

Meeting Date: 1/13/15

Agenda Item

14

REQUESTED COMMISSION ACTION:

X Consent ___ Ordinance X Resolution ___ Consideration ___ Workshop

SHORT TITLE A Resolution approving and authorizing the proper city officials to execute a Restrictive Covenant between the City of Pompano Beach and the State of Florida, Department of State, Division of Cultural Affairs relating to the Library Cultural Center project.

Summary of Purpose and Why:

The Department of State, Division of Cultural Affairs has brought forth a Grant Award Agreement in the amount of \$500,000 for the project "Pompano Beach Cultural Center: Phase 1." As a condition to receive the grant funds, the City must record the Restrictive Covenant with the Clerk of the Circuit Court in the County of the project. The Restrictive Covenant serves to ensure that the facility will be used as a cultural facility for at least ten (10) years following execution of the grant award agreement. The restrictive covenant provides for the repayment schedule should the terms of the agreement and restrictive covenant be violated.

QUESTIONS TO BE ANSWERED BY ORIGINATING DEPARTMENT:

- (1) Origin of request for this action: Staff
- (2) Primary staff contact: Ernesto Reyes, Assistant to the City Manager for Budget and Strategic Planning 786-4601
- (3) Expiration of contract, if applicable: N/A
- (4) Fiscal impact and source of funding: N/A

DEPARTMENTAL COORDINATION	DATE	DEPARTMENTAL RECOMMENDATION	DEPARTMENTAL HEAD SIGNATURE OR ATTACHED MEMO NUMBER
Budget	12/29/14	Approval	
Finance	12/31/14	<u>approve</u>	<u>S. Sibble</u>
City Attorney	12/30/14		<u>[Signature]</u>

X City Manager  [Signature]

ACTION TAKEN BY COMMISSION:

<u>Ordinance</u>	<u>Resolution</u>	<u>Consideration</u>
Workshop		
1 st Reading	1 st Reading	Results: Results:
2nd Reading		

RESOLUTION NO. 2015- _____

CITY OF POMPANO BEACH
Broward County, Florida

A RESOLUTION OF THE CITY COMMISSION OF THE CITY OF POMPANO BEACH, FLORIDA, APPROVING AND AUTHORIZING THE PROPER CITY OFFICIALS TO EXECUTE A RESTRICTIVE COVENANT BETWEEN THE CITY OF POMPANO BEACH AND THE STATE OF FLORIDA, DEPARTMENT OF STATE, DIVISION OF CULTURAL AFFAIRS RELATING TO THE LIBRARY CULTURAL CENTER PROJECT; PROVIDING AN EFFECTIVE DATE.

BE IT RESOLVED BY THE CITY COMMISSION OF THE CITY OF POMPANO BEACH, FLORIDA:

SECTION 1. That a Restrictive Covenant between the City of Pompano Beach and the State of Florida, Department of State, Division of Cultural Affairs, a copy of which is attached hereto and incorporated by reference as if set forth in full, is hereby approved.

SECTION 2. That the proper City officials are hereby authorized to execute said Restrictive Covenant between the City of Pompano Beach and the State of Florida, Department of State, Division of Cultural Affairs.

SECTION 4. This Resolution shall become effective upon passage.

PASSED AND ADOPTED this _____ day of _____, 2015.

LAMAR FISHER, MAYOR

ATTEST:

MARY L. CHAMBERS, CITY CLERK

RESTRICTIVE COVENANT

(City as Grantee owns land and will building.)

THIS RESTRICTIVE COVENANT is hereby entered into this _____ day of _____, 20____, by _____, hereinafter referred to as "the Land Owner"; **City of Pompano Beach, Florida**, and **City of Pompano Beach, Florida** hereinafter referred to as "the Grantee;" and the State of Florida, Department of State, Division of Cultural Affairs, hereinafter referred to as the "Division".

WHEREAS, the Land Owner is the fee simple title holder of the land located **100 West Atlantic Boulevard, Pompano Beach, Florida 33060**. A legal description of the subject property is attached as Exhibit A and is made a part of this covenant.

WHEREAS, the Grantee owns the land and will own the building(s) used or to be used as a cultural facility. "Facility" refers herein to the building(s) and associated land to be used as the "cultural facility," as defined herein.

WHEREAS, the Grantee has been approved to receive a Cultural Facilities Grant in the amount of **\$ 500,000**, to be administered by the Division and used only for the acquisition, renovation, and construction of the cultural facility as required by Section 265.701(1), Florida Statutes.

WHEREAS, the Division has authority under Section 265.701(4), Florida Statutes, to require the recordation of this restrictive covenant to ensure that the facility will be used as cultural facility, as defined herein, for at least ten (10) years following execution of the grant award agreement.

NOW THEREFORE, in partial consideration for the Cultural Facilities Grant and in accordance with Section 265.701(4), Florida Statutes, the Parties agree to the following:

- 1.) This restrictive covenant shall run with the title to the facility and the associated land, shall encumber them, and shall be binding upon the Grantee, the Land Owner, and their successors in interest for the period of (10) ten years following execution of the grant award agreement.
- 2.) The grant award shall only be expended for:

Project Title: Pompano Beach Cultural Center: Phase 1 (Grant # 15.9.300.599)

3.) For the required duration of this covenant, the Parties agree that the Grantee shall own all improvements to the facility and to the associated land, funded in whole or in part by grant funds

4.) The Division has the right to inspect the facility at all reasonable times to determine whether the conditions of the agreement and this covenant are being complied with.

