

Agenda Item #3.M.5.

PALM BEACH COUNTY
BOARD OF COUNTY COMMISSIONERS
AGENDA ITEM SUMMARY

Meeting Date: October 5, 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 receive and file: executed Entertainment Contractor Agreements received during the months of February, May, June, and September of 2009.

- A) Chris Legrand, Band Concert, Sunset Cove Amphitheater for the period March 14, 2009, through March 15, 2009, in an amount not-to-exceed \$4,100;
- B) CK Entertainment Incorporated, July 4th Concert, Sunset Cove Amphitheater for the period July 4, 2009, through July 5, 2009, in an amount not-to-exceed \$6,000;
- C) Richard Benjamin, d.b.a. The Fabulons, Grand Opening Concert, Canyon Town Center Amphitheater for the period May 17, 2009, through May 18, 2009, in an amount not-to-exceed \$1,500;
- D) Randolph Markland, Sweet Justice Concert, Seabreeze Amphitheater for the period June 13, 2009, through June 14, 2009, in an amount not-to-exceed \$2,000;
- E) Bill Cockrell, High Tide Band, Canyon Town Center Amphitheater for the period June 13, 2009, through June 14, 2009, in an amount not-to-exceed \$800;
- F) Sid Parker, Band Concert, Canyon Town Center Amphitheater for the period July 11, 2009, through July 12, 2009, in an amount not-to-exceed \$850;
- G) Ray Williams, Duo Cats Concert, Canyon Town Center Amphitheater for the period August 15, 2009, through August 16, 2009, in an amount not-to-exceed \$500;
- H) Peter Fogel, Comedy Show, Seabreeze Amphitheater for the period September 19, 2009, through September 20, 2009, in an amount not-to-exceed \$2,000;
- I) Mark Knick, Insti-Gators Band, Canyon Town Center Amphitheater for Saturday, September 12, 2009, in an amount not-to-exceed \$1,000;
- J) Peter Noble, The Fabulous Fleetwoods Concert, Canyon Town Center Amphitheater for the period October 10, 2009, through October 11, 2009, in an amount not-to-exceed \$750; and
- K) Joseph Taffuri, Valcano Band, Seabreeze Amphitheater for the period October 17, 2009, through October 18, 2009, in an amount not-to-exceed \$850.

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 attached Entertainment Contractor Agreements have been fully executed on behalf of the Board of County Commissioners (Board) by the County Administrator/Director/Assistant Director of the Parks and Recreation Department in accordance with Resolution 2009-1109, and are now being submitted to the Board to receive and file. Districts 1 and 5 (AH)

Background and Justification: The Entertainment Contractor Agreements with musicians, dancers and specialty performers (Resolution 2009-1109) was adopted by the Board to streamline the process of hiring musicians, dancers and specialty performers. The Board granted the Director/Assistant Director of Parks and Recreation authority to execute Entertainment Contractor Agreements with musicians, dancers and specialty performers up to \$10,000, with contracts between \$10,000 and \$50,000 requiring the County Administrator's approval and contracts over \$50,000 requiring Board approval.

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

Attachments: Entertainment Agreements (11)

Recommended by: 
Department Director

9/7/10
Date

Approved by: 
Assistant County Administrator

9/15/10
Date

II. FISCAL IMPACT ANALYSIS

A. Five Year Summary of Fiscal Impact:

Fiscal Years	2011	2012	2013	2014	2015
Capital 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)	_____	_____	_____	_____	_____

Is Item Included in Current Budget? Yes _____ No _____
 Budget Account No.: Fund _____ Department _____ Unit _____
 Object _____ Program _____

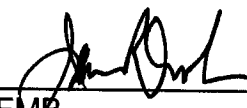
B. Recommended Sources of Funds/Summary of Fiscal Impact:

	Contractor	FY2010	
		Revenue	Expense
A	Chris Legrand	\$0	\$4,100
B	Ck Entertainment	\$0	\$6,000
C	Richard Benjamin dba The Fabulons	\$0	\$1,500
D	Randolph Markland	\$0	\$2,000
E	Bill Cockrell	\$0	\$800
F	Sid Parker	\$0	\$850
G	Ray Williams	\$0	\$500
H	Peter Fogel	\$0	\$2,000
I	Mark Knick	\$0	\$1,000
J	Peter Noble	\$0	\$750
K	Joseph Taffuri	\$0	\$850
	Totals	\$0	\$20,350

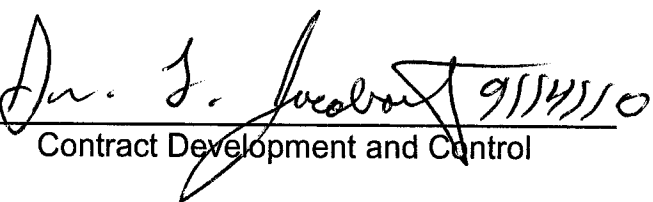
C. Departmental Fiscal Review: chopelakis

III. REVIEW COMMENTS

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

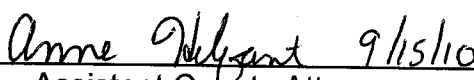


 OFMB



 Contract Development and Control

B. Legal Sufficiency: *7/13/10 Sid 9/13/10 9/19/10*



 Assistant County Attorney

C. Other Department Review:

Department Director

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

ACCOUNT:		VENDOR CODE:		CONTRACT:	
MC:	PS:	CC:	CA:	DD:	

**ENTERTAINMENT CONTRACTOR AGREEMENT FOR
PALM BEACH COUNTY PARKS & RECREATION DEPARTMENT**

This Agreement is made as of the 21 day of Feb, 2009, 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 CHRIS LEGRAND, an Independent Contractor, hereinafter referred to as "Contractor".

WITNESSETH:

WHEREAS, the County desires to host a concert, hereinafter referred to as the "Event" at Sunset Cove Amphitheater, hereinafter referred to as the "Facility"; and

WHEREAS, as part of the Event, the County desires to hire entertainment, which shall consist of one (1) five (5) piece band, hereinafter referred to as "Entertainment"; and

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

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

WHEREAS, providing Entertainment 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 Entertainment services on Saturday March 14, 2009 and shall complete all services by Sunday March 15, 2009.
3. **Payments To Contractor:** County shall pay Contractor a total amount not-to-exceed \$4100.00 for Entertainment services as described above. County shall pay a deposit to Contractor in an amount not-to-exceed \$2050.00, which shall be part of the total not-to-exceed amount as mentioned above. The balance in the amount not-to-exceed \$2050.00 shall be paid to Contractor upon completion of the performance of the Entertainment 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 Entertainment. If an alternative date for the Entertainment 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 Entertainment 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 Entertainment as more particularly described in Exhibit "A", the Scope of Work, attached hereto and incorporated herein by reference.
- B. Contractor's Entertainment shall begin at 8:00 p.m. and end at 10:30 p.m.
- C. Contractor may arrive at the Facility to begin setting up at 3:00 p.m., but shall arrive no later than one hundred and eighty (180) minutes prior to the scheduled Entertainment time and shall have completed all sound checks and warm-ups, if applicable, at least ninety (90) 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 Entertainment, and shall leave the Facility in the same condition the Facility was in prior to conducting the Entertainment.
- E. Contractor's Entertainment shall consist of two (2) sets of sixty (60) minutes each set, plus one (1) twenty (20) minute break.
- F. Contractor's Entertainment includes the following other entertainers and performers, which may not be altered without prior County approval: Chris LeGrand, James Riddick, Charles Trador, Carl Bass, Tony Fortuna. Contractor shall appear and perform on stage for at least ninety (90%) of the scheduled Entertainment 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.
- G. Contractor shall perform the Entertainment 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.
- H. No alcohol or illegal drugs shall be consumed by Contractor, its employees or agents prior to, during or subsequent to the Entertainment.
- I. County will provide the sound equipment and lighting for Contractor's Entertainment, 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.
- J. The Entertainment shall contain no profanity, obscene language, lewd gestures, or any other material offensive to the general community. Should Contractor fail to comply with this provision, the County may withhold payment to Contractor, and Contractor hereby waives entitlement to said payment. Contractor further understands that future opportunities to perform for the County may be withheld.
- K. Contractor further represents it has inspected the Facility and that the Facility is in proper condition for the Entertainment, Contractor will perform.
- L. 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.
- M. County shall provide all electrical services for the Entertainment, but Contractor shall be responsible for all necessary extension cords and other related equipment.
- N. If any additional requirements such as specialty certifications, licenses and/or memberships applicable

to the Entertainment are required, CONTRACTOR shall attach a copy of each to this Agreement as Exhibit "C".

- O. Contractor shall not use or permit the use of any pyrotechnics of any type during its Entertainment at the Event.
- P. Contractor shall not undertake or participate in any business, exhibit or activity at the Event other than herein specified.
- Q. 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 ten (10) hours notice prior to the scheduled Entertainment. Upon cancellation due to inclement weather, County and Contractor may negotiate another date for Entertainment 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 Entertainment 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 Entertainment as scheduled, Contractor may fulfill the obligations of this Agreement by substituting a similar artist, with the prior approval of County. If a substitute artist performs the Entertainment, Contractor shall refund County's full deposit immediately, and County may pay a lower not-to-exceed amount to the substitute artist. County and Contractor may also negotiate another date for Entertainment 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 immediately refund County's full deposit.
- C. County can adjust Contractor's performance as deemed necessary to conclude the Entertainment early, in consultation with Contractor. If in the reasonable discretion of County, Contractor is not performing the Entertainment in a professional manner in accordance with this Agreement, Contractor's Entertainment 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. Performing Rights: County shall not endorse the Contractor's name or likeness, except the County may photograph and/or record both the audio and visual aspects of the Entertainment, for the sole purpose of future promotion for the Event. County agrees that it shall not transmit directly from the Facility, at the time of the Entertainment, any part of such recording absent a specific written agreement between the parties to the Agreement permitting such transmission.

8. 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.
9. 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.
10. Representatives: The County's representative for this Agreement is Ann Butler, telephone no. 561-488-7414. The Contractor's representative for this Agreement is Chris LeGrand telephone no. 318-518-7820.
11. Indemnification: Contractor shall conduct its activities and Entertainment and the activities and Entertainment 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.
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, 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.
13. 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: Chris LeGrand
- CONTRACTOR'S Address: P.O. Box 8921, Shreveport, LA 71148
- CONTRACTOR'S Phone No. 318-518-7820
14. 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.

