

PALM BEACH COUNTY
BOARD OF COUNTY COMMISSIONERS

AGENDA ITEM SUMMARY

Meeting Date: February 4, 2014

Consent

Regular

Ordinance

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 Entertainment Contractor Agreement form.

Summary: The Parks and Recreation Department uses a standard Board of County Commissioners' approved Entertainment Contractor Agreement which allows the Parks and Recreation Department to hire dancers, musicians, and specialty performers at any of the County's three amphitheaters. The existing agreement includes delegated authority of the standard Entertainment Contractor 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 2008-1109, as amended by Resolution 2010-0644, by revising the standard Entertainment Contractor Agreement form to further clarify responsibilities of the contractor, clarify signing authority, conform to County Code, and include updated exhibits. Countywide (AH)

Background and Justification: On June 17, 2008, the Board adopted Resolution 2008-1109 establishing the standard Entertainment Contractor 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 to hire dancers, musicians, and specialty performers at County amphitheaters. Resolution 2010-0644, adopted April 20, 2010, amended Resolution 2008-1109, incorporating the Inspector General Fee requirement.

The attached Resolution further amends Resolution 2008-1109 by revising the standard Entertainment Contractor Agreement form to further clarify responsibilities of the contractor, clarify that the County Administrator will execute Agreements valued more than \$10,000, but not more than \$50,000, conform to County Code, and include updated exhibits.

Attachment: Resolution amending Resolution 2008-1109

Recommended by: _____

Eric Case
Department Director

1/6/2014
Date

Approved by: _____

[Signature]
Assistant County Administrator

Date

II. FISCAL IMPACT ANALYSIS

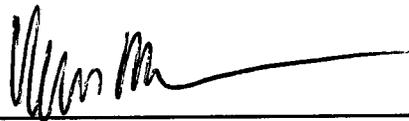
A. Five Year Summary of Fiscal Impact:

Fiscal Years	2014	2015	2016	2017	2018
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 _____

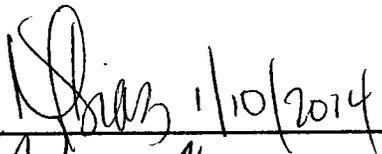
B. Recommended Sources of Funds/Summary of Fiscal Impact:

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:

 1/10/2014
 OFMB  1/9
 AK 1/10/14


 Contract Development and Control

B. Legal Sufficiency:

Anne Delaney 1-17-14
 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-2014- _____

RESOLUTION OF THE BOARD OF COUNTY COMMISSIONERS OF PALM BEACH COUNTY, FLORIDA, AMENDING RESOLUTION 2008-1109, AS AMENDED BY RESOLUTION 2010-0644; DELETING THE STANDARD ENTERTAINMENT CONTRACTOR AGREEMENT ATTACHED TO RESOLUTION 2010-0644 AND REPLACING IT WITH THE ATTACHED REVISED STANDARD ENTERTAINMENT CONTRACTOR AGREEMENT; PROVIDING FOR SEVERABILITY; AND PROVIDING FOR AN EFFECTIVE DATE.

WHEREAS, Resolution 2008-1109 was adopted by the Board of County Commissioners ("BCC") on June 17, 2008, which authorized the County Administrator or designee to execute the standard Entertainment Contractor Agreement for the provision of dancers, musicians, and specialty performers at County amphitheaters; and

WHEREAS, Resolution 2010-0644 was adopted by the BCC on April 20, 2010, amending Resolution 2008-1109, which deleted the standard Entertainment Contractor Agreement attached to R-2008-1109 and replaced it with a revised standard Entertainment Contractor Agreement, to incorporate the Inspector General Fee requirement; and

WHEREAS, it is necessary to amend the standard Entertainment Contractor Agreement attached to R-2010-0644 and replace it with the attached revised standard Entertainment Contractor Agreement, to further clarify responsibilities of the contractor, clarify signing authority, conform to County Code, and include updated exhibits; and

WHEREAS, the execution of the standard Entertainment Contractor 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. 2010-0644 is hereby amended by deleting the standard Entertainment Contractor Agreement attached to R-2010-0644 and replacing it with the attached standard Entertainment Contractor Agreement, attached hereto and incorporated herein.
2. Entertainment Contractor Agreements valued more than \$10,000, but not more than \$50,000, will be executed by the County Administrator.

