

PALM BEACH COUNTY
BOARD OF COUNTY COMMISSIONERS

AGENDA ITEM SUMMARY

Meeting Date: November 20, 2012

Consent
 Ordinance

Regular
 Public Hearing

Department: Parks and Recreation

Submitted By: Parks and Recreation Department

Submitted For: Parks and Recreation Department

I. EXECUTIVE BRIEF

Motion and Title: Staff recommends motion to adopt: A Resolution approving a revised standard Amphitheater Rental Agreement form.

Summary: The Parks and Recreation Department uses a standard Board of County Commissioners' approved Amphitheater Rental Agreement to provide for qualified individuals and organizations to rent any of the County's three amphitheatres. The existing agreement included delegated authority of the standard Amphitheater Rental Agreement form including delegation of authority to execute the standard form Agreement to the County Administrator, Director, and Assistant Director of the Parks and Recreation Department. This Resolution amends Resolution 2009-0335, as amended by Resolution 2009-1807, by revising the standard Amphitheater Rental Agreement form to include updated exhibits, clarifying responsibilities of the renter, including notice of the establishment of the Inspector General and clarifying that Amphitheater Rental Agreements valued at more than \$15,000, but not more than \$50,000, will be executed by the County Administrator. Countywide (AH)

Background and Justification: On February 24, 2009, the Board adopted Resolution 2009-0335 establishing the standard Amphitheater Rental Agreement form and delegating authority to the County Administrator, Director and Assistant Director of the Parks and Recreation Department to execute the standard Agreement form for rental of the County amphitheatres. Resolution 2009-1807, adopted October 20, 2009, amended Resolution 2009-0335, clarifying the renters' scope of liability and certain provisions when requested by renters.

The attached Resolution further amends Resolution 2009-0335 by revising the standard Amphitheater Rental Agreement form to clarify responsibilities of the renter, clarify that the County Administrator will execute Agreements valued more than \$15,000, but not more than \$50,000, conform to County Code, and include updated exhibits. In the event an Amphitheater Rental Agreement's value exceeds \$50,000, the Amphitheater Rental Agreement will be submitted for approval by the Board.

Attachment: Resolution amending Resolution 2009-0335

Recommended by: _____


Department Director

10/23/2012
Date

Approved by: _____


Assistant County Administrator

11/15/12
Date

II. FISCAL IMPACT ANALYSIS


A. Five Year Summary of Fiscal Impact:

Fiscal Years	2013	2014	2015	2016	2017
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>	<u> </u>	<u> </u>	<u> </u>	<u> </u>

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

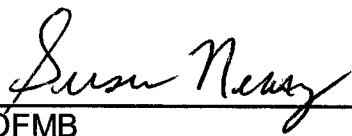
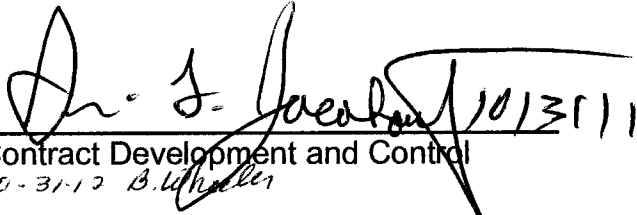
B. Recommended Sources of Funds/Summary of Fiscal Impact:

* No fiscal impact is associated with this item.

C. Departmental Fiscal Review: 

III. REVIEW COMMENTS

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

<p><u></u> 10/25/12 OFMB 10/16</p>	<p><u></u> 10/31/12 Contract Development and Control 10-31-12 B. G. Walker</p>
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B. Legal Sufficiency:

Anne Helgent 11-2-12
 Assistant County Attorney

C. Other Department Review:

 Department Director

REVISED 10/95
 ADM FORM 01

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

RESOLUTION NO. R-2012- _____

RESOLUTION OF THE BOARD OF COUNTY COMMISSIONERS OF PALM BEACH COUNTY, FLORIDA, AMENDING RESOLUTION 2009-0335, AS AMENDED BY RESOLUTION 2009-1807; DELETING THE STANDARD AMPHITHEATER RENTAL AGREEMENT ATTACHED TO RESOLUTION 2009-1807 AND REPLACING IT WITH THE ATTACHED REVISED STANDARD AMPHITHEATER RENTAL AGREEMENT; PROVIDING FOR SEVERABILITY; AND PROVIDING FOR AN EFFECTIVE DATE.

WHEREAS, Resolution 2009-0335 was adopted by the Board of County Commissioner ("BCC") on February 24, 2009, which authorized the County Administrator or designee to execute the standard Amphitheater Rental Agreement for the rental of County amphitheatres; and

WHEREAS, Resolution 2009-1807 was adopted by the BCC on October 20, 2009, amending Resolution 2009-0335, which deleted the standard Amphitheater Rental Agreement attached to R-2009-0335 and replaced it with a revised standard Amphitheater Rental Agreement, to clarify the renters' scope of liability and certain provisions when requested by renters; and

WHEREAS, it is necessary to amend the standard Amphitheater Rental Agreement attached to R-2009-1807 and replace it with the attached revised standard Amphitheater Rental Agreement, to clarify renters' responsibilities, clarify signing authority, conform to County Code, and include updated exhibits; and

WHEREAS, the execution of the standard Amphitheater Rental Agreement does not constitute policy-making decisions and is a ministerial function which the BCC wishes to delegate.