15. 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.
16. 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.
17. 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.
18. 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).
19. 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.
20. 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.
21. 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.
22. 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.
23. 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 or expression.

(REMAINDER OF THIS PAGE INTENTIONALLY LEFT BLANK)

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

PALM BEACH COUNTY WITNESS

Kimberly A. McNesley
SIGNATURE

Kimberly A McNesley
NAME (TYPE OR PRINT)

PALM BEACH COUNTY

Denise E. ...
DEPARTMENT DIRECTOR

COUNTY ADMINISTRATOR (If contract value exceeds \$50,000.)

INDEPENDENT CONTRACTOR

[Signature]
SIGNATURE

CHRIS LEGRAND OWNER
NAME & TITLE (TYPE OR PRINT)

CONTRACTOR WITNESS

[Signature]
SIGNATURE

Rebecca Baird
NAME (TYPE OR PRINT)

Approved as to Form and Legal Sufficiency

By: Anne Nelyand
Assistant County Attorney

EXHIBIT A

Scope of Work

Saturday March 14, 2009

The Contractor will perform two (2) sets of sixty (60) minutes each of live (not pre-recorded) music at Sunset Cove Amphitheater. There will be one (1) twenty (20) minute break between sets. The County will review and may edit Contractors performance song list one week prior to performance. Performance time is from 8:00 PM to 10:30 PM. Sound check will begin at 5:00 PM and conclude by 6:00 PM. Instruments, equipment and microphones will not be moved after the sound check has been completed. The County will provide the Contractor with bottled water, black towels (1 per performer), one (1) large dressing room, three (3) oscillating fans on stage and one (1) drum riser. The Contractor will supply all backline, amps and necessary cables. The County will not provide a hospitality rider or meal before, during or after the performance.

EXHIBIT B

Production Specifications

Saturday March 14, 2009

The County agrees to supply an in house sound system (see attached sound system list), and an in house lighting system (see attached lighting system list). The County agrees to supply one (1) sound technician, one (1) stage manager and one (1) light technician for the duration of the Event. The County will supply all monitors, microphones and necessary cables as required by Contractors stage plot.

The Contractor will supply all backline, amps and necessary cables.

EXHIBIT C

Not required.

EXHIBIT D

Not Required

ACCOUNT:					VENDOR CODE:					CONTRACT:				
MC:			PS:			CC:			CA:			DD:		

**ENTERTAINMENT CONTRACTOR AGREEMENT FOR
PALM BEACH COUNTY PARKS & RECREATION DEPARTMENT**

This Agreement is made as of the 26 day of Feb, 2009, 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 CK Entertainment Incorporated., an Independent Contractor, hereinafter referred to as "Contractor".

WITNESSETH:

WHEREAS, the County desires to host a July 4th Concert, hereinafter referred to as the "Event" at Sunset Cove Amphitheater, hereinafter referred to as the "Facility"; and

WHEREAS, as part of the Event, the County desires to hire entertainment, which shall consist of one (1) eight (8) piece band, hereinafter referred to as "Entertainment"; and

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

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

WHEREAS, providing Entertainment 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 Entertainment services on Saturday July 4, 2009 and shall complete all services by July 5, 2009.
3. **Payments To Contractor:** County shall pay Contractor a total amount not-to-exceed \$6,000.00 for Entertainment services as described above. County shall pay a deposit to Contractor in an amount not-to-exceed \$3,000.00, which shall be part of the total not-to-exceed amount as mentioned above. The balance in the amount not-to-exceed \$3,000.00 shall be paid to Contractor upon completion of the performance of the Entertainment 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 Entertainment. If an alternative date for the Entertainment 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 Entertainment 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 Entertainment as more particularly described in Exhibit "A", the Scope of Work, attached hereto and incorporated herein by reference.
- B. Contractor's Entertainment shall begin at 7:00 p.m. and end at 9:00 p.m.
- C. Contractor may arrive at the Facility to begin setting up at 3:00 pm, but shall arrive no later than 120 minutes prior to the scheduled Entertainment time and shall have completed all sound checks and warm-ups, if applicable, at least 60 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 Entertainment, and shall leave the Facility in the same condition the Facility was in prior to conducting the Entertainment.
- E. Contractor's Entertainment shall consist of 1 set of 120 minutes.
- F. Contractor's Entertainment includes the following other entertainers and performers, which may not be altered without prior County approval: Carey Kleiman, Mike Balogh, Zolton Gröff, Brian Horte, Marty Rocker, John Bauer, Gregory Griffith and Rachel Brown. Contractor shall appear and perform on stage for at least ninety percent (90%) of the scheduled Entertainment 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.
- G. Contractor shall perform the Entertainment 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.
- H. No alcohol or illegal drugs shall be consumed by Contractor, its employees or agents prior to, during or subsequent to the Entertainment.
- I. County will provide the sound equipment and lighting for Contractor's Entertainment, 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.
- J. The Entertainment shall contain no profanity, obscene language, lewd gestures, or any other material offensive to the general community. Should Contractor fail to comply with this provision, the County may withhold payment to Contractor, and Contractor hereby waives entitlement to said payment. Contractor further understands that future opportunities to perform for the County may be withheld.
- K. Contractor further represents it has inspected the Facility and that the Facility is in proper condition for the Entertainment, Contractor will perform.
- L. 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.
- M. County shall provide basic electrical services for the Entertainment, but Contractor shall be responsible for all necessary extension cords and other related equipment.
- N. If any additional requirements such as specialty certifications, licenses and/or memberships applicable to the Entertainment are required, CONTRACTOR shall attach a copy of each to this Agreement as Exhibit "C".

- O. Contractor shall not use or permit the use of any pyrotechnics of any type during its Entertainment at the Event.
- P. Contractor shall not undertake or participate in any business, exhibit or activity at the Event other than herein specified.
- Q. 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 5 hours notice prior to the scheduled Entertainment. Upon cancellation due to inclement weather, County and Contractor may negotiate another date for Entertainment 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 Entertainment 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 Entertainment as scheduled, Contractor may fulfill the obligations of this Agreement by substituting a similar artist, with the prior approval of County. If a substitute artist performs the Entertainment, Contractor shall refund County's full deposit immediately, and County may pay a lower not-to-exceed amount to the substitute artist. County and Contractor may also negotiate another date for Entertainment 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 immediately refund County's full deposit.
- C. County can adjust Contractor's performance as deemed necessary to conclude the Entertainment early, in consultation with Contractor. If in the reasonable discretion of County, Contractor is not performing the Entertainment in a professional manner in accordance with this Agreement, Contractor's Entertainment 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. Performing Rights: County shall not endorse the Contractor's name or likeness, except the County may photograph and/or record both the audio and visual aspects of the Entertainment, for the sole purpose of future promotion for the Event. County agrees that it shall not transmit directly from the Facility, at the time of the Entertainment, any part of such recording absent a specific written agreement between the parties to the Agreement permitting such transmission.

8. 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.

9. **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.
10. **Representatives:** The County's representative for this Agreement is Ann Butler, telephone no. 561-488-7414. The Contractor's representative for this Agreement is Carey Kleiman, telephone no. 954-436-1230.
11. **Indemnification:** Contractor shall conduct its activities and Entertainment and the activities and Entertainment 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.
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, 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.
13. **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: Carey Kleiman

CONTRACTOR'S Address: 5722 South Flamingo Rd., Unit 354, Cooper City, FL 33330

CONTRACTOR'S Phone No. 954-436-1230
14. **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.
15. **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.

16. **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.
17. **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.
18. **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).
19. **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.
20. **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.
21. **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.
22. **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.
23. **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 or expression.

(REMAINDER OF THIS PAGE INTENTIONALLY LEFT BLANK)

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

PALM BEACH COUNTY WITNESS

Kimberly A McNeely
SIGNATURE

Kimberly A McNeely
NAME (TYPE OR PRINT)

PALM BEACH COUNTY

[Signature]
DEPARTMENT DIRECTOR

COUNTY ADMINISTRATOR (If contract value exceeds \$50,000.)

INDEPENDENT CONTRACTOR

Cary D. Kleiman CK Entertainment Inc.
SIGNATURE

CARY D. KLEIMAN, President - CK Entertainment Inc
NAME & TITLE (TYPE OR PRINT)

CONTRACTOR WITNESS

Catherine Leisek
SIGNATURE

CATHERINE LEISEK
NAME (TYPE OR PRINT)

Approved as to Form and Legal Sufficiency

By: Anne Delgant
Assistant County Attorney

EXHIBIT "A"

Scope of Work

July 4th, 2009

The Contractor will perform one (1) two (2) hour performance of live (not pre-recorded) music at Sunset Cove Amphitheater. The County may review and edit the Contractors song list one week prior to the performance. There will be no breaks during this performance. Performance time is 7 PM to 9 PM. Sound check will begin at 5 PM and conclude by 5:30 PM. Instruments, equipment and microphones will not be moved after the sound check has been performed.

County will provide the Contractor with bottled water, black towels (one per performer), 2 air conditioned dressing rooms, 3 oscillating fans on stage and one drum riser (8' x 8' x 2').

County will not provide a hospitality rider or meal before, during or after the performance.

EXHIBIT "C"

Not required

EXHIBIT "D"

Not required

ACCOUNT:		VENDOR CODE:		CONTRACT:	
MC:	PS: <i>KB</i>	CC:	CA:	DD:	<i>KB</i>

**ENTERTAINMENT CONTRACTOR AGREEMENT FOR
PALM BEACH COUNTY PARKS & RECREATION DEPARTMENT**

This Agreement is made as of the 16th day of April, 2009, 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 Richard Benjamin, d.b.a. The Fabulons, an Independent Contractor, hereinafter referred to as "Contractor".

WITNESSETH:

WHEREAS, the County desires to host Grand Opening Concert, hereinafter referred to as the "Event" at Canyon Town Center Amphitheater, hereinafter referred to as the "Facility"; and

WHEREAS, as part of the Event, the County desires to hire entertainment, which shall consist of a six (6) piece band, hereinafter referred to as "Entertainment"; and

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

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

WHEREAS, providing Entertainment 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 Entertainment services on Sunday May 17, 2009 and shall complete all services by Monday May 18, 2009.
3. **Payments To Contractor:** County shall pay Contractor a total amount not-to-exceed One Thousand Five Hundred dollars (\$1500.00) for Entertainment services as described above. County shall pay a deposit to Contractor in an amount not-to-exceed Seven Hundred and Fifty dollars (\$750.00), which shall be part of the total not-to-exceed amount as mentioned above. The balance in the amount not-to-exceed Seven Hundred and Fifty dollars (\$750.00), shall be paid to Contractor upon completion of the performance of the Entertainment 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 Entertainment. If an alternative date for the Entertainment 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 Entertainment 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 Entertainment as more particularly described in Exhibit "A", the Scope of Work, attached hereto and incorporated herein by reference.
- B. Contractor's Entertainment shall begin at 12:30 PM and end at 2:00 PM.
- C. Contractor may arrive at the Facility to begin setting up at 9:00 AM, but shall arrive no later than 120 minutes prior to the scheduled Entertainment time and shall have completed all sound checks and warm-ups, if applicable, at least 60 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 Entertainment, and shall leave the Facility in the same condition the Facility was in prior to conducting the Entertainment.
- E. Contractor's Entertainment shall consist of one (1) set of ninety (90) minutes.
- F. Contractor's Entertainment includes the following other entertainers and performers, which may not be altered without prior County approval: Richard Benjamin, Shelly Brill, Donna Jester, Dennis Coch, Arnie Barry, Mitch Weiner. Contractor shall appear and perform on stage for at least ninety percent (90%) of the scheduled Entertainment 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.
- G. Contractor shall perform the Entertainment 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.
- H. No alcohol or illegal drugs shall be consumed by Contractor, its employees or agents prior to, during or subsequent to the Entertainment.
- I. County will not provide any sound equipment and lighting for Contractor's Entertainment. All sound equipment, instruments, supplies 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.
- J. The Entertainment shall contain no profanity, obscene language, lewd gestures, or any other material offensive to the general community. Should Contractor fail to comply with this provision, the County may withhold payment to Contractor, and Contractor hereby waives entitlement to said payment. Contractor further understands that future opportunities to perform for the County may be withheld.
- K. Contractor further represents it has inspected the Facility and that the Facility is in proper condition for the Entertainment, Contractor will perform.
- L. 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.
- M. County shall provide all electrical services for the Entertainment, but Contractor shall be responsible for all necessary extension cords and other related equipment.
- N. If any additional requirements such as specialty certifications, licenses and/or memberships applicable to the Entertainment are required, CONTRACTOR shall attach a copy of each to this Agreement as Exhibit "C".

- O. Contractor shall not use or permit the use of any pyrotechnics of any type during its Entertainment at the Event.
- P. Contractor shall not undertake or participate in any business, exhibit or activity at the Event other than herein specified.
- Q. 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 six (6) hours notice prior to the scheduled Entertainment. Upon cancellation due to inclement weather, County and Contractor may negotiate another date for Entertainment 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 Entertainment 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 Entertainment as scheduled, Contractor may fulfill the obligations of this Agreement by substituting a similar artist, with the prior approval of County. If a substitute artist performs the Entertainment, Contractor shall refund County's full deposit immediately, and County may pay a lower not-to-exceed amount to the substitute artist. County and Contractor may also negotiate another date for Entertainment 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 immediately refund County's full deposit.
- C. County can adjust Contractor's performance as deemed necessary to conclude the Entertainment early, in consultation with Contractor. If in the reasonable discretion of County, Contractor is not performing the Entertainment in a professional manner in accordance with this Agreement, Contractor's Entertainment 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. Performing Rights: County shall not endorse the Contractor's name or likeness, except the County may photograph and/or record both the audio and visual aspects of the Entertainment, for the sole purpose of future promotion for the Event. County agrees that it shall not transmit directly from the Facility, at the time of the Entertainment, any part of such recording absent a specific written agreement between the parties to the Agreement permitting such transmission.

8. 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

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

PALM BEACH COUNTY WITNESS

SIGNATURE *Kimberly A McNeeley*

NAME (TYPE OR PRINT) *Kimberly A McNeeley*

PALM BEACH COUNTY

DEPARTMENT DIRECTOR *Dennis Edema*

COUNTY ADMINISTRATOR (If contract value exceeds \$50,000.)

INDEPENDENT CONTRACTOR

SIGNATURE *Richard Benjamin*

NAME & TITLE (TYPE OR PRINT) *Richard Benjamin / owner*

CONTRACTOR WITNESS

SIGNATURE *Paula Benjamin*

NAME (TYPE OR PRINT) *Pamela Benjamin*

Approved as to Form and Legal Sufficiency

By: *Anne Delgant*
Assistant County Attorney

EXHIBIT A


Scope of Work

Sunday May 17, 2009

The Contractor will perform one (1) set of ninety (90) minutes of live (not pre-recorded) music at Canyon Town Center Amphitheater. There will be no breaks between sets. The County will review and may edit Contractors performance song list one week prior to performance. Performance time is from 12:30 PM to 2:00 PM. Sound check will begin at 11:00 AM and conclude by 11:30 AM. Instruments, equipment and microphones will not be moved after the sound check has been completed. The County will provide the Contractor with one (1) 10 x 10 popup tent with weights for the Front of House use, bottled water, and black towels (1 per performer). The Contractor will supply all necessary sound equipment, backline, amps, cables and heavy duty extension cords. The County will not provide a hospitality rider or meal before, during or after the performance.

EXHIBIT D

Not Required

ACCOUNT: 000570-5707-01-9161	VENDOR CODE: VC0000183862	CONTRACT:
MC:	PS:	CC:
		CA: QH
		DD: 

**ENTERTAINMENT CONTRACTOR AGREEMENT FOR
PALM BEACH COUNTY PARKS & RECREATION DEPARTMENT**

This Agreement is made as of the 12th day of MAY, 2009, 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 Randolph Markland, an Independent Contractor, hereinafter referred to as "Contractor".

WITNESSETH:

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

WHEREAS, as part of the Event, the County desires to hire entertainment, which shall consist of one (1) four (4) piece band called Sweet Justice, hereinafter referred to as "Entertainment"; and

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

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

WHEREAS, providing Entertainment 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 Entertainment services on Saturday June 13, 2009 and shall complete all services by Sunday June 14, 2009.
3. **Payments To Contractor:** County shall pay Contractor a total amount not-to-exceed Two Thousand dollars (\$2,000.00) for Entertainment services as described above. County shall pay a deposit to Contractor in an amount not-to-exceed One Thousand dollars (\$1,000.00), which shall be part of the total not-to-exceed amount as mentioned above. The balance in the amount not-to-exceed One Thousand dollars (\$1,000.00) shall be paid to Contractor upon completion of the performance of the Entertainment 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 Entertainment. If an alternative date for the Entertainment 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 Entertainment 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 Entertainment as more particularly described in Exhibit "A", the Scope of Work, attached hereto and incorporated herein by reference.
- B. Contractor's Entertainment shall begin at 4:00 PM and end at 7:00 PM.
- C. Contractor may arrive at the Facility to begin setting up at 2:00 PM but shall arrive no later than 90 minutes prior to the scheduled Entertainment time and shall have completed all sound checks and warm-ups, if applicable, at least 45 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 Entertainment, and shall leave the Facility in the same condition the Facility was in prior to conducting the Entertainment.
- E. Contractor's Entertainment shall consist of 2 sets of 70 minutes each set with two (2) 20 minute breaks.
- F. Contractor's Entertainment includes the following other entertainers and performers, which may not be altered without prior County approval: Randolph Markland, Michael Castro, Cecil Peter and Clemont Lightbourne. Contractor shall appear and perform on stage for at least ninety percent (90%) of the scheduled Entertainment 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.
- G. Contractor shall perform the Entertainment 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.
- H. No alcohol or illegal drugs shall be consumed by Contractor, its employees or agents prior to, during or subsequent to the Entertainment.
- I. County will provide the sound equipment and lighting for Contractor's Entertainment, 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.
- J. The Entertainment shall contain no profanity, obscene language, lewd gestures, or any other material offensive to the general community. Should Contractor fail to comply with this provision, the County may withhold payment to Contractor, and Contractor hereby waives entitlement to said payment. Contractor further understands that future opportunities to perform for the County may be withheld.
- K. Contractor further represents it has inspected the Facility and that the Facility is in proper condition for the Entertainment, Contractor will perform.
- L. 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.
- M. County shall provide all electrical services for the Entertainment, but Contractor shall be responsible for all necessary extension cords and other related equipment.
- N. If any additional requirements such as specialty certifications, licenses and/or memberships applicable to the Entertainment are required, CONTRACTOR shall attach a copy of each to this Agreement as

Exhibit "C".

- O. Contractor shall not use or permit the use of any pyrotechnics of any type during its Entertainment at the Event.
- P. Contractor shall not undertake or participate in any business, exhibit or activity at the Event other than herein specified.
- Q. 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 4 hours notice prior to the scheduled Entertainment. Upon cancellation due to inclement weather, County and Contractor may negotiate another date for Entertainment 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 Entertainment 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 Entertainment as scheduled, Contractor may fulfill the obligations of this Agreement by substituting a similar artist, with the prior approval of County. If a substitute artist performs the Entertainment, Contractor shall refund County's full deposit immediately, and County may pay a lower not-to-exceed amount to the substitute artist. County and Contractor may also negotiate another date for Entertainment 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 immediately refund County's full deposit.
- C. County can adjust Contractor's performance as deemed necessary to conclude the Entertainment early, in consultation with Contractor. If in the reasonable discretion of County, Contractor is not performing the Entertainment in a professional manner in accordance with this Agreement, Contractor's Entertainment 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. Performing Rights: County shall not endorse the Contractor's name or likeness, except the County may photograph and/or record both the audio and visual aspects of the Entertainment, for the sole purpose of future promotion for the Event. County agrees that it shall not transmit directly from the Facility, at the time of the Entertainment, any part of such recording absent a specific written agreement between the parties to the Agreement permitting such transmission.

8. 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.

9. 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.
10. Representatives: The County's representative for this Agreement is Ann Butler, telephone no. 561-488-7414. The Contractor's representative for this Agreement is Randolph Markland, telephone no. 561-315-2151.
11. Indemnification: Contractor shall conduct its activities and Entertainment and the activities and Entertainment 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.
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, 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.
13. 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: Randolph Markland

CONTRACTOR'S Address: 159 Love Crescent, Royal Palm Beach, FL 33411

CONTRACTOR'S Phone No. 561-315-2151
14. 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.

15. 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.
16. 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.
17. 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.
18. 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).
19. 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.
20. 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.
21. 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.
22. 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.
23. 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.

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

PALM BEACH COUNTY WITNESS

Brendan T. Landry
SIGNATURE

BRENDAN T. LANDRY
NAME (TYPE OR PRINT)

PALM BEACH COUNTY

Dennis Ehlman
DEPARTMENT DIRECTOR

COUNTY ADMINISTRATOR (if contract value exceeds \$50,000.)

INDEPENDENT CONTRACTOR

R Markland
SIGNATURE

RANDOLPH MARKLAND BAND LEADER.
NAME & TITLE (TYPE OR PRINT)

CONTRACTOR WITNESS

Clement Lightbourne
SIGNATURE

CLEMENT Lightbourne
NAME (TYPE OR PRINT)

Approved as to Form and Legal Sufficiency

By: Anne Delzant
Assistant County Attorney

EXHIBIT A

Scope of Work

Saturday June 13, 2009 SWEET JUSTICE BAND

The Contractor will perform two (2) sets of seventy (70) minutes each of live (not pre-recorded) music at Seabreeze Amphitheater. There will be two (2) twenty (20) minute breaks between sets. The County will review and may edit Contractors performance song list one week prior to performance. Performance time is from 4:00 PM to 7:00 PM. Sound check will begin at 2:30 PM and conclude by 3:00 PM. Instruments, equipment and microphones will not be moved after the sound check has been completed. The County will provide the Contractor with bottled water, black towels (1 per performer), and one (1) dressing room. The Contractor will supply all backline, amps and necessary cables. The County will not provide a hospitality rider or meal before, during or after the performance.

EXHIBIT C

Not required.

ACCOUNT: 0001-580-5207-03-3407	VENDOR CODE: VC0000124116	CONTRACT:	
MC: <i>W</i>	PS: <i>KB</i>	CC:	CA: <i>A.H.</i> DD: <i>W</i>

**ENTERTAINMENT CONTRACTOR AGREEMENT FOR
PALM BEACH COUNTY PARKS & RECREATION DEPARTMENT**

This Agreement is made as of the 8th day of June, 2009, 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 Bill Cockrell, an Independent Contractor, hereinafter referred to as "Contractor".

WITNESSETH:

WHEREAS, the County desires to host Summer Celebration Concert, hereinafter referred to as the "Event" at Canyon Town Center Amphitheater, hereinafter referred to as the "Facility"; and

WHEREAS, as part of the Event, the County desires to hire entertainment, which shall consist of one (1) two (2) piece band called High Tide Band, hereinafter referred to as "Entertainment"; and

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

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

WHEREAS, providing Entertainment 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 Entertainment services on Saturday June 13, 2009 and shall complete all services by Sunday June 14, 2009.
3. **Payments To Contractor:** County shall pay Contractor a total amount not-to-exceed Eight Hundred Dollars (\$800.00) for Entertainment services as described above. County shall pay a deposit to Contractor in an amount not-to-exceed Four Hundred Dollars (\$400.00), which shall be part of the total not-to-exceed amount as mentioned above. The balance in the amount not-to-exceed Four Hundred Dollars (\$400.00) shall be paid to Contractor upon completion of the performance of the Entertainment 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 Entertainment. If an alternative date for the Entertainment 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 Entertainment 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 Entertainment as more particularly described in Exhibit "A", the Scope of Work, attached hereto and incorporated herein by reference.
- B. Contractor's Entertainment shall begin at 7:00 PM and end at 9:00 PM.
- C. Contractor may arrive at the Facility to begin setting up at 4:00 PM, but shall arrive no later than 120 minutes prior to the scheduled Entertainment time and shall have completed all sound checks and warm-ups, if applicable, at least 30 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 Entertainment, and shall leave the Facility in the same condition the Facility was in prior to conducting the Entertainment.
- E. Contractor's Entertainment shall consist of 2 sets of 45 minutes each set.
- F. Contractor's Entertainment includes the following other entertainers and performers, which may not be altered without prior County approval: Bill Cockrell and Carl Watson. Contractor shall appear and perform on stage for at least ninety percent (90%) of the scheduled Entertainment 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.
- G. Contractor shall perform the Entertainment 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.
- H. No alcohol or illegal drugs shall be consumed by Contractor, its employees or agents prior to, during or subsequent to the Entertainment.
- I. Contractor will provide the sound equipment and lighting for Contractor's Entertainment, 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.
- J. The Entertainment shall contain no profanity, obscene language, lewd gestures, or any other material offensive to the general community. Should Contractor fail to comply with this provision, the County may withhold payment to Contractor, and Contractor hereby waives entitlement to said payment. Contractor further understands that future opportunities to perform for the County may be withheld.
- K. Contractor further represents it has inspected the Facility and that the Facility is in proper condition for the Entertainment, Contractor will perform.
- L. 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.
- M. County shall provide all electrical services for the Entertainment, but Contractor shall be responsible for all necessary extension cords and other related equipment.
- N. If any additional requirements such as specialty certifications, licenses and/or memberships applicable to the Entertainment are required, CONTRACTOR shall attach a copy of each to this Agreement as Exhibit "C".

- O. Contractor shall not use or permit the use of any pyrotechnics of any type during its Entertainment at the Event.
- P. Contractor shall not undertake or participate in any business, exhibit or activity at the Event other than herein specified.
- Q. 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 2 hours notice prior to the scheduled Entertainment. Upon cancellation due to inclement weather, County and Contractor may negotiate another date for Entertainment 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 Entertainment 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 Entertainment as scheduled, Contractor may fulfill the obligations of this Agreement by substituting a similar artist, with the prior approval of County. If a substitute artist performs the Entertainment, Contractor shall refund County's full deposit immediately, and County may pay a lower not-to-exceed amount to the substitute artist. County and Contractor may also negotiate another date for Entertainment 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 immediately refund County's full deposit.
- C. County can adjust Contractor's performance as deemed necessary to conclude the Entertainment early, in consultation with Contractor. If in the reasonable discretion of County, Contractor is not performing the Entertainment in a professional manner in accordance with this Agreement, Contractor's Entertainment 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. Performing Rights: County shall not endorse the Contractor's name or likeness, except the County may photograph and/or record both the audio and visual aspects of the Entertainment, for the sole purpose of future promotion for the Event. County agrees that it shall not transmit directly from the Facility, at the time of the Entertainment, any part of such recording absent a specific written agreement between the parties to the Agreement permitting such transmission.

8. 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.

9. **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.
10. **Representatives:** The County's representative for this Agreement is Ann Butler, telephone no. 561-488-7414. The Contractor's representative for this Agreement is Bill Cockrell, telephone no. 321-284-5709.
11. **Indemnification:** Contractor shall conduct its activities and Entertainment and the activities and Entertainment 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.
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, 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.
13. **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: Bill Cockrell

CONTRACTOR'S Address: 8580 Robin Trail, Kissimmee, FL 34747

CONTRACTOR'S Phone No. 321-284-5709
14. **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.
15. **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.

16. **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.
17. **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.
18. **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).
19. **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.
20. **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.
21. **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.
22. **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.
23. **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.

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PALM BEACH COUNTY WITNESS

Tom Landry
SIGNATURE

Tom Landry
NAME (TYPE OR PRINT)

PALM BEACH COUNTY

Rennie Allen
DEPARTMENT DIRECTOR

COUNTY ADMINISTRATOR (If contract value exceeds \$50,000.)

INDEPENDENT CONTRACTOR

Bill Cockrell
SIGNATURE

Bill COCKRELL
NAME & TITLE (TYPE OR PRINT)

CONTRACTOR WITNESS

Beth Cockrell
SIGNATURE

Beth Cockrell
NAME (TYPE OR PRINT)

Approved as to Form and Legal Sufficiency

By: Anne Welzant
Assistant County Attorney

EXHIBIT A

Scope of Work

Saturday June 13, 2009 High Tide Band

The Contractor will perform two (2) sets of forty-five (45) minutes of live (not pre-recorded) music at Canyon Town Center Amphitheater. There will be one (1) twenty (20) minute break between sets. The County will review and may edit Contractors performance song list one week prior to performance. Performance time is from 7:00 PM to 9:00 PM. Sound check will begin at 6:00 PM and conclude by 6:30 PM. Instruments, equipment and microphones will not be moved after the sound check has been completed. The County will provide the Contractor bottled water, and black towels (1 per performer). The Contractor will supply all necessary sound and light equipment, backline, amps, Front of House tent (if required), tables, chairs, cables and heavy duty extension cords. The County will not provide a hospitality rider or meal before, during or after the performance.

EXHIBIT B

Production Specifications

Saturday June 13, 2009 High Tide Band

The Contractor will supply all sound and light equipment, backline, amps, cables, microphones, monitors, talent, Front of House tent (if required), tables, chairs, and heavy duty extension cords required to perform this concert.

The County will supply necessary power.

EXHIBIT C

Not required.

EXHIBIT D

Not Required

ACCOUNT: 0001-520-5207-03-3402	VENDOR CODE: 0000124191	CONTRACT:	
MC: <u>VB</u>	PS: <u>VB</u>	CC:	CA: <u>A. P.</u> DD: <u>VB</u>

**ENTERTAINMENT CONTRACTOR AGREEMENT FOR
PALM BEACH COUNTY PARKS & RECREATION DEPARTMENT**

This Agreement is made as of the 15th day of June, 2009, 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 Sid Parker, an Independent Contractor, hereinafter referred to as "Contractor".

WITNESSETH:

WHEREAS, the County desires to host Swing and Jazz Concert, hereinafter referred to as the "Event" at Canyon Town Center Amphitheater, hereinafter referred to as the "Facility"; and

WHEREAS, as part of the Event, the County desires to hire entertainment, which shall consist of, one (1) sextet (6) piece Orchestra called Sid Parker and his Orchestra hereinafter referred to as "Entertainment"; and

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

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

WHEREAS, providing Entertainment 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 Entertainment services on Saturday July 11, 2009 and shall complete all services by Sunday July 12, 2009.
3. **Payments To Contractor:** County shall pay Contractor a total amount not-to-exceed Eight Hundred and Fifty Dollars (\$850.00) for Entertainment services as described above. County shall pay a deposit to Contractor in an amount not-to-exceed Four Hundred and Twenty-Five Dollars (\$425.00), which shall be part of the total not-to-exceed amount as mentioned above. The balance in the amount not-to-exceed Four Hundred and Twenty-Five Dollars (\$425.00) shall be paid to Contractor upon completion of the performance of the Entertainment 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 Entertainment. If an alternative date for the Entertainment 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 Entertainment 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 Entertainment as more particularly described in Exhibit "A", the Scope of Work, attached hereto and incorporated herein by reference.
- B. Contractor's Entertainment shall begin at 7:00 PM and end at 9:00 PM.
- C. Contractor may arrive at the Facility to begin setting up at 4:00 PM, but shall arrive no later than 120 minutes prior to the scheduled Entertainment time and shall have completed all sound checks and warm-ups, if applicable, at least 30 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 Entertainment, and shall leave the Facility in the same condition the Facility was in prior to conducting the Entertainment.
- E. Contractor's Entertainment shall consist of 2 sets of 45 minutes each set.
- F. Contractor's Entertainment includes the following other entertainers and performers, which may not be altered without prior County approval: Sid Parker and five (5) Orchestra players. Contractor shall appear and perform on stage for at least ninety percent (90%) of the scheduled Entertainment 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.
- G. Contractor shall perform the Entertainment 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.
- H. No alcohol or illegal drugs shall be consumed by Contractor, its employees or agents prior to, during or subsequent to the Entertainment.
- I. Contractor will provide the sound equipment for Contractor's Entertainment, 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.
- J. The Entertainment shall contain no profanity, obscene language, lewd gestures, or any other material offensive to the general community. Should Contractor fail to comply with this provision, the County may withhold payment to Contractor, and Contractor hereby waives entitlement to said payment. Contractor further understands that future opportunities to perform for the County may be withheld.
- K. Contractor further represents it has inspected the Facility and that the Facility is in proper condition for the Entertainment, Contractor will perform.
- L. 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.
- M. County shall provide all electrical services for the Entertainment, but Contractor shall be responsible for all necessary extension cords and other related equipment.
- N. If any additional requirements such as specialty certifications, licenses and/or memberships applicable to the Entertainment are required, CONTRACTOR shall attach a copy of each to this Agreement as

Exhibit "C".

- O. Contractor shall not use or permit the use of any pyrotechnics of any type during its Entertainment at the Event.
- P. Contractor shall not undertake or participate in any business, exhibit or activity at the Event other than herein specified.
- Q. 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 2 hours notice prior to the scheduled Entertainment. Upon cancellation due to inclement weather, County and Contractor may negotiate another date for Entertainment 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 Entertainment 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 Entertainment as scheduled, Contractor may fulfill the obligations of this Agreement by substituting a similar artist, with the prior approval of County. If a substitute artist performs the Entertainment, Contractor shall refund County's full deposit immediately, and County may pay a lower not-to-exceed amount to the substitute artist. County and Contractor may also negotiate another date for Entertainment 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 immediately refund County's full deposit.
- C. County can adjust Contractor's performance as deemed necessary to conclude the Entertainment early, in consultation with Contractor. If in the reasonable discretion of County, Contractor is not performing the Entertainment in a professional manner in accordance with this Agreement, Contractor's Entertainment 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. Performing Rights: County shall not endorse the Contractor's name or likeness, except the County may photograph and/or record both the audio and visual aspects of the Entertainment, for the sole purpose of future promotion for the Event. County agrees that it shall not transmit directly from the Facility, at the time of the Entertainment, any part of such recording absent a specific written agreement between the parties to the Agreement permitting such transmission.

8. Independent Contractor Status: It is specifically understood that the Contractor is an independent

legal authority to do so, and his/her execution shall bind the Contractor, its employees, agents and subcontractors to the terms and conditions herein.

16. **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.
17. **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.
18. **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).
19. **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.
20. **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.
21. **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.
22. **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.
23. **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.

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

PALM BEACH COUNTY WITNESS

Tom Landry
SIGNATURE

Tom Landry
NAME (TYPE OR PRINT)

PALM BEACH COUNTY

Ronnie Johnson
DEPARTMENT DIRECTOR

COUNTY ADMINISTRATOR (If contract value exceeds \$50,000.)

INDEPENDENT CONTRACTOR

Sid Parker
SIGNATURE

SID PARKER BAND LEADER
NAME & TITLE (TYPE OR PRINT)

CONTRACTOR WITNESS

Sandra Parker
SIGNATURE

SONDRA PARKER
NAME (TYPE OR PRINT)

Approved as to Form and Legal Sufficiency

By: Anne Delgant
Assistant County Attorney

EXHIBIT A

Scope of Work

Saturday July 11, 2009 Sid Parker Band

The Contractor will perform two (2) sets of forty-five (45) minutes of live (not pre-recorded) music at Canyon Town Center Amphitheater. There will be one (1) twenty (20) minute break between sets. The County will review and may edit Contractors performance song list one week prior to performance. Performance time is from 7:00 PM to 9:00 PM. Sound check will begin at 6:00 PM and conclude by 6:30 PM. Instruments, equipment and microphones will not be moved after the sound check has been completed. The County will provide the Contractor bottled water, and black towels (1 per performer). The Contractor will supply all necessary sound equipment, backline, amps, cables and heavy duty extension cords. The County will not provide a hospitality rider or meal before, during or after the performance.

EXHIBIT B

Production Specifications

Saturday July 11, 2009 Sid Parker Band

The Contractor will supply all sound equipment, backline, amps, cables, microphones, monitors, talent, tent (front of house if required), tables, and heavy duty extension cords required to perform this concert. Contractor will provide required chairs and music stands.

The County will supply necessary power.

EXHIBIT C

Not required.

EXHIBIT D

Not Required

ACCOUNT: 0001-580-5207-03-340		VENDOR CODE: WILL00195		CONTRACT:	
MC: <i>W</i>	PS: <i>(B)</i>	CC:	CA: <i>A.H.</i>	DD: <i>(W)</i>	

**ENTERTAINMENT CONTRACTOR AGREEMENT FOR
PALM BEACH COUNTY PARKS & RECREATION DEPARTMENT**

This Agreement is made as of the 15th day of June, 2009, 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 Ray Williams, an Independent Contractor, hereinafter referred to as "Contractor".

WITNESSETH:

WHEREAS, the County desires to host a Concert, hereinafter referred to as the "Event" at Canyon Town Center Amphitheater, hereinafter referred to as the "Facility"; and

WHEREAS, as part of the Event, the County desires to hire entertainment, which shall consist of one (1) two (2) piece band called Duo Cats, hereinafter referred to as "Entertainment"; and

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

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

WHEREAS, providing Entertainment 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 Entertainment services on Saturday August 15, 2009 and shall complete all services by Sunday August 16, 2009.
3. **Payments To Contractor:** County shall pay Contractor a total amount not-to-exceed five hundred dollars (\$500.00) for Entertainment services as described above. County shall pay a deposit to Contractor in an amount not-to-exceed two hundred and fifty dollars (\$250.00), which shall be part of the total not-to-exceed amount as mentioned above. The balance in the amount not-to-exceed two hundred and fifty dollars (\$250.00) shall be paid to Contractor upon completion of the performance of the Entertainment 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 Entertainment. If an alternative date for the Entertainment 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 Entertainment 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 Entertainment as more particularly described in Exhibit "A", the Scope of Work, attached hereto and incorporated herein by reference.
- B. Contractor's Entertainment shall begin at 7:30 PM and end at 9:00 PM.
- C. Contractor may arrive at the Facility to begin setting up at 6:00 PM, but shall arrive no later than 60 minutes prior to the scheduled Entertainment time and shall have completed all sound checks and warm-ups, if applicable, at least 30 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 Entertainment, and shall leave the Facility in the same condition the Facility was in prior to conducting the Entertainment.
- E. Contractor's Entertainment shall consist of one set of 90 minutes.
- F. Contractor's Entertainment includes the following other entertainers and performers, which may not be altered without prior County approval: Ray Williams and Rick Atheras. Contractor shall appear and perform on stage for at least ninety percent (90%) of the scheduled Entertainment 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.
- G. Contractor shall perform the Entertainment 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.
- H. No alcohol or illegal drugs shall be consumed by Contractor, its employees or agents prior to, during or subsequent to the Entertainment.
- I. County will not provide the sound equipment and lighting for Contractor's Entertainment. Contractor will provide the sound equipment and lighting 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.
- J. The Entertainment shall contain no profanity, obscene language, lewd gestures, or any other material offensive to the general community. Should Contractor fail to comply with this provision, the County may withhold payment to Contractor, and Contractor hereby waives entitlement to said payment. Contractor further understands that future opportunities to perform for the County may be withheld.
- K. Contractor further represents it has inspected the Facility and that the Facility is in proper condition for the Entertainment, Contractor will perform.
- L. 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.
- M. County shall provide all basic electrical services for the Entertainment, but Contractor shall be responsible for all necessary extension cords and other related equipment.
- N. If any additional requirements such as specialty certifications, licenses and/or memberships applicable to the Entertainment are required, CONTRACTOR shall attach a copy of each to this Agreement as Exhibit "C".

- O. Contractor shall not use or permit the use of any pyrotechnics of any type during its Entertainment at the Event.
- P. Contractor shall not undertake or participate in any business, exhibit or activity at the Event other than herein specified.
- Q. 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 two (2) hours notice prior to the scheduled Entertainment. Upon cancellation due to inclement weather, County and Contractor may negotiate another date for Entertainment 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 Entertainment 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 Entertainment as scheduled, Contractor may fulfill the obligations of this Agreement by substituting a similar artist, with the prior approval of County. If a substitute artist performs the Entertainment, Contractor shall refund County's full deposit immediately, and County may pay a lower not-to-exceed amount to the substitute artist. County and Contractor may also negotiate another date for Entertainment 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 immediately refund County's full deposit.
- C. County can adjust Contractor's performance as deemed necessary to conclude the Entertainment early, in consultation with Contractor. If in the reasonable discretion of County, Contractor is not performing the Entertainment in a professional manner in accordance with this Agreement, Contractor's Entertainment 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. Performing Rights: County shall not endorse the Contractor's name or likeness, except the County may photograph and/or record both the audio and visual aspects of the Entertainment, for the sole purpose of future promotion for the Event. County agrees that it shall not transmit directly from the Facility, at the time of the Entertainment, any part of such recording absent a specific written agreement between the parties to the Agreement permitting such transmission.

8. 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.

9. 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.
10. Representatives: The County's representative for this Agreement is Ann Butler, telephone no. 561-488-7414. The Contractor's representative for this Agreement is Ray Williams, telephone no. 561-635-3362.
11. Indemnification: Contractor shall conduct its activities and Entertainment and the activities and Entertainment 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.
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, 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.
13. 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: Ray Williams

CONTRACTOR'S Address: 2329 Redwood Rd, West Palm Beach, Fl. 33409

CONTRACTOR'S Phone No. 561-635-3362
14. 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.
15. 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.

16. **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.
17. **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.
18. **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).
19. **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.
20. **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.
21. **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.
22. **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.
23. **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.

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

PALM BEACH COUNTY WITNESS

Tom Landy

SIGNATURE

TOM LANDY

NAME (TYPE OR PRINT)

PALM BEACH COUNTY

Russell Williams

DEPARTMENT DIRECTOR

COUNTY ADMINISTRATOR (If contract value exceeds \$50,000.)

INDEPENDENT CONTRACTOR

M Williams

SIGNATURE

HANDWRITING RAYMOND WILLIAMS

NAME & TITLE (TYPE OR PRINT)

CONTRACTOR WITNESS

A Butler

SIGNATURE

Ann Butler

NAME (TYPE OR PRINT)

Approved as to Form and Legal Sufficiency

By: *Anne Delgent*

Assistant County Attorney

EXHIBIT A

Scope of Work

Saturday August 15, 2009 DUO CATS

The Contractor will perform one (1) set of ninety (90) minutes of live (not pre-recorded) music at Canyon Town Center Amphitheater. There will be no breaks between sets. The County will review and may edit Contractor's performance song list one week prior to performance. Performance time is from 7:30 PM to 9:00 PM. Sound check will begin at 6:30 PM and conclude by 7:00 PM. Instruments, equipment and microphones will not be moved after the sound check has been completed. The County will provide the Contractor bottled water, and black towels (1 per performer). The Contractor will supply all necessary sound and light equipment, backline, amps, cables and heavy duty extension cords. The County will not provide a hospitality rider or meal before, during or after the performance.

EXHIBIT B

Production Specifications

Saturday August 15, 2009 DUO CATS

The Contractor will supply all sound and light equipment, backline, amps, cables, microphones, monitors, talent and heavy duty extension cords required to perform this concert.

The County will supply necessary power.

EXHIBIT C

Not required.

EXHIBIT D

Not Required

ACCOUNT: 0001-580-5207-01-3401					VENDOR CODE: VCO000 125364					CONTRACT:				
MC: AB			PS:			CC:			CA: O. J.			DD:		

**ENTERTAINMENT CONTRACTOR AGREEMENT FOR
PALM BEACH COUNTY PARKS & RECREATION DEPARTMENT**

This Agreement is made as of the 21st day of August, 2009, 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 Peter Fogel, an Independent Contractor, hereinafter referred to as "Contractor".

WITNESSETH:

WHEREAS, the County desires to host a Comedy Show, hereinafter referred to as the "Event" at Seabreeze Amphitheater, hereinafter referred to as the "Facility"; and

WHEREAS, as part of the Event, the County desires to hire entertainment, which shall consist of a one (1) man comedy show named Peter Fogel, hereinafter referred to as "Entertainment"; and

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

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

WHEREAS, providing Entertainment 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 Entertainment services on Saturday September 19, 2009 and shall complete all services by Sunday September 20, 2009.
3. **Payments To Contractor:** County shall pay Contractor a total amount not-to-exceed Two Thousand dollars (\$2,000.00) for Entertainment services as described above. County shall pay a deposit to Contractor in an amount not-to-exceed One Thousand dollars (\$1,000.00), which shall be part of the total not-to-exceed amount as mentioned above. The balance in the amount not-to-exceed One Thousand dollars (\$1,000.00), shall be paid to Contractor upon completion of the performance of the Entertainment 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 Entertainment. If an alternative date for the Entertainment 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 Entertainment 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 Entertainment as more particularly described in Exhibit "A", the Scope of Work, attached hereto and incorporated herein by reference.
- B. Contractor's Entertainment shall begin at 8:30 PM and end at 9:30 PM.
- C. Contractor may arrive at the Facility to begin setting up at 5:00 PM, but shall arrive no later than sixty (60) minutes prior to the scheduled Entertainment time and shall have completed all sound checks and warm-ups, if applicable, at least thirty(30) 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 Entertainment, and shall leave the Facility in the same condition the Facility was in prior to conducting the Entertainment.
- E. Contractor's Entertainment shall consist of one (1) set of sixty (60) minutes.
- F. Contractor's Entertainment includes the following other entertainers and performers, which may not be altered without prior County approval: Peter Fogel. Contractor shall appear and perform on stage for at least ninety percent (90%) of the scheduled Entertainment 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.
- G. Contractor shall perform the Entertainment 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.
- H. No alcohol or illegal drugs shall be consumed by Contractor, its employees or agents prior to, during or subsequent to the Entertainment.
- I. County will provide the sound equipment and lighting for Contractor's Entertainment, 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.
- J. The Entertainment shall contain no profanity, obscene language, lewd gestures, or any other material offensive to the general community. Should Contractor fail to comply with this provision, the County may withhold payment to Contractor, and Contractor hereby waives entitlement to said payment. Contractor further understands that future opportunities to perform for the County may be withheld.
- K. Contractor further represents it has inspected the Facility and that the Facility is in proper condition for the Entertainment, Contractor will perform.
- L. 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.
- M. County shall provide all electrical services for the Entertainment.
- N. If any additional requirements such as specialty certifications, licenses and/or memberships applicable to the Entertainment are required, CONTRACTOR shall attach a copy of each to this Agreement as Exhibit "C".
- O. Contractor shall not use or permit the use of any pyrotechnics of any type during its Entertainment at

the Event.

- P. Contractor shall not undertake or participate in any business, exhibit or activity at the Event other than herein specified.
- Q. 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 four (4) hours notice prior to the scheduled Entertainment. Upon cancellation due to inclement weather, County and Contractor may negotiate another date for Entertainment 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 Entertainment 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 Entertainment as scheduled, Contractor may fulfill the obligations of this Agreement by substituting a similar artist, with the prior approval of County. If a substitute artist performs the Entertainment, Contractor shall refund County's full deposit immediately, and County may pay a lower not-to-exceed amount to the substitute artist. County and Contractor may also negotiate another date for Entertainment 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 immediately refund County's full deposit.
- C. County can adjust Contractor's performance as deemed necessary to conclude the Entertainment early, in consultation with Contractor. If in the reasonable discretion of County, Contractor is not performing the Entertainment in a professional manner in accordance with this Agreement, Contractor's Entertainment 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. Performing Rights: County shall not endorse the Contractor's name or likeness, except the County may photograph and/or record both the audio and visual aspects of the Entertainment, for the sole purpose of future promotion for the Event. County agrees that it shall not transmit directly from the Facility, at the time of the Entertainment, any part of such recording absent a specific written agreement between the parties to the Agreement permitting such transmission.

8. 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.

9. **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.
10. **Representatives:** The County's representative for this Agreement is Ann Butler, telephone no. 561-488-7414. The Contractor's representative for this Agreement is Peter Fogel, telephone no. 561-245-5252.
11. **Indemnification:** Contractor shall conduct its activities and Entertainment and the activities and Entertainment 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.
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, 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.
13. **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: Peter Fogel
- CONTRACTOR'S Address: 8108 Summer Shores Drive, Delray Beach, Fl. 33446
- CONTRACTOR'S Phone No.: 561-245-5252
14. **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.
15. **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.

16. **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.
17. **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.
18. **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).
19. **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.
20. **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.
21. **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.
22. **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.
23. **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.

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

PALM BEACH COUNTY WITNESS

Nancy Beale
SIGNATURE

Nancy Beale
NAME (TYPE OR PRINT)

PALM BEACH COUNTY

Debbie Williams
DEPARTMENT DIRECTOR

COUNTY ADMINISTRATOR (If contract value exceeds \$50,000.)

INDEPENDENT CONTRACTOR

Peter Fogel
SIGNATURE

PETER Fogel
NAME & TITLE (TYPE OR PRINT)

CONTRACTOR WITNESS

Scott Larit
SIGNATURE

SCOTT LARIT
NAME (TYPE OR PRINT)

Approved as to Form and Legal Sufficiency

By: *Anne Delgado*
Assistant County Attorney

EXHIBIT A

Scope of Work

Saturday September 19, 2009 Peter Fogel

The Contractor will perform one (1) set of sixty (60) minutes each of a live (not pre-recorded) Comedy routine at Seabreeze Amphitheater. There will be no breaks. The County will review and may edit Contractors performance content prior to performance. Performance time is from 8:30 PM to 9:30 PM. Sound check will begin at 7:30 PM and conclude by 7:45 PM. Microphones and monitors will not be moved after the sound check has been completed. The County will provide the Contractor with bottled water, one (1) black towel, and one (1) air conditioned dressing room. The County will not provide a hospitality rider or meal before, during or after the performance.

EXHIBIT B

Production Specifications

Saturday September 19, 2009 Peter Fogel

The County agrees to supply a sound system adequate for the audience to hear (see attachment B1), two (2) light trees with 4 Par 64 cans each (no dimmer) and one (1) spotlight. The County agrees to supply one (1) sound technician and one (1) spot light technician for the duration of the Event. The County will supply all monitors, microphones and necessary cables as required by Contractors stage plot.

EXHIBIT C

Not required.

ACCOUNT: 0001-500-5207-02-3401		VENDOR CODE: VC 0000125366		CONTRACT:	
MC: AB PR	PS: ED JRC	CC:	CA: 0.94.	DD:	

**ENTERTAINMENT CONTRACTOR AGREEMENT FOR
PALM BEACH COUNTY PARKS & RECREATION DEPARTMENT**

This Agreement is made as of the 27th day of August, 2009, 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 Mark Knick, an Independent Contractor, hereinafter referred to as "Contractor".

WITNESSETH:

WHEREAS, the County desires to host Country music concert, hereinafter referred to as the "Event" at Canyon Town Center Amphitheater, hereinafter referred to as the "Facility"; and

WHEREAS, as part of the Event, the County desires to hire entertainment, which shall consist of a four (4) piece band called The Insti-Gators, hereinafter referred to as "Entertainment"; and

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

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

WHEREAS, providing Entertainment 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 Entertainment services on Saturday September 12, 2009 at 7:00 PM and shall complete all services by Saturday September 12, 2009 8:30 PM.
3. **Payments To Contractor:** County shall pay Contractor a total amount not-to-exceed One Thousand dollars (1,000.00) for Entertainment services as described above. County shall pay a deposit to Contractor in an amount not-to-exceed Five Hundred dollars (\$500.00), which shall be part of the total not-to-exceed amount as mentioned above. The balance in the amount not-to-exceed Five Hundred dollars (\$500.00) shall be paid to Contractor upon completion of the performance of the Entertainment 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 Entertainment. If an alternative date for the Entertainment 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 Entertainment 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 Entertainment as more particularly described in Exhibit "A", the Scope of Work, attached hereto and incorporated herein by reference.
- B. Contractor's Entertainment shall begin at 7:00 PM and end at 8:30 PM.
- C. Contractor may arrive at the Facility to begin setting up at 5:00 PM, but shall arrive no later than sixty (60) minutes prior to the scheduled Entertainment time and shall have completed all sound checks and warm-ups, if applicable, at least thirty (30) 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 Entertainment, and shall leave the Facility in the same condition the Facility was in prior to conducting the Entertainment.
- E. Contractor's Entertainment shall consist of one (1) set of ninety (90) minutes.
- F. Contractor's Entertainment includes the following other entertainers and performers, which may not be altered without prior County approval: Mark Knick, Jeff Knick, Wild Bill, and J. Crotteau. Contractor shall appear and perform on stage for at least ninety percent (90%) of the scheduled Entertainment 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.
- G. Contractor shall perform the Entertainment 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.
- H. No alcohol or illegal drugs shall be consumed by Contractor, its employees or agents prior to, during or subsequent to the Entertainment.
- I. County will provide the sound equipment and lighting for Contractor's Entertainment, 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.
- J. The Entertainment shall contain no profanity, obscene language, lewd gestures, or any other material offensive to the general community. Should Contractor fail to comply with this provision, the County may withhold payment to Contractor, and Contractor hereby waives entitlement to said payment. Contractor further understands that future opportunities to perform for the County may be withheld.
- K. Contractor further represents it has inspected the Facility and that the Facility is in proper condition for the Entertainment, Contractor will perform.
- L. 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.
- M. County shall provide all electrical services for the Entertainment, but Contractor shall be responsible for all necessary extension cords and other related equipment.
- N. If any additional requirements such as specialty certifications, licenses and/or memberships applicable to the Entertainment are required, CONTRACTOR shall attach a copy of each to this Agreement as Exhibit "C".

- O. Contractor shall not use or permit the use of any pyrotechnics of any type during its Entertainment at the Event.
- P. Contractor shall not undertake or participate in any business, exhibit or activity at the Event other than herein specified.
- Q. 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 four (4) hours notice prior to the scheduled Entertainment. Upon cancellation due to inclement weather, County and Contractor may negotiate another date for Entertainment 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 Entertainment 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 Entertainment as scheduled, Contractor may fulfill the obligations of this Agreement by substituting a similar artist, with the prior approval of County. If a substitute artist performs the Entertainment, Contractor shall refund County's full deposit immediately, and County may pay a lower not-to-exceed amount to the substitute artist. County and Contractor may also negotiate another date for Entertainment 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 immediately refund County's full deposit.
- C. County can adjust Contractor's performance as deemed necessary to conclude the Entertainment early, in consultation with Contractor. If in the reasonable discretion of County, Contractor is not performing the Entertainment in a professional manner in accordance with this Agreement, Contractor's Entertainment 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. Performing Rights: County shall not endorse the Contractor's name or likeness, except the County may photograph and/or record both the audio and visual aspects of the Entertainment, for the sole purpose of future promotion for the Event. County agrees that it shall not transmit directly from the Facility, at the time of the Entertainment, any part of such recording absent a specific written agreement between the parties to the Agreement permitting such transmission.

8. 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.

9. 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.
10. Representatives: The County's representative for this Agreement is Ann Butler, telephone no. 561-488-7414. The Contractor's representative for this Agreement is Mark Knick, telephone no. 954-288-4617.
11. Indemnification: Contractor shall conduct its activities and Entertainment and the activities and Entertainment 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.
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, 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.
13. 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: Mark Knick

CONTRACTOR'S Address: 900 NW 5th Ave, Ft. Lauderdale, Florida 33311

CONTRACTOR'S Phone No. 954-288-4617
14. 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.
15. 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.

16. **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.
17. **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.
18. **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).
19. **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.
20. **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.
21. **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.
22. **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.
23. **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.

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

PALM BEACH COUNTY WITNESS

Tom Landry

SIGNATURE

TOM LANDRY

NAME (TYPE OR PRINT)

PALM BEACH COUNTY

m. may

Rennia Johnson

DEPARTMENT DIRECTOR

COUNTY ADMINISTRATOR (If contract value exceeds \$50,000.)

INDEPENDENT CONTRACTOR

Mark Knick

SIGNATURE

MARK KNICK, BASS

NAME & TITLE (TYPE OR PRINT)

CONTRACTOR WITNESS

Julie Hard

SIGNATURE

JULIE HARD

NAME (TYPE OR PRINT)

Approved as to Form and Legal Sufficiency

By: *Anne Delgent*
Assistant County Attorney

EXHIBIT A

Scope of Work

Saturday, September 12, 2009 Insti-Gators Band

The Contractor will perform one (1) set of ninety (90) minutes of live (not pre-recorded) music at Canyon Town Center Amphitheater. There will be no breaks between sets. The County will review and may edit Contractors performance song list one week prior to performance. Performance time is from 7:00 PM to 8:30 PM. Sound check will begin at 6:00 PM and conclude by 6:30 PM. Instruments, equipment and microphones will not be moved after the sound check has been completed. The County will provide the Contractor bottled water, and black towels (1 per performer).

The Contractor will supply all necessary sound and light equipment, backline, amps, cables and heavy duty extension cords. The County will not provide a hospitality rider or meal before, during or after the performance.

EXHIBIT B

Production Specifications

Saturday, September 12, 2009 Insti-Gators Band

The Contractor will supply all sound and light equipment, backline, amps, cables, microphones, monitors, talent and heavy duty extension cords required to perform this concert.

The County will supply necessary power.

EXHIBIT C

Not required.

EXHIBIT D

Not Required

ACCOUNT: 0001-580-5207-03-3401	VENDOR CODE: VC 0000125365	CONTRACT:
MC: AB	PS:	CC: CA: C. N. DD:

**ENTERTAINMENT CONTRACTOR AGREEMENT FOR
PALM BEACH COUNTY PARKS & RECREATION DEPARTMENT**

This Agreement is made as of the 31st day of Aug., 2009, 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 Peter Noble an Independent Contractor, hereinafter referred to as "Contractor".

WITNESSETH:

WHEREAS, the County desires to host a Rock & Blues Concert, hereinafter referred to as the "Event" at Canyon Town Center Amphitheater, hereinafter referred to as the "Facility"; and

WHEREAS, as part of the Event, the County desires to hire entertainment, which shall consist of a four piece band called The Fabulous Fleetwoods, hereinafter referred to as "Entertainment"; and

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

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

WHEREAS, providing Entertainment 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 Entertainment services on Saturday, October 10, 2009 and shall complete all services by Sunday, October 11, 2009.
3. **Payments To Contractor:** County shall pay Contractor a total amount not-to-exceed Seven Hundred and Fifty Dollars (\$750.00) for Entertainment services as described above. County shall pay a deposit to Contractor in an amount not-to-exceed Three Hundred and Seventy-Five Dollars (\$375.00), which shall be part of the total not-to-exceed amount as mentioned above. The balance in the amount not-to-exceed Three Hundred and Seventy-Five Dollars (\$375.00), shall be paid to Contractor upon completion of the performance of the Entertainment 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 Entertainment. If an alternative date for the Entertainment 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 Entertainment 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 Entertainment as more particularly described in Exhibit "A", the Scope of Work, attached hereto and incorporated herein by reference.
- B. Contractor's Entertainment shall begin at 7:00PM and end at 9:00PM.
- C. Contractor may arrive at the Facility to begin setting up at 5:00PM, but shall arrive no later than sixty (60) minutes prior to the scheduled Entertainment time and shall have completed all sound checks and warm-ups, if applicable, at least thirty (30) 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 Entertainment, and shall leave the Facility in the same condition the Facility was in prior to conducting the Entertainment.
- E. Contractor's Entertainment shall consist of One (1) set of One Hundred and Twenty (120) minutes.
- F. Contractor's Entertainment includes the following other entertainers and performers, which may not be altered without prior County approval: Entertainers in the band are Peter Noble, Jim Jones, Richie Schmidt, and John Harris. Contractor shall appear and perform on stage for at least ninety percent (90%) of the scheduled Entertainment 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.
- G. Contractor shall perform the Entertainment 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.
- H. No alcohol or illegal drugs shall be consumed by Contractor, its employees or agents prior to, during or subsequent to the Entertainment.
- I. County will provide the sound equipment and lighting for Contractor's Entertainment, 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.
- J. The Entertainment shall contain no profanity, obscene language, lewd gestures, or any other material offensive to the general community. Should Contractor fail to comply with this provision, the County may withhold payment to Contractor, and Contractor hereby waives entitlement to said payment. Contractor further understands that future opportunities to perform for the County may be withheld.
- K. Contractor further represents it has inspected the Facility and that the Facility is in proper condition for the Entertainment, Contractor will perform.
- L. 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.
- M. County shall provide all electrical services for the Entertainment, but Contractor shall be responsible for all necessary extension cords and other related equipment.
- N. If any additional requirements such as specialty certifications, licenses and/or memberships applicable to the Entertainment are required, CONTRACTOR shall attach a copy of each to this Agreement as

Exhibit "C".

- O. Contractor shall not use or permit the use of any pyrotechnics of any type during its Entertainment at the Event.
- P. Contractor shall not undertake or participate in any business, exhibit or activity at the Event other than herein specified.
- Q. 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 four (4) hours notice prior to the scheduled Entertainment. Upon cancellation due to inclement weather, County and Contractor may negotiate another date for Entertainment 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 Entertainment 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 Entertainment as scheduled, Contractor may fulfill the obligations of this Agreement by substituting a similar artist, with the prior approval of County. If a substitute artist performs the Entertainment, Contractor shall refund County's full deposit immediately, and County may pay a lower not-to-exceed amount to the substitute artist. County and Contractor may also negotiate another date for Entertainment 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 immediately refund County's full deposit.
- C. County can adjust Contractor's performance as deemed necessary to conclude the Entertainment early, in consultation with Contractor. If in the reasonable discretion of County, Contractor is not performing the Entertainment in a professional manner in accordance with this Agreement, Contractor's Entertainment 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. Performing Rights: County shall not endorse the Contractor's name or likeness, except the County may photograph and/or record both the audio and visual aspects of the Entertainment, for the sole purpose of future promotion for the Event. County agrees that it shall not transmit directly from the Facility, at the time of the Entertainment, any part of such recording absent a specific written agreement between the parties to the Agreement permitting such transmission.

8. 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.

9. 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.
10. Representatives: The County's representative for this Agreement is Ann Butler, telephone no. 561-488-7414. The Contractor's representative for this Agreement is Peter Noble, telephone no. 561-317-9811.
11. Indemnification: Contractor shall conduct its activities and Entertainment and the activities and Entertainment 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.
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, 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.
13. 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: Peter Noble

CONTRACTOR'S Address: 4743 Dolphin Drive Lake Worth, FL 33428

CONTRACTOR'S Phone No. 561-317-9811
14. 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.
15. 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.

16. **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.
17. **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.
18. **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).
19. **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.
20. **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.
21. **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.
22. **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.
23. **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.

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

PALM BEACH COUNTY WITNESS

Nancy Beale
SIGNATURE

Nancy Beale
NAME (TYPE OR PRINT)

PALM BEACH COUNTY

m. may Dennis Tullman
DEPARTMENT DIRECTOR

COUNTY ADMINISTRATOR (If contract value exceeds \$50,000.)

INDEPENDENT CONTRACTOR

Peter H. Noble
SIGNATURE

PETER H NOBLE / BAND MEMBER
NAME & TITLE (TYPE OR PRINT)

CONTRACTOR WITNESS

Tony Barone
SIGNATURE

Tony Barone
NAME (TYPE OR PRINT)

Approved as to Form and Legal Sufficiency

By: Anne Delzant
Assistant County Attorney

EXHIBIT A

Scope of Work

Saturday, October 10, 2009 Fabulous Fleetwoods

The Contractor will perform one (1) set of one hundred and twenty (120) minutes of live (not pre-recorded) music at Canyon Town Center Amphitheater. There will be no breaks between sets. The County will review and may edit Contractors performance song list one week prior to performance. Performance time is from 7:00 PM to 9:00 PM. Sound check will begin at 6:00 PM and conclude by 6:30 PM. Instruments, equipment and microphones will not be moved after the sound check has been completed. The County will provide the Contractor bottled water, and black towels (1 per performer). The Contractor will supply all necessary sound and light equipment, backline, amps, cables and heavy duty extension cords. The County will not provide a hospitality rider or meal before, during or after the performance.

EXHIBIT B

Production Specifications

Saturday, October 10, 2009 Fabulous Fleetwoods

The Contractor will supply all sound and light equipment, backline, amps, cables, microphones, monitors, talent and heavy duty extension cords required to perform this concert.

The County will supply necessary power.

EXHIBIT C

Not required.

EXHIBIT D

Not Required

ACCOUNT: 0001-580-5207-01-340		VENDOR CODE: VC0000125666		CONTRACT:	
MC: P20	PS: (D)	CC:	CA:	DD: (D)	

**ENTERTAINMENT CONTRACTOR AGREEMENT FOR
PALM BEACH COUNTY PARKS & RECREATION DEPARTMENT**

This Agreement is made as of the 22nd day of Sept., 2009, 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 Joseph Taffuri, Independent Contractor, hereinafter referred to as "Contractor".

WITNESSETH:

WHEREAS, the County desires to host a Classic Rock & Blues Concert, hereinafter referred to as the "Event" at Seabreeze Amphitheater, 750 South A1A, Jupiter, FL 3347, hereinafter referred to as the "Facility"; and

WHEREAS, as part of the Event, the County desires to hire entertainment, which shall consist of a five piece band called Valcano Band, hereinafter referred to as "Entertainment"; and

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

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

WHEREAS, providing Entertainment 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 Entertainment services on Saturday, October 17, 2009 and shall complete all services by Sunday, October 18, 2009.
3. **Payments To Contractor:** County shall pay Contractor a total amount not-to-exceed eight Hundred and Fifty Dollars (\$850.00) for Entertainment services as described above. County shall pay a deposit to Contractor in an amount not-to-exceed Four Hundred and Twenty-Five Dollars (\$425.00), which shall be part of the total not-to-exceed amount as mentioned above. The balance in the amount not-to-exceed Four Hundred and Twenty-Five Dollars (\$425.00), shall be paid to Contractor upon completion of the performance of the Entertainment 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 Entertainment. If an alternative date for the Entertainment 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 Entertainment 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 Entertainment as more particularly described in Exhibit "A", the Scope of Work, attached hereto and incorporated herein by reference.
- B. Contractor's Entertainment shall begin at 8:00PM and end at 10:00PM.
- C. Contractor may arrive at the Facility to begin setting up at 5:00PM, but shall arrive no later than sixty (60) minutes prior to the scheduled Entertainment time and shall have completed all sound checks and warm-ups, if applicable, at least thirty (30) 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 Entertainment, and shall leave the Facility in the same condition the Facility was in prior to conducting the Entertainment.
- E. Contractor's entertainment shall consist of two (2) sets of fifty (50) minutes with one twenty (20) minute break.
- F. Contractor's Entertainment includes the following other entertainers and performers, which may not be altered without prior County approval: Entertainers in the band are Valarie Favale, Jim Sigis, Joe Taffuri, Doc Pollitick, George Hepburn. Contractor shall appear and perform on stage for at least ninety percent (90%) of the scheduled Entertainment 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.
- G. Contractor shall perform the Entertainment 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.
- H. No alcohol or illegal drugs shall be consumed by Contractor, its employees or agents prior to, during or subsequent to the Entertainment.
- I. County will provide the sound equipment and lighting for Contractor's Entertainment, 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.
- J. The Entertainment shall contain no profanity, obscene language, lewd gestures, or any other material offensive to the general community. Should Contractor fail to comply with this provision, the County may withhold payment to Contractor, and Contractor hereby waives entitlement to said payment. Contractor further understands that future opportunities to perform for the County may be withheld.
- K. Contractor further represents it has inspected the Facility and that the Facility is in proper condition for the Entertainment, Contractor will perform.
- L. 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.
- M. County shall provide all electrical services for the Entertainment, but Contractor shall be responsible for all necessary extension cords and other related equipment.
- N. If any additional requirements such as specialty certifications, licenses and/or memberships applicable

to the Entertainment are required, CONTRACTOR shall attach a copy of each to this Agreement as Exhibit "C".

- O. Contractor shall not use or permit the use of any pyrotechnics of any type during its Entertainment at the Event.
- P. Contractor shall not undertake or participate in any business, exhibit or activity at the Event other than herein specified.
- Q. 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 four (4) hours notice prior to the scheduled Entertainment. Upon cancellation due to inclement weather, County and Contractor may negotiate another date for Entertainment 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 Entertainment 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 Entertainment as scheduled, Contractor may fulfill the obligations of this Agreement by substituting a similar artist, with the prior approval of County. If a substitute artist performs the Entertainment, Contractor shall refund County's full deposit immediately, and County may pay a lower not-to-exceed amount to the substitute artist. County and Contractor may also negotiate another date for Entertainment 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 immediately refund County's full deposit.
- C. County can adjust Contractor's performance as deemed necessary to conclude the Entertainment early, in consultation with Contractor. If in the reasonable discretion of County, Contractor is not performing the Entertainment in a professional manner in accordance with this Agreement, Contractor's Entertainment 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. Performing Rights: County shall not endorse the Contractor's name or likeness, except the County may photograph and/or record both the audio and visual aspects of the Entertainment, for the sole purpose of future promotion for the Event. County agrees that it shall not transmit directly from the Facility, at the time of the Entertainment, any part of such recording absent a specific written agreement between the parties to the Agreement permitting such transmission.

8. 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.
9. 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.
10. Representatives: The County's representative for this Agreement is Ann Butler, telephone no. 561-488-7414. The Contractor's representative for this Agreement is Joseph Taffuri, telephone no. 561-427-8299.
11. Indemnification: Contractor shall conduct its activities and Entertainment and the activities and Entertainment 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.
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, 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.
13. 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: Joseph Taffuri c/of Valcano Band

CONTRACTOR'S Address: 5888 Williamson Road
 Jupiter, FL 33458

CONTRACTOR'S Phone No. 561-427-8299
14. 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.

15. 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.
16. 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.
17. 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.
18. 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).
19. 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.
20. 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.
21. 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.
22. 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.
23. 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.

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

PALM BEACH COUNTY WITNESS

Tom Landry
SIGNATURE

TOM LANDRY
NAME (TYPE OR PRINT)

PALM BEACH COUNTY

m. may Dennis Eblen
DEPARTMENT DIRECTOR

COUNTY ADMINISTRATOR (If contract value exceeds \$50,000.)

INDEPENDENT CONTRACTOR

Joseph W Taffuri / ^{came or} Volcano Band
SIGNATURE

Joseph W Taffuri
NAME & TITLE (TYPE OR PRINT)

CONTRACTOR WITNESS

Joseph W Taffuri
SIGNATURE

Joseph Taffuri
NAME (TYPE OR PRINT)

Approved as to Form and Legal Sufficiency

By: Anne Idelgard
Assistant County Attorney

EXHIBIT A

Scope of Work

Saturday, October 17, 2009 Valcano Band

The Contractor will perform two (2) sets of fifty (50) minutes of live (not pre-recorded) music at Seabreeze Center Amphitheater. There will be one twenty minute (20) break between sets. The County will review and may edit Contractors performance song list one week prior to performance. Performance time is from 8:00 PM to 10:00 PM. Sound check will begin at 6:00 PM and conclude by 6:30 PM. Instruments, equipment and microphones will not be moved after the sound check has been completed. The County will provide the Contractor bottled water, and black towels (1 per performer). The Contractor will supply all necessary sound and light equipment, backline, amps, cables and heavy duty extension cords. The County will not provide a hospitality rider or meal before, during or after the performance.

EXHIBIT B

Production Specifications

Saturday, October 17, 2009 Valcano Band

The Contractor will supply all sound and light equipment, backline, amps, cables, microphones, monitors, talent and heavy duty extension cords required to perform this concert.

The County will supply necessary power.

EXHIBIT C

Not required.