5.) The Grantee shall operate and maintain the facility as a "cultural facility," defined as a building which shall be used primarily for the programming, production, presentation, exhibition or any combination of the above functions of any of the cultural disciplines, such as: music, dance, theatre, creative writing, literature, painting, sculpture, folks arts, photography, crafts, media arts, and historical and science museums."

6.) This restrictive covenant will be violated by the Grantee, or its successors in interest if the facility ceases to be used as a cultural facility, as defined above, within ten (10) years following execution of the execution of the grant award agreement as required by Section 265.701(4), Florida Statutes. If the Grantee violates this restrictive covenant, it shall repay the grant funds to the Division pursuant to the amortization schedule set forth below:

a. If the violation occurs within five (5) years following the execution of the grant award agreement, 100% of the grant amount;

b. If the violation occurs more than five (5) but less than six (6) years following execution of the grant award agreement, 80% of the grant amount;

c. If the violation occurs more than six (6) but less than seven (7) years following execution of the grant award agreement, 65% of the grant amount;

d. If the violation occurs more than seven (7) but less than eight (8) years following execution of the grant award agreement, 50% of the grant amount;

e. If the violation occurs more than eight (8) but less than nine (9) years following execution of the grant award agreement, 35% of the grant amount; and

f. If the violation occurs more than nine (9) but less than ten (10) years following execution of the grant award agreement, 20% of the grant amount.

7.) Any amount due from the Grantee as a result of a violation of this restrictive covenant shall be due in full within 90 days of the violation, or some other period of time as agreed upon by the Parties.

"CITY":

Witnesses:

CITY OF POMPANO BEACH

By: _____
LAMAR FISHER, MAYOR

By: _____
DENNIS W. BEACH, CITY MANAGER

Attest:

MARY L. CHAMBERS
CITY CLERK

(SEAL)

Approved As To Form:

GORDON B. LINN
CITY ATTORNEY

STATE OF FLORIDA
COUNTY OF BROWARD

The foregoing instruments were acknowledged before me this _____ day of _____, 2015 by **LAMAR FISHER** as Mayor, **DENNIS W. BEACH** as City Manager and **MARY L. CHAMBERS**, City Clerk of the City of Pompano Beach, Florida, a municipal corporation, on behalf of the municipal corporation, who are personally known to me.

NOTARY'S SEAL:

NOTARY PUBLIC, STATE OF FLORIDA

(Name of Acknowledger Typed, Printed or Stamped)

Commission Number

8.) If the entire amount due under the paragraph (6) is not repaid by the Grantee within the time allotted, the Parties agree that the Division may obtain a stipulated judgment against the Grantee for the amount due plus interest at the current legal rate. The Parties further agree that such a judgment shall be a stipulated judgment by virtue of full execution of this restrictive covenant; that it shall not require further approval of the Grantee or the Land Owner to obtain; and that no trial or hearing shall be necessary to make such a stipulated judgment legally effective. The Division shall have the right to enforce the stipulated judgment by resorting to any legal or equitable available remedy including an action for specific performance.

- 9.) As a condition to receipt of grant funds, the Grantee shall:
- a. Record this covenant in the public records with the Clerk of the Circuit Court of _____ County, Florida;
 - b. Pay all fees associated with its recording; and
 - c. Provide certified copy of the recorded covenant to the Division and to the Land Owner.

10.) The Parties agree that the Division shall incur no tax liability as a result of this covenant.

IN WITNESS WHEREOF, the Grantee and the Land Owner hereby affirm that they have read this restrictive covenant; that they understand and agree to its terms; and that they hereby affix their signatures accordingly.

WITNESSES:

PARTIES:

GRANTEE SIGNATURE

GRANTEE NAME (print)

First Witness Signature

First Witness Name (print)

Second Witness Signature

Second Witness Name (print)

GRANTEE ADDRESS

City

State

Zip

The State of Florida
County of _____

I certify that on this date before me, an officer duly authorized in the state and county named above to take acknowledgments, that

_____ personally
(Name)

appeared as _____ for _____
(Position) (Name of Qualifying Entity)

known to me to be or proved to my satisfaction that he/she is the person described in and who executed the foregoing instrument.

Type of Identification Produced _____

Executed and sealed by me at _____, Florida
on _____.

Notary Public in and for
The State of _____
My commission expires: _____

[SEAL]

LAND OWNER SIGNATURE LAND OWNER NAME (Print)

First Witness Signature First Witness Name (print)

Second Witness Signature Second Witness Name (print)

LAND OWNER ADDRESS

City State Zip

The State of Florida
County of _____

I certify that on this date before me, an officer duly authorized
in the state and county named above to take acknowledgments, that

_____ personally
(Name)

appeared as _____ for _____
(Position) (Name of Qualifying Entity)

known to me to be or proved to my satisfaction that he/she is the person described in and
who executed the foregoing instrument.

Type of Identification Produced _____

Executed and sealed by me at _____, Florida on _____

Notary Public in and for
The State of _____
My commission expires: _____

[SEAL]

For the Division of Cultural Affairs:

Name Title

R.A. Gray Building
500 S. Bronough Street
Tallahassee, Florida 32399

First Witness Signature

First Witness Name (Print)

Second Witness Signature

Second Witness Name (print)

The State of Florida County of _____

I certify that on this date before me, an officer duly authorized in the state and county named above to take acknowledgments, that

_____ personally
(Name)

appeared as _____ for the Florida Department of State, Division of
(Position)

Cultural Affairs known to me to be or proved to my satisfaction that he/she is the person described in and who executed the foregoing instrument.

Type of Identification Produced _____

Executed and sealed by me at _____, Florida on _____

Notary Public in and for

The State of _____

[SEAL]

My commission expires: _____