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

1. Resolution No. 2009-1807 is hereby amended by deleting the standard Amphitheater Rental Agreement attached to R-2009-1807 and replacing it with the attached standard Amphitheater Rental Agreement, attached hereto and incorporated herein.
2. Amphitheater Rental Agreements valued more than \$15,000, but not more than \$50,000, will be executed by the County Administrator.
3. All other terms and conditions of Resolution No. 2009-0335, as amended by Resolution No. 2009-1807, shall remain in full force and effect.

4. If any section, paragraph, sentence, clause, phrase or word of this Resolution is for any reason held by a court to be unconstitutional, inoperative, or void, such holding shall not affect the remainder of this Resolution.

5. This Resolution is effective upon its adoption by the Board of County Commissioners.

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

- District 1: Commissioner
- District 2: Commissioner Paulette Burdick
- District 3: Commissioner
- District 4: Commissioner Steven L. Abrams
- District 5: Commissioner
- District 6: Commissioner Jess R. Santamaria
- District 7: Commissioner Priscilla A. Taylor

The Chair thereupon declared the Resolution duly passed and adopted this _____ day of _____, 2012.

APPROVED AS TO FORM
AND LEGAL SUFFICIENCY

PALM BEACH COUNTY, FLORIDA
BOARD OF COUNTY COMMISSIONERS

Sharon R. Bock, Clerk & Comptroller

By: _____
County Attorney

By: _____
Deputy Clerk

**AMPHITHEATER RENTAL AGREEMENT FOR
PALM BEACH COUNTY PARKS & RECREATION DEPARTMENT**

THIS AMPHITHEATER RENTAL AGREEMENT, hereinafter referred to as the "Agreement," is made and entered into on _____, by and between Palm Beach County, a Political Subdivision of the State of Florida, by and through its Board of County Commissioners, hereinafter referred to as "COUNTY," and _____, a _____, authorized to conduct business in the State of Florida, hereinafter referred to as "RENTER".

WITNESSETH:

WHEREAS, COUNTY, by and through its Parks and Recreation Department, hereinafter referred to as the "Department," owns and operates Sunset Cove Amphitheater, Seabreeze Amphitheater, and Canyon Town Center Amphitheater; and

WHEREAS, COUNTY seeks to supplement the cost to improve and maintain said amphitheatres by providing qualified entities the opportunity to conduct organized amphitheater events in exchange for the payment of rent; and

WHEREAS, such amphitheater use is a privilege granted to RENTER and governed by COUNTY pursuant to the terms and conditions of this Agreement.

NOW, THEREFORE, in consideration of the mutual covenants and agreements contained herein, COUNTY and RENTER hereby agree to the following terms and conditions:

1. **Term:** This Agreement is effective _____, at _____ AM | PM, the date and time RENTER enters the amphitheater property, and will terminate _____, at _____ AM | PM, the date and time RENTER is to complete vacating the amphitheater property.

The number of days the Term of this Agreement is effective includes, without proration, any partial day's use and occupancy of the Amphitheater.

Except as provided for herein, the Term of this Agreement is not subject to extension or renewal.

2. **Amphitheater:** The amphitheater available for use by RENTER is _____, hereinafter referred to as "Amphitheater", together with certain equipment, improvements, and appurtenances thereto all as more particularly described on the Rental Selection Form, attached hereto as **Exhibit "A"**.

3. **Use:** The purpose for which RENTER is granted use of the Amphitheater is specifically limited to the production and conduct of a certain event promoted as: _____.

The scope and detail of the event is more particularly described on the Rental Scope and Detail, attached hereto as **Exhibit "B"**.

Though the Rental Scope and Detail has been approved by COUNTY prior to the signing of this Agreement, all aspects of the Amphitheater rental including, but not limited to, promotional, marketing and merchandising

materials, event program, entertainment, equipment and services remain under the purview of the COUNTY and may not be changed in any way without COUNTY's prior approval.

4. **Rental, Fees and Charges:**

- a. **Booking Deposit:** \$ _____, to be paid at the time the Amphitheater rental date is confirmed, amount is credited to the Rental Settlement, attached hereto as **Exhibit "C"**.
- b. **Amphitheater Rental:** \$ _____, the Amphitheater's daily rental fee times the number of days the Term of this Agreement is effective, the amount of which is applied to the Rental Settlement balance and paid immediately following the event.

In the event the Amphitheater is not vacated by the termination date and time specified above, and/or the Amphitheater is not returned to a condition satisfactory to the Department, an additional daily rental fee will be added to the Rental Settlement balance for each day or portion thereof RENTER is holdover and/or fails to return the Amphitheater to a condition satisfactory to the Department.

