### PALM BEACH COUNTY BOARD OF COUNTY COMMISSIONERS

### AGENDA ITEM SUMMARY

Meeting Date: May 20, 2014

[X] Consent
[ ] Ordinance

[ ] Regular [ ] Public Hearing

Department: Parks and Recreation

Submitted By: Parks and Recreation Department

Submitted For: Parks and Recreation Department

### I. EXECUTIVE BRIEF

Motion and Title: Staff recommends motion to receive and file: the following original executed Sound and Light Production Services Contractor Agreements:

- A) City Sound and Recording LLC; Riverdown concert, Sunset Cove Amphitheater on January 25, 2014;
- B) City Sound and Recording LLC; Solid Brass concert, Seabreeze Amphitheater on February 14, 2014;
- C) Blackwood Productions LLC; Big Vince and Phat Cats concert, Seabreeze Amphitheater on March 14, 2014;
- D) Blackwood Productions LLC; The Avett Brothers concert, Sunset Cove Amphitheater for the period March 28, 2014, through March 29, 2014;
- E) Blackwood Productions LLC; Ales for Anglers concert, Sunset Cove Amphitheater for the period March 29, 2014, through March 30, 2014; and
- F) Blackwood Productions LLC; Reach FM: Reach Fest concert, Sunset Cove Amphitheater for the period April 12, 2014, through April 13, 2014.

**Summary:** In accordance with County PPM CW-O-051, all delegated contracts/agreements/grants must be submitted by the initiating Department as a Receive and File agenda item. The Sound and Light Production Services Contractor Agreements have been fully executed on behalf of the Board of County Commissioners (Board) by the County Administrator/Director/Assistant Director of the Parks and Recreation Department in accordance with Resolution 2009-0592, amended by Resolutions 2010-0645 and 2014-0167, and are now being submitted to the Board to receive and file. Districts 1 and 5 (AH)

**Background and Justification:** The Sound and Light Production Services Contractor Agreements with sound and light companies, Resolution 2009-0592, amended by Resolutions 2010-0645 and 2014-0167, was adopted by the Board to streamline the process of hiring sound and light production contractors. The Board granted the Director/Assistant Director of the Parks and Recreation Department authority to execute Independent Contractor Agreements with sound and light production contractors up to \$10,000, with contracts between \$10,000 and \$50,000 requiring the County Administrator's approval and contracts over \$50,000 requiring Board approval.

Full production services were needed at the Seabreeze Amphitheater for the recent County sponsored concerts to provide a quality event by supplying additional sound equipment and providing expertise to protect County facilities and equipment inventory. One concert required full production services, while the others needed sound and lighting production support at the Sunset Cove Amphitheater concerts. Sound and lighting production support helps protect County facilities and equipment inventory.

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

Attachments: Sound and Light Production Services Contractor Agreements (6)

Recommended by:	En Cal	4/28/2014
	Department Director	Date <sup>ℓ</sup> /
Approved by:	Assistant County Administrator	Date

### **II. FISCAL IMPACT ANALYSIS**

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

Fiscal Years	2014	2015	2016	2017	2018
Capital Expenditures Operating Costs External Revenues Program Income (Count In-Kind Match (County)	<u>-0-</u> <u>4,600</u> ( <u>1,350)</u> y) <u>-0-</u> <u>-0-</u>	-0- -0- -0- -0- -0-	-0- -0- -0- -0- -0-	-0- -0- -0- -0- -0-	-0- -0- -0- -0- -0-
NET FISCAL IMPACT	<u>3,250</u> *		0	0	0
# ADDITIONAL FTE POSITIONS (Cumulative	) 0	-			

### Is Item Included in Current Budget? Yes X No Budget Account No.: Fund <u>0001</u> Department <u>580</u> Unit <u>5206/5207</u> Revenue Source <u>4729</u>/Object <u>3401</u> Program \_\_\_\_

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

	Contractor	Revenue	Expense
Α	City Sound and Recording LLC	\$0	\$750
В	City Sound and Recording LLC	\$0	\$1,500
С	Blackwood Productions LLC	\$0	\$1,000
D	Blackwood Productions LLC *	\$450	\$450
E	Blackwood Productions LLC *	\$450	\$450
F	Blackwood Productions LLC *	\$450	\$450
	Totals	\$1,350	\$4,600

\* The cost of these services were reimbursed to the County by the event promoters (AEG Live SE, LLC; Snook and Gamefish Foundation, Inc.; Reach Communications, Inc.) during the rental settlement, which occurred on the night of the event.

C. Departmental Fiscal Review:

In

### **III. REVIEW COMMENTS**

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

OFMB<sup>1</sup>

B. Legal Sufficiency:

6-14 Assistant Could hty Attorney

C. Other Department Review:

**Department Director** 

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

G:\Special Facilities Division\Agenda Items & Agreements\Amphitheaters\FY 2014\Sound & Light\Board Agenda Items\14 05 20 Agenda Sound and Light.docx

ntract Development and choluce

	SPECIAL FACILITIES DIV	ISION
ACCOUNT: 0001-580-5207-3401	VENDOR CODE: VC0000116028	CONTRACT: City Sound & Recording LLC
MC: DP 11.16.13 PS (	FSS: CC:	CA: DD:

### SOUND AND LIGHT PRODUCTION SERVICES CONTRACTOR AGREEMENT FOR PALM BEACH COUNTY PARKS & RECREATION DEPARTMENT

This Agreement is made as of the 26 day of 26626262, by and between Palm Beach County, a Political Subdivision of the State of Florida, by and through its Board of Commissioners, hereinafter referred to as the "County" and City Sound and Recording LLC, an Independent Contractor, hereinafter referred to as "Contractor".

### WITNESSETH:

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

WHEREAS, as part of the Event, the County desires to hire Production Services, which shall consist of **Production Staff**, hereinafter referred to as "Production Services"; and

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

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

WHEREAS, providing Production Services at the Facility serves a public purpose; and

WHEREAS, both parties desire to enter into this Agreement.

**NOW THEREFORE**, in consideration of the mutual covenants and promises contained herein, the County and Contractor hereby agree as follows:

- 1. <u>Recitals:</u> The foregoing recitals are true and correct and are incorporated herein by reference.
- 2. <u>Term</u>: The Contractor shall commence its Production Services on Saturday January 25, 2014 at 12:00pm and shall complete all services by Saturday January 25, 2014 at 11:00pm.
- 3. <u>Payments To Contractor</u>: County shall pay Contractor a total amount not-to-exceed Seven Hundred and Fifty Dollars (\$750.00), for Production Services as described above. County shall pay a deposit to Contractor in an amount not-to-exceed Three Hundred and Seventy Five Dollars (\$375.00), which shall be part of the total not-to-exceed amount as mentioned above. The balance in the amount not-to-exceed Three Hundred and Seventy Five Dollars (\$375.00), shall be paid to Contractor upon completion of the performance of the Entertainment services at the Facility, and upon verification by County that all services have been performed in accordance with this Agreement. If Contractor cancels or fails to appear at the Event, Contractor and County shall negotiate an alternate date for the Entertainment. If an alternative date for the Entertainment cannot be negotiated within three (3) days after cancellation, Contractor shall fully refund County's deposit within two (2) days of written notice by County that an alternative date for the Entertainment cannot be negotiated. Contractor shall furnish at its expense all transportation to and from the Event and Facility. All transportation, travel, food and lodging expenses are included in the not-toexceed amount mentioned above.
- 4. <u>Taxes:</u> The County is exempt from payment of Florida State Sales and Use Taxes. The County will sign an exemption certificate submitted by the Contractor. The Contractor shall not be exempted from paying sales tax to its suppliers for materials used to fulfill contractual obligations with the County, nor is Contractor authorized to use the County's Tax Exemption Number in securing such materials.

