

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 October and November of 2009, and January, March, April and May of 2010.

- A) Gene Mattis, Orchestra Concert, Canyon Town Center Amphitheater for November 7, 2009, in an amount not-to-exceed \$900;
- B) Morgan Renee Entertainment, Odyssey Road Concert, Seabreeze Amphitheater for November 14, 2009, in an amount not-to-exceed \$2,000;
- C) The Club Singers Inc., Choral Concert, Canyon Town Center Amphitheater for December 5, 2009, in an amount not-to-exceed \$600;
- D) Superstar Productions, Inc., Winter Solstice Party, Sunset Cove Amphitheater for Saturday, December 19, 2009, in an amount not-to-exceed \$750;
- E) Soars High Production Inc., Band Concert, Seabreeze Amphitheater for Saturday, February 27, 2010, in an amount not-to-exceed \$800;
- F) Ben Grisafi, Band Concert, Seabreeze Amphitheater for March 20, 2010, in an amount not-to-exceed \$1,500;
- G) Maximum Bands Entertainment LLC, Crossroads Concert, Seabreeze Amphitheater for May 8, 2010, in an amount not-to-exceed \$2,040.10;
- H) Melvin Carnegie, Band Concert, Seabreeze Amphitheater for April 17, 2010, in an amount not-to-exceed \$1,200;
- I) Maximum Bands Entertainment LLC, Crossroads Concert, Sunset Cove Amphitheater for May 29, 2010, in an amount not-to-exceed \$2,606.50;
- J) Peter Noble, The Blunts Concert, Seabreeze Amphitheater for June 5, 2010, in an amount not-to-exceed \$2,005;
- K) Claude Roatta, Dashboard Saints Concert, Canyon Town Center Amphitheater for June 12, 2010, in an amount not-to-exceed \$900;
- L) Seymour Schatzberg, Gold Coast Dance Band, Canyon Town Center Amphitheater for May 15, 2010, in an amount not-to-exceed \$900; and
- M) Marlow Productions LLC, July 4th Concert, Sunset Cove Amphitheater for the period July 4, 2010, in an amount not-to-exceed \$6,007.52.

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 2008-1109, amended by Resolution 2009-0644, 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 2008-1109, amended by Resolution 2009-0644) 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 (13)

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)	<u>0</u>				

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

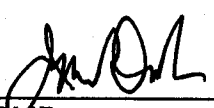
B. Recommended Sources of Funds/Summary of Fiscal Impact:

	Contractor	FY2010	
		Revenue	Expense
A	Gene Mattis	\$0	\$900
B	Morgan Renee Entertainment, Inc.	\$0	\$2,000
C	The Club Singers Inc.	\$0	\$600
D	Superstar Productions, Inc.	\$0	\$750
E	Soars High Production Inc.	\$0	\$800
F	Ben Grisafi	\$0	\$1,500
G	Maximum Bands Entertainment LLC	\$0	\$2,041
H	Melvin Carnegie	\$0	\$1,200
I	Maximum Bands Entertainment LLC	\$0	\$2,607
J	Peter Noble	\$0	\$2,005
K	Claude Roatta	\$0	\$900
L	Seymour Schatzberg	\$0	\$900
M	Marlow Productions LLC	\$0	\$6,008
	Totals	\$0	\$22,211

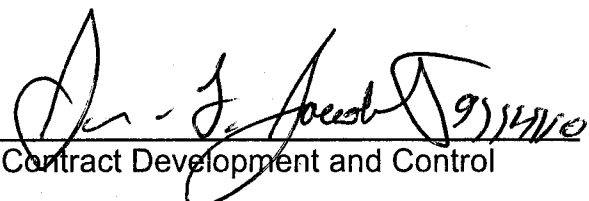
C. Departmental Fiscal Review: chapelakis

III. REVIEW COMMENTS

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



 OFMB



 Contract Development and Control

B. Legal Sufficiency: *9/13/10* *9/12/10*

Anne Delgado 9/15/10

 Assistant County Attorney

C. Other Department Review:

 Department Director

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

ACCOUNT: 0001-580-5207-03-3401	VENDOR CODE: VC0000126227	CONTRACT: GENE MATTIS ORCHESTRA
MC: AB. [initials]	PS: [initials]	CC: [initials]
	CA: O. [initials]	DD: [initials]

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

This Agreement is made as of the 14 day of Oct, 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 Gene Mattis, 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 a seventeen (17) piece orchestra called the Gene Mattis 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 November 7, 2009 4:00 PM and shall complete all services by Saturday November 7, 2009 10:00 PM.
3. **Payments To Contractor:** County shall pay Contractor a total amount not-to-exceed Nine Hundred dollars (\$900.00) for Entertainment services as described above. County shall pay a deposit to Contractor in an amount not-to-exceed Four Hundred and Fifty dollars (\$450.00), 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 Fifty dollars (\$450.00) 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 10:00 PM.
- C. Contractor may arrive at the Facility to begin setting up at 4:00 PM, but shall arrive no later than one hundred and twenty (120) 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 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: Gene Mattis plus 16 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. 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 Gene Mattis, telephone no. 561-627-4254.
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: Gene Mattis

CONTRACTOR'S Address: 9 Lochwick Road, Palm Beach Gardens, FL 33418

CONTRACTOR'S Phone No: 561-627-4254
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.

(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

(J. Gene Mattis)
SIGNATURE

Joseph Gene MATTEIS
NAME (TYPE OR PRINT)

PALM BEACH COUNTY

Chris Cole
DEPARTMENT DIRECTOR

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

INDEPENDENT CONTRACTOR

(Here) Joseph A. Mattis
SIGNATURE

J. Gene MATTEIS Leader
NAME & TITLE (TYPE OR PRINT)

CONTRACTOR WITNESS

Anne Mattis
SIGNATURE

Anne MATTEIS
NAME (TYPE OR PRINT)

Approved as to Form and Legal Sufficiency

By: Anne Nelson
Assistant County Attorney

EXHIBIT D

Not Required

ACCOUNT: 0770 1-580-5267-01 3401	VENDOR CODE: VC 0000 125630	CONTRACT: ODYSSEY ROAD
MC: AB (B) PS: (12)	CC:	CA: O.P.N. DD:

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

This Agreement is made as of the 14th day of OCT., 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 Morgan Renee Entertainment, Inc., an Independent Contractor, hereinafter referred to as "Contractor".