- c. **Use and Service Charges:** Charges for use of equipment, staff overtime, and support services such as law enforcement, technical staff and skilled maintenance, the amount of which is applied to the Rental Settlement balance.
- d. **Damage Deposit:** In addition to the rental, fees and charges referenced above, the Department reserves the right to require RENTER to submit a damage deposit. The decision to require such a deposit may be made at any time during the Term of this Agreement and will be made on a case-by-case basis. In the event such a deposit is required, RENTER will remit payment of the deposit immediately upon notice from the Department. The deposit may be fully or partially retained as compensation for damages or cost of clean-up. Following the Amphitheater rental the Department will assess the condition of the Amphitheater, its equipment, improvements, appurtenances, and associated premises. For purposes of this Agreement, "associated premises" are those areas which the use of is included in the amphitheater rental and therefore not subject to a separate rental charge. In the event damages are discovered and/or further clean-up is necessary, the cost to repair such damages and/or the cost of further clean-up exceeds the amount of the damage deposit, RENTER will immediately remit the difference. Provided the Amphitheater is returned in a condition satisfactory to the Department, the deposit will be refunded within forty-five (45) days following the date of the Amphitheater rental.

In consideration of the fact that Amphitheater rental, fees, and charges are calculated as of the date of the Amphitheater rental and that all rental, fees, and charges are subject to adjustment, the amount of rental, fees, and charges assessed at the time the Rental Settlement balance is calculated may differ from those in effect as of the date of this Agreement.

- 5. **Termination:** In addition to the cancellation rights provided in Article 8 below, COUNTY reserves the right to terminate this Agreement at anytime without cause effective upon delivery of written notice of termination to RENTER. In such event, COUNTY will not be held liable for any lost profits or damages resulting from such termination. Though such termination may be effective immediately, the Department will not unreasonably limit the time necessary for RENTER to vacate the Amphitheater premises. Additionally, in the event of such

termination, RENTER's Booking Deposit will be refunded within forty-five (45) days following the date of termination together with any other fees and charges paid by RENTER.

6. **Performance:**

a. RENTER agrees to:

1. **use** the Amphitheater solely for the purpose for which this Agreement is entered into;
2. **accept** the Amphitheater and all equipment and improvements related to the rental in the condition existing as of the date of this Agreement;
3. **waive** any and all claims for compensation for any and all losses or damages sustained due to failure or malfunction of the Amphitheater's water or electrical power supplies;
4. **adhere** to the directives of the Department's representatives including, but not limited to, proper use and handling of COUNTY owned equipment, assignment of designated parking areas, locations for offloading and staging production equipment, and acceptable noise levels;
5. **prohibit** any activity on the Amphitheater premises that may be considered contrary to community standards of appropriateness;
6. **assure** that all persons under RENTER's control conduct themselves in a socially acceptable manner;
7. **obtain** the Department's written approval prior to the use of any type of pyrotechnics;
8. **obtain** the Department's written approval prior to operating any engine, motor or machinery or using any flammable agents, including but not limited to oils, camphene, kerosene, naphtha, or gasoline;
9. **assume** all responsibility for event promotions and ticket sales, all of which is subject to the review and approval of COUNTY including attendance tracking, ticket accounting and financial reporting;
10. **limit** event attendance to the capacity specified by the Department, the final decision regarding all issues related to ticketing, attendance and capacity will be made by the Department's designated representative for the event;
11. **assume** full responsibility for obtaining all licenses and permits required by Copyright Regulations of Title 17 of the United States Code, and shall indemnify COUNTY and its agents for any expenses incurred as a result of RENTER's failure to obtain such licenses or permits, including, but not limited to, fines or damages collected against COUNTY or COUNTY's agents, any attorney's fees and court costs, and for any expenses incurred as a result of RENTER's failure to otherwise satisfy such regulations;
12. **identify**, as part of Rental Scope and Detail, attached hereto as **Exhibit "B-1"**, any and all required specialty certifications, licenses and / or memberships applicable to the event;

13. **deliver** to the Department, no later than forty-eight (48) hours prior to the Amphitheater event, a copy of those certain specialty certifications, licenses and / or memberships referenced above, all of which will be retained by the Department;
14. **acknowledge** that failure to deliver the required documentation referenced above may result in immediate termination of this Agreement which includes forfeiture of the Booking Deposit and a demand for payment of all administrative costs incurred by COUNTY in association with this Agreement;
15. **remove** all equipment and materials owned by RENTER and subcontractors no later than the termination date and time specified in Article 1 above;
16. **return** the Amphitheater and all equipment and improvements related to the rental to the condition existing as of the effective date and time specified in Article 1 above;
17. **hold** COUNTY harmless for the sale or disposal of any equipment and materials considered to be abandoned due to RENTER's failure to remove same from the Amphitheater premises by the specified termination date and time and pay the cost of such removal and disposal upon receipt of COUNTY's invoice; and
18. **comply** with all Amphitheater rules and regulations and adhere to all federal, state and local laws and regulations, including Palm Beach County Code, Chapter 21, as may be amended, pertaining to Parks and Recreation, and Department standard operating procedures as all such laws, regulations, ordinances, and procedures apply to RENTER's use of the Amphitheater.