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

#### 6. <u>Contractor's Responsibilities:</u>

- A. Contractor shall provide Production Services as more particularly described in **Exhibit "A"**, the Scope of Work, attached hereto and incorporated herein by reference.
- B. Contractor's Production Services shall begin at 12:00pm Saturday January 25, 2014 and shall complete all services by 11:00pm Saturday January 25, 2014.
- C. Contractor may arrive at the Facility to begin setting up at 5:00 pm, but shall arrive no later than three hundred and sixty (360) minutes prior to the scheduled Entertainment time and shall have completed all sound checks and warm-ups, if applicable, at least one hundred and twenty (120) minutes prior to the scheduled Entertainment time.
- D. Contractor shall break down and remove all equipment and other materials it brings to the Event immediately upon completion of the Event, and shall leave the Facility in the same condition the Facility was in prior to conducting the Production Services.
- E. Contractor shall appear and perform Production Services for at least ninety percent (90%) of the scheduled Event time. Failure to adhere to this provision shall result in a downward adjustment in compensation payable to Contractor. County shall be the sole decision maker as to whether this provision has been complied with.
- F. Contractor shall perform the Production Services set forth in this Agreement in accordance with all applicable association/governing body rules and regulations, and in a competent, professional, safe, and responsible manner with full regard for the safety of the participants as well as the Facility.
- G. 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 the 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.

- H. No alcohol or illegal drugs shall be consumed by Contractor, its employees or agents prior to, during or subsequent to the Event while on County property.
- I. County will provide the sound equipment and lighting for Production Services, as more specifically described in Exhibit "B", attached hereto and incorporated herein by reference. All other equipment, instruments, supplies and props not identified in Exhibit "B" that are necessary for the Entertainment shall be provided and transported by Contractor. County assumes no responsibility for any items or materials of Contractor while at the Facility.
- J. Contractor further represents it has inspected the Facility and that the Facility is in proper condition for the Production Services to be completed.
- K. All vehicles belonging to Contractor or Contractor's employees or agents shall be parked in the assigned area prior to the beginning of the Event.

- L. County shall provide basic electrical services for the Event, but Contractor shall be responsible for all necessary extension cords and other related equipment.
- M. If any additional requirements such as specialty certifications, licenses and/or memberships applicable to the Production Services are required, CONTRACTOR shall attach a copy of each to this Agreement as **Exhibit "C".**
- N. Contractor shall not use or permit the use of any pyrotechnics of any type during the Event.
- O. Contractor shall not undertake or participate in any business, exhibit or activity at the Event other than herein specified.
- P. Contractor shall comply in all material respects with all federal and state laws and regulations and all applicable county and city ordinances and regulations.

#### 7. Cancellation and Postponement of Event:

- A. In case of inclement weather (i.e. hurricanes, thunderstorms, tornadoes, flooding, etc.), Acts of God, riots, strikes, epidemics, and similar circumstances affecting public safety, as determined solely by County, the County may cancel or postpone this Agreement by providing Contractor with at least four (4) hours notice prior to the scheduled Event. Upon cancellation due to inclement weather, County and Contractor may negotiate another date for the Event at the Facility by Contractor, upon the same terms and conditions of this Agreement. In the event an alternate date cannot be agreed upon by both parties within three (3) days after cancellation, Contractor shall fully refund County's deposit within two (2) days of written notice by County that an alternative date for the Event cannot be negotiated. In the event an alternate date is not negotiated in accordance herewith, Contractor shall not be entitled to payment, and County shall not be liable for any lost profits or damages claimed by Contractor. County reserves the right, without liability therefore, to evacuate the Facility during any activity in progress where it is deemed necessary for the safety of the general public, patrons, or guests.
- B. In the event of sickness or acts of nature that prevent Contractor from performing the Production Services as scheduled, Contractor may fulfill the obligations of this Agreement by substituting a similar Production Company, with the prior approval of County. If a substitute Production Company performs the Production Services, Contractor shall refund County's full deposit immediately, and County may pay a lower not-to-exceed amount to the substitute Production Company.
- C. County can adjust Contractor's Production Services as deemed necessary to conclude the Event early, in consultation with Contractor. If in the reasonable discretion of County, Contractor is not performing the Production Services in a professional manner in accordance with this Agreement, the Event may be canceled early and this Agreement shall be terminated, and Contractor shall immediately return all deposits paid by County to Contractor.
- D. County may terminate this Agreement without cause upon seven (7) days prior written notice to Contractor. County shall not be liable to Contractor for any lost profits or damages claimed by Contractor. Upon early termination by County, Contractor shall refund County's full deposit within two (2) days after notice of termination.
- E. Contractor may terminate this Agreement upon written notice mailed to the County at least thirty (30) working days prior to the Event, and shall immediately refund all deposits paid by County to Contractor.
- 8. <u>Independent Contractor Status</u>: It is specifically understood that the Contractor is an independent contractor and not an employee of the County. The County and Contractor agree that this Agreement is not a contract of employment and that no relationship of Employer/Employee or Principal/Agent is or shall be created hereby nor shall hereafter exist by reason of the performance of the services herein specified.

- 9. <u>Assignment</u>: Contractor shall not assign, transfer or otherwise encumber this Agreement or any party thereof, in any manner without the prior written consent of the County. It is further agreed that no modification, amendment or alteration in the terms and conditions contained herein shall be effective unless contained in a written document executed with the same formality and equal dignity herewith.
- <u>Representatives:</u> The County's representative for this Agreement is Andrew Holzinger; telephone no. 561-966-7047. The Contractor's representative for this Agreement is Peter Noble, telephone no.561-252-6443.
- 11. <u>Indemnification:</u> Contractor shall conduct its activities and Production Services and the activities and Production Services of its agents, employees and subcontractors at the Facility as not to endanger any person thereon and to indemnify and hold harmless the County, its officials, agents and employees from and against all claims, suits, actions, damages, liabilities, expenditures or causes of action, including attorney's fees and costs, whether at trial or appellate levels or otherwise, arising out of or in any way connected to the activity or inactivity of Contractor, its agents, employees or subcontractors, and resulting or occurring from any act, omission or error of Contractor, its agents or employees, resulting in or relating to injuries to body, life, limb or property sustained in, about or of the use of the Facility by Contractor, its agents, employees or subcontractor, its employees, agents or subcontractors, for any cause whatsoever, prior, during or subsequent to the period of time during this Agreement. This provision shall survive termination or expiration of this Agreement.
- 12. <u>Insurance:</u> County, by and through its Risk Management Department, in cooperation with the contracting/monitoring department, reserves the rights to require insurance coverages throughout the term of this Agreement. If County determines insurance is required to perform this Agreement, Contractor shall, at its sole cost and expense, maintain in full force and effect at all times during the life of this Agreement, insurance coverages and limits (including endorsements), as described in **Exhibit "D"**. Contractor shall provide the County with at least ten (10) day prior notice of any cancellation, non-renewal or material change to the insurance coverages. The requirements of Contractor to maintain or not to maintain insurance is not intended to and shall not in any manner limit or qualify the liabilities and obligations assumed by Contractor under this Agreement. County reserves the right, but not the obligation, to review and reject any insurer providing coverage because of its poor financial condition or failure to operate legally.
- 13. <u>Notices</u>: All notices required in this Agreement shall be hand delivered or sent by certified mail, return receipt requested, if sent to the COUNTY shall be mailed to:

Director of Special Facilities Palm Beach County Parks and Recreation Department 2700 Sixth Avenue South Lake Worth, FL 33461

and if sent to the CONTRACTOR shall be mailed to:

CONTRACTOR'S Name: City Sound and Recording, LLC/Peter Noble

CONTRACTOR'S Address: 3646 23rd Avenue South, Unit 107 Lake Worth FL, 33461

CONTRACTOR'S Phone No.: 561-252-6443

- 14. <u>Remedies:</u> This Agreement shall be governed by the laws of the State of Florida. Any legal action necessary to enforce this Agreement shall be held in Palm Beach County, Florida. Nothing herein shall be construed as creating any personal liability on the part of any officer or agent of the County, or shall it be construed as giving any rights or benefits hereunder to anyone other than the County and the Contractor.
- 15. <u>Authorization:</u> Any individual executing this Agreement on behalf of Contractor warrants he or she has full legal authority to do so, and his/her execution shall bind the Contractor, its employees, agents and subcontractors to the terms and conditions herein.

- 16. <u>Availability of Funds</u>: The County's performance and obligation to pay under this Agreement for subsequent fiscal years is contingent upon annual appropriations for its purpose by the Board of County Commissioners.
- 17. <u>Arrears:</u> The Contractor shall not pledge the County's credit or make it a guarantor of payment or surety for any contract, debt, obligation, judgment, lien, or any form of indebtedness. The Contractor further warrants and represents that it has no obligation or indebtedness that would impair its ability to fulfill the terms of this Agreement.
- 18. <u>Public Entity Crimes:</u> As provided in F.S. 287.132-133, by entering into this Agreement or performing any work in furtherance hereof, the Contractor certifies that it, its affiliates, suppliers, subcontractors and consultants who will perform hereunder, have not been placed on the convicted vendor list maintained by the State of Florida Department of Management Services within the 36 months immediately preceding the date hereof. This notice is required by F.S. 287.133(3)(a).
- 19. <u>Severability:</u> If any term or provision of this Agreement, or the application thereof to any person or circumstances shall, to any extent, be held invalid or unenforceable, the remainder of this Agreement, or the application of such terms or provision, to persons or circumstances other than those as to which it is held invalid or unenforceable, shall not be affected, and every other term and provision of this Agreement shall be deemed valid and enforceable to the extent permitted by law.
- 20. <u>Entirety of Contractual Agreement:</u> The County and the Contractor agree that this Agreement sets forth the entire agreement between the parties, and that there are no promises or understandings other than those stated herein. None of the provisions, terms and conditions contained in this Agreement may be added to, modified, superseded or otherwise altered, except by written instrument executed by the parties hereto.
- 21. <u>Waiver</u>: Failure of County to insist upon strict performance of any covenant or condition of this Agreement, or to execute any right herein contained, shall not be construed as a waiver or relinquishment for the failure of such covenant, condition, or right, but the same shall remain in full force and effect.
- 22. <u>Nondiscrimination:</u> 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 and expression.
- 23. <u>No Third Party Beneficiary:</u> 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 or the Contractor.
- 24. <u>Criminal History Records Check:</u> If Contractor's employees or subcontractors are required under this Agreement to enter a "critical facility," as identified in Resolution R-2003-1274, the Contractor 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.

#### (REMAINDER OF THIS PAGE INTENTIONALY LEFT BLANK)

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

PALM BEACH COUNTY WITNESS SIGNATUR DIZENCEA REW NAME (TYPE PALM BEACH COUNTY EPARTMENT DIRECTOR COUNTY ADMINISTRATOR (if contract value exceeds \$10,000.) CONTRACTOR **City Sound and Recording LLC** UWNER CONTRACTOR WITNESS SIGNATURE att Milim NAME (T YPE OR PRINT) Approved as to Form and Legal Sufficiency By: <u>Assistant County Attorney</u>

### EXHIBIT "A"

#### Scope of Work

#### January 25, 2014 Riverdown

### City Sound and Recording LLC

Contractor will supply to the County, one (1) sound engineer, one (1) stage manager, monitors, mics with stands, and all necessary cables to provide sound during the concert which runs from **7:00 PM to 9:00 PM**. Contractor will assist the performers to set up backline and provide a sound check 60 minutes prior to performance time.

Contractor will review the artist technical rider or production requirements with Amphitheater staff prior to the event to determine if the facility sound and lighting equipment meets the minimal needs of the event.

Contractor will set up and tie-in the County's existing sound equipment.

Contractor will enable Powergates in mechanical room if required.

Contractor will monitor power levels at the front of house station during sound checks and for the duration of show to ensure that the County's sound system is not being pushed past the DC One limiter presets.

Contractor will monitor sound levels at the front of house using the County's supplied Decibel reader. Decibel reader may not exceed 110 Decibels at the front of house station.

Contractor will unplug and put the County's existing sound equipment back into the stage equipment room at the conclusion of the show.

Contractor will check the County's inventory to ensure all equipment has been placed back in equipment room. Contractor will ensure that stage lighting has been returned to its original state at post show.

# EXHIBIT "B"

**Equipment Provided** 

January 25, 2014 Riverdown

<u>City Sound and Recording LLC</u> The County's sound and light system provided is detailed on the attached equipment list.



### Lighting and Sound System

**Stage Lighting Console** 

Strand Palette 48/96

#### Lighting

Altman Outdoor PAR 64-1000watt Fixture (44 on front overhang rail, 11 on first inside rail) Altman R-40 Striplight-250watt Fixtures (4 per row on second, third and fourth inside rail)

Sound System **Mixing Console** Soundcraft GB8 40 channel

## **Microphones**

Shure ULX Wireless with SM58 Capsules (2)

#### Signal Processing

DBX 223 1 Graphic EQs (3) Yamaha SPX 2000 Lexicon MX 400 Symetrix SYM-NET 8x8 Processors EV DC One

#### **Playback**

Denon DN-635 CD Player Denon DN-T625 Cassette/ CD Player

#### Speaker System

EV Xlci Line Array Xlc 118 (3 per side) Xlci 127 (6 per side)

Power Amplification Crown Macro Tech 5002vz (2 for Suds) Crown Macro tech 3600vz (3 for Lows) Crown Macro Tech 2402 (3 for passively crossed over Mids and Highs)

#### <u>Snake</u>

Custom unit permanently installed with 48 inputs. 4 tie lines. All returns hardwired to House system.

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# EXHIBIT "C"

Specialty certifications, licenses and/or memberships

Not required for this performance

### EXHIBIT "D"

### Insurance

Commercial General Liability with limits of at least \$1,000,000 each occurrence is required. 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 shall be provided on a primary basis.

Required for this performance, see attached

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### Andrew Holzinger

From: Sent To: Subject: Ohy Sound & Recording, LLC (chysouna@mindspring.com) Finaay March 05, 2015 9:16 AM Andrew Holdinges Statement

City Sound and Recording LLC has no employees. Should that status change I will notify you prior to any event.