3. All other terms and conditions of Resolution No. 2008-1109, as amended by Resolution No. 2010-0644, 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:

Commissioner Priscilla A. Taylor, Mayor	-
Commissioner Paulette Burdick, Vice Mayor	-
Commissioner Hal R. Valeche	-
Commissioner Shelley Vana	-
Commissioner Steven L. Abrams	-
Commissioner Mary Lou Berger	-
Commissioner Jess R. Santamaria	-

The Chair thereupon declared the Resolution duly passed and adopted this _____ day of _____, 2014.

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

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

THIS ENTERTAINMENT CONTRACTOR 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 "CONTRACTOR".

WITNESSETH:

WHEREAS, COUNTY, by and through its Parks and Recreation Department, hereinafter referred to as the "Department," seeks to organize and make available quality entertainment productions at the COUNTY owned and operated Amphitheaters; and

WHEREAS, COUNTY provides CONTRACTOR the opportunity to produce, stage, and perform such productions pursuant to the terms and conditions of this Agreement.

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

1. **Term:** This Agreement is effective _____, at _____ AM | PM, the date and time CONTRACTOR is scheduled to arrive at the event venue, and will terminate _____, at _____ AM | PM, the date and time CONTRACTOR is scheduled to depart the event venue.
2. **Amphitheater:** The event venue is _____, hereinafter referred to as "Amphitheater", together with such amenities, equipment, and appurtenances as may be made available by COUNTY, in its sole discretion, all as more particularly described on the Amphitheater Designation Form, attached hereto as **Exhibit "A"**.
3. **Event:** The entertainment production to be presented at the Amphitheater is an event promoted as: _____, hereinafter referred to as "Event", for which COUNTY hires CONTRACTOR to produce, stage, and perform, and when applicable including securing the Event's entertainment talent: _____, hereinafter referred to as "Entertainment".

If applicable, the sound check and/or warm-up for all Event Entertainment will begin at _____ AM | PM and will conclude no later than _____ AM | PM, which is no less than _____ minutes prior to time the Event is scheduled to begin.

The Event's Entertainment will begin performing at _____ AM | PM and will conclude at _____ AM | PM.

The performance will consist of _____ set(s) of _____ minutes per set.

If usual and customary for the type of entertainment production and/or the length of time Entertainment is scheduled to perform, the production may include _____ intermission(s), of _____ minutes each.

Unless otherwise specifically agreed to by COUNTY prior to the signing of this Agreement, no portion of the Event's Entertainment production is to include prerecorded audio or video.

In addition to the above, the scope and detail of the Event is more particularly described on the Event Scope and Detail, attached hereto as **Exhibit "B"**.

4. **Payment:** The total amount payable by COUNTY to CONTRACTOR for the Event Entertainment is _____ dollars (\$_____) to be paid upon conclusion of the Event and verification that CONTRACTOR's entertainment production obligations have been completed as required herein.

Notwithstanding the foregoing, at COUNTY's sole discretion, a percentage of the total amount payable may be paid to CONTRACTOR prior to the Event.

In such event, COUNTY will remit to CONTRACTOR _____ percent (____%) of said total amount payable within _____ days following the signing of this Agreement by COUNTY. The remaining balance of the total amount payable will be paid upon conclusion of the Event and verification that CONTRACTOR's entertainment production obligations have been completed as required herein.