WITNESSETH:

WHEREAS, the County desires to host a rock 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 a Journey tribute band called Odyssey Road, 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:

- Recitals:** The foregoing recitals are true and correct and are incorporated herein by reference.
- Term:** The Contractor shall commence its Entertainment services on Saturday November 14, 2009 at 3:00PM and shall complete all services by Saturday November 14, 2009 at 11:00PM.
- 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.
- 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 pm and end at 9:30 pm.
- C. Contractor may arrive at the Facility to begin setting up at 3:00 pm, 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 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 set of ninety minutes.
- F. Contractor's Entertainment includes the following other entertainers and performers, which may not be altered without prior County approval: James Sanderford, Bobby Gugliuzza, Mike Soper, Paul Granato, and Joe Ferry. 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 Randy Carrillo, telephone no. 561-543-6550.
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: Randy Carillo/Morgan Renee Entertainment

CONTRACTOR'S Address: 4340 Main Street, Jupiter, Fl. 33458

CONTRACTOR'S Phone No. 561-543-6550
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.

(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

Chris Call
DEPARTMENT DIRECTOR

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

INDEPENDENT CONTRACTOR

[Signature]
SIGNATURE

Randy E. Carrillo President & CEO
NAME & TITLE (TYPE OR PRINT)

CONTRACTOR WITNESS

[Signature]
SIGNATURE

SANDY CASALLO / ADMINISTRATIVE ASSISTANT
NAME (TYPE OR PRINT)

Approved as to Form and Legal Sufficiency

By: *Anne Helgard*
Assistant County Attorney

EXHIBIT A

Scope of Work

Saturday, November 14, 2009 ODYSSEY ROAD

The Contractor will perform one (1) set of ninety (90) minutes of live (not pre-recorded) music at Seabreeze Amphitheater. The County will review and may edit Contractors performance song list one week prior to performance. Performance time is from 8:00 PM to 9:30 PM. Sound check will begin at 7:00 PM and conclude by 7:30 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, November 14, 2009 ODYSSEY ROAD

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.

Not Required

ACCOUNT:001-580-5207-03-3401		VENDOR CODE: VC0000126709		CONTRACT: The Club Singers, Inc.	
MC: AB	PS: <u>FB</u>	CC:	CA: <u>Q.A.</u>	DD:	

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

This Agreement is made as of the 11th day of Nov, 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 The Club Singers Inc., an Independent Contractor, hereinafter referred to as "Contractor".

WITNESSETH:

WHEREAS, the County desires to host a Holiday Tree Lighting Party, 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 The Club Singers, an eighty (80) member choral group, 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 December 5th at 4:00 PM and shall complete all services by Saturday December 5th at 10:00 PM.
3. **Payments To Contractor:** County shall pay Contractor a total amount not-to-exceed Six Hundred Dollars (\$600) upon completion of the performance of the Entertainment services as described above, 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 may negotiate an alternate date for the Entertainment. 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 10:00 PM.
- C. Contractor may arrive at the Facility to begin setting up at 4:00 PM, but shall arrive no later than ninety (90) 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 (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: Marlis Winter and the Club Singers. 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 Marlis Winter, telephone no. 561-737-6083.
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: Marlis Winter c/o The Club Singers Inc.
CONTRACTOR'S Address: 10060 Diamond Lake, Boynton Beach, Fl. 33437
CONTRACTOR'S Phone No.: 561-737-6083
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

Kimberly A. McNeely
SIGNATURE

Kimberly A. McNeely
NAME (TYPE OR PRINT)

PALM BEACH COUNTY

Denise Edinger
DEPARTMENT DIRECTOR

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

INDEPENDENT CONTRACTOR

Mark Winter
SIGNATURE

MARLIS WINTER - DIRECTOR - The Club Sings, Inc.
NAME & TITLE (TYPE OR PRINT)

CONTRACTOR WITNESS

James L. Lippe, Esq.
SIGNATURE

JAMES L. LIPPE
NAME (TYPE OR PRINT)

Approved as to Form and Legal Sufficiency

By: Anne Helgert
Assistant County Attorney

EXHIBIT A

Scope of Work

Saturday December 5, 2009 THE CLUB SINGERS

The Contractor will perform one (1) set of sixty (60) 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 8:00 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 Contractor will supply all necessary sound equipment, backline, amps, cables and heavy duty extension cords. The County will not provide a hospitality rider or meals and beverages before, during or after the performance.

The County will supply two (2) light trees consisting of four (4) par 64 cans on each tree plus existing stage lighting.

EXHIBIT B

Production Specifications

Saturday December 5, 2009 THE CLUB SINGERS

The Contractor will supply all sound 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: 0001-580-5207-02-3401	VENDOR CODE: VC 0000126046	CONTRACT: Costumed Characters
MC: AB PPO	PS: (PB)	CC:
	CA: O.H.	DD:

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

This Agreement is made as of the 24 day of Nov, 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 Superstar Productions, Inc., an Independent Contractor, hereinafter referred to as "Contractor".

WITNESSETH:

WHEREAS, the County desires to host a Winter Solstice Party, 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 Mickey and Minnie Mouse costume characters, 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 December 19, 2009 at 4:30 PM and shall complete all services by Saturday December 19, 2009 at 6:00 PM.
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 4:30 PM and end at 6:00 PM.
- C. Contractor may arrive at the Facility to begin setting up at 4:30 PM, but shall arrive no later than thirty (30) 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 thirty (30) minutes and a fifteen (15) minutes photo opportunity session after the concert.
- F. Contractor's Entertainment includes the following other entertainers and performers, which may not be altered without prior County approval: Mickey and Minnie Mouse costumed characters. 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 Robert Guerra telephone no. 954-389-1137.
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:	Robert Guerra
CONTRACTOR'S Address:	4974 SW 186 Tiki Way, Miramar, FL 33029
CONTRACTOR'S Phone No.:	954-389-1137
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.

(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

A. Butler
SIGNATURE

A. Butler
NAME (TYPE OR PRINT)

PALM BEACH COUNTY

Ken Case
DEPARTMENT DIRECTOR

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

INDEPENDENT CONTRACTOR

Robert Guerra
SIGNATURE

Robert GUERRA - Entertainer
NAME & TITLE (TYPE OR PRINT)

CONTRACTOR WITNESS

Paul Ridgway
SIGNATURE

Joanie Ridgway
NAME (TYPE OR PRINT)

Approved as to Form and Legal Sufficiency

By: Anne Idelmont
Assistant County Attorney

EXHIBIT A

Scope of Work

Saturday December 19, 2009 Mickey and Minnie Mouse

The Contractor will perform one (1) set of thirty (30) minutes of a live sing-a-long concert at Sunset Cove Amphitheater. There will be no breaks. A fifteen (15) minute photo opportunity session will follow the concert. The County will review and may edit Contractors performance content prior to performance. Performance time is from 5:15 PM to 6:00 PM. Sound check will begin at 4:30 PM and conclude by 4:45 PM. Microphones and monitors will not be moved after the sound check has been completed. The County will provide the Contractor with bottled water, 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 December 19, 2009 Mickey and Minnie Mouse

The County agrees to supply a sound and light system (see attachment B-1) The County agrees to supply one (1) sound 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.

EXHIBIT D

Not Required

ACCOUNT: 0001-580-5207-01-3401		VENDOR CODE: VC0000126978		CONTRACT:	
MC: MT	PS: <i>KV</i>	CC:	CA:	DD:	

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

This Agreement is made as of the 15th day of Jan, 20 10, 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 Soars High Production Inc., an Independent Contractor, hereinafter referred to as "Contractor".

WITNESSETH:

WHEREAS, the County desires to host a 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 a three 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, February 27, 2010 at 4:00pm and shall complete all services by Saturday, February 27, 2010 at 11:00pm.
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 4:00pm and end at 11:00pm
- C. Contractor may arrive at the Facility to begin setting up at 4:00pm, 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 2 set(s) of 55 minutes each set.
- F. Contractor's Entertainment includes the following other entertainers and performers, which may not be altered without prior County approval: JP Soars, Chris Peete, and Don Gottlieb. 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 Melissa Turner, telephone no. (561) 963-6702. The Contractor's representative for this Agreement is JP Soars, telephone no. (561) 667-5481.
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: Soars High Production

CONTRACTOR'S Address: 1200 NW 16th Ct Suite 12 Boca Raton, FL 33486

CONTRACTOR'S Phone No. (651) 667-5481
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.

(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

Ronnie E. Lerner
DEPARTMENT DIRECTOR

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

INDEPENDENT CONTRACTOR

John Paul Soars
SIGNATURE

John Paul Soars Band Leader
NAME & TITLE (TYPE OR PRINT)

CONTRACTOR WITNESS

Melissa Turner
SIGNATURE

Melissa Turner
NAME (TYPE OR PRINT)

Approved as to Form and Legal Sufficiency

By: Anne Delgent
Assistant County Attorney

EXHIBIT A

Scope of Work

Saturday February 27, 2010 JP Soars

The Contractor will perform two (2) sets of fifty five (55) minutes of live (not pre-recorded) music at Seabreeze Amphitheater. There will be one 10 minute break. 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 7:00 PM and conclude by 7:30 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) large 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 B

Production Specifications

Saturday February 27, 2010 JP Soars

The County agrees to supply a sound system, and a lighting system provided by City Sound and Recording per your requirements on your stage plot. 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, all 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: 0001-580-5207-01-3401		VENDOR CODE: VC0000127072		CONTRACT: BEN GRISAFI BIG BAND	
MC: MT	PS:	CC:	CA:	DD:	

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

This Agreement is made as of the 16th day of March, 20 10, 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 Ben Grisafi, an Independent Contractor, hereinafter referred to as "Contractor".

WITNESSETH:

WHEREAS, the County desires to host a 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 a thirteen 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 20, 2010 at 12:00pm and shall complete all services by Saturday, March 20, 2010 at 10:00pm and
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 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 fifty dollars [\$750.00], shall be paid to Contractor upon completion 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 Services. If an alternative date for the Entertainment Services cannot be negotiated within three (3) days after cancellation, Contractor shall fully refund County's deposit within two (2) days of written notice by County that an alternative date for the Entertainment Services cannot be negotiated. Contractor shall furnish at its expense all transportation to and from the Event and Facility. All transportation, travel, food and lodging expenses are included in the not-to-exceed amount mentioned above.
4. **Taxes:** The County is exempt from payment of Florida State Sales and Use Taxes. The County will sign an exemption certificate submitted by the Contractor. The Contractor shall not be exempted from paying sales tax to its suppliers for materials used to fulfill contractual obligations with the County, nor is Contractor authorized to use the County's Tax Exemption Number in securing such materials.

The Contractor shall be responsible for payment of its own and its share of its employees' payroll, payroll taxes, and benefits with respect to this Agreement. It is also acknowledged and agreed by the County and

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

5. Contractor's Responsibilities:

- A. Contractor shall provide 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 4:00pm and end at 7:00pm
- C. Contractor may arrive at the Facility to begin setting up at 12:00pm, 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 3 set(s) of 50 minutes each set.
- F. Contractor's Entertainment includes the following other entertainers and performers, which may not be altered without prior County approval: Ben Grisafi plus twelve (12). 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 Melissa Turner, telephone no. (561) 963-6702. The Contractor's representative for this Agreement is Ben Grisafi, telephone no. (561) 351-1763.
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, employees or subcontractors, 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: Ben Grisafi

CONTRACTOR'S Address: 413 Kelsey Park Drive Palm Beach Gardens, FL 33410

CONTRACTOR'S Phone No. (561) 351-1763
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.

(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. McNeeley
SIGNATURE

Kimberly A. McNeeley
NAME (TYPE OR PRINT)

PALM BEACH COUNTY

Denise Johnson
DEPARTMENT DIRECTOR

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

INDEPENDENT CONTRACTOR

Ben Grisafi
SIGNATURE

Ben Grisafi
NAME & TITLE (TYPE OR PRINT)

CONTRACTOR WITNESS

Yvette Grisafi
SIGNATURE

Yvette Grisafi
NAME (TYPE OR PRINT)

Approved as to Form and Legal Sufficiency

By: Anne Delgado
Assistant County Attorney

EXHIBIT A

Scope of Work

Saturday March 20, 2010 Ben Grisafi and The Big Band Hall of Fame Orchestra

The Contractor will perform three (3) sets of fifty (50) minutes of live (not pre-recorded) music at Seabreeze Amphitheater. There will be two (2) 10 minute breaks. The County will review and may edit Contractors performance song list one week prior to performance. Performance time is from 4:00 PM to 07:00 PM. Sound check will begin at 3:00 PM and conclude by 3:30 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, twenty (20) chairs and two (2) large dressing rooms. The Contractor will supply all backline, amps, necessary cables and full sound system. The County will not provide a hospitality rider or meal before, during or after the performance.

EXHIBIT B

Production Specifications

Saturday March 20, 2010 Ben Grisafi and The Big Band Hall of Fame Orchestra

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: VC0000127663	CONTRACT: CROSSROADS 5/8/10
MC: AB	PS: <i>(initials)</i>	CC: <i>(initials)</i>
	CA: <i>(initials)</i>	DD: <i>(initials)</i>

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

This Agreement is made as of the 31st day of March, 2010, 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 Maximum Bands Entertainment LLC, 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 a 4 piece Eric Clapton tribute band called Crossroads, 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 May 8, 2010 at 4 PM and shall complete all services by Saturday May 8, 2010 at 11 PM.
3. Payments To Contractor: County shall pay Contractor a total amount not-to-exceed Two Thousand and Forty dollars and ten cents (\$2040.10) for Entertainment services as described above. County shall pay a deposit to Contractor in an amount not-to-exceed one thousand, twenty dollars and five cents (\$1020.05), which shall be part of the total not-to-exceed amount as mentioned above. The balance in the amount not-to-exceed one thousand, twenty dollars and five cents (\$1020.05), 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. Without changing the contract price, a fee of 0.25% will be deducted by the County from each invoice for payment submitted by the Contractor in order to defray costs of the Inspector General's Office. (Palm Beach County Ordinance No. 2009-049). Please refer to Article 6(H) below for more information.

5. 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.

6. 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 PM and end at 11 PM.
- C. Contractor may arrive at the Facility to begin setting up at 4 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 fifty-five (55) minutes each set.
- F. Contractor's Entertainment includes the following other entertainers and performers, which may not be altered without prior County approval: Gary Bush, Stephen Douglas, John Porth, and Ric Arra. 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. Pursuant to Ordinance No. 2009-049, as may be amended, Palm Beach County has established the Office of the Inspector General, which is authorized and empowered to review past, present and proposed County contracts, transactions, accounts and records. All contractors and parties doing business with the County and receiving County funds shall fully cooperate with the Inspector General. The Inspector General has the power to subpoena witnesses, administer oaths, require the production of records, and to audit, investigate, monitor, and inspect the activities of the contractor, its officers, agents, employees, and lobbyists in order to ensure compliance with contract specifications and to detect waste, corruption and fraud. Where applicable, the cost of the Inspector General's Office shall be incorporated into the contract price of all contracts and shall be one quarter (¼) of one (1) percent of the contract price. Failure to cooperate with the Inspector General or interference or impeding any investigation shall be in violation of Ordinance 2009-049, and punished pursuant to Section 125.69, Florida Statutes, in the same manner as a second degree misdemeanor.

- I. No alcohol or illegal drugs shall be consumed by Contractor, its employees or agents prior to, during or subsequent to the Entertainment.
- J. 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.
- K. 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.
- L. Contractor further represents it has inspected the Facility and that the Facility is in proper condition for the Entertainment, Contractor will perform.
- M. 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.
- N. County shall provide all electrical services for the Entertainment, but Contractor shall be responsible for all necessary extension cords and other related equipment.
- O. 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".
- P. Contractor shall not use or permit the use of any pyrotechnics of any type during its Entertainment at the Event.
- Q. Contractor shall not undertake or participate in any business, exhibit or activity at the Event other than herein specified.
- R. Contractor shall comply in all material respects with all federal and state laws and regulations and all applicable county and city ordinances and regulations.

7. 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.
8. 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.
9. 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.
10. 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.
11. Representatives: The County's representative for this Agreement is Ann Butler, telephone no.561-488-7414. The Contractor's representative for this Agreement is Garrison Collins telephone no.941-232-6312.
12. 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.
13. 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.

14. 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: Maximum Bands Entertainment LLC/Garrison Collins

CONTRACTOR'S Address: 16026 Shinnecock Dr., Odessa, FL 33556

CONTRACTOR'S Phone No 941-232-6312

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

23. 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.
24. 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

Kimberly A McNeely
SIGNATURE

Kimberly A McNeely
NAME (TYPE OR PRINT)

PALM BEACH COUNTY

Debbie Edinger
DEPARTMENT DIRECTOR

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

INDEPENDENT CONTRACTOR

Richard Rubin - For Crossroads
SIGNATURE

Richard Rubin - President
NAME & TITLE (TYPE OR PRINT)

CONTRACTOR WITNESS

Melissa Rubin
SIGNATURE

MELISSA RUBIN
NAME (TYPE OR PRINT)

Approved as to Form and Legal Sufficiency

By: *Anne Helzlsouer*
Assistant County Attorney

EXHIBIT A

Scope of Work

Saturday May 8, 2010 Crossroads, Eric Clapton Tribute Band

The Contractor will perform two (2) sets of fifty five (55) minutes of live (not pre-recorded) music at Seabreeze Amphitheater. There will be one 10 minute break. 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 7:00 PM and conclude by 7:30 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) large dressing room.

The Contractor will supply a full sound and light system, all backline, amps and necessary cables.

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

EXHIBIT B

Production Specifications

Saturday May 8, 2010 Crossroads, Eric Clapton Tribute Band

The County will provide 200 amp power for a sound system and 400 amp power for lighting. Contractor will provide adequate sound and lights to perform on an outside stage for 700 people.

EXHIBIT C

Not required.

EXHIBIT D

Not Required

ACCOUNT: 0001-580-5207-01-3401		VENDOR CODE: VC 0000128210		CONTRACT: STRICTLY BUSINESS	
MC: MT	PS:	CC:	CA: Q.N.	DD:	

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

This Agreement is made as of the 2nd day of April, 2010, 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 Melvin Carnegie, an Independent Contractor, hereinafter referred to as "Contractor".

WITNESSETH:

WHEREAS, the County desires to host a 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 an 8 piece Motown, oldies 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, April 17, 2010 at 4:00pm and shall complete all services by Saturday, April 17, 2010 at 11:00pm and
3. Payments To Contractor: County shall pay Contractor a total amount not-to-exceed one thousand two hundred dollars [\$1200.00] for Entertainment Services as described above. County shall pay a deposit to Contractor in an amount not-to-exceed six hundred dollars [\$600.00], which shall be part of the total not-to-exceed amount as mentioned above. The balance in the amount not-to-exceed six hundred dollars [\$600.00], shall be paid to Contractor upon completion 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 Services. If an alternative date for the Entertainment Services cannot be negotiated within three (3) days after cancellation, Contractor shall fully refund County's deposit within two (2) days of written notice by County that an alternative date for the Entertainment Services cannot be negotiated. Contractor shall furnish at its expense all transportation to and from the Event and Facility. All transportation, travel, food and lodging expenses are included in the not-to-exceed amount mentioned above.
4. Taxes: The County is exempt from payment of Florida State Sales and Use Taxes. The County will sign an exemption certificate submitted by the Contractor. The Contractor shall not be exempted from paying sales tax to its suppliers for materials used to fulfill contractual obligations with the County, nor is Contractor authorized to use the County's Tax Exemption Number in securing such materials.

The Contractor shall be responsible for payment of its own and its share of its employees' payroll, payroll taxes, and benefits with respect to this Agreement. It is also acknowledged and agreed by the County and

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

5. Contractor's Responsibilities:

- A. Contractor shall provide 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 4:00pm, 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 set(s) of 55 minutes each set.
- F. Contractor's Entertainment includes the following other entertainers and performers, which may not be altered without prior County approval: Melvin Carnegie, John Hollis, Douglas Young, Ronald Williams, Hank McNabb, Sylvester Watson, Kerry Lowery, and Felicia Flint. 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, 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 Melissa Turner, telephone no. (561) 963-6702. The Contractor's representative for this Agreement is Melvin Carnegie, telephone no. (561) 305-4118.
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: Melvin Carnegie

CONTRACTOR'S Address: 1327 NW 3rd St. Delray Beach, FL 33444

CONTRACTOR'S Phone No. (561) 305-4118
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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ATTN:
Melissa
Turner

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

PALM BEACH COUNTY WITNESS

Shelby R. Nichols
SIGNATURE

Kimberly A. McNeeley
NAME (TYPE OR PRINT)

PALM BEACH COUNTY

Rebecca E. Sullivan
DEPARTMENT DIRECTOR

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

INDEPENDENT CONTRACTOR

x *Melvin Carnege*
SIGNATURE

x *Melvin Carnege*
NAME & TITLE (TYPE OR PRINT)

CONTRACTOR WITNESS

x *Ronald Williams*
SIGNATURE

x *RONALD Williams*
NAME (TYPE OR PRINT)

Approved as to Form and Legal Sufficiency

By: *Anne Delaney*
Assistant County Attorney

EXHIBIT A

Scope of Work

Saturday, April 17, 2010 Melvin Carnegie and the Strictly Business Band

The Contractor will perform two (2) sets of fifty-five (55) minutes of live (not pre-recorded) music at Seabreeze Amphitheater. There will be one (1) 10 minute break. 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 7:00 PM and conclude by 7:30 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, one per person and two (2) large dressing rooms. The Contractor will supply all backline, amps, necessary cables and full sound system. The County will not provide a hospitality rider or meal before, during or after the performance.

EXHIBIT B

Production Specifications

Saturday, April 17, 2010 Melvin Carnegie and the Strictly Business 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: 0001-580-5207-02-3401	VENDOR CODE: VC0000127663	CONTRACT: CARIBBEAN CHILLERS 5/24/10
MC: PB	PS: PB	CC: CA: Q.N. DD:

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

This Agreement is made as of the 16th day of April, 2010, 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 Maximum Bands Entertainment LLC., an Independent Contractor, hereinafter referred to as "Contractor".

WITNESSETH:

WHEREAS, the County desires to host 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 a six (6) piece Jimmy Buffett tribute band called Caribbean Chillers, 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 May 29, 2010 at 4 PM and shall complete all services by May 29, 2010 at 11 PM.
3. **Payments To Contractor:** County shall pay Contractor a total amount not-to-exceed Two Thousand, Six Hundred and six dollars and fifty cents (\$2,606.50) for Entertainment services as described above. County shall pay a deposit to Contractor in an amount not-to-exceed One Thousand, Three Hundred and three dollars and twenty-five cents (\$1,303.25) which shall be part of the total not-to-exceed amount as mentioned above. The balance in the amount not-to-exceed One Thousand, Three Hundred and three dollars and twenty-five cents (\$1,303.25) 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. Without changing the contract price, a fee of 0.25% will be deducted by the County from each invoice for payment submitted by the Contractor in order to defray costs of the Inspector General's Office. (Palm Beach County Ordinance No. 2009-049). Please refer to Article 6(H) below for more information.

5. 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.

6. 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 11:00 PM.
- C. Contractor may arrive at the Facility to begin setting up at 4:00 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 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: Jason Strong, Joe Rajski, Bill Bradley, James Cardarelli, Jamie Jasko and Ephriam Adams. 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. Pursuant to Ordinance No. 2009-049, as may be amended, Palm Beach County has established the Office of the Inspector General, which is authorized and empowered to review past, present and proposed County contracts, transactions, accounts and records. All contractors and parties doing business with the County and receiving County funds shall fully cooperate with the Inspector General. The Inspector General has the power to subpoena witnesses, administer oaths, require the production of records, and to audit, investigate, monitor, and inspect the activities of the contractor, its officers, agents, employees, and lobbyists in order to ensure compliance with contract specifications and to detect waste, corruption and fraud. Where applicable, the cost of the Inspector General's Office shall be incorporated into the contract price of all contracts and shall be one quarter ($\frac{1}{4}$) of one (1) percent of the contract price. Failure to cooperate with the Inspector General or interference or impeding any investigation shall be in violation of Ordinance 2009-049, and punished pursuant to Section 125.69, Florida Statutes, in the same manner as a second degree misdemeanor.
- I. No alcohol or illegal drugs shall be consumed by Contractor, its employees or agents prior to, during or subsequent to the Entertainment.

- J. 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.
- K. 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.
- L. Contractor further represents it has inspected the Facility and that the Facility is in proper condition for the Entertainment, Contractor will perform.
- M. 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.
- N. County shall provide all electrical services for the Entertainment, but Contractor shall be responsible for all necessary extension cords and other related equipment.
- O. 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".
- P. Contractor shall not use or permit the use of any pyrotechnics of any type during its Entertainment at the Event.
- Q. Contractor shall not undertake or participate in any business, exhibit or activity at the Event other than herein specified.
- R. Contractor shall comply in all material respects with all federal and state laws and regulations and all applicable county and city ordinances and regulations.

7. 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.
8. 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.
9. 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.
10. 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.
11. Representatives: The County's representative for this Agreement is Ann Butler telephone no. 561-48-7414. The Contractor's representative for this Agreement is Garrison Collins telephone no.941-232-6312.
12. 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.
13. 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.

14. **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: Maximum Bands Entertainment LLC/Garrison Collins

CONTRACTOR'S Address: 16026 Shinnecock Dr., Odessa, FL 33556

CONTRACTOR'S Phone No: 941-232-6312

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

23. 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.
24. 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

Kimberly A. McNeely
SIGNATURE

Kimberly A. McNeely
NAME (TYPE OR PRINT)

PALM BEACH COUNTY

Denise Eddleman
DEPARTMENT DIRECTOR

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

INDEPENDENT CONTRACTOR

Richard Rubin - For the Caribbean Chillies
SIGNATURE

Richard Rubin President
NAME & TITLE (TYPE OR PRINT)

CONTRACTOR WITNESS

Melissa Rubin
SIGNATURE

MELISSA RUBIN
NAME (TYPE OR PRINT)

Approved as to Form and Legal Sufficiency

By: Anne Weyand
Assistant County Attorney

EXHIBIT A

Scope of Work

Saturday May 29, 2010 Caribbean Chillers

The Contractor will perform one (1) set of one hundred and twenty (120) minutes each of live (not pre-recorded) music at Sunset Cove Amphitheater. There will no breaks. 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 7:00 PM and conclude by 7:30 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) large air conditioned 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 B

Production Specifications

Saturday May 29, 2010 Caribbean Chillers

The County agrees to supply a sound system adequate for the audience to hear. The County agrees to supply one (1) sound technician; and one (1) stage manager, 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: 001-580-5207-01-3401	VENDOR CODE: VC0000125365	CONTRACT: BLUNTS CONCERT 6/5/10		
MC: AB <i>AB</i>	PS: <i>AB</i>	CC:	CA: <i>Q.A.</i>	DD:

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

This Agreement is made as of the 16th day of April, 2010, 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 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 a five (5) piece band called The Blunts, 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 June 5, 2010 at 3:00 PM and shall complete all services by June 5, 2010 at 11:00 PM.
3. **Payments To Contractor:** County shall pay Contractor a total amount not-to-exceed Two Thousand and five dollars (\$2005.00) for Entertainment services as described above. County shall pay a deposit to Contractor in an amount not-to-exceed One Thousand and two dollars and fifty cents (\$1002.50), which shall be part of the total not-to-exceed amount as mentioned above. The balance in the amount not-to-exceed One Thousand and two dollars and fifty cents (\$1002.50) 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. Without changing the contract price, a fee of 0.25% will be deducted by the County from each invoice for payment submitted by the Contractor in order to defray costs of the Inspector General's Office. (Palm Beach County Ordinance No. 2009-049). Please refer to Article 6(H) below for more information.
5. **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.

6. 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 3:00 PM and end at 11:00 PM.
- 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 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: Peter Noble, Richie Schmidt, Teresa Schmidt, John Harris, and Jim James. 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. Pursuant to Ordinance No. 2009-049, as may be amended, Palm Beach County has established the Office of the Inspector General, which is authorized and empowered to review past, present and proposed County contracts, transactions, accounts and records. All contractors and parties doing business with the County and receiving County funds shall fully cooperate with the Inspector General. The Inspector General has the power to subpoena witnesses, administer oaths, require the production of records, and to audit, investigate, monitor, and inspect the activities of the contractor, its officers, agents, employees, and lobbyists in order to ensure compliance with contract specifications and to detect waste, corruption and fraud. Where applicable, the cost of the Inspector General's Office shall be incorporated into the contract price of all contracts and shall be one quarter (¼) of one (1) percent of the contract price. Failure to cooperate with the Inspector General or interference or impeding any investigation shall be in violation of Ordinance 2009-049, and punished pursuant to Section 125.69, Florida Statutes, in the same manner as a second degree misdemeanor.
- I. No alcohol or illegal drugs shall be consumed by Contractor, its employees or agents prior to, during or subsequent to the Entertainment.
- J. 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.

- K. 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.
- L. Contractor further represents it has inspected the Facility and that the Facility is in proper condition for the Entertainment, Contractor will perform.
- M. 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.
- N. County shall provide all electrical services for the Entertainment, but Contractor shall be responsible for all necessary extension cords and other related equipment.
- O. 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".
- P. Contractor shall not use or permit the use of any pyrotechnics of any type during its Entertainment at the Event.
- Q. Contractor shall not undertake or participate in any business, exhibit or activity at the Event other than herein specified.
- R. Contractor shall comply in all material respects with all federal and state laws and regulations and all applicable county and city ordinances and regulations.

7. Cancellation and Postponement of Event:

- A. In case of inclement whether (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 whether, 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.
8. 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.
9. 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.
10. 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.
11. 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.
12. 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.
13. 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.
14. 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

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

24. **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, or sexual orientation.

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PALM BEACH COUNTY WITNESS

Kimberly A. McNeely
SIGNATURE

Kimberly A. McNeely
NAME (TYPE OR PRINT)

PALM BEACH COUNTY

Dennis E. Ehlman
DEPARTMENT DIRECTOR

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

INDEPENDENT CONTRACTOR

Peter H. Noble
SIGNATURE

PETER H. NOBLE / OWNER
NAME & TITLE (TYPE OR PRINT)

CONTRACTOR WITNESS

A. Butler
SIGNATURE

A. Butler
NAME (TYPE OR PRINT)

Approved as to Form and Legal Sufficiency

By: Anne Delcourt
Assistant County Attorney

EXHIBIT A

Scope of Work

Saturday, June 5, 2010 The Blunts

The Contractor will perform one (1) set of one hundred and twenty (120) minutes of live (not pre-recorded) music at Seabreeze 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, June 5, 2010 The Blunts

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: 001-580-5207-03-3401					VENDOR CODE: VC0000128118					CONTRACT: Dashboard Saints-Claude Roatta				
MC:AB			PS:			CC:			CA:			DD:		

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

This Agreement is made as of the 27 day of April, 2010, 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 Claude Roatta, an Independent Contractor, hereinafter referred to as "Contractor".

WITNESSETH:

WHEREAS, the County desires to host a misc 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 five (5) piece band called Dashboard Saints, 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 12, 2010 at 4:00PM and shall complete all services by Saturday June 12, 2010 at 11:00PM.
3. **Payments To Contractor:** County shall pay Contractor a total amount not-to-exceed Nine Hundred dollars (\$900.00) for Entertainment services as described above. County shall pay a deposit to Contractor in an amount not-to-exceed Four Hundred and Fifty dollars (\$450.00), 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 Fifty dollars (\$450.00) 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 11:00 PM.
- C. Contractor may arrive at the Facility to begin setting up at 5:00 PM, but shall arrive no later than one hundred and twenty (120) minutes prior to the scheduled Entertainment time and shall have completed all sound checks and warm-ups, if applicable, at least sixty (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: Claude Roatta, Robert Carriazo, Alex Consuegra, Rane Roatta, and Tony Sinatra. 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 whether (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 whether, 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 Claude Roatta, telephone no. 305-970-5018.
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: Claude Roatta

CONTRACTOR'S Address: 6791 SW 57th Terrace, Miami, FL 33143

CONTRACTOR'S Phone No: 305-970-5018
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, or sexual orientation.

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

PALM BEACH COUNTY WITNESS

Kimberly A McWeeley
SIGNATURE

Kimberly A McWeeley
NAME (TYPE OR PRINT)

PALM BEACH COUNTY

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

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

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

CONTRACTOR WITNESS

Brendan T. Lantry
SIGNATURE

Brendan T. Lantry
NAME (TYPE OR PRINT)

CONTRACTOR

Claude Roatta
SIGNATURE

CLAUDE ROATTA
NAME (TYPE OR PRINT)

owner
TITLE (TYPE OR PRINT)

Approved as to Form and
Legal Sufficiency

By: *Anne Helgen*
Assistant County Attorney

EXHIBIT A

Scope of Work

Saturday, June 12, 2010 Dashboard Saints

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 **7:30 PM to 9:00 PM**. Sound check will begin at 7:00 PM and conclude by 7:15 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, June 12, 2010 Dashboard Saints

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

The County will supply necessary power, and two (2) light trees with eight (8) par 64 cans.

ACCOUNT: 001-580-5207-03-3401		VENDOR CODE: VC0000126977		CONTRACT: Seymour Schatzberg 5/15/10	
MC: AB	PS:	CC:	CA:	DD:	

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

This Agreement is made as of the 30th day of April, 2010, 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 Seymour Schatzberg, an Independent Contractor, hereinafter referred to as "Contractor".

WITNESSETH:

WHEREAS, the County desires to host a Big Band 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 sixteen piece orchestra called the Gold Coast Dance 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 May 15, 2010 at 4:00 PM and shall complete all services by Saturday May 15, 2010 at 10:30 PM.
3. **Payments To Contractor:** County shall pay Contractor a total amount not-to-exceed Nine Hundred dollars (\$900.00) for Entertainment services as described above. County shall pay a deposit to Contractor in an amount not-to-exceed Four Hundred and Fifty dollars (\$450.00), 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 Fifty dollars (\$450.00) 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 p.m. and end at 10:30 p.m.
- C. Contractor may arrive at the Facility to begin setting up at 4:00 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 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: Sy Shatzberg plus fourteen orchestra members. 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 whether (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 whether, 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 Seymour Schatzberg, telephone no. 561-734-4444.
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: Seymour Schatzberg

CONTRACTOR'S Address: 9649 Harbor Lake Circle, Boynton Beach, Fl 33437

CONTRACTOR'S Phone No: 561-734-4444
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, or sexual orientation.

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of such covenant, condition, or right, but the same shall remain in full force and effect.

24. **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, or sexual orientation.