Pete Nobie

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	SPECIAL FACILITIES DIV	/ISION
ACCOUNT: 0001-580-5206-01-3401	VENDOR CODE: VC0000116028	CONTRACT: City Sound & Recording LLC
MC: DP 10.08.13 PS	FSS: CC: 🜩	CA: DD:
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#### SOUND AND LIGHT PRODUCTION SERVICES CONTRACTOR AGREEMENT FÓR PALM BEACH COUNTY PARKS & RECREATION DEPARTMENT

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This Agreement is made as of the  $30^{-14}$  day of  $50^{-14}$  day of  $50^{-14}$ , by and between Palm Beach County, a Political Subdivision of the State of Florida, by and through its Board of Commissioners, hereinafter referred to as the "County" and City Sound and Recording LLC, an Independent Contractor, an Independent Contractor, hereinafter referred to as "Contractor"

### WITNESSETH:

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

WHEREAS, as part of the Event, the County desires to hire Production Services, which shall consist of production staff, hereinafter referred to as "Production Services"; and

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

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

WHEREAS, providing Production Services at the Facility serves a public purpose; and

WHEREAS, both parties desire to enter into this Agreement.

NOW THEREFORE, in consideration of the mutual covenants and promises contained herein, the County and Contractor hereby agree as follows:

- Recitals: The foregoing recitals are true and correct and are incorporated herein by reference. 1.
- 2. Term: The Contractor shall commence its Entertainment services on Friday February 14, 2014 at 12:00pm and shall complete all services Friday February 14, 2014 at 11:00pm.
- 3 County shall pay Contractor a total amount not-to-exceed One Thousand and Five Hundred Dollars (\$1,500.00) for Production Services as described above. County shall pay a deposit to Contractor in an amount not-to-exceed Seven Hundred and Fifty Dollars (\$750.00), which shall be part of the total not-toexceed amount as mentioned above. The balance in the amount not-to-exceed Seven Hundred and Fifty Dollars (\$750.00), shall be paid to Contractor upon completion of the performance of the Production Services at the Facility, and upon verification by County that all services have been performed in accordance with this Agreement. If Contractor cancels or fails to appear at the Event, Contractor and County shall negotiate an alternate date for the Production Services. If an alternative date for the Production Services cannot be negotiated within three (3) days after cancellation, Contractor shall fully refund County's deposit within two (2) days of written notice by County that an alternative date for the Production Services cannot be negotiated. Contractor shall furnish at its expense all transportation to and from the Event and Facility. All transportation, travel, food and lodging expenses are included in the not-toexceed amount mentioned above.
- 4 Taxes: The County is exempt from payment of Florida State Sales and Use Taxes. The County will sign an exemption certificate submitted by the Contractor. The Contractor shall not be exempted from paying sales tax to its suppliers for materials used to fulfill contractual obligations with the County, nor is Contractor authorized to use the County's Tax Exemption Number in securing such materials.



The Contractor shall be responsible for payment of its own and its share of its employees' payroll, payroll taxes, and benefits with respect to this Agreement. It is also acknowledged and agreed by the County and Contractor that the service herein provided by the Contractor is a professional service and that the County is neither paying Social Security benefits nor withholding taxes from the Contractor's compensation for said service. The Contractor assumes all liability and responsibility for payment of his/her own FICA and Social Security benefits with respect to this Agreement.

#### 5. <u>Contractor's Responsibilities:</u>

- A. Contractor shall provide Production Services as more particularly described in **Exhibit "A"**, the Scope of Work, attached hereto and incorporated herein by reference.
- B. Contractor's Production Services shall begin at 12:00pm on Friday February 14, 2014 and end at 11:00pm on Friday February 14, 2014.
- C. Contractor may arrive at the Facility to begin setting up at **12:00 pm**, but shall arrive no later than **three hundred and sixty (360) minutes** prior to the scheduled Entertainment time and shall have completed all sound checks and warm-ups, if applicable, at least **thirty (30) minutes** prior to the scheduled Entertainment time.
- D. Contractor shall break down and remove all equipment and other materials it brings to the Event immediately upon completion of the Event, and shall leave the Facility in the same condition the Facility was in prior to conducting the Production Services.
- E. Contractor shall appear and perform Production Services for at least ninety percent (90%) of the scheduled Event time. Failure to adhere to this provision shall result in a downward adjustment in compensation payable to Contractor. County shall be the sole decision maker as to whether this provision has been complied with.
- F. Contractor shall perform the Production Services set forth in this Agreement in accordance with all applicable association/governing body rules and regulations, and in a competent, professional, safe, and responsible manner with full regard for the safety of the participants as well as the Facility.
- G. 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 the 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.

- H. No alcohol or illegal drugs shall be consumed by Contractor, its employees or agents prior to, during or subsequent to the Event while on County property.
- I. County will provide the sound equipment and lighting for Production Services, as more specifically described in Exhibit "B", attached hereto and incorporated herein by reference. All other equipment, instruments, supplies and props not identified in Exhibit "B" that are necessary for the Entertainment shall be provided and transported by Contractor. County assumes no responsibility for any items or materials of Contractor while at the Facility.
- J. Contractor further represents it has inspected the Facility and that the Facility is in proper condition for the Production Services to be completed.

- K. All vehicles belonging to Contractor or Contractor's employees or agents shall be parked in the assigned area prior to the beginning of the Event.
- L. County shall provide basic electrical services for the Event, but Contractor shall be responsible for all necessary extension cords and other related equipment.
- M. If any additional requirements such as specialty certifications, licenses and/or memberships applicable to the Production Services are required, CONTRACTOR shall attach a copy of each to this Agreement as **Exhibit "C"**.
- N. Contractor shall not use or permit the use of any pyrotechnics of any type during the Event.
- O. Contractor shall not undertake or participate in any business, exhibit or activity at the Event other than herein specified.
- P. Contractor shall comply in all material respects with all federal and state laws and regulations and all applicable county and city ordinances and regulations.

#### 6. <u>Cancellation and Postponement of Event:</u>

- A. In case of inclement weather (i.e. hurricanes, thunderstorms, tornadoes, flooding, etc.), Acts of God, riots, strikes, epidemics, and similar circumstances affecting public safety, as determined solely by County, the County may cancel or postpone this Agreement by providing Contractor with at least four (4) hours notice prior to the scheduled Event. Upon cancellation due to inclement weather, County and Contractor may negotiate another date for the Event at the Facility by Contractor, upon the same terms and conditions of this Agreement. In the event an alternate date cannot be agreed upon by both parties within three (3) days after cancellation, Contractor shall fully refund County's deposit within two (2) days of written notice by County that an alternative date for the Event cannot be negotiated. In the event an alternate date is not negotiated in accordance herewith, Contractor shall not be entitled to payment, and County shall not be liable for any lost profits or damages claimed by Contractor. County reserves the right, without liability therefore, to evacuate the Facility during any activity in progress where it is deemed necessary for the safety of the general public, patrons, or guests.
- B. In the event of sickness or acts of nature that prevent Contractor from performing the Production Services as scheduled, Contractor may fulfill the obligations of this Agreement by substituting a similar Production Company, with the prior approval of County. If a substitute Production Company performs the Production Services, Contractor shall refund County's full deposit immediately, and County may pay a lower not-to-exceed amount to the substitute Production Company.
- C. County can adjust Contractor's Production Services as deemed necessary to conclude the Event early, in consultation with Contractor. If in the reasonable discretion of County, Contractor is not performing the Production Services in a professional manner in accordance with this Agreement, the Event may be canceled early and this Agreement shall be terminated, and Contractor shall immediately return all deposits paid by County to Contractor.
- D. County may terminate this Agreement without cause upon seven (7) days prior written notice to Contractor. County shall not be liable to Contractor for any lost profits or damages claimed by Contractor. Upon early termination by County, Contractor shall refund County's full deposit within two (2) days after notice of termination.
- E. Contractor may terminate this Agreement upon written notice mailed to the County at least thirty (30) working days prior to the Event, and shall immediately refund all deposits paid by County to Contractor.
- 7. <u>Independent Contractor Status</u>: It is specifically understood that the Contractor is an independent contractor and not an employee of the County. The County and Contractor agree that this Agreement is not a contract of employment and that no relationship of Employer/Employee or Principal/Agent is or shall

be created hereby nor shall hereafter exist by reason of the performance of the services herein specified.

