

PALM BEACH COUNTY
BOARD OF COUNTY COMMISSIONERS

AGENDA ITEM SUMMARY

Meeting Date: April 7, 2009

Consent
 Ordinance

Regular
 Public Hearing

Department: Parks and Recreation

Submitted By: Parks and Recreation Department

Submitted For: Parks and Recreation Department

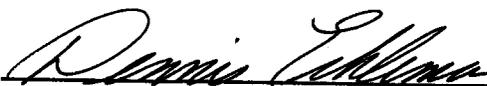
I. EXECUTIVE BRIEF

Motion and Title: Staff recommends motion to adopt: Resolution authorizing the County Administrator or his designee to execute standard sound and light production services contractor agreements for the provision of sound and light production for entertainment at County facilities.

Summary: Palm Beach County Parks and Recreation Department (Parks) regularly hosts special events in which sound and light production services are needed. Due to the frequency of hiring sound and light production services, staff is recommending that the Board of County Commissioners (BCC) approve a resolution which delegates authority to the County Administrator or his designee to execute standard sound and light production services contractor agreements on behalf of the County. Countywide (AH)

Background and Justification: The Parks and Recreation Department routinely hosts special events at its facilities that include entertainment in the form of dancers, musicians and specialty performers. Each form of entertainment requires a varying degree of unique production services. On April 15, 2008, the BCC approved an amendment to the purchasing ordinance (Ordinance No. 2008-009) which, among other changes, exempted event specific stage production or programming including production services from the purchasing ordinance and the competitive procurement process. Staff is recommending the BCC approve a resolution which delegates authority to the County Administrator or his designee to execute standard sound and light production services contractor agreements for the provision of providing varying degrees of unique sound and light production services at County facilities. Additionally, the Resolution establishes procedures for the Director or Assistant Director of the Department, as the County Administrator's designee, to approve all standard sound and light production services contractor agreements in an amount not-to-exceed \$10,000; the County Administrator to approve standard sound and light production services contractor agreements from \$10,001 up to \$50,000; and BCC approval when standard sound and light production services contractor agreements exceed \$50,000. Due to industry standards and practice, the standard sound and light production services contractor agreement requires the contractor provide insurance coverage when determined necessary by the County's Risk Management Department.

Attachment: Resolution

Recommended by: 
Department Director

3-17-09
Date

Approved by: 
Assistant County Administrator

3/26/09
Date

II. FISCAL IMPACT ANALYSIS

A. Five Year Summary of Fiscal Impact:

Fiscal Years	2009	2010	2011	2012	2013
Grant Expenditures	<u>-0-</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>-0-</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 No
 Budget Account No.: Fund _____ Department _____ Unit _____
 Object _____ Program N/A

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

There is no fiscal impact associated with this item.

C. Departmental Fiscal Review: ckopelakis

III. REVIEW COMMENTS

* **A. OFMB Fiscal and/or Contract Development and Control Comments:**
 Agreements less than \$10,000 would be approved by Director of Purch. Agreements up to \$50,000 would be approved by County Administrator

Jim Orl 3-23-09
 OEMBC 3/23/09 ck 03/20/09 ON 3/19/09

Dr. J. Jacoby 3/24/09
 Contract Development and Control
 E. Jones 3/24/09

B. Legal Sufficiency:

Anne Wilford 3/25/09
 Assistant County Attorney

C. Other Department Review:

 Department Director

REVISED 10/95
 ADM FORM 01

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

RESOLUTION NO. R-2009-

RESOLUTION OF THE BOARD OF COUNTY COMMISSIONERS OF PALM BEACH COUNTY, FLORIDA, AUTHORIZING THE COUNTY ADIMINSTRATOR OR DESIGNEE TO EXECUTE A STANDARD FORM AGREEMENT ON BEHALF OF THE BOARD OF COUNTY COMMISSIONERS; PROVIDING FOR SEVERABILITY; AND PROVIDING FOR AN EFFECTIVE DATE

WHEREAS, the Board of County Commissioners ("BCC"), through its Parks and Recreation Department, hosts special events at County owned amphitheaters; and