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

PALM BEACH COUNTY WITNESS

Kimberly A. McNeeley
SIGNATURE

Kimberly A. McNeeley
NAME (TYPE OR PRINT)

PALM BEACH COUNTY

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

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

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

CONTRACTOR WITNESS

Sharon Schatzberg
SIGNATURE

Sharon Schatzberg
NAME (TYPE OR PRINT)

CONTRACTOR

SEYMOUR SCHATZBERG
SIGNATURE

SEYMOUR SCHATZBERG
NAME (TYPE OR PRINT)

BAND LEADER
TITLE (TYPE OR PRINT)

Approved as to Form and
Legal Sufficiency

By: *Anne Delgant*
Assistant County Attorney

EXHIBIT A

Scope of Work

Saturday, May 15, 2010 Seymour Schatzberg's Gold Coast Dance Band Orchestra

The Contractor will perform two (2) sets of fifty-five (55) minutes of live (not pre-recorded) music at Canyon Town Center Amphitheater. There will be one ten(10) minute 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, 6 channel PA system, 2 speakers, 3 microphones, 2 light trees with 8 par 64 cans, all power cords and 20 armless chairs. The County will not provide a hospitality rider or meal before, during or after the performance.

Contractor will supply all backline, music stands, sheet music and 3 microphones required for this performance.

EXHIBIT B

Production Specifications

Saturday, May 15, 2010 Seymour Schatzberg's Gold Coast Dance Band Orchestra

The County will supply all sound and light equipment, cables, 3 microphones, and heavy duty extension cords required to perform this concert.

Contractor will supply all backline, and 3 microphones.

EXHIBIT C

Not required.

EXHIBIT D

Not Required

ACCOUNT: 0001-580-2007-02-3401		VENDOR CODE: VG0000127663		CONTRACT: Marlow Prod./The Brass Evolution	
MC: AB	PS: <i>PS</i>	CC:	CA:	DD:	

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

This Agreement is made as of the 20th day of MAY, 2010, 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 Marlow Productions LLC, 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 a twelve (12) piece band called The Brass Evolution, 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 July 4, 2010 at 4:00 PM and shall complete all services by Sunday July 4, 2010 at 10:30 PM.
3. **Payments To Contractor:** County shall pay Contractor a total amount not-to-exceed Six Thousand and seven dollars and fifty-two cents (\$6,007.52) for Entertainment services as described above. County shall pay a deposit to Contractor in an amount not-to-exceed Three Thousand dollars (\$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 Three Thousand and seven dollars and fifty-two cents (\$3,007.52) 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. Without changing the contract price, a fee of 0.25% will be deducted by the County from each invoice for payment submitted by the Contractor in order to defray costs of the Inspector General's Office. (Palm Beach County Ordinance No. 2009-049). Please refer to Article 6(G) below for more information.
5. **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.

6. 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 10:30 PM.
- C. Contractor may arrive at the Facility to begin setting up at 4:00 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 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: Jody Marlow, Jeffrey Harris, Astrid, Tom Lippincott, Bob Taylor, Ettienne Fuentes, Jack Gardner, Luke Basso, David Levitan, Nelson Colon, and Alex Lencina. 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. Pursuant to Ordinance No. 2009-049, as may be amended, Palm Beach County has established the Office of the Inspector General, which is authorized and empowered to review past, present and proposed County contracts, transactions, accounts and records. All contractors and parties doing business with the County and receiving County funds shall fully cooperate with the Inspector General. The Inspector General has the power to subpoena witnesses, administer oaths, require the production of records, and to audit, investigate, monitor, and inspect the activities of the contractor, its officers, agents, employees, and lobbyists in order to ensure compliance with contract specifications and to detect waste, corruption and fraud. Where applicable, the cost of the Inspector General's Office shall be incorporated into the contract price of all contracts and shall be one quarter ($\frac{1}{4}$) of one (1) percent of the contract price. Failure to cooperate with the Inspector General or interference or impeding any investigation shall be in violation of Ordinance 2009-049, and punished pursuant to Section 25.69, Florida Statutes, in the same manner as a second degree misdemeanor.
- H. 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.
- I. No alcohol or illegal drugs shall be consumed by Contractor, its employees or agents prior to, during or subsequent to the Entertainment.
- J. 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.

- K. 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.
- L. Contractor further represents it has inspected the Facility and that the Facility is in proper condition for the Entertainment, Contractor will perform.
- M. 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.
- N. County shall provide all electrical services for the Entertainment, but Contractor shall be responsible for all necessary extension cords and other related equipment.
- O. 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".
- P. Contractor shall not use or permit the use of any pyrotechnics of any type during its Entertainment at the Event.
- Q. Contractor shall not undertake or participate in any business, exhibit or activity at the Event other than herein specified.
- R. Contractor shall comply in all material respects with all federal and state laws and regulations and all applicable county and city ordinances and regulations.

7. 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.
8. 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.
9. 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.
10. 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.
11. Representatives: The County's representative for this Agreement is Ann Butler, telephone no.561-488-7414. The Contractor's representative for this Agreement is Jody Marlow, telephone no.561-315-0457
12. 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.
13. 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.

14. 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: Marlow Productions LLC/Jody Marlow
CONTRACTOR'S Address: 1733 Farmington Circle, Wellington, Fl. 33414
CONTRACTOR'S Phone No.: 561-795-5356

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

23. 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.
24. 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

Kimberly A. McNeely

SIGNATURE

Kimberly A. McNeely

NAME (TYPE OR PRINT)

PALM BEACH COUNTY

Debbie Goldman

DEPARTMENT DIRECTOR

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

INDEPENDENT CONTRACTOR

[Signature]

SIGNATURE

Jody Marlow / Marlow Productions

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 Delgado*

Assistant County Attorney

EXHIBIT A

Scope of Work

Sunday July 4, 2010 Brass Evolution

The Contractor will perform one (1) set of one hundred and twenty (120) minutes of live (not pre-recorded) music at Sunset Cove Amphitheater. There will be no breaks. 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 5:30 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

Sunday July 4, 2010 Brass Evolution

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, some microphones and necessary cables as required by Contractors stage plot.

The Contractor will supply all backline, amps, necessary cables and microphones for brass instruments.

EXHIBIT C

Not required.

EXHIBIT D

Not Required