- 8. <u>Assignment</u>: Contractor shall not assign, transfer or otherwise encumber this Agreement or any party thereof, in any manner without the prior written consent of the County. It is further agreed that no modification, amendment or alteration in the terms and conditions contained herein shall be effective unless contained in a written document executed with the same formality and equal dignity herewith.
- 9. <u>Representatives:</u> <u>Representatives:</u> The County's representative for this Agreement is **Andrew Holzinger;** telephone no. **561-966-7047**. The Contractor's representative for this Agreement is **Peter Noble**, telephone no.**561-252-6443**.
- 10. 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.
- 11. <u>Insurance:</u> County, by and through its Risk Management Department, in cooperation with the contracting/monitoring department, reserves the rights to require insurance coverages throughout the term of this Agreement. If County determines insurance is required to perform this Agreement, Contractor shall, at its sole cost and expense, maintain in full force and effect at all times during the life of this Agreement, insurance coverages and limits (including endorsements), as described in **Exhibit "D"**. Contractor shall provide the County with at least ten (10) day prior notice of any cancellation, non-renewal or material change to the insurance coverages. The requirements of Contractor to maintain or not to maintain insurance is not intended to and shall not in any manner limit or qualify the liabilities and obligations assumed by Contractor under this Agreement. County reserves the right, but not the obligation, to review and reject any insurer providing coverage because of its poor financial condition or failure to operate legally.
- 12. <u>Notices</u>: All notices required in this Agreement shall be hand delivered or sent by certified mail, return receipt requested, if sent to the COUNTY shall be mailed to:

Director of Special Facilities Palm Beach County Parks and Recreation Department 2700 Sixth Avenue South Lake Worth, FL 33461

and if sent to the CONTRACTOR shall be mailed to:

CONTRACTOR'S Name: City Sound and Recording, LLC/Peter Noble

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

CONTRACTOR'S Phone No.: 561-252-6443

13. <u>Remedies</u>: 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.

- 14. <u>Authorization:</u> Any individual executing this Agreement on behalf of Contractor warrants he or she has full legal authority to do so, and his/her execution shall bind the Contractor, its employees, agents and subcontractors to the terms and conditions herein.
- 15. <u>Availability of Funds</u>: The County's performance and obligation to pay under this Agreement for subsequent fiscal years is contingent upon annual appropriations for its purpose by the Board of County Commissioners.
- 16. <u>Arrears:</u> The Contractor shall not pledge the County's credit or make it a guarantor of payment or surety for any contract, debt, obligation, judgment, lien, or any form of indebtedness. The Contractor further warrants and represents that it has no obligation or indebtedness that would impair its ability to fulfill the terms of this Agreement.
- 17. <u>Public Entity Crimes:</u> As provided in F.S. 287.132-133, by entering into this Agreement or performing any work in furtherance hereof, the Contractor certifies that it, its affiliates, suppliers, subcontractors and consultants who will perform hereunder, have not been placed on the convicted vendor list maintained by the State of Florida Department of Management Services within the 36 months immediately preceding the date hereof. This notice is required by F.S. 287.133(3)(a).
- 18. <u>Severability:</u> If any term or provision of this Agreement, or the application thereof to any person or circumstances shall, to any extent, be held invalid or unenforceable, the remainder of this Agreement, or the application of such terms or provision, to persons or circumstances other than those as to which it is held invalid or unenforceable, shall not be affected, and every other term and provision of this Agreement shall be deemed valid and enforceable to the extent permitted by law.
- 19. <u>Access and Audits</u>: 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.

- 20. <u>Entirety of Contractual Agreement:</u> The County and the Contractor agree that this Agreement sets forth the entire agreement between the parties, and that there are no promises or understandings other than those stated herein. None of the provisions, terms and conditions contained in this Agreement may be added to, modified, superseded or otherwise altered, except by written instrument executed by the parties hereto.
- 21. <u>Waiver</u>: Failure of County to insist upon strict performance of any covenant or condition of this Agreement, or to execute any right herein contained, shall not be construed as a waiver or relinquishment for the failure of such covenant, condition, or right, but the same shall remain in full force and effect.
- 22. <u>Nondiscrimination</u>: 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 and expression.
- 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. <u>Criminal History Records Check:</u> 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.

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

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## PALM BEACH COUNTY WITNESS

SIGNA LZENGER NDREW

NAME (T

PALM BEACH COUNTY

COUNTY ADMINISTRATOR (If contract value exceeds \$10,000.)

CONTRACTOR – (City Sound and Recording LLC)

OWNER N

### **CONTRACTOR WITNESS**

Approved as to Form and Legal Sufficiency

Ume G By: Assistant County Attorney

### EXHIBIT "A"

### Scope of Work

### Date: Friday February 14, 2014 Solid Brass

Contractor will supply to the County, one (1) sound engineer, one (1) stage manager, monitors, mics with stands, and all necessary cables to provide sound during the concert. Sound check will begin at 6:00 pm and conclude by 6:30 pm. Performance time is from **7:00 PM to 9:00 PM**. Contractor will assist the performers to set up backline and provide a sound check 30 minutes prior to performance time.

### EXHIBIT "B"

### Equipment Provided

# Date: Friday February 14, 2014 Solid Brass

The County will provide two (2) light trees with four (4) – par 64 cans per tree (500 watts each can).

Contractor will supply to the County:

Qty	item #	Description
8.00	Audio	Mid/ High Cabs with Power
8.00	Audio	Dual 18" Subs with Power
8.00	Audio	Monitor Wedges with Power
1.00	Audio	32 x 16 Mixing Console
1.00	Audio	Mic, Stand & Cable Package
1.00	Lighting	Front Truss with Lifts
1.00	Lighting	Rear Truss with Lifts
32.00	Lighting	PAR 56 Lamps
1.00	Lighting	Controller
1.00	Power	200 Amp, 3 Phase Distro
2.00	Power	100 Amp, 1 Phase Distro
1.00	Power	Backline Power
4.00	Crew	Crew Members

# EXHIBIT "C"

# Specialty certifications, licenses and/or memberships

Not required for this performance

### EXHIBIT "D"

### Insurance

Commercial General Liability with limits of at least \$1,000,000 each occurrence is required. 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 shall be provided on a primary basis.

Required for this performance, see attached

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	e Worth, FL 33467							RDING COVERAGE		NAIC #
<b></b>	one (561) 434-4451 Fi URED	ax (5	61) 4	34-3505	INSUR	ERA: Penn /	America			
	Sound & Recording LLC					ER B :				
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ACORD 25 (2010/05) QF

The ACORD name and logo are registered marks of ACORD

#### Andrew Holzinger

From:	
Sent	
To:	
Subject:	

City Sound & Recording, L.C. (drysound@mindspring.com) Friday, March 05, 2015 9:18 AM Andrew Bulzinger Statement . . . . . . . .

City Sound and Recording LLC has no employees. Should that status change I will notify you prior to any event.