Satisfactory completion of CONTRACTOR's entertainment production obligations include, but are not limited to, the requirement that the Event's Entertainment perform onstage a minimum of ninety percent (90%) of the agreed upon performance time. Failure to meet this requirement will result in a reduction in payment to CONTRACTOR. The amount of such reduction will be determined by COUNTY in its sole discretion.

5. **Termination by COUNTY:** In addition to the termination rights provided in Article 10 below, COUNTY reserves the right to terminate this Agreement without cause, following its signing by COUNTY, effective upon delivery of written notice of termination to CONTRACTOR at least seven (7) days prior to the effective date hereof. In such event, this Agreement will terminate without further action or payment and CONTRACTOR will return to COUNTY, within four (4) days following such termination, any percentage payment that may have been made to CONTRACTOR. COUNTY will not be held liable for any damages resulting from such termination.
6. **Termination by CONTRACTOR:** CONTRACTOR may terminate this Agreement without cause, following its signing by COUNTY, effective upon delivery of written notice of termination to COUNTY at least thirty (30) days prior to the effective date hereof. In such event, this Agreement will terminate without further action provided CONTRACTOR returns to COUNTY with said notice of termination any percentage payment that may have been made to CONTRACTOR.

7. **Performance:**

a. CONTRACTOR 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 Event in the condition existing as of the effective date of this Agreement;

3. **accept** the amount of payment defined above as full and final payment without further expectation for reimbursement of any expenses related to this Agreement;
4. **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;
5. **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;
6. **prohibit** any activity or material related to the Event that may be considered contrary to community standards of appropriateness, including the use of profanity, obscene language, or lewd gestures, which will result in COUNTY's withholding of payment and denial of future entertainment contracting opportunities;
7. **assure** that all persons under CONTRACTOR's control conduct themselves in a socially acceptable manner including prohibiting the consumption of alcohol or illegal drugs on Amphitheater premises;
8. **obtain** the Department's written approval prior to the use of any type of pyrotechnics;
9. **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; with the exception of generators that have been approved by the Department's representative.
10. **assume** full responsibility for obtaining all licenses and permits required by Copyright Regulations of Title 17 of the United States Code, and agree to indemnify COUNTY and its agents for any expenses incurred as a result of CONTRACTOR'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 CONTRACTOR's failure to otherwise satisfy such regulations;
11. **identify**, as part of Event Scope and Detail, attached hereto as **Exhibit "B"**, any and all required specialty certifications, licenses and / or memberships applicable to the event;
12. **deliver** to the Department, no later than forty-eight (48) hours prior to the Event, a copy of those certain specialty certifications, licenses and / or memberships referenced above, all of which will be retained by the Department;
13. **acknowledge** that failure to deliver the required documentation referenced above may result in immediate termination of this Agreement and the return to COUNTY, within four (4) days following such termination, any percentage payment that may have been made to CONTRACTOR and forfeiture of the payment balance;
14. **remove** all equipment and materials owned by CONTRACTOR and Entertainment no later than the termination date and time specified in Article 1 above;
15. **return** the Amphitheater and all equipment and improvements related to the Event to the condition existing as of the effective date and time specified in Article 1 above;

16. **hold** COUNTY harmless for the sale or disposal of any equipment and materials considered to be abandoned due to CONTRACTOR's or Entertainment'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
17. **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 CONTRACTOR's and Entertainment's use of the Amphitheater.

b. COUNTY agrees to:

1. **promote** the Event;
2. **deliver** the Amphitheater and associated premises in a safe, clean, and orderly condition;
3. **assign** sufficient staff to provide logistical support and oversee all aspects of the Event including authority to make final decisions and issue directives on behalf of COUNTY;
4. **provide** support services including law enforcement, technical staff and skilled maintenance as may be determined necessary by the Department;
5. **retain** control of the Amphitheater and all operations conducted on the Amphitheater premises including enforcement of all laws, rules, regulations pertaining to the safety and wellbeing of the public; and
6. **collect** and dispose of any and all items either discarded or lost by patrons or others at the Event, without interference by CONTRACTOR or Entertainment or any person working for or on their behalf.

8. **Postponement or Cancellation of Event:** In the event emergency conditions arise which may affect public safety, the Event 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 the Event and will endeavor to provide CONTRACTOR at least four (4) hours notice of such postponement or cancellation prior to the Event start time specified in Article 3 above. 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 the Event due to any public safety concern or CONTRACTOR elects to cancel the Event's Entertainment rather than accept a delayed start time, the Term of this Agreement will be extended upon the same terms and conditions provided that within five (5) days following such occurrence, COUNTY and CONTRACTOR agree upon a rescheduled Event date and time. Such Term extension will be effective upon COUNTY's delivery to CONTRACTOR of a written notice specifying the agreed upon rescheduled Event date and time and detailing the circumstances leading to the Term extension.

In the event COUNTY and CONTRACTOR are unable to agree upon a rescheduled Event date and time as specified above, this Agreement will terminate without further action or payment and CONTRACTOR will

return to COUNTY, within four (4) days following such termination, any percentage payment that may have been made to CONTRACTOR.

9. **Cancellation, Rescheduling and Substitution of Entertainment:** In the event CONTRACTOR fails to perform or otherwise cancels the Event's Entertainment for any reason, including illness, at any time, the Term of this Agreement may be extended upon the same terms and conditions provided that within five (5) days following such cancellation, COUNTY and CONTRACTOR agree upon a rescheduled Event date and time. Such Term extension will be effective upon COUNTY's delivery to CONTRACTOR of a written notice specifying the agreed upon rescheduled Event date and time and detailing the circumstances leading to the Term extension.

In the event COUNTY and CONTRACTOR are unable to agree upon a rescheduled Event date and time as specified above, this Agreement will terminate without further action or payment and CONTRACTOR will return to COUNTY, within four (4) days following such termination, any percentage payment that may have been made to CONTRACTOR.

Notwithstanding the foregoing, in the event CONTRACTOR cancels the Event's Entertainment due to illness, CONTRACTOR may be permitted, with COUNTY's prior approval, to secure substitute entertainment. Provided, however, such substitute entertainment must perform a similar type and style of entertainment as that for which this Agreement is entered into. In such event, COUNTY reserves the right to require CONTRACTOR to return, within four (4) days following the Event date, any percentage payment that may have been made and/or reduce or deny payment of the remaining amount payable.

10. **Termination for Cause:** The occurrence of any one or more of the following acts constitutes a material default and breach of this Agreement by CONTRACTOR and will result in the immediate termination of this Agreement:

- CONTRACTOR misrepresents the type or style of entertainment to be performed;
- CONTRACTOR provided materially false information relating to this Agreement;
- Any person under the control of CONTRACTOR, including subcontractors, is responsible for purposely damaging the Amphitheater or any COUNTY owned equipment;
- Any person under the control of CONTRACTOR, including subcontractors, is guilty of gross misconduct or unlawful behavior while on the Amphitheater premises; or
- Entertainment's performance fails to meet the professional performance standards and expectations assumed at the time this Agreement is entered into and COUNTY, following consultation with CONTRACTOR, elects to stop the performance prior to its scheduled conclusion time.

In the event of any such material default or breach, this Agreement will terminate without further action or payment and CONTRACTOR will return to COUNTY, within four (4) days following such termination, any percentage payment that may have been made to CONTRACTOR. COUNTY will not be held liable for any lost profits or damages resulting from any such termination.

11. **Photography / Recording:** Except for Entertainment performances and materials covered by copyright laws, licensing fees or other legal regulations, COUNTY may photograph and/or record audio and video during the Event. Such photos and recordings may be used by COUNTY for promotional and informational purposes only. CONTRACTOR agrees to provide assistance as needed to accommodate such photography and recording. CONTRACTOR 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.
12. **Relationship of the Parties:** The CONTRACTOR is, and shall be, in the performance of all work services and activities under this Agreement, an Independent Contractor, and not an employee, agent, or servant of the COUNTY. All persons engaged in any of the work or services performed pursuant to this Agreement shall at all times, and in all places, be subject to the CONTRACTOR'S sole direction, supervision, and control. The CONTRACTOR shall exercise control over the means and manner in which it and its employees perform the work, and in all respects the CONTRACTOR'S relationship and the relationship of its employees to the COUNTY shall be that of an Independent Contractor and not as employees or agents of the COUNTY.

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

CONTRACTOR may not use the name or logo of the COUNTY, the Department or Amphitheater in a manner that suggests a relationship other than that for which this Agreement is entered into. Any use of the COUNTY, Department or Amphitheater logos is subject to approval by the COUNTY.

13. **Taxes:** CONTRACTOR assumes sole responsibility for the payment of any and all federal, state, and local taxes as may be applicable to the payment made by COUNTY to CONTRACTOR. Additionally, CONTRACTOR is not eligible to benefit from the COUNTY's tax exempt status.
14. **No Assignment:** CONTRACTOR may not assign any rights, responsibilities, or obligations required under this Agreement. Any such attempted assignment is a material breach of this Agreement and cause for immediate termination.

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

Name: _____ Phone Number: _____

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

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.

17. **Indemnification:** CONTRACTOR agrees to 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 CONTRACTOR'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) CONTRACTOR's acts, omissions or operations hereunder, (v) the performance, non-performance or purported performance of CONTRACTOR, 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.

18. **Damage or Destruction of Amphitheater:** In the event the Amphitheater or any part thereof is damaged by the act, default, or negligence of CONTRACTOR or Entertainment, the cost to repair such damage will be the responsibility of CONTRACTOR. In the event of such damage, COUNTY's payment to CONTRACTOR may be reduced or forfeited to cover repair costs and/or the cost of such repairs may be invoiced by COUNTY to CONTRACTOR, the amount of which is payable upon CONTRACTOR's receipt of invoice.

Additionally, CONTRACTOR is prohibited from defacing the Amphitheater in any way including using nails, hooks, tacks, screws or any other fastening device. 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 CONTRACTOR.

19. **Termination Upon Destruction or other Casualty:** In the event the Amphitheater or any part thereof is destroyed or damaged in whole or part, 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 COUNTY's delivery to CONTRACTOR of a written notice of termination. In the event of any such termination, this Agreement will terminate without further action or payment and CONTRACTOR will return to COUNTY, within four (4) days following such termination, any percentage payment that may have been made to CONTRACTOR. COUNTY will not be held liable for any lost profits or damages resulting from any such termination.

20. **COUNTY Not Liable:** All personal property placed on or moved onto the Amphitheater premises will be done so at the sole risk of CONTRACTOR or owner thereof and CONTRACTOR expressly acknowledges and agrees that COUNTY will not be liable for any damage to or loss of such personal property.

21. **Notices:** All notices required by this Agreement are to be hand delivered or sent by certified mail, return receipt requested to:

If sent to COUNTY, such notices are to be addressed:

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

If sent to CONTRACTOR, such notices are to be addressed:

Attn: _____

22. **Remedies:** This Agreement shall be governed by the laws of the State of Florida. Any legal action necessary to enforce the Agreement will be held in Palm Beach County. No remedy herein conferred upon any party is intended to be exclusive of any other remedy, and each and every such remedy shall be cumulative and shall be in addition to every other remedy given hereunder or now or hereafter existing at law or in equity, by statute or otherwise. No single or partial exercise by any party of any right, power, or remedy hereunder shall preclude any other or further exercise thereof.
23. **No Third Party Beneficiaries:** 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 not limited to any citizen or employees of the COUNTY and/or CONTRACTOR.
24. **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.
25. **Arrears:** CONTRACTOR 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. CONTRACTOR further warrants and represents that it has no obligation or indebtedness that would impair its ability to fulfill the terms of this Agreement.
26. **Authorization:** This Agreement is executed by an individual legally authorized to fully bind CONTRACTOR to all terms and conditions of this Agreement.
27. **Public Entity Crimes:** As provided in F.S. 287.132-133, by entering into this Agreement or performing any work in furtherance hereof, 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 thirty-six (36) months immediately preceding the date hereof. This notice is required by F.S. 287.133(3)(a).
28. **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.
29. **Access and Audits:** If applicable, should any portion of the payments made to CONTRACTOR include CONTRACTOR's charges, expenses, and costs incurred in estimating and performing the services to be performed hereunder, CONTRACTOR will maintain adequate records to justify all such charges, expenses, and costs for at least three (3) years after the expiration or termination of this Agreement. The COUNTY shall have access to all such books, records, and documents for the purpose of inspection or audit during normal business hours at CONTRACTOR'S place of business.

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 CONTRACTOR, 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.

30. **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.
31. **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, familial status, sexual orientation, gender identity or expression.
32. **Regulation; Licensing Requirements:** CONTRACTOR agrees to comply with all laws, ordinances and regulations applicable to its use of the Amphitheater premises. CONTRACTOR is presumed to be familiar with all applicable federal, state, and local laws, ordinances, codes and regulations.
33. **Criminal History Records Check:** If CONTRACTOR's employees or subcontractors are required under this contract to enter a "critical facility," as identified in Resolution R-2003-1274, the CONTRACTOR shall comply with the provisions of Chapter 2, Article IX of the Palm Beach County Code ("Criminal History Records Check" section). 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 record checks, the CONTRACTOR shall be solely responsible for the financial, schedule, and staffing implications associated in complying with this section of the Palm Beach County Code.
34. **Entirety of Agreement:** COUNTY and 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.

(REMAINDER OF PAGE INTENTIONALLY LEFT BLANK)

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 \$10,000.00, But Not More Than \$50,000.00:**

County Administrator

By: _____

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

**COUNTY:
Board of County Commissioners**

By: _____
Mayor

**ATTEST:
Clerk & Comptroller**

Deputy Clerk

WITNESS

Signature

Print

CONTRACTOR –

By: _____
Signature

Print

Title

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

County Attorney

EXHIBIT "A"

ENTERTAINMENT CONTRACTOR AGREEMENT

Amphitheater Designation Form

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



Viewing capacity for 6,000 – 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



Viewing capacity for 2,500 – 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



Viewing capacity for 500 – covered stage with light rigging – covered backstage – loading ramps – public restrooms attached

NOTE: The above described Amphitheater amenities, equipment, and appurtenances are identified for informational purposes only and may not be available for use by Contractor nor Entertainment.

EXHIBIT "B"
(1 of 2)

ENTERTAINMENT CONTRACTOR AGREEMENT

Event Scope & Detail

Event Date: _____

Event Name: _____

Event Scope & Detail: _____

Specialty Certificates, Licenses, and Memberships:

Identify certificates, licenses, and memberships required pursuant to provision 6.a.11. of the Entertainment Contractor Agreement. Submit such documents with this *Event Scope & Detail* or indicate the date such documents will be delivered to the Department:

EXHIBIT "B"

(2 of 2)

Amenities, Services & Equipment:

Provided By:
N/A COUNTY CONTRACTOR

Detailed list of equipment provided by COUNTY and/or CONTRACTOR is attached to this Exhibit: _____	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Sound System: _____	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Sound Equipment: _____	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Light System: _____	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Lighting Equipment: _____	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Light Trees: _____	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Microphones: _____	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Cables: _____	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Backline: _____	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Heavy Duty/Outdoor Extension Cords: _____	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Sound Technician: _____	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Light Technician: _____	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Dressing Room: _____	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Drum Riser: _____	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Generators: <i>Department Approval Signature:</i> _____	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Fireworks / Pyrotechnics: † _____	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

† 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 of the Department Director, and must be conducted in accordance with the permit issued by the Fire Rescue Department having municipal jurisdiction of the Amphitheater. Also, the presence of the Fire Rescue Department is required. Additional insurance coverages as well as charges for the presence of Fire Rescue equipment and personnel will apply

EXHIBIT "C"

(1 of 2)

ENTERTAINMENT CONTRACTOR AGREEMENT

Insurance Requirements

CONTRACTOR 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 CONTRACTOR, are not intended to and shall not in any manner limit or qualify the liabilities and obligations assumed by CONTRACTOR under the Agreement. CONTRACTOR 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.

Palm Beach County Parks & Recreation Department Representative to Initial as applicable:

No Insurance Required: Based on scope of services, CONTRACTOR shall not be required to provide insurance.

Commercial General Liability: CONTRACTOR shall maintain Commercial General Liability at a limit of liability not less than **\$500,000** Each Occurrence. Coverage shall not contain any endorsement(s) excluding Contractual Liability or Cross Liability.

Auto Liability: CONTRACTOR shall maintain Business Auto Liability at a limit of liability not less than **\$500,000** Each Occurrence for all owned, non-owned, and hired automobiles. In the event CONTRACTOR owns no automobiles, the Business Auto Liability requirement shall be amended allowing CONTRACTOR to maintain only Hired & Non-Owned Auto Liability. This amended requirement may be satisfied by way of endorsement to the Commercial General Liability, or separate Business Auto coverage form.

Workers' Compensation Insurance & Employer's Liability: CONTRACTOR shall maintain Workers' Compensation & Employer's Liability in accordance with Florida Statute Chapter 440.

Professional Liability: CONTRACTOR shall maintain Professional Liability or equivalent Errors & Omissions Liability at a limit of liability not less than **\$1,000,000** Each Claim. When a self-insured retention (SIR) or deductible exceeds **\$10,000**, COUNTY reserves the right, but not the obligation, to review and request a copy of CONTRACTOR's most recent annual report or audited financial statement. For policies written on a "Claims-Made" basis, CONTRACTOR shall maintain a Retroactive Date prior to or equal to the effective date of this Agreement. The Certificate of Insurance providing evidence of the purchase of this coverage shall clearly indicate whether coverage is provided on an "occurrence" or "claims - made" form. If coverage is provided on a "claims-made" form the Certificate of Insurance must also clearly indicate the "retroactive date" of coverage. In the event the policy is canceled, not renewed, switched to an Occurrence Form, retroactive date advanced, or any other event triggering the right to purchase a Supplement Extended Reporting Period (SERP) during the life of this Agreement, CONTRACTOR shall purchase a SERP with a minimum reporting period not less than three (3) years.

EXHIBIT "C"

(2 of 2)

Additional Insured Clause: Except as to Business Auto, Workers' Compensation and 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: CONTRACTOR 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 CONTRACTOR 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 CONTRACTOR enter into such an agreement on a pre-loss basis.

Certificates of Insurance: Prior to execution of the Agreement, the CONTRACTOR shall deliver to the COUNTY Certificate(s) of Insurance evidencing that all types and amounts of insurance coverage required by this Agreement have been obtained and are in full force and effect. In addition, the CONTRACTOR 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 a minimum ten (10) day endeavor to notify due to cancellation of coverage. 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, CONTRACTOR may satisfy the minimum limits required above for Commercial General Liability, Business Auto Liability, and Employer's Liability coverage under Umbrella or Excess Liability. The Umbrella or Excess Liability shall have an Aggregate limit not less than the highest "Each Occurrence" limit for Commercial General Liability, Business Auto Liability, or Employer's Liability. The COUNTY shall 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 Revise or Reject: COUNTY, by and through its Risk Management Department, in cooperation with the contracting/monitoring department, reserves the right to review, modify, reject, or accept any required policies of insurance, including limits, coverage, or endorsements, herein from time to time throughout the term of 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.