b. COUNTY agrees to:

1. **deliver** the Amphitheater and associated premises in a safe, clean, and orderly condition;
 2. **assign** sufficient staff to provide logistical support and oversee all aspects of the rental including authority to make final decisions and issue directives on behalf of COUNTY;
 3. **provide** equipment and support services including law enforcement, technical staff and skilled maintenance as specified on the Rental Scope and Detail, attached hereto as **Exhibit "B"**, and agreed to in advance by the Department;
 4. **retain** control of the Amphitheater and all operations conducted on the Amphitheater premises including enforcement of all laws, rules and regulations pertaining to the safety and wellbeing of the public; and
 5. **collect** and dispose of any and all items either discarded or lost by patrons or others at an Amphitheater event, without interference by RENTER or any person working for or on behalf of RENTER, the disposition of which may include retaining such items at a lost-and-found location.
7. **Postponement or Cancellation of Event:** In the event emergency conditions arise which may affect public safety, RENTER's use of the Amphitheater may be postponed or cancelled. Such emergency conditions include, but are not limited to, acts of God or issuance of an executive order indicating a state of general emergency. COUNTY, in its sole discretion, will determine the necessity to postpone or cancel RENTER's use of the Amphitheater and will endeavor to provide RENTER at least four (4) hours notice of such

postponement or cancellation prior to the event's start time. Provided, however, COUNTY's notice of such postponement or cancellation may be given at anytime including during the event performance.

In the event COUNTY cancels RENTER's use of the Amphitheater due to any public safety concern, the Term of this Agreement will be extended upon the same terms and conditions provided that within five (5) business days following such cancellation, COUNTY and RENTER agree upon a rescheduled event date. Such Term extension will be effective upon COUNTY's delivery to RENTER of a written notice specifying the agreed upon rescheduled event date and detailing the circumstances leading to the Term extension.

8. **Cancellation for Cause:** The occurrence of any one or more of the following acts constitutes a material default and breach of this Agreement by RENTER and will result in cancellation of RENTER's use of the Amphitheater:

- RENTER elects to cancel the event rather than accept the delayed start time ordered by COUNTY due to a public safety concern;
- RENTER fails to agree upon a rescheduled event date within five (5) business days following COUNTY's cancellation of the event due to a public safety concern;
- RENTER cancels use of the Amphitheater due to illness;
- RENTER misrepresents its intended use of the Amphitheater including acting as a broker or agent by attempting to re-let the Amphitheater;
- RENTER's use of the Amphitheater expands beyond the scope and purpose for which this Agreement is entered into;
- RENTER provided materially false information relating to this Agreement;
- Any person under the control of RENTER, including subcontractors, is responsible for purposely damaging the Amphitheater or any COUNTY owned equipment; or
- Any person under the control of RENTER, including subcontractors, is guilty of gross misconduct or unlawful behavior while on the Amphitheater premises.

Termination of this Agreement due to any such material default or breach requires RENTER to pay any and all COUNTY expenses associated with RENTER's use of the Amphitheater together with all fees and charges due and owed the same as if RENTER's use of the Amphitheater had not been cancelled and the event occurred as scheduled. COUNTY will not be held liable for any lost profits or damages resulting from any such cancellation. RENTER's Booking Deposit will be applied to the expenses, fees and charges owed to COUNTY and any remaining balance owed is due and payable upon RENTER's receipt of COUNTY's invoice.

9. **Photography / Recording:** Except for event performances and materials covered by copyright laws, licensing fees or other legal regulations, COUNTY may photograph and/or record audio and video during any Amphitheater event. Such photos and recordings may be used by COUNTY for promotional and informational purposes only. RENTER agrees to provide assistance as needed to accommodate such photography and

recording. RENTER is responsible for being aware of and advising COUNTY of any copyright infringements or other legal limitations that may apply to photographing and/or recording during the event.

10. **Relationship of the Parties:** RENTER is an independent contractor and operator responsible for its acts and omissions, for which COUNTY cannot be held liable.

This Agreement does not constitute an endorsement or sponsorship by COUNTY of RENTER or of RENTER's use of the Amphitheater. Though COUNTY may issue press releases and publish announcements regarding RENTER's use of the Amphitheater, including postings on COUNTY websites and social media sites, such announcements are intended solely for the purpose of raising public awareness of the Amphitheater and are not to be misrepresented as a form of endorsement or sponsorship by COUNTY.

RENTER may not use the name or logo of the COUNTY, the Department or Amphitheater in a manner that suggests a relationship other than owner and renter. Any use of the COUNTY, Department or Amphitheater logos is subject to approval by the COUNTY.

11. **Taxes:** RENTER assumes sole responsibility for the payment of any and all federal, state, and local taxes as may be applicable to RENTER's use of the Amphitheater and its business operations thereon. Additionally, RENTER is not eligible to benefit from the COUNTY's tax exempt status.

12. **Subcontracting:** Those employed by any entity performing any work or service on behalf of RENTER at the Amphitheater is considered to be a subcontractor for whom RENTER is responsible. Any agreement between RENTER and a subcontracting entity will be provided to the Department upon request.

13. **No Assignment or Brokerage:** RENTER may not assign any rights, responsibilities, or obligations under this Agreement nor act as an agent or broker for the renting of the Amphitheater. Any attempt to re-let the Amphitheater is a material breach of this Agreement and cause for immediate termination.

14. **Department Representative:** The Department's authorized representative for this Agreement is:

Name: _____ Phone Number: _____

15. **Insurance Requirements:** It is the responsibility of RENTER to provide proof of the required insurance coverages specified on Insurance Requirements, attached hereto as **Exhibit "D"**.

Such proof of insurance must be provided to the Department's authorized representative prior to the execution of this Agreement or no later than ten (10) days prior to the effective date hereof, at the COUNTY's discretion.

16. **Indemnification:** RENTER shall protect, defend, reimburse, indemnify and hold COUNTY, its agents, employees and elected officers free and harmless at all times from and against any and all claims, liability, expenses, losses, costs, fines and damages, including attorney's fees and costs at trial and appellate levels, and causes of action of every kind and character arising out of this Agreement or RENTER's use and occupancy of the Amphitheater. Such causes of action include, without limitation, those arising by reason of; (i) any damage to property or the environment, (ii) bodily injury, including death, incurred or sustained by any party hereto, any agent or employee of any party hereto, and any third or other party whosoever, (iii) the

condition of the Amphitheater existing at the effective date of this Agreement, (iv) RENTER's acts, omissions or operations hereunder, (v) the performance, non-performance or purported performance of RENTER, or (vi) any breach of the terms of this Agreement. The obligations arising under this provision will survive the expiration or termination of this Agreement.

17. **Damage or Destruction of Amphitheater:** RENTER hereby assumes full responsibility for the character, acts, and conduct of all persons admitted to the Amphitheater by or with the actual or constructive consent of any person acting for or on behalf of RENTER. If the Amphitheater, or any part thereof, during the Term of this Agreement, is damaged by the act, default, or negligence of RENTER, or of RENTER's members, agents, employees, officers, representatives, guests, invitees, contractors, or any person whomsoever, RENTER is to immediately restore the Amphitheater, at its sole cost and expense, to the condition existing prior to such damage as determined by COUNTY. If RENTER fails to restore the Amphitheater in the timely manner prescribed by COUNTY, such restoration will be completed by COUNTY and RENTER assumes responsibility for payment of all such costs, plus twenty-five percent (25%) administrative overhead. Such restoration cost, plus the administrative cost, constitutes additional rent which is due and payable upon receipt of invoice.

Additionally, RENTER is prohibited from defacing the Amphitheater in any way including using nails, hooks, tacks, screws or any other fastening device. RENTER is also prohibited from painting any areas of the Amphitheater or painting any items including personal property anywhere on the Amphitheater premises. No signs, advertisements, show-bills, lithographs, posters, placards or any other such items are to be posted or otherwise displayed anywhere on the Amphitheater premises without the express consent of the Department's authorized representative. Any such unapproved items will be immediately removed at the sole cost and expense of RENTER.

18. **Termination Upon Destruction or other Casualty:** In the event the Amphitheater or any part thereof is destroyed or damaged in whole or part by fire, water, or any other cause, or if any other casualty or unforeseen occurrence renders the fulfillment of this Agreement impossible, as determined by COUNTY in its sole discretion, this Agreement will terminate effective upon notice to RENTER and RENTER agrees to not hold COUNTY liable for any claim for damages or compensation should this Agreement be so terminated.
19. **COUNTY Not Liable:** COUNTY will not be responsible or liable to RENTER for any claims for compensation or any losses, damages or injury sustained by RENTER resulting from failure of any water supply, electrical current, sewerage or drainage facility, or caused by natural physical conditions of the Amphitheater premises, whether on the surface or underground, including displacement of materials by fire, water, windstorm, tornado, hurricane, act of God or any cause beyond the control of COUNTY. All personal property placed on or moved onto the Amphitheater premises will be done so at the sole risk of RENTER or owner thereof and RENTER expressly acknowledges and agrees that COUNTY will not be liable for any damage to or loss of such personal property.
20. **Notices:** All notices required by this Agreement are to be hand delivered or sent by certified mail, return receipt requested to:

COUNTY:

Palm Beach County Parks and Recreation Department
Attn: _____
2700 6th Avenue South
Lake Worth, Florida 33461

RENTER:

Attn: _____

21. **Remedies:** This Agreement is governed by the laws of the State of Florida. To the extent allowed by law, the venue for any action arising from this Agreement will be in Palm Beach County, Florida. Nothing herein is to be construed as creating any personal liability on the part of any officer or agent of COUNTY, or construed as giving any rights or benefits hereunder to anyone other than COUNTY and RENTER.

No provision of this Agreement is intended to, or shall be construed to, create any third party beneficiary or to provide any rights to any person or entity not a party to this Agreement, including but no limited to any citizen or employees of the COUNTY and/or RENTER.

22. **Annual Appropriations:** The fulfillment of this Agreement and all obligations of COUNTY hereunder are subject to and contingent upon annual budgetary appropriations by the Board of County Commissioners.

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

24. **Authorization:** This Agreement is executed by an individual legally authorized to fully bind RENTER to all terms and conditions of this Agreement.

25. **Public Entity Crimes:** As provided in F.S. 287.132-133, by entering into this Agreement or performing any work in furtherance hereof, RENTER 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 thirty-six (36) months immediately preceding the date hereof. This notice is required by F.S. 287.133(3)(a).

26. **Severability:** In the event any term or provision of this Agreement is held invalid or unenforceable, the remainder of this Agreement will not be affected, and every other term and provision of this Agreement will be deemed valid and enforceable to the extent permitted by law.

27. **Access and Audits:** In the event that any part of the payment due and owed to COUNTY is calculated as a portion or percentage of ticket sales, gate admissions, vehicle parking or any other attendance information, RENTER shall maintain the necessary records sufficient to adequately substantiate all such calculations for

three (3) years following completion or termination of this Agreement and agrees to produce such records for audit immediately upon receipt of COUNTY's notice.

28. **Office of the Inspector General:** Palm Beach County has established the Office of the Inspector General in Palm Beach County Code, Section 2-421 - 2-440, as may be amended. The Inspector General's authority includes but is not limited to the power to review past, present and proposed COUNTY contracts, transactions, accounts and records, to require the production of records, and to audit, investigate, monitor, and inspect the activities of RENTER, its officers, agents, employees, and lobbyists in order to ensure compliance with contract requirements and detect corruption and fraud.
- Failure to cooperate with the Inspector General or interfering with or impeding any investigation shall be in violation of Palm Beach County Code, Section 2-421-2-440, and punished pursuant to Section 125.69, Florida Statutes, in the same manner as a second degree misdemeanor.
29. **Waiver:** The failure of COUNTY to insist upon strict performance of any of the agreements, terms, covenants or conditions of this Agreement, does not constitute a waiver of any rights or remedies that COUNTY may have for any subsequent breach, default, or non-performance, and COUNTY's right to insist on strict performance of this Agreement will not be affected by any previous waiver of course or dealing.
30. **Nondiscrimination:** RENTER 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, familial status, sexual orientation, gender identity or expression.
31. **Regulation; Licensing Requirements:** RENTER agrees to comply with all laws, ordinances and regulations applicable to its use and rental of the Amphitheater premises. RENTER is presumed to be familiar with all applicable federal, state, and local laws, ordinances, codes and regulations.
32. **Entirety of Agreement:** COUNTY and RENTER 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.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement as of the date first written above.

**PALM BEACH COUNTY
BOARD OF COUNTY COMMISSIONERS:**

By: _____
Director / Assistant Director
Palm Beach County Parks and Recreation Department

**If Agreement Value
Exceeds \$15,000.00, But Not More Than \$50,000.00:**

County Administrator –

By: _____

**If Agreement Value
Exceeds \$50,000.00:**

**COUNTY:
Board of County Commissioners**

By: _____
Chair

**ATTEST:
Clerk & Comptroller
Deputy Clerk –**

WITNESS –

Signature

Print

RENTER –

By: _____
Signature

Print

Title

**APPROVED AS TO
FORM AND LEGAL SUFFICIENCY:**

County Attorney –

EXHIBIT "A"

AMPHITHEATER RENTAL AGREEMENT

Rental Selection Form

SUNSET COVE AMPHITHEATER: Located in South County Regional Park
12551 Glades Road
Boca Raton



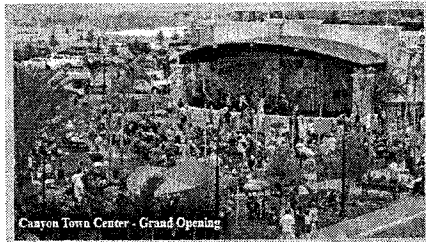
Seating for 5,000 – covered stage with rigging points – four dressing rooms – private restrooms – air conditioned back stage – covered vendor area with hook-up – public restrooms attached

SEABREEZE AMPHITHEATER: Located in Carlin Park
750 South State Road A1A
Jupiter



Seating for 2,000 – covered stage with light rigging – sound control room – three dressing rooms – green room – two private restrooms – prop room – costume room – air conditioned back stage – public restrooms detached

CANYON TOWN CENTER AMPHITHEATER: Located in Canyon Community Park
8802 Boynton Beach Boulevard
Boynton Beach



Seating for 500 – covered stage with light rigging – covered backstage – loading ramps – public restrooms attached – public parking

NOTE: The above described Amphitheater amenities and equipment are identified for informational purposes only and may not be included in all rentals.

EXHIBIT "B-1"

(1 of 2)

AMPHITHEATER RENTAL AGREEMENT

Rental Scope & Detail

Specialty Certificates, Licenses, and Memberships:

Identify certificates, licenses, and memberships required pursuant to provision 6.a.12. of the Amphitheater Rental Agreement. Submit such documents with this *Rental Scope & Detail* or indicate the date such documents will be delivered to the Department:

Amenities, Services & Equipment:

Procured By Renter:

- | | |
|------------------------------------------------|---------------------------------------------|
| <input type="checkbox"/> Liquor | <input type="checkbox"/> Volunteers |
| <input type="checkbox"/> Food and Beverages | <input type="checkbox"/> Signs / Banners |
| <input type="checkbox"/> Vendor Merchandise | <input type="checkbox"/> Barbeques / Grills |
| <input type="checkbox"/> Production Staff | <input type="checkbox"/> _____ |
| <input type="checkbox"/> Stage Security Detail | <input type="checkbox"/> _____ |

Procured By:

Paid By:

<u>N/A</u>	<u>County</u>	<u>Renter</u>		<u>County *</u>	<u>Renter</u>
<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	Approved Cleaning Service	<input type="checkbox"/>	<input type="checkbox"/>
<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	PBSO	<input type="checkbox"/>	<input type="checkbox"/>
<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	Local Law Enforcement	<input type="checkbox"/>	<input type="checkbox"/>
<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	EMS	<input type="checkbox"/>	<input type="checkbox"/>
<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	Sound and Light System	<input type="checkbox"/>	<input type="checkbox"/>
<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	FOH Tent or Scaffolding	<input type="checkbox"/>	<input type="checkbox"/>

EXHIBIT "B-1"

(2 of 2)

Services & Equipment - continued:

Procured By:

Paid By:

N/A	County	Renter		County *	Renter
<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	Dumpster	<input type="checkbox"/>	<input type="checkbox"/>
<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	Cleaning Crew	<input type="checkbox"/>	<input type="checkbox"/>
<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	Tents	<input type="checkbox"/>	<input type="checkbox"/>
<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	Tables	<input type="checkbox"/>	<input type="checkbox"/>
<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	Chairs	<input type="checkbox"/>	<input type="checkbox"/>
<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	Portolets	<input type="checkbox"/>	<input type="checkbox"/>
<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	Fireworks / Pyrotechnics †	<input type="checkbox"/>	<input type="checkbox"/>
<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	_____	<input type="checkbox"/>	<input type="checkbox"/>
<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	_____	<input type="checkbox"/>	<input type="checkbox"/>
<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	_____	<input type="checkbox"/>	<input type="checkbox"/>

***** : All costs associated with the County's procurement of amenities, services and equipment will be included on the Rental Settlement (**Exhibit "C"**) and paid by Renter at the time all other fees and charges and due and payable.

† : Requests to include fireworks or any other form of pyrotechnics display will be considered on a case-by-case basis. Any such displays require the approval and presence of the Fire Rescue Department having municipal jurisdiction over the Amphitheater. Additional insurance coverages as well as charges for the presence of Fire Rescue equipment and personnel will apply.

EXHIBIT "C"

AMPHITHEATER RENTAL AGREEMENT

Rental Settlement

EXAMPLE...

ACCOUNT NUMBER	DESCRIPTION	AMOUNT
5207- 01 - 4735	SEABREEZE / Facility Rental	\$
5207- 02 - 4735	SUNSET COVE / Facility Rental	\$
5207- 03 - 4735	CANYON TOWN CENTER / Facility Rental	\$
5207- 02 - 4725-14	SUNSET COVE / Parking	\$
5207 - (01,02,03) - 4729-24	Food, Beverage & Alcohol	\$
5207 - (01,02,03) - 4729-25	Souvenirs & Event Products	\$
5207 - (01,02,03) - 4729-26	Non Event Related Merchandise	\$
5207 - (01,02,03) - 4729-09	Cleaning (Hourly / per person)	\$
5221 - 4729-13	Parks Maintenance / Wages Regular	\$
5221 - 4729-14	Parks Maintenance / Wages Overtime	\$
5207 - (01,02,03) - 4729-15	Law Enforcement / PBSO	\$
5207 - (01,02) - 4729-01	Pavilion Rental	\$
5207 - 02 - 4734	SUNSET COVE / Equipment Rental	\$
5207 - (01,02,03) - 4721-09	Administrative Fee	\$
0001 - 2170 - STAX	Sales Tax	\$
0001 - 2230 - AMAD	Advance Deposit / Booking Fee	\$ ()
Balance Due		\$

Damage Deposit: \$ _____
0001 - 2200 - AMSD

Date Received: _____

**Palm Beach County
Parks and Recreation Department:**

By: _____ Date: _____
Authorized Representative / Amphitheater Manager

RENTER:

By: _____ Date: _____
Authorized Representative for:

EXHIBIT "D"

(1 of 2)

AMPHITHEATER RENTAL AGREEMENT

Insurance Requirements

Unless waived in whole or in part by the Department and COUNTY's Risk Management Department, RENTER will maintain in full force and effect, on a primary basis and at its sole expense, at all times during the life of this Agreement, insurance coverages and limits (including endorsements) as described herein. Failure to maintain the required insurance will be considered default of this Agreement. The requirements contained herein, as well as COUNTY's review or acceptance of insurance maintained by RENTER, are not intended to and shall not in any manner limit or qualify the liabilities and obligations assumed by RENTER under the Agreement. RENTER agrees to provide the COUNTY with at least ten (10) days prior notice of any cancellation, non-renewal or material change to the insurance coverages.

Commercial General Liability: RENTER is to maintain Commercial General Liability at a limit of liability not less than one million dollars **(\$1,000,000)** Each Occurrence. Coverage shall not contain any endorsement(s) excluding nor limiting Premises/Operations, Personal Injury, Product/ completed Operations, Contractual Liability, Severability of Interests or Cross Liability. Coverage is to be provided on a primary basis.

Business or Personal Automobile Liability: RENTER is to maintain Business or Personal Auto Liability at a limit of liability not less than five hundred thousand dollars (\$500,000) Each Occurrence for all Owned, Non-Owned, and Hired automobiles. In the event RENTER does not own automobiles, RENTER agrees to maintain coverage for Non-Owned & Hired Auto Liability, which may be satisfied by way of endorsement to the Commercial General Liability policy or separate Business or Personal Auto Liability policy. Coverage is to be provided on a primary basis.

Notwithstanding the foregoing, in the event the scope and conduct of RENTER's operations under this Agreement do not involve the operation, ownership or use of any vehicle, this requirement is waived.

Liquor Liability: The sale of alcoholic beverages of any kind requires a liquor license to be obtained and available for inspection by law enforcement during the Amphitheater rental.

The sale of any alcoholic beverages requires that the Certificate of Insurance include Liquor Liability Coverage with a minimum limit of liability of one million dollars **(\$1,000,000)** each occurrence.

An Amphitheater rental that does not require attendees to pay an admission fee or other entrance charge including donations and provides alcoholic beverages at no cost to the attendees requires that the Certificate of Insurance include Host Liquor Liability Coverage with a minimum limit of liability of one million dollars **(\$1,000,000)** each occurrence.

Workers' Compensation Insurance & Employer's Liability: RENTER shall maintain Workers' Compensation & Employer's Liability in accordance with Florida Statute Chapter 440. Coverage is to be provided on a primary basis.

EXHIBIT "D"

(2 of 2)

Additional Insured Clause: Except as to Business or Personal Automobile Liability, Workers' Compensation & Employer's Liability (and Professional Liability, when applicable) the Certificate(s) of Insurance shall clearly confirm that coverage required by this Agreement has been endorsed to include COUNTY as "Additional Insured". As such, said Certificate(s) shall specifically include: "Palm Beach County, a Political Subdivision of the State of Florida, its Officers, Employees, and Agents."

Waiver of Subrogation: RENTER hereby waives any and all rights of Subrogation against the COUNTY, its officers, employees and agents for each required policy. When required by the insurer, or should a policy condition not permit an insured to enter into a pre-loss agreement to waive subrogation without an endorsement, then RENTER shall notify the insurer and request the policy be endorsed with a Waiver of Transfer of Rights of Recovery Against Others, or its equivalent. This Waiver of Subrogation requirement shall not apply to any policy which includes a condition to the policy specifically prohibiting such an endorsement or voids coverage should RENTER enter into such an agreement on a pre-loss basis.

Certificates of Insurance: Prior to execution of the Agreement, RENTER shall deliver to COUNTY Certificate(s) of Insurance evidencing that all coverages, limits and endorsements required by this Agreement have been obtained and are in full force and effect. In addition, RENTER shall provide this evidence to the COUNTY prior to the expiration date of any such insurance required herein. Such Certificate(s) of Insurance shall include at least ten (10) days prior notice of any cancellation, non-renewal or material change to the insurance coverages. Certificates of Insurance are to be sent to:

Palm Beach County Board of County Commissioners
C/O Parks and Recreation Department
Attn: _____
2700 Sixth Avenue South
Lake Worth, Florida 33461

Umbrella or Excess Liability: If necessary, RENTER may satisfy the minimum liability limits required above for Commercial General Liability, Business or Personal Automobile Liability, and Employer's Liability coverage under an Umbrella or Excess Liability policy. Under the Umbrella or Excess Liability there is no minimum Per Occurrence limit of liability; however, the Annual Aggregate limit shall not be less than the highest "Each Occurrence" limit for the Commercial General Liability, Business Automobile liability, or Employer's Liability. COUNTY will be specifically endorsed as an "Additional Insured" on the Umbrella or Excess Liability, unless the Certificate of Insurance notes the Umbrella or Excess Liability provides coverage on a "Follow-Form" basis.

Right to Review: COUNTY, by and through its Risk Management Department, in cooperation with the contracting/monitoring department, reserves the right, but not the obligation, to review, modify, reject, or accept any required policies of insurance, including limits, coverages and endorsements based on insurance market conditions affecting the availability or affordability of coverage; or changes in the scope of work / specifications affecting the applicability of coverage. Additionally, COUNTY reserves the right, but not the obligation, to review and reject any insurance policies failing to meet the requirements stated herein or any insurer providing coverage due to its poor financial condition or failure to operate legally.