WHEREAS, the BCC desires to provide public entertainment at its amphitheaters in the form of dancers, musicians and specialty performers; and

WHEREAS, forms of entertainment require varying degrees of sound and light production services unique to each event; and

WHEREAS, the Department of Parks and Recreation utilizes certain standard form documents in the conduct its business; and

WHEREAS, the delegation to the County Administrator or his designee the authority to execute the standard form agreement would eliminate the delays caused by requiring such items to be brought before the BCC for approval and would therefore be consistent with the goal of the BCC to streamline the agenda process; and

WHEREAS, the BCC desires to authorize the County Administrator or his designee to execute a standard form agreement on behalf of the BCC for the provision of sound and light production services at special events hosted by Palm Beach County; and

WHEREAS, the execution of the standard form agreement does not constitute a policy-making decision and is ministerial function which the BCC wishes to delegate.

NOW, THEREFORE, BE IT RESOLVED BY THE BOARD OF COUNTY COMMISSIONERS OF PALM BEACH COUNTY, FLORIDA, that:

1. The foregoing recitals are true and correct and are incorporated herein.
2. The BCC hereby: (i) adopts a standard form agreement in the form attached hereto and incorporated herein as Attachment "A" (standard sound and light production services contractor agreement), and (ii) authorizes the County Administrator or his designee to execute the standard sound and light production services contractor agreement on behalf of the BCC.
3. It is the intention of the BCC that this delegation of signature authority is strictly limited to the parameters set forth herein. In the event there is any material deviation from the approved standard terms and conditions of the standard sound and light production services contractor agreement, then the approval of the BCC shall be required. The County Administrator's designee for purposes of this Resolution shall include the Director and Assistant Director of the Parks and Recreation Department.
4. Standard sound and light production services contractor agreements in an amount not-to-exceed \$10,000 may be approved by the Director or Assistant Director of Parks and Recreation Department. Standard sound and light production services contractor agreements in an amount from \$10,001 up to \$50,000 must be approved by the County Administrator. Standard sound and light production services contractor agreements exceeding \$50,000 must be approved by the Board of County Commissioners.

5. If any section, sentence, clause, phrase, or word of this Resolution is held invalid or unconstitutional by a Court of competent jurisdiction, then said holding shall in no way affect the validity of the remaining portion of this Resolution.
6. This Resolution shall become effective immediately upon adoption by the BCC.

The foregoing Resolution was offered by Commissioner _____, who moved its adoption. The motion was seconded by Commissioner _____, and upon being put to a vote, the vote was as follows:

Commissioner John F. Koons, Chairman	-
Commissioner Burt Aaronson, Vice Chairman	-
Commissioner Karen T. Marcus	-
Commissioner Shelley Vana	-
Commissioner Steven L. Abrams	-
Commissioner Jess R. Santamaria	-
Commissioner Addie L. Greene	-

The Chairperson thereupon declared the Resolution duly passed and adopted this _____ day of _____, 2009.

PALM BEACH COUNTY, FLORIDA, BY ITS BOARD OF COUNTY COMMISSIONERS

SHARON R. BOCK, CLERK & COMPTROLLER

By: _____
Deputy Clerk

APPROVED AS TO FORM AND LEGAL SUFFICIENCY

By: Anne Delgent
Assistant County Attorney

ATTACHMENT "A"

**SOUND AND LIGHT PRODUCTION SERVICES CONTRACTOR AGREEMENT FOR
PALM BEACH COUNTY PARKS & RECREATION DEPARTMENT**

This Agreement is made as of the ____ day of _____, 20____, by and between Palm Beach County, a Political Subdivision of the State of Florida, by and through its Board of Commissioners, hereinafter referred to as the "County" and _____, an Independent Contractor, hereinafter referred to as "Contractor".

WITNESSETH:

WHEREAS, the County desires to host _____, hereinafter referred to as the "Event" at _____, hereinafter referred to as the "Facility"; and

WHEREAS, as part of the Event, the County desires to hire Production Services, which shall consist of _____, hereinafter referred to as "Production Services"; and

WHEREAS, Contractor desires to provide Production Services to the County at the Facility during the Event; and

WHEREAS, Contractor has the knowledge, ability, and equipment to provide such Production Services for the County; and

WHEREAS, providing Production Services at the Facility serves a public purpose; and

WHEREAS, both parties desire to enter into this Agreement.

