

PALM BEACH COUNTY  
BOARD OF COUNTY COMMISSIONERS

AGENDA ITEM SUMMARY

Meeting Date: November 16, 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 Agreement received during the month of August 2010.

Maximum Bands Entertainment LLC, Bounce Concert, Canyon Town Center Amphitheater for September 12, 2010, in an amount not-to-exceed \$800.

**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 Entertainment Contractor Agreement has 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 is now being submitted to the Board to receive and file. District 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 Agreement attached has 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 is now being submitted to the Board to receive and file.

**Attachment:** Entertainment Contractor Agreement

Recommended by: \_\_\_\_\_

  
Department Director

10/20/10  
Date

Approved by: \_\_\_\_\_

  
Assistant County Administrator

10/27/10  
Date

## II. FISCAL IMPACT ANALYSIS

**A. Five Year Summary of Fiscal Impact:**

Fiscal Years	2011	2012	2013	2014	2015
Capital Expenditures	-0-	-0-	-0-	-0-	-0-
Operating Costs	-0-	-0-	-0-	-0-	-0-
External Revenues	-0-	-0-	-0-	-0-	-0-
Program Income (County)	-0-	-0-	-0-	-0-	-0-
In-Kind Match (County)	-0-	-0-	-0-	-0-	-0-
<b>NET FISCAL IMPACT</b>	<b>-0-</b>	<b>-0-</b>	<b>-0-</b>	<b>-0-</b>	<b>-0-</b>
<b># ADDITIONAL FTE POSITIONS (Cumulative)</b>	<b>0</b>				

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:**

	FY2010	
Contractor	Revenue	Expense
Maximum Bands Entertainment LLC	\$0	\$800
<b>Totals</b>	<b>\$0</b>	<b>\$800</b>

C. Departmental Fiscal Review: ckopelakis

### III. REVIEW COMMENTS

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

OFMB

*James J. Anderson* 10/26/10  
Contract Development and Control

### B. Legal Sufficiency:

Anne Delgant 10/26/10  
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: VC0000130364					CONTRACT: Bounce 9-12-10				
MC: AB <i>BO</i>			PS: <i>(initials)</i>			CC:			CA:			DD: KB <i>for JC</i>		

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

This Agreement is made as of the 19<sup>th</sup> day of August, 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".

### W I T N E S S E T H:

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

**WHEREAS**, as part of the Event, the County desires to hire entertainment, which shall consist of a four (4) piece top 40 band called Bounce, 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 September 12, 2010 at 3 PM and shall complete all services by September 12, 2010 at 10 PM.
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. 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 10:00 PM.
- C. Contractor may arrive at the Facility to begin setting up at 3:00 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 two (2) sets of fifty-five (55) minutes, with one (1) ten (10) minute break.
- F. Contractor's Entertainment includes the following other entertainers and performers, which may not be altered without prior County approval: George Malin, Kevin Gore, Gus Guilbert and Fred Dupont. 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, cables 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 or smoke/fog machines 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 George Malin telephone no. 267-566-3322.
  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: George Malin

CONTRACTOR'S Address: 15185 Michelangelo Blvd, Apt 202, Delray Beach, FL 33446

CONTRACTOR'S Phone No: 267-566-3322

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.

(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**

mm, Dennis E. [Signature]  
DEPARTMENT DIRECTOR

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

**INDEPENDENT CONTRACTOR**

George B. Malin IV  
SIGNATURE

George Malin  
NAME & TITLE (TYPE OR PRINT)

**CONTRACTOR WITNESS**

Rori Goldstein  
SIGNATURE

Rori Goldstein  
NAME (TYPE OR PRINT)

Approved as to Form and Legal Sufficiency

By: Anne [Signature]  
Assistant County Attorney

## EXHIBIT A

### Scope of Work

Sunday September 12, 2010 "Bounce"

The Contractor will perform two (2) sets of fifty-five (55) minutes each of live (not pre-recorded) music at Canyon Town Center Amphitheater. There will one (1) ten (10) minute break. The County will review and may edit Contractors performance song list one week prior to performance. Performance time is from **6:00 PM to 8:00 PM**. Sound check will begin at 5:30 PM and conclude by 5.45 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, and black towels (1 per performer).

The Contractor will supply all backline, extension cords, 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 September 12, 2010 "Bounce"**

The County agrees to supply a stage light system consisting of two (2) light trees with four (4) 500-watt par cans each tree.

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

EXHIBIT C

Not required.

EXHIBIT D

Not Required