

Meeting Date: October 27, 2015

Agenda Item 25

REQUESTED COMMISSION ACTION:

Consent Ordinance Resolution Consideration/Discussion Presentation

SHORT TITLE OR MOTION 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: Phase 2.

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 2." 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 this agreement and restrictive covenant be violated.

- (1) Origin of request for this action: Staff
- (2) Primary staff contact: Ernesto Reyes, Assistant to the City Manager for Budget and Strategic Planning Ext. 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
Budget	<u>10-14-15</u>	<u>Approve</u>	<u>[Signature] for Ernesto Reyes</u>
Finance	<u>10-19-15</u>	<u>Approve</u>	<u>A. Jensen</u>
City Attorney	<u>10-19-15</u>	<u>[Signature]</u>	<u>[Signature]</u>

City Manager [Signature] [Signature]

ACTION TAKEN BY COMMISSION:

Ordinance	Resolution	Consideration	Workshop
1 st Reading	1 st Reading	Results:	Results:
_____	_____	_____	_____
2 nd Reading	_____	_____	_____
_____	_____	_____	_____
_____	_____	_____	_____



City Attorney's Communication #2016-48

October 19, 2015

TO: Erjeta Diamanti, Budget Analyst
FROM: Mark E. Berman, City Attorney
RE: Resolution – Library Cultural Center: Phase 2

As requested in your memorandum dated October 14, 2015, I have prepared and attached the following form of resolution:

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: PHASE 2; PROVIDING AN EFFECTIVE DATE.

Please feel free to contact me if I may be of further assistance.



MARK E. BERMAN

MEB/ds
l:cor/budget/2016-48
Attachment

RESOLUTION NO. 2016- _____

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: PHASE 2; 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:

ASCELETA HAMMOND, CITY CLERK

MEB/ds
10/19/15
l:reso/2016-27

RESTRICTIVE COVENANT

(Grantee owns land and building.)

THIS RESTRICTIVE COVENANT is hereby entered into this _____ day of _____, 20_____, by **City of Pompano Beach**, 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 Grantee is the fee simple title holder of the land and the building(s) to be used as a cultural facility located at **100 West Atlantic Boulevard, Pompano Beach, Florida**. A legal description of the subject property is attached as Exhibit A and is made a part of this covenant.

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. "Facility" is used herein to refer to the building(s) and associated land that will be used as a "cultural facility," as defined herein.

WHEREAS, the Division has authority under Section 265.701(4), Florida Statutes, to require that this restrictive covenant be recorded 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 and its successors in interest for (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 2 _____ (16.9.300.564)

3.) For the required duration of this covenant, the Parties agree that the Grantee shall own all improvements made to the facility and 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 grant award agreement and this covenant are being complied with.

5.) The Grantee shall 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 defined in s. 265.283(7), F.S. These disciplines include, but are not limited to music, dance, theatre, creative writing, literature, architecture, painting, sculpture, folk arts, photography, crafts, media arts, visual arts, programs of museums, and other such allied, major art forms.

6.) This restrictive covenant will be violated if 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 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 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 the 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

8.) If the entire amount due under the provisions of paragraph six (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, and record it in the public records of the county where the land and cultural facility are located. 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 to obtain; and that no trial or hearing shall be necessary to make such a stipulated judgment legally effective. Such a judgment, when recorded, shall be considered a valid lien upon Grantee's interest in the facility and the associated land, including all improvements funded in whole or part by grant funds.

- 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 **Broward** County, Florida;
 - b. Pay fees associated with its recording; and
 - c. Provide a certified copy of the recorded covenant to the Division.

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

IN WITNESS WHEREOF, the Grantee hereby affirms that he/she has read this restrictive covenant, understands and agrees to its terms, and hereby affixes his/her signature accordingly.

PARTIES and WITNESSES:

GRANTEE SIGNATURE

GRANTEE NAME (print)

First Witness Signature

First Witness Name (print)

Second Witness Signature

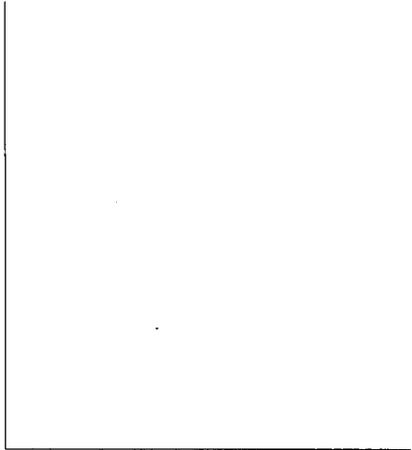
Second Witness Name (print)

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]

For the Division of Cultural Affairs:

Name

Title

R.A. Gray Building
500 S. Bronough St.
Tallahassee, Florida 32303

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,
(Position)

Division of 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 _____

My commission expires: _____

[SEAL]

“CITY”:

Witnesses:

CITY OF POMPANO BEACH

By: _____
LAMAR FISHER, MAYOR

By: _____
DENNIS W. BEACH, CITY MANAGER

Attest:

ASCELETA HAMMOND, CITY CLERK

(SEAL)

Approved As To Form:

MARK E. BERMAN, CITY ATTORNEY

STATE OF FLORIDA
COUNTY OF BROWARD

The foregoing instrument was acknowledged before me this _____ day of _____, 2015 by **LAMAR FISHER** as Mayor, **DENNIS W. BEACH** as City Manager and **ASCELETA HAMMOND** as 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