NOW THEREFORE, in consideration of the mutual covenants and promises contained herein, the County and Contractor hereby agree as follows:

1. **Recitals:** The foregoing recitals are true and correct and are incorporated herein by reference.
2. **Term:** The Contractor shall commence its Production Services on _____ and shall complete all services by _____.
3. **Payments To Contractor:** County shall pay Contractor a total amount not-to-exceed _____ for Production Services as described above. County shall pay a deposit to Contractor in an amount not-to-exceed _____, which shall be part of the total not-to-exceed amount as mentioned above. The balance in the amount not-to-exceed _____ shall be paid to Contractor upon completion of the Production Services at the Facility, and upon verification by County that all services have been performed in accordance with this Agreement. If Contractor cancels or fails to appear at the Event, Contractor and County shall negotiate an alternate date for the Production Services. If an alternative date for the Production Services cannot be negotiated within three (3) days after cancellation, Contractor shall fully refund County's deposit within two (2) days of written notice by County that an alternative date for the Production Services cannot be negotiated. Contractor shall furnish at its expense all transportation to and from the Event and Facility. All transportation, travel, food and lodging expenses are included in the not-to-exceed amount mentioned above.
4. **Taxes:** The County is exempt from payment of Florida State Sales and Use Taxes. The County will sign an exemption certificate submitted by the Contractor. The Contractor shall not be exempted from paying sales tax to its suppliers for materials used to fulfill contractual obligations with the County, nor is Contractor authorized to use the County's Tax Exemption Number in securing such materials.

The Contractor shall be responsible for payment of its own and its share of its employees' payroll, payroll

taxes, and benefits with respect to this Agreement. It is also acknowledged and agreed by the County and Contractor that the service herein provided by the Contractor is a professional service and that the County is neither paying Social Security benefits nor withholding taxes from the Contractor's compensation for said service. The Contractor assumes all liability and responsibility for payment of his/her own FICA and Social Security benefits with respect to this Agreement.

5. Contractor's Responsibilities:

- A. Contractor shall provide Production Services as more particularly described in Exhibit "A", the Scope of Work, attached hereto and incorporated herein by reference.
- B. Contractor's Production Services shall begin at _____ (a.m. or p.m.) and end at _____ (a.m. or p.m.).
- C. Contractor may arrive at the Facility to begin setting up at _____, but shall arrive no later than _____ minutes prior to the scheduled Entertainment time and shall have completed all sound checks and warm-ups, if applicable, at least _____ minutes prior to the scheduled Entertainment time.
- D. Contractor shall break down and remove all equipment and other materials it brings to the Event immediately upon completion of the Event, and shall leave the Facility in the same condition the Facility was in prior to conducting the Production Services.
- E. Contractor shall appear and perform Production Services for at least ninety percent (90%) of the scheduled Event time. Failure to adhere to this provision shall result in a downward adjustment in compensation payable to Contractor. County shall be the sole decision maker as to whether this provision has been complied with.
- F. Contractor shall perform the Production Services set forth in this Agreement in accordance with all applicable association/governing body rules and regulations, and in a competent, professional, safe, and responsible manner with full regard for the safety of the participants as well as the Facility.
- G. No alcohol or illegal drugs shall be consumed by Contractor, its employees or agents prior to, during or subsequent to the Event.
- H. County will provide the sound equipment and lighting for Production Services, as more specifically described in Exhibit "B", attached hereto and incorporated herein by reference. All other equipment, instruments, supplies and props not identified in Exhibit "B" that are necessary for the Entertainment shall be provided and transported by Contractor. County assumes no responsibility for any items or materials of Contractor while at the Facility.
- I. Contractor further represents it has inspected the Facility and that the Facility is in proper condition for the Production Services to be completed.
- J. All vehicles belonging to Contractor or Contractor's employees or agents shall be parked in the assigned area prior to the beginning of the Event.
- K. County shall provide basic electrical services for the Event, but Contractor shall be responsible for all necessary extension cords and other related equipment.
- L. If any additional requirements such as specialty certifications, licenses and/or memberships applicable to the Production Services are required, CONTRACTOR shall attach a copy of each to this Agreement as Exhibit "C".
- M. Contractor shall not use or permit the use of any pyrotechnics of any type during the Event.
- N. Contractor shall not undertake or participate in any business, exhibit or activity at the Event other than herein specified.