Pete Nobie

Ł

SPECIAL FACILITIES DIVISION	1
	CONTRACT: Blackwood Productions LLC
MC: DP 01.10.14 PS 04 FSS: 14 CC:	CA: DD:

### SOUND AND LIGHT PRODUCTION SERVICES CONTRACTOR AGREEMENT FOR PALM BEACH COUNTY PARKS & RECREATION DEPARTMENT

This Agreement is made as of the  $5^{r^4}$  day of March,  $20^{14}$ , by and between Palm Beach County, a Political Subdivision of the State of Florida, by and through its Board of Commissioners, hereinafter referred to as the "County" and Blackwood Productions LLC, a Florida Limited Liability Company, hereinafter referred to as "Contractor".

#### WITNESSETH:

WHEREAS, the County desires to host a **Blues** concert, hereinafter referred to as the "Event" at **Seabreeze** Amphitheater, hereinafter referred to as the "Facility"; and

WHEREAS, as part of the Event, the County desires to hire Production Services, which shall consist of production staff, hereinafter referred to as "Production Services"; and

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

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

WHEREAS, providing Production Services at the Facility serves a public purpose; and

WHEREAS, both parties desire to enter into this Agreement.

**NOW THEREFORE**, in consideration of the mutual covenants and promises contained herein, the County and Contractor hereby agree as follows:

- 1. <u>Recitals:</u> The foregoing recitals are true and correct and are incorporated herein by reference.
- 2. <u>Term</u>: The Contractor shall commence its Entertainment services on Friday, March 14, 2014 at 12:00pm and shall complete all services Friday, March 14, 2014 at 11:00pm.
- 3. County shall pay Contractor a total amount not-to-exceed One Thousand Dollars (\$1,000.00) for Production Services as described above. County shall pay a deposit to Contractor in an amount not-toexceed Five Hundred Dollars (\$500.00), which shall be part of the total not-to-exceed amount as mentioned above. The balance in the amount not-to-exceed Five Hundred Dollars (\$500.00), shall be paid to Contractor upon completion of the performance of the Production Services at the Facility, and upon verification by County that all services have been performed in accordance with this Agreement. If Contractor cancels or fails to appear at the Event, Contractor and County shall negotiate an alternate date for the Production Services. If an alternative date for the Production Services cannot be negotiated within three (3) days after cancellation, Contractor shall fully refund County's deposit within two (2) days of written notice by County that an alternative date for the Production Services cannot be negotiated. Contractor shall furnish at its expense all transportation to and from the Event and Facility. All transportation, travel, food and lodging expenses are included in the not-to-exceed amount mentioned above.
- 4. <u>Taxes:</u> The County is exempt from payment of Florida State Sales and Use Taxes. The County will sign an exemption certificate submitted by the Contractor. The Contractor shall not be exempted from paying sales tax to its suppliers for materials used to fulfill contractual obligations with the County, nor is Contractor authorized to use the County's Tax Exemption Number in securing such materials.

The Contractor shall be responsible for payment of its own and its share of its employees' payroll, payroll

The Contractor shall be responsible for payment of its own and its share of its employees' payroll, payroll taxes, and benefits with respect to this Agreement. It is also acknowledged and agreed by the County and Contractor that the service herein provided by the Contractor is a professional service and that the County is neither paying Social Security benefits nor withholding taxes from the Contractor's compensation for said service. The Contractor assumes all liability and responsibility for payment of his/her own FICA and Social Security benefits with respect to this Agreement.

#### 5. <u>Contractor's Responsibilities:</u>

- A. Contractor shall provide Production Services as more particularly described in **Exhibit "A"**, the Scope of Work, attached hereto and incorporated herein by reference.
- B. Contractor's Production Services shall begin at 12:00pm on Friday March 14, 2014 and end at 11:00pm on Friday March 14, 2014.
- C. Contractor may arrive at the Facility to begin setting up at **12:00 pm**, but shall arrive no later than **three hundred and sixty (360) minutes** prior to the scheduled Entertainment time and shall have completed all sound checks and warm-ups, if applicable, at least **thirty (30) minutes** prior to the scheduled Entertainment time.
- D. Contractor shall break down and remove all equipment and other materials it brings to the Event immediately upon completion of the Event, and shall leave the Facility in the same condition the Facility was in prior to conducting the Production Services.
- E. Contractor shall appear and perform Production Services for at least ninety percent (90%) of the scheduled Event time. Failure to adhere to this provision shall result in a downward adjustment in compensation payable to Contractor. County shall be the sole decision maker as to whether this provision has been complied with.
- F. Contractor shall perform the Production Services set forth in this Agreement in accordance with all applicable association/governing body rules and regulations, and in a competent, professional, safe, and responsible manner with full regard for the safety of the participants as well as the Facility.
- G. 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 the 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.

- H. No alcohol or illegal drugs shall be consumed by Contractor, its employees or agents prior to, during or subsequent to the Event while on County property.
- I. County will provide the sound equipment and lighting for Production Services, as more specifically described in Exhibit "B", attached hereto and incorporated herein by reference. All other equipment, instruments, supplies and props not identified in Exhibit "B" that are necessary for the Entertainment shall be provided and transported by Contractor. County assumes no responsibility for any items or materials of Contractor while at the Facility.
- J. Contractor further represents it has inspected the Facility and that the Facility is in proper condition for the Production Services to be completed.



- K. All vehicles belonging to Contractor or Contractor's employees or agents shall be parked in the assigned area prior to the beginning of the Event.
- L. County shall provide basic electrical services for the Event, but Contractor shall be responsible for all necessary extension cords and other related equipment.
- M. If any additional requirements such as specialty certifications, licenses and/or memberships applicable to the Production Services are required, CONTRACTOR shall attach a copy of each to this Agreement as Exhibit "C".
- N. Contractor shall not use or permit the use of any pyrotechnics of any type during the Event.
- O. Contractor shall not undertake or participate in any business, exhibit or activity at the Event other than herein specified.
- P. Contractor shall comply in all material respects with all federal and state laws and regulations and all applicable county and city ordinances and regulations.

#### 6. <u>Cancellation and Postponement of Event:</u>

- A. In case of inclement weather (i.e. hurricanes, thunderstorms, tornadoes, flooding, etc.), Acts of God, riots, strikes, epidemics, and similar circumstances affecting public safety, as determined solely by County, the County may cancel or postpone this Agreement by providing Contractor with at least four (4) hours notice prior to the scheduled Event. Upon cancellation due to inclement weather, County and Contractor may negotiate another date for the Event at the Facility by Contractor, upon the same terms and conditions of this Agreement. In the event an alternate date cannot be agreed upon by both parties within three (3) days after cancellation, Contractor shall fully refund County's deposit within two (2) days of written notice by County that an alternative date for the Event cannot be negotiated. In the event an alternate date is not negotiated in accordance herewith, Contractor shall not be entitled to payment, and County shall not be liable for any lost profits or damages claimed by Contractor. County reserves the right, without liability therefore, to evacuate the Facility during any activity in progress where it is deemed necessary for the safety of the general public, patrons, or guests.
- B. In the event of sickness or acts of nature that prevent Contractor from performing the Production Services as scheduled, Contractor may fulfill the obligations of this Agreement by substituting a similar Production Company, with the prior approval of County. If a substitute Production Company performs the Production Services, Contractor shall refund County's full deposit immediately, and County may pay a lower not-to-exceed amount to the substitute Production Company.
- C. County can adjust Contractor's Production Services as deemed necessary to conclude the Event early, in consultation with Contractor. If in the reasonable discretion of County, Contractor is not performing the Production Services in a professional manner in accordance with this Agreement, the Event may be canceled early and this Agreement shall be terminated, and Contractor shall immediately return all deposits paid by County to Contractor.
- D. County may terminate this Agreement without cause upon seven (7) days prior written notice to Contractor. County shall not be liable to Contractor for any lost profits or damages claimed by Contractor. Upon early termination by County, Contractor shall refund County's full deposit within two (2) days after notice of termination.
- E. Contractor may terminate this Agreement upon written notice mailed to the County at least thirty (30) working days prior to the Event, and shall immediately refund all deposits paid by County to Contractor.
- 7. <u>Independent Contractor Status</u>: It is specifically understood that the Contractor is an independent contractor and not an employee of the County. The County and Contractor agree that this Agreement is not a contract of employment and that no relationship of Employer/Employee or Principal/Agent is or shall

be created hereby nor shall hereafter exist by reason of the performance of the services herein specified.

- 8. <u>Assignment</u>: Contractor shall not assign, transfer or otherwise encumber this Agreement or any party thereof, in any manner without the prior written consent of the County. It is further agreed that no modification, amendment or alteration in the terms and conditions contained herein shall be effective unless contained in a written document executed with the same formality and equal dignity herewith.
- 9. <u>Representatives:</u> <u>Representatives:</u> The County's representative for this Agreement is Andrew Holzinger; telephone no. 561-966-7047. The Contractor's representative for this Agreement is Peter Noble, telephone no.561-252-6443.
- 10. Indemnification: CONTRACTOR agrees to protect, defend, reimburse, indemnify and hold COUNTY, its agents, employees and elected officers free and hamless 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.
- 11. <u>Insurance:</u> County, by and through its Risk Management Department, in cooperation with the contracting/monitoring department, reserves the rights to require insurance coverages throughout the term of this Agreement. If County determines insurance is required to perform this Agreement, Contractor shall, at its sole cost and expense, maintain in full force and effect at all times during the life of this Agreement, insurance coverages and limits (including endorsements), as described in **Exhibit "D"**. Contractor shall provide the County with at least ten (10) day prior notice of any cancellation, non-renewal or material change to the insurance coverages. The requirements of Contractor to maintain or not to maintain insurance is not intended to and shall not in any manner limit or qualify the liabilities and obligations assumed by Contractor under this Agreement. County reserves the right, but not the obligation, to review and reject any insurer providing coverage because of its poor financial condition or failure to operate legally.
- 12. <u>Notices</u>: All notices required in this Agreement shall be hand delivered or sent by certified mail, return receipt requested, if sent to the COUNTY shall be mailed to:

Director of Special Facilities Palm Beach County Parks and Recreation Department 2700 Sixth Avenue South Lake Worth, FL 33461

and if sent to the CONTRACTOR shall be mailed to:

CONTRACTOR'S Name: Blackwood Productions LLC/Peter Noble

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

CONTRACTOR'S Phone No.: 561-252-6443

13. <u>Remedies</u>: 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.



- 14. <u>Authorization:</u> Any individual executing this Agreement on behalf of Contractor warrants he or she has full legal authority to do so, and his/her execution shall bind the Contractor, its employees, agents and subcontractors to the terms and conditions herein.
- 15. <u>Availability of Funds</u>: The County's performance and obligation to pay under this Agreement for subsequent fiscal years is contingent upon annual appropriations for its purpose by the Board of County Commissioners.
- 16. <u>Arrears:</u> The Contractor shall not pledge the County's credit or make it a guarantor of payment or surety for any contract, debt, obligation, judgment, lien, or any form of indebtedness. The Contractor further warrants and represents that it has no obligation or indebtedness that would impair its ability to fulfill the terms of this Agreement.
- 17. <u>Public Entity Crimes:</u> As provided in F.S. 287.132-133, by entering into this Agreement or performing any work in furtherance hereof, the Contractor certifies that it, its affiliates, suppliers, subcontractors and consultants who will perform hereunder, have not been placed on the convicted vendor list maintained by the State of Florida Department of Management Services within the 36 months immediately preceding the date hereof. This notice is required by F.S. 287.133(3)(a).
- 18. <u>Severability</u>: If any term or provision of this Agreement, or the application thereof to any person or circumstances shall, to any extent, be held invalid or unenforceable, the remainder of this Agreement, or the application of such terms or provision, to persons or circumstances other than those as to which it is held invalid or unenforceable, shall not be affected, and every other term and provision of this Agreement shall be deemed valid and enforceable to the extent permitted by law.
- 19. 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.

- 20. <u>Entirety of Contractual Agreement:</u> The County and the Contractor agree that this Agreement sets forth the entire agreement between the parties, and that there are no promises or understandings other than those stated herein. None of the provisions, terms and conditions contained in this Agreement may be added to, modified, superseded or otherwise altered, except by written instrument executed by the parties hereto.
- 21. <u>Waiver</u>: Failure of County to insist upon strict performance of any covenant or condition of this Agreement, or to execute any right herein contained, shall not be construed as a waiver or relinquishment for the failure of such covenant, condition, or right, but the same shall remain in full force and effect.
- 22. <u>Nondiscrimination:</u> 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 and expression.
- 23. <u>No Third Party Beneficiaries</u>: 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. <u>Criminal History Records Check:</u> 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.

(REMAINDER OF THIS PAGE INTENTIONALY LEFT BLANK)

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

PALM BEACH COUNTY WITNESS Λ SIGNATURE 25060 NAME (TYPE OR PRINT) PALM BEACH COUNTY 20 COUNTY ADMINISTRATOR (If contract value exceeds \$10,000.) CONTRACTOR - (Blackwood Productions LLC) WNER NA **CONTRACTOR WITNESS** eZ Approved as to Form and Legal Sufficiency

Assistant County Attorney By:

### **EXHIBIT "A"**

### Scope of Work

### Date: Friday March 14, 2014 Big Vince and the Phat Cats

Contractor will supply to the County, one (1) sound engineer, one (1) stage manager, monitors, mics with stands, and all necessary cables to provide sound during the concert. Sound check will begin at 6:00 pm and conclude by 6:30 pm. Performance time is from **7:00 PM to 9:00 PM**. Contractor will assist the performers to set up backline and provide a sound check 30 minutes prior to performance time.

# EXHIBIT "B"

# Equipment Provided

# Date: Friday March 14, 2014 Big Vince and the Phat Cats

The County will provide two (2) light trees with four (4) - par 64 cans per tree (500 watts each can).

9

Contractor will supply to the County:

Qty	ltem #	Description
8.00	Audio	Mid/ High Cabs with Power
8.00	Audio	Dual 18" Subs with Power
8.00	Audio	Monitor Wedges with Power
1.00	Audio	32 x 16 Mixing Console
1.00	Audio	Mic, Stand & Cable Package
1.00	Power	200 Amp, 3 Phase Distro
2.00	Power	100 Amp, 1 Phase Distro
1.00	Power	Backline Power
4.00	Crew	Crew Members

# EXHIBIT "C"

# Specialty certifications, licenses and/or memberships

Not required for this performance

## EXHIBIT "D"

## Insurance

Commercial General Liability with limits of at least \$1,000,000 each occurrence is required. 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 shall be provided on a primary basis.

Required for this performance, see attached



# CERTIFICATE OF LIABILITY INSURANCE

DATE (MM/DD/YYYY) 02/25/14

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	HIS CERTIFICATE IS ISSUED AS A M ERTIFICATE DOES NOT AFFIRMATI ELOW. THIS CERTIFICATE OF INSU EPRESENTATIVE OR PRODUCER, A	VELY RAN	OR CE D	NEGATIVELY AMEND, EX OES NOT CONSTITUTE	XTEND	OR ALTER 1	THE COVERA	AGE AFFORDED BY THE	POLIC	IES	
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	ertificate holder in lieu of such endorseme	ent(s)		and the second sec		ACT					
	6. Holdam Insurance				NAME:         FAX           PHONE         FAX           (AUC, No, Ext):         (561) 434-4451						
1	0 Jog Road				E-MAII		@hghoidam.co		(50)	) 434-3305	
Lak	e Worth, FL 33467				ADDRESS: Craig@inginoidam.com INSURER(S) AFFORDING COVERAGE NAIC #						
Phe		ax (5	61) 4	34-3505	INSUR	D	America Ins Co				
	JRED				INSUR	ER B :					
	kwood Productions, LLC				INSUR						
	6 23rd Ave S #107				INSUR						
Lak	e Worth, FL 33461		Ę	561	INSUR						
				NUMBER:				REVISION NUMBER:			
THIS IS TO CERTIFY THAT THE POLICIES OF INSURANCE LISTED BELOW HAVE BEEN ISSUED TO THE INSURED NAMED ABOVE FOR THE POLICY PERIOD INDICATED. NOTWITHSTANDING ANY REQUIREMENT, TERM OR CONDITION OF ANY CONTRACT OR OTHER DOCUMENT WITH RESPECT TO WHICH THIS CERTIFICATE MAY BE ISSUED OR MAY PERTAIN, THE INSURANCE AFFORDED BY THE POLICIES DESCRIBED HEREIN IS SUBJECT TO ALL THE TERMS, EXCLUSIONS AND CONDITIONS OF SUCH POLICIES. LIMITS SHOWN MAY HAVE BEEN REDUCED BY PAID CLAIMS.							od This				
INSR LTR	TYPE OF INSURANCE	ADDL	SUBR WVD	POLICY NUMBER		POLICY EFF (MM/DD/YYYY)	POLICY EXP (MM/DD/YYYY)	LIMIT	s		
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CEF					CANC	ELLATION				]	
	Palm Beach County Board Of County Commissioners				SHC THE	OULD ANY OF	DATE THEREC	ESCRIBED POLICIES BE CA DF, NOTICE WILL BE DELIVI YY PROVISIONS.			
	2700 6th Ave South Lake Worth, FL 33461				AUTHO	RIZED REPRESI	ENTATIVE	900	4	-	
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 From:
 Detrifblackwoodsv.com

 Te:
 Andrew Holzinger; Donald Perez; Ashley Slone N.

 Subject:
 Worker's Comp Letter

 Date:
 Friday, January 10, 2014 2:21:25 PM

Blackwood Productions, LLC has no employees. Should that status change, I will notify you prior to any event.

Thank you Pete Noble President/ General Manager Blackwood Productions, LLC 561-252-6443 www.blackwoodsy.com

SPECIAL FACILITIES D	VISION
ACCOUNT: 0001-580-5207-3401 VENDOR CODE: VS0000001301	CONTRACT: Blackwood Productions LLC
MC: DP 11.16.13 PS OF FSS: CC:	CA: DD:
0	X ()

# SOUND AND LIGHT PRODUCTION SERVICES CONTRACTOR AGREEMENT FOR PALM BEACH COUNTY PARKS & RECREATION DEPARTMENT

This Agreement is made as of the  $\underline{13}^{\text{th}}$  day of  $\underline{MAt(1)}$ , 20, 14, by and between Palm Beach County, a Political Subdivision of the State of Florida, by and through its Board of Commissioners, hereinafter referred to as the "County" and Blackwood Productions LLC, a Florida Limited Liability Company, hereinafter referred to as "Contractor".

### WITNESSETH:

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

WHEREAS, as part of the Event, the County desires to hire Production Services, which shall consist of **Production Staff** hereinafter referred to as "Production Services"; and

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

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

WHEREAS, providing Production Services at the Facility serves a public purpose; and

WHEREAS, both parties desire to enter into this Agreement.

**NOW THEREFORE**, in consideration of the mutual covenants and promises contained herein, the County and Contractor hereby agree as follows:

- 1. <u>Recitals:</u> The foregoing recitals are true and correct and are incorporated herein by reference.
- 2. <u>Term</u>: The Contractor shall commence its Production Services on Friday, March 28, 2014 at 7:00 am and shall complete all services by Saturday, March 29, 2014 at 2:00 am.
- 3. Payments To Contractor: County shall pay Contractor a total amount not-to-exceed Four Hundred and Fifty dollars (\$450.00) for Production Services as described above. The total amount not-to-exceed Four Hundred and Fifty dollars (\$450.00) shall be paid to Contractor upon completion of the Production Services at the Facility, and upon verification by County that all services have been performed in accordance with this Agreement. If Contractor cancels or fails to appear at the Event, Contractor and County shall negotiate an alternate date for the Production Services. If an alternative date for the Production Services cannot be negotiated within three (3) days after cancellation, Contractor shall fully refund County's deposit within two (2) days of written notice by County that an alternative date for the Production Services cannot be negotiated. Contractor shall furnish at its expense all transportation to and from the Event and Facility. All transportation, travel, food and lodging expenses are included in the not-to-exceed amount mentioned above.
- 4. <u>Taxes:</u> The County is exempt from payment of Florida State Sales and Use Taxes. The County will sign an exemption certificate submitted by the Contractor. The Contractor shall not be exempted from paying sales tax to its suppliers for materials used to fulfill contractual obligations with the County, nor is Contractor authorized to use the County's Tax Exemption Number in securing such materials.

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

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

#### 5. <u>Contractor's Responsibilities:</u>

- A. Contractor shall provide Production Services as more particularly described in **Exhibit "A"**, the Scope of Work, attached hereto and incorporated herein by reference.
- B. Contractor's Production Services shall begin at 7:00 am Friday, March 28, 2014, and end at 2:00 am Saturday, March 29, 2014.
- C. Contractor may arrive at the Facility to begin setting up at 7:00 am, but shall arrive no later than three hundred and sixty (360) minutes prior to the scheduled Entertainment time and shall have completed all sound checks and warm-ups, if applicable, at least one hundred and twenty (120) minutes prior to the scheduled Entertainment time.
- D. Contractor shall break down and remove all equipment and other materials it brings to the Event immediately upon completion of the Event, and shall leave the Facility in the same condition the Facility was in prior to conducting the Production Services.
- E. Contractor shall appear and perform Production Services for at least ninety percent (90%) of the scheduled Event time. Failure to adhere to this provision shall result in a downward adjustment in compensation payable to Contractor. County shall be the sole decision maker as to whether this provision has been complied with.
- F. Contractor shall perform the Production Services set forth in this Agreement in accordance with all applicable association/governing body rules and regulations, and in a competent, professional, safe, and responsible manner with full regard for the safety of the participants as well as the Facility.
- G. 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 the 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.

- H. No alcohol or illegal drugs shall be consumed by Contractor, its employees or agents prior to, during or subsequent to the Event while on County property.
- I. County will provide the sound equipment and lighting for Production Services, as more specifically described in Exhibit "B", attached hereto and incorporated herein by reference. All other equipment, instruments, supplies and props not identified in Exhibit "B" that are necessary for the Entertainment shall be provided and transported by Contractor. County assumes no responