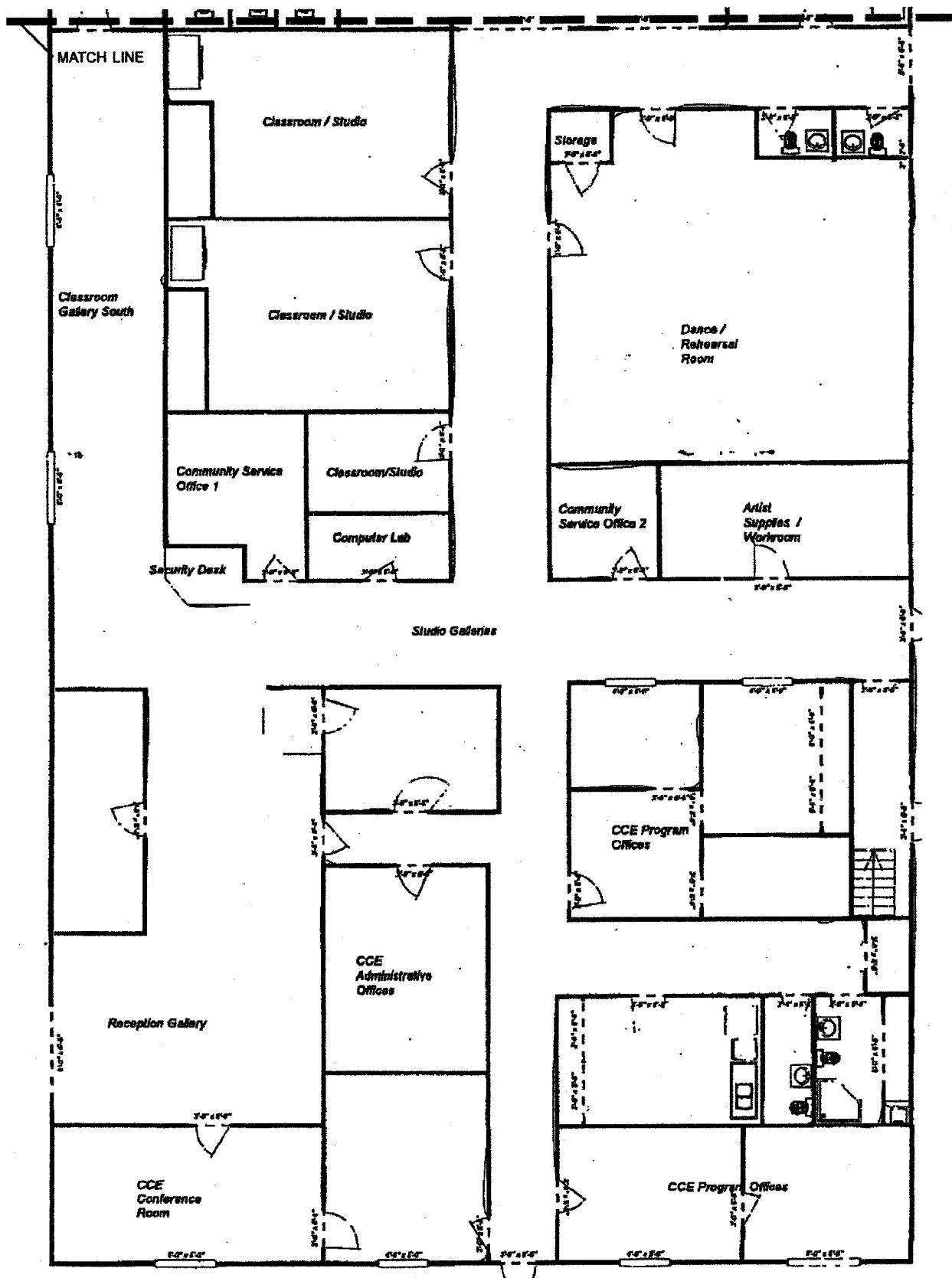


EXHIBIT B

LEGAL DESCRIPTION OF PROPERTY

EXHIBIT B

Legal Description:

Location address: 425 24th Street

Municipality: West Palm Beach

Parcel Control: 74-43-43-09-05-016-0230

Subdivision: Northwood ADD in PB 8 PGS 47 & 62, PB 9 PGS 30 & 47, PB 10 P 11,
PB 11 PGS 18, 38

Official Records Book: 18197 Page: 0940

Legal Description: NORTHWOOD ADD LTS 23 THRU 34 & W 15FT OF LT 35
BLK 16

EXHIBIT C

**CONTRACT PAYMENT REQUEST FORM AND CONTRACTUAL SERVICES
PURCHASE SCHEDULE FORM**



PALM BEACH COUNTY
PARKS AND RECREATION DEPARTMENT

EXHIBIT C

CONTRACT PAYMENT REQUEST

Date

Grantee: _____ Project Name: _____

Submission #: _____ Reimbursement Period: _____

Item	Key	Project Costs This Submission	Cumulative Project Costs
Consulting Services	(CS)	_____	_____
Contractual Services	(C)	_____	_____
Materials, Supplies, Direct Purchases	(M)	_____	_____
Equipment, Furniture	(E)	_____	_____
TOTAL PROJECT COSTS		=====	=====

Key Legend

CS = Consulting Services
C = Contractual Services
M = Materials, Supplies, Direct Purchases
E = Equipment, Furniture

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

CS = Consulting Services
C = Contractual Services
M = Materials, Supplies, Direct Purchases
E = Equipment, Furniture

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

EXHIBIT C

Date _____

Grantee: _____

Project Name: _____

Submittal #: _____

Reimbursement Period: _____

Ln	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.

Financial Officer

Date

EXHIBIT D

PRE-AGREEMENT COST LIST

Not Applicable



CERTIFICATE OF LIABILITY INSURANCE

OP ID LT

DATE (MM/DD/YYYY)

10/11/10

THIS CERTIFICATE IS ISSUED AS A MATTER OF INFORMATION ONLY AND CONFERS NO RIGHTS UPON THE CERTIFICATE HOLDER. THIS CERTIFICATE DOES NOT AFFIRMATIVELY OR NEGATIVELY AMEND, EXTEND OR ALTER THE COVERAGE AFFORDED BY THE POLICIES BELOW. THIS CERTIFICATE OF INSURANCE DOES NOT CONSTITUTE A CONTRACT BETWEEN THE ISSUING INSURER(S), AUTHORIZED REPRESENTATIVE OR PRODUCER, AND THE CERTIFICATE HOLDER.

IMPORTANT: If the certificate holder is an ADDITIONAL INSURED, the policy(ies) must be endorsed. If SUBROGATION IS WAIVED, subject to the terms and conditions of the policy, certain policies may require an endorsement. A statement on this certificate does not confer rights to the certificate holder in lieu of such endorsement(s).

PRODUCER Northeast Agencies - Crystal Northeast Agencies 2495 Main St Suite 209 Buffalo NY 14214 Phone: 716-837-8804 Fax: 716-837-8848	CONTACT NAME: PHONE (A/C, No, Ext): FAX (A/C, No): E-MAIL ADDRESS: PRODUCER CUSTOMER ID #: CENTE17
INSURED CENTER FOR CREATIVE EDUCATION 425 24TH STREET WEST PALM BEACH FL 33407	INSURER(S) AFFORDING COVERAGE INSURER A: ESSEX INSURANCE COMPANY INSURER B: HARTFORD INSURER C: HARTFORD UNDERWRITERS INSURANC INSURER D: INSURER E: INSURER F: NAIC # 22357

COVERAGES

CERTIFICATE NUMBER:

REVISION NUMBER:

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.

INSR LTR	TYPE OF INSURANCE	ADD'L SUBR INSR	WVD	POLICY NUMBER	POLICY EFF (MM/DD/YYYY)	POLICY EXP (MM/DD/YYYY)	LIMITS
A	<input checked="" type="checkbox"/> GENERAL LIABILITY <input type="checkbox"/> COMMERCIAL GENERAL LIABILITY <input type="checkbox"/> CLAIMS-MADE <input type="checkbox"/> OCCUR GEN'L AGGREGATE LIMIT APPLIES PER: <input type="checkbox"/> POLICY <input type="checkbox"/> PRO-JECT <input type="checkbox"/> LOC			PA110010441	10/08/10	10/08/11	EACH OCCURRENCE \$ 1,000,000 DAMAGE TO RENTED PREMISES (Ea occurrence) \$ 50,000 MED EXP (Any one person) \$ 1,000 PERSONAL & ADV INJURY \$ EXCLUDED GENERAL AGGREGATE \$ 2,000,000 PRODUCTS - COMP/OP AGG \$ EXCLUDED \$
B	<input checked="" type="checkbox"/> AUTOMOBILE LIABILITY <input type="checkbox"/> ANY AUTO <input type="checkbox"/> ALL OWNED AUTOS <input type="checkbox"/> SCHEDULED AUTOS <input checked="" type="checkbox"/> HIRED AUTOS <input checked="" type="checkbox"/> NON-OWNED AUTOS			01SBMZC3794 01SBMZC3794	09/20/10 09/20/10	11/15/10 11/15/10	COMBINED SINGLE LIMIT (Ea accident) \$ 1,000,000 BODILY INJURY (Per person) \$ BODILY INJURY (Per accident) \$ PROPERTY DAMAGE (Per accident) \$ \$ \$
	<input type="checkbox"/> UMBRELLA LIAB <input type="checkbox"/> OCCUR <input type="checkbox"/> EXCESS LIAB <input type="checkbox"/> CLAIMS-MADE <input type="checkbox"/> DEDUCTIBLE <input type="checkbox"/> RETENTION \$						EACH OCCURRENCE \$ AGGREGATE \$ \$ \$
C	WORKERS COMPENSATION AND EMPLOYERS' LIABILITY ANY PROPRIETOR/PARTNER/EXECUTIVE OFFICER/MEMBER EXCLUDED? (Mandatory in NH) If yes, describe under DESCRIPTION OF OPERATIONS below	Y/N N/A		10WECPO2822	05/25/10	05/25/11	<input checked="" type="checkbox"/> WC STATUTORY LIMITS <input type="checkbox"/> OTHER E.L. EACH ACCIDENT \$ 100,000 E.L. DISEASE - EA EMPLOYEE \$ 100,000 E.L. DISEASE - POLICY LIMIT \$ 500,000

DESCRIPTION OF OPERATIONS / LOCATIONS / VEHICLES (Attach ACORD 101, Additional Remarks Schedule, if more space is required)

Palm Beach county Board of County Commissioners, a Political Subdivision of the State of Florida, its officers, Employees and Agents are named as additional insured with respects to vacant building. Waiver of subrogation applies

CERTIFICATE HOLDER

CANCELLATION

Palm Beach County, C/O Parks & Recreation Department
Administrative Support Manager
2700 Sixth Ave South
Lake Worth FL 33461

SHOULD ANY OF THE ABOVE DESCRIBED POLICIES BE CANCELLED BEFORE THE EXPIRATION DATE THEREOF, NOTICE WILL BE DELIVERED IN ACCORDANCE WITH THE POLICY PROVISIONS.

AUTHORIZED REPRESENTATIVE

© 1988-2009 ACORD CORPORATION. All rights reserved.

BOARD OF COUNTY COMMISSIONERS
PALM BEACH COUNTY, FLORIDA
BUDGET TRANSFER

Page 1 of 1

BGEX 581 081610*1975

FUND 3020 - \$25M GO 05, Recreational & Cultural Facilities

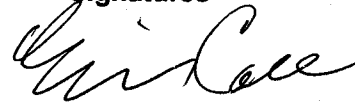
ACCT NUMBER	ACCOUNT NAME	ORIGINAL BUDGET	CURRENT BUDGET	INCREASE	DECREASE	ADJUSTED BUDGET	EXPENDED/ ENCUMBERED 8/16/2010	REMAINING BALANCE
<u>Reserves - Fund 3020</u>								
3020-821-9817-9908	Res-New Projects	8,234,048	5,886,638		800,000	5,086,638	0	5,086,638
<u>Center for Creative Education Construction Project</u>								
3020-581-P728-8201	Contributions-Non-Govts Agncs	0	0	800,000		800,000	0	800,000
TOTAL				<u>800,000</u>	<u>800,000</u>			

Parks and Recreation Department
INITIATING DEPARTMENT/DIVISION

Administration/Budget Department Approval

OFMB Department - Posted

Signatures



Date

10-18-2010

By Board of County Commissioners
At Meeting of
November 16, 2010
Deputy Clerk to the Court