- O. Contractor shall comply in all material respects with all federal and state laws and regulations and all applicable county and city ordinances and regulations.

6. Cancellation and Postponement of Event:

- A. In case of inclement weather (i.e. hurricanes, thunderstorms, tornadoes, flooding, etc.), Acts of God, riots, strikes, epidemics, and similar circumstances affecting public safety, as determined solely by County, the County may cancel or postpone this Agreement by providing Contractor with at least _____ hours notice prior to the scheduled Event. Upon cancellation due to inclement weather, County and Contractor may negotiate another date for the Event at the Facility by Contractor, upon the same terms and conditions of this Agreement. In the event an alternate date cannot be agreed upon by both parties within three (3) days after cancellation, Contractor shall fully refund County's deposit within two (2) days of written notice by County that an alternative date for the Event cannot be negotiated. In the event an alternate date is not negotiated in accordance herewith, Contractor shall not be entitled to payment, and County shall not be liable for any lost profits or damages claimed by Contractor. County reserves the right, without liability therefore, to evacuate the Facility during any activity in progress where it is deemed necessary for the safety of the general public, patrons, or guests.
- B. In the event of sickness or acts of nature that prevent Contractor from performing the Production Services as scheduled, Contractor may fulfill the obligations of this Agreement by substituting a similar Production Company, with the prior approval of County. If a substitute Production Company performs the Production Services, Contractor shall refund County's full deposit immediately, and County may pay a lower not-to-exceed amount to the substitute Production Company.
- C. County can adjust Contractor's Production Services as deemed necessary to conclude the Event early, in consultation with Contractor. If in the reasonable discretion of County, Contractor is not performing the Production Services in a professional manner in accordance with this Agreement, the Event may be canceled early and this Agreement shall be terminated, and Contractor shall immediately return all deposits paid by County to Contractor.
- D. County may terminate this Agreement without cause upon seven (7) days prior written notice to Contractor. County shall not be liable to Contractor for any lost profits or damages claimed by Contractor. Upon early termination by County, Contractor shall refund County's full deposit within two (2) days after notice of termination.
- E. Contractor may terminate this Agreement upon written notice mailed to the County at least thirty (30) working days prior to the Event, and shall immediately refund all deposits paid by County to Contractor.

7. Independent Contractor Status: It is specifically understood that the Contractor is an independent contractor and not an employee of the County. The County and Contractor agree that this Agreement is not a contract of employment and that no relationship of Employer/Employee or Principal/Agent is or shall be created hereby nor shall hereafter exist by reason of the performance of the services herein specified.

8. Assignment: Contractor shall not assign, transfer or otherwise encumber this Agreement or any party thereof, in any manner without the prior written consent of the County. It is further agreed that no modification, amendment or alteration in the terms and conditions contained herein shall be effective unless contained in a written document executed with the same formality and equal dignity herewith.

9. Representatives: The County's representative for this Agreement is _____, telephone no. _____. The Contractor's representative for this Agreement is _____, telephone no. _____.

10. Indemnification: Contractor shall conduct its activities and Production Services and the activities and Production Services of its agents, employees and subcontractors at the Facility as not to endanger any person thereon and to indemnify and hold harmless the County, its officials, agents and employees from and against all claims, suits, actions, damages, liabilities, expenditures or causes of action, including

attorney's fees and costs, whether at trial or appellate levels or otherwise, arising out of or in any way connected to the activity or inactivity of Contractor, its agents, employees or subcontractors, and resulting or occurring from any act, omission or error of Contractor, its agents or employees, resulting in or relating to injuries to body, life, limb or property sustained in, about or of the use of the Facility by Contractor, its agents, employees or subcontractors. County shall not be liable for any property damage or bodily injury sustained by Contractor, its employees, agents or subcontractors, for any cause whatsoever, prior, during or subsequent to the period of time during this Agreement. This provision shall survive termination or expiration of this Agreement.

11. **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, Contractor 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 "D". Contractor 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 Contractor 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 Contractor 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.

12. **Notices:** All notices required in this Agreement shall be hand delivered or sent by certified mail, return receipt requested, if sent to the COUNTY shall be mailed to:

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

and if sent to the CONTRACTOR shall be mailed to:

CONTRACTOR'S Name: _____

CONTRACTOR'S Address: _____

CONTRACTOR'S Phone No. _____

13. **Remedies:** This Agreement shall be governed by the laws of the State of Florida. Any legal action necessary to enforce this Agreement shall be held in Palm Beach County, Florida. Nothing herein shall be construed as creating any personal liability on the part of any officer or agent of the County, or shall it be construed as giving any rights or benefits hereunder to anyone other than the County and the Contractor.

14. **Authorization:** Any individual executing this Agreement on behalf of Contractor warrants he or she has full legal authority to do so, and his/her execution shall bind the Contractor, its employees, agents and subcontractors to the terms and conditions herein.

15. **Availability of Funds:** The County's performance and obligation to pay under this Agreement for subsequent fiscal years is contingent upon annual appropriations for its purpose by the Board of County Commissioners.

16. **Arrears:** The Contractor shall not pledge the County's credit or make it a guarantor of payment or surety for any contract, debt, obligation, judgment, lien, or any form of indebtedness. The Contractor further warrants and represents that it has no obligation or indebtedness that would impair its ability to fulfill the terms of this Agreement.

17. **Public Entity Crimes:** As provided in F.S. 287.132-133, by entering into this Agreement or performing any work in furtherance hereof, the Contractor 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 F.S. 287.133(3)(a).

18. **Criminal History Records Check:** The Contractor shall comply with the provisions of Ordinance 2003-030, the Criminal History Records Check Ordinance ("Ordinance"), if Contractor's employees or subcontractors are required under this Agreement to enter a "critical facility" as identified in Resolution R-2003-1274. The Contractor acknowledges and agrees that all employees and subcontractors who are to enter a "critical facility" will be subject to a fingerprint based criminal history records check. Although County agrees to pay for all applicable FDLE/FBI fees required for criminal history records check, the Contractor shall be solely responsible for the financial, schedule, and staffing implications associated in complying with Ordinance 2003-030.
19. **Severability:** If any term or provision of this Agreement, or the application thereof to any person or circumstances shall, to any extent, be held invalid or unenforceable, the remainder of this Agreement, or the application of such terms or provision, to persons or circumstances 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.
20. **Entirety of Contractual Agreement:** The County and the Contractor 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.
21. **Waiver:** Failure of County to insist upon strict performance of any covenant or condition of this Agreement, or to execute any right herein contained, shall not be construed as a waiver or relinquishment for the failure of such covenant, condition, or right, but the same shall remain in full force and effect.
22. **Nondiscrimination:** Contractor 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, sexual orientation, gender identity and expression.

(REMAINDER OF THIS PAGE INTENTIONALLY LEFT BLANK)

IN WITNESS WHEREOF, the parties have hereunto set their hands and seals in the date first above written.

PALM BEACH COUNTY WITNESS

SIGNATURE

NAME (TYPE OR PRINT)

SERVICES CONTRACTOR WITNESS

SIGNATURE

NAME (TYPE OR PRINT)

Approved as to Form and
Legal Sufficiency

By: _____
Assistant County Attorney

PALM BEACH COUNTY

DEPARTMENT DIRECTOR/ASSISTANT DIRECTOR
(Agreement value up to \$10,000)

COUNTY ADMINISTRATOR
(Agreement value from \$10,001 up to \$50,000)

CHAIRPERSON, BOARD OF COUNTY COMMISSIONERS
(Agreement value exceeds \$50,000)

SERVICES CONTRACTOR

SIGNATURE

NAME (TYPE OR PRINT)

TITLE (TYPE OR PRINT)

EXHIBIT "A"

Scope of Work