

PALM BEACH COUNTY
BOARD OF COUNTY COMMISSIONERS

AGENDA ITEM SUMMARY

Meeting Date: **March 14, 2017**

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 receive and file: the following original executed Sponsorship Agreement:

Boynton Beach Associates XVIII, LLLP, cash sponsorship of a series of nine concerts and eighteen movie nights, Canyon Town Center Amphitheater, for the period January 6, 2017, through December 30, 2017.

Summary: In accordance with County PPM CW-O-051, all delegated contracts/agreements/grants must be submitted by the initiating Department as a Receive and File agenda item. The Sponsorship Agreement has been fully executed on behalf of the Board of County Commissioners (Board) by the County Administrator/Director of the Parks and Recreation Department in accordance with Resolution 2008-0442, amended by Resolution 2017-0102, and is now being submitted to the Board to receive and file. These sponsored events help offer a balanced schedule of events which promote the quality of life in the communities we serve. District 5 (AH)

Background and Justification: The Sponsorship Agreement, Resolution 2008-0442, amended by Resolution 2017-0102, was adopted by the Board for the provision of benefits to a sponsor when an event or program is hosted by the Parks and Recreation Department. The Department customarily budgets operating funds to host a variety of leisure activities and seeks donations to supplement these events. Sponsors often request a reciprocal relationship with the County, and in response to these requests the Department established a Donations/Sponsorships PPM. This PPM dictates procedures for the acceptance of donations and sponsorships from the public for Palm Beach County Parks and Recreation purposes, wherein the sponsor provides cash and/or in-kind services to the Department in return for access to commercial and/or marketing potential through a Sponsorship Agreement. The Board granted the Director of Parks and Recreation authority to execute Sponsorship Agreements not-to-exceed \$15,000, with Sponsorship Agreements between \$15,000 and \$50,000 requiring the County Administrator's approval and Sponsorship Agreements over \$50,000 requiring Board approval.

The Agreement attached has been executed on behalf of the Board by the County Administrator/Director of the Parks and Recreation Department in accordance with the authority delegated by the Board, and is now being submitted to the Board to receive and file.

Attachment: Sponsorship Agreement

Recommended by: 
Department Director

2-10-17
Date

Approved by: 
Deputy County Administrator

2-22-17
Date

II. FISCAL IMPACT ANALYSIS

A. Five Year Summary of Fiscal Impact:

Fiscal Years	2017	2018	2019	2020	2021
Capital Expenditures	<u>-0-</u>	<u>-0-</u>	<u>-0-</u>	<u>-0-</u>	<u>-0-</u>
Operating Costs	<u>9,300</u>	<u>-0-</u>	<u>-0-</u>	<u>-0-</u>	<u>-0-</u>
External Revenues	<u>(14,400)</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>*(5,100)</u>	<u>-0-</u>	<u>-0-</u>	<u>-0-</u>	<u>-0-</u>
# ADDITIONAL FTE POSITIONS (Cumulative)	<u>0</u>				

Is Item Included in Current Budget? Yes X No _____
 Budget Account No.: Fund 0001 Department 580 Unit 5206
 Object various / Revenue 6600 Program _____

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

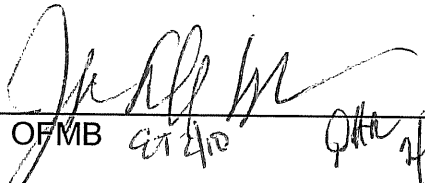
Sponsor	Revenue	Expense
Boynton Beach Associates XVIII, LLLP	\$14,400	\$9,300
Totals	\$14,400	\$9,300

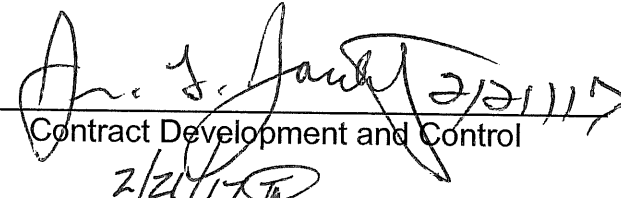
*Estimated net revenues for this agreement are \$5,100. Actual operating costs will be determined at the termination of the agreement.

C. Departmental Fiscal Review: 
 (M. Szakacs for R.P.)

III. REVIEW COMMENTS

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


 OFMB 2/21/17


 Contract Development and Control
 2/21/17

B. Legal Sufficiency:

Anne Delgado 2-22-17
 Assistant County Attorney

C. Other Department Review:

 Department Director

This summary is not to be used as a basis for payment

AGREEMENT BETWEEN PALM BEACH COUNTY
AND BOYNTON BEACH ASSOCIATES XVIII, LLLP
FOR A SPONSORSHIP AGREEMENT
AT THE CANYON TOWN CENTER AMPHITHEATER

This Agreement is made as of the 21st day of DECEMBER 2016, by and between Palm Beach County, a Political subdivision of the State of Florida, by and through its Board of County Commissioners, hereinafter referred to as the "COUNTY" and Boynton Beach Associates XVIII, LLLP herein after referred to as the "SPONSOR", both being referred to collectively as the "PARTIES".

WHEREAS, COUNTY owns and operates Canyon Town Center Amphitheater, hereinafter referred to as the "Venue"; and

WHEREAS, COUNTY is hosting the Canyon Concert Series, once each month in, January, February, March, April, May, September, October, November and December 2017 at the Venue; and each concert being hereafter individually referred to as an "Event" and collectively referred to as the "Events"

WHEREAS, COUNTY desires to expand its services offered to the public with the least amount of financial impact to its citizens; and

WHEREAS, COUNTY established a sponsorship program, which earns revenue from commercial advertising through Sponsors who receive sponsorship benefit appropriations based on the size and cost of the Event; and

WHEREAS, COUNTY desires to generate revenue at the Venue by allowing Sponsor to become a concert series sponsor for the Event; and

WHEREAS, SPONSOR desires to Sponsor the Events as a SPONSOR and receive sponsorship benefits in accordance with this Agreement; and

WHEREAS, generating revenue at the Venue serves a public purpose; and

WHEREAS, both PARTIES desire to enter into this Agreement.

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

Section 1. Recitals.

The above recitals are true and correct and are incorporated herein.

Section 2. Term.

The term of this Agreement shall commence on January 6, 2017, and shall terminate on December 30, 2017.

Section 3. Payment.

The total amount to be paid by SPONSOR to the COUNTY under this Agreement for the sponsorship of Events shall be **(2) payments each of Seven Thousand Two Hundred Dollars (\$7,200.00) for a total of Fourteen Thousand Four Hundred Dollars (\$14,400.00)**. SPONSOR shall make (1) payment of Seven Thousand Two Hundred Dollars (\$7, 200.00) by January 6, 2017 and (1) payment of Seven Thousand Two Hundred Dollars (\$7, 200.00) by April 11, 2017. Failure by SPONSOR to make payments within the specified time frame may result in termination of this Agreement by COUNTY. Payment shall be mailed to Parks & Recreation Department, 2700 6th Avenue South, Lake Worth, FL 33461, Attention Donald Perez. Checks should be payable to Palm Beach County Board of County Commissioners.

Section 4. Sponsorship Benefits.

SPONSOR shall be considered a sponsor during each of the nine concert events, to be held at Canyon Town Center Amphitheater for the months of January, February, March, April, May, September, October, November and December 2017.

The SPONSOR's company logo shall be included on flyers and on the County web site for each of the Events, as more particularly described in **Exhibit "A"**.

The SPONSOR shall receive a waiver of Canyon Town Center Amphitheater rental fees for use of the facility, exclusively for the showing of movies, twenty nine (29) times during the term of this Agreement. Approval of movie by COUNTY is required prior to each requested movie date.

Section 5. Sponsorship Standards/Criteria.

- A. The logo shall be limited to speech which proposes a commercial transaction. Speech that proposes a commercial transaction is speech that promotes a commercial service or product, as opposed to an idea.
- B. Logos, advertisements or a manner of presentation which negatively impact the COUNTY, promote a product, service, or activity offensive to the general public, or which negatively impact, disrupt, intrude upon or interfere in any manner, with the efficient and cost effective operation and administration of the COUNTY, or any other advertising the COUNTY determines to be inappropriate or likely to hinder or interfere with the goal of earning revenue from long term commercial advertisements at the Venue are not permitted.
- C. SPONSOR may not pursue advertisements or logos that:
 - 1. include false, misleading or deceptive statements or material;
 - 2. relate to an illegal activity;
 - 3. include explicit sexual material, obscene material, or material harmful to minors;
 - 4. advertise tobacco;
 - 5. include language that is obscene, vulgar, profane or scatological;
 - 6. relate to instruments, devises, items, projects, or paraphernalia that are designed for use in connection with specific sexual activities;
 - 7. depict violence and/or anti-social behavior.
- D. By approving SPONSOR's logo, COUNTY is in no way establishing or promoting SPONSOR's view as the COUNTY's.
- E. During the Events, COUNTY may prohibit SPONSOR from displaying or passing out material

COUNTY determines to be inappropriate or likely to hinder or interfere with the goal of earning revenue from long term commercial advertisements at the Venue. COUNTY shall not be liable for any damage in connection therewith.

Section 6. Sponsor's Responsibilities.

At least (10) days prior to the first Event, SPONSOR shall submit its logo to COUNTY for review and approval. If COUNTY determines the logo does not comply with COUNTY's advertising standards, the SPONSOR shall submit another sample to COUNTY until approval is granted. Any logo previously approved, which may subsequently be considered objectionable by COUNTY shall no longer be eligible for display. The COUNTY shall not be liable for any damages in connection therewith. Once approved Sponsor may use the logo for all Events or modify the logo by providing the new logo to the COUNTY at least ten (10) days prior to the next Event.

Section 7. County's Responsibilities.

- A. County shall determine, in COUNTY's sole discretion, the size of SPONSOR's logo and where the logo will be displayed on the advertising material for the Event.
- B. COUNTY is to host the Events at the Venue as set forth in this Agreement. In the event a particular Event is cancelled or does not occur on the scheduled date, COUNTY shall attempt to reschedule prior to the expiration of this Agreement.

Section 8. Termination

This Agreement may be terminated by SPONSOR upon sixty (60) days prior written notice to the COUNTY's representative in the event of substantial failure by COUNTY to perform in accordance with the terms of this Agreement through no fault of the SPONSOR. It may also be terminated, in whole or in part, by COUNTY, with or without cause, immediately upon five (5) days written notice to the SPONSOR.

Section 9. Indemnification.

SPONSOR agrees to protect, defend, reimburse, indemnify and hold COUNTY, its agents, employees and elected officers free and harmless at all times from and against any and all claims, liability, expenses, losses, costs, fines and damages, including attorney's fees and costs at trial and appellate levels, and causes of action of every kind and character arising out of this Agreement or SPONSOR's use and occupancy of the Amphitheater. Such causes of action include, without limitation, those arising by reason of; (i) any damage to property or the environment, (ii) bodily injury, including death, incurred or sustained by any party hereto, any agent or employee of any party hereto, and any third or other party whosoever, (iii) the condition of the Amphitheater existing at the effective date of this Agreement, (iv) SPONSOR's acts, omissions or operations hereunder, (v) the performance, non-performance or purported performance of SPONSOR, or (vi) any breach of the terms of this Agreement. The obligations arising under this provision will survive the expiration or termination of this Agreement.

Section 10. Remedies.

This Agreement shall be governed by the laws of the State of Florida. Any legal action necessary to enforce the Agreement will be held in a court of competent jurisdiction located in Palm Beach County, Florida. 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, 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.

Section 11. No Third Party Beneficiaries.

No provision of this Agreement is intended to, or shall be construed to, create any third party beneficiary or to provide any rights to any person or entity not a party to this Agreement, including but not limited to any citizen or employees of the COUNTY and/or SPONSOR.

Section 12. Insurance.

COUNTY, by and through its Risk Management Department, in cooperation with the contracting/monitoring department, reserves the rights to require insurance coverages throughout the term of this Agreement. If COUNTY determines insurance is required to perform this Agreement, SPONSOR shall, at its sole cost and expense, maintain in full force and effect at all times during the life of this Agreement, insurance coverages and limits (including endorsements), as described in **Exhibit "B"**. SPONSOR shall 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 of SPONSOR to maintain or not to maintain insurance is not intended to and shall not in any manner limit or qualify the liabilities and obligations assumed by SPONSOR under 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.

Section 13. Severability.

In the event any term or provision of this Agreement is held invalid or unenforceable, the remainder of this Agreement will not be affected, and every other term and provision of this Agreement will be deemed valid and enforceable to the extent permitted by law.

Section 14. Notice.

All notices required in this Agreement shall be sent by certified mail, return receipt requested, hand delivery or other delivery service.

If sent to the COUNTY, notices shall be addressed to:

Director, Special Facilities
2700 6th Avenue South
Lake Worth, Florida 33461

With a copy to:

Palm Beach County Attorney's Office
301 North Olive Ave. Suite 601
West Palm Beach, Florida 33401

If sent to the SPONSOR, notices shall be addressed to:

Boynton Beach Associates XVIII, LLLP
1600 Sawgrass Corp. Parkway, Ste 400
Sunrise, Florida 33323
Attn: Michael Friedman

Section 15. Independent Contractor Relationship.

SPONSOR, is and shall be, in the performance of all work, services and activities under this Agreement, an Independent Contractor, and not an employee, agent, or servant of COUNTY. The SPONSOR does not have the power or authority to bind the COUNTY in any promise, agreement or representation.

Section 16. Entirety of Contractual Agreement.

The COUNTY and SPONSOR agree that this Agreement sets forth the entire agreement between the PARTIES, and that there are no promises or understandings other than those stated herein. 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.

Section 17. Nondiscrimination.

SPONSOR warrants and represents that all of its employees are treated equally during employment without regard to race, color, religion, disability, sex, age, national origin, ancestry, marital status, familial status, sexual orientation, gender identity and expression, or genetic information.

Section 18. Access and Audits

Palm Beach County has established the Office of the Inspector General in Palm Beach County Code, Section 2-421 - 2-440, as may be amended. The Inspector General's authority includes but is not limited to the power to review past, present and proposed County contracts, transactions, accounts and records, to require the production of records, and to audit, investigate, monitor, and inspect the activities of the Sponsor, its officers, agents, employees and lobbyists in order to ensure compliance with contract requirements and detect corruption and fraud.

Failure to cooperate with the Inspector General or interfering with or impeding any investigation shall be in violation of Palm Beach County Code, Section 2-421 - 2-440, and punished pursuant to Section 125.69, Florida Statutes, in the same manner as a second degree misdemeanor.

(REMAINDER OF THIS PAGE INTENTIONALLY LEFT BLANK)

IN WITNESS WHEREOF, the COUNTY has made and executed this Agreement on behalf of the County and SPONSOR has hereunto set its hand the day and year above written.

PALM BEACH COUNTY WITNESS

[Signature]
Signature

ANDREW HOUZGROVE
Name (type or print)

PALM BEACH COUNTY

[Signature]
Department Director/Designee

EDEL CALL
Name (type or print)

**If Agreement Value
Exceeds \$10,000.00, But Not More Than
\$50,000.00:**

[Signature]
County Administrator

Verdenia C. Baker
Name (type or print)

SPONSOR WITNESS

[Signature] 9/26/16
Signature Date

MICHAEL FELDMAN
Name (type or print)

SPONSOR

[Signature] 9/26/16
Signature Date

RICHARD M. NORWALK
Name (type or print)

Approved as to Form and
Legal Sufficiency

[Signature]
Assistant County Attorney

Boynton Beach Associates XVIII, LLLP
A FLORIDA LIMITED LIABILITY LIMITED PARTNERSHIP
By: Boynton Beach XVIII, Corporation, A
FLORIDA CORPORATION, its general partner

EXHIBIT “A”

Sponsorship Benefits

The Sponsor logo will be included in the following print media:

- a) All flyers created for distribution to the Canyon Town Center email database. The flyer will be released via email to 870 homeowners, community TV channels and placed in common areas.
- b) Palm Beach County website and the Canyon Amphitheater Facebook Page as an event listing.
- c) Public Acknowledgement and thank you over PA system during events.

Sponsor shall supply a black and white logo in Vector based EPS format (preferred for manipulation without distortion) **OR** TIFF, 300 resolution **OR** higher format **OR** JPEG format via email.

EXHIBIT “B”

Insurance

Not required, logo only being supplied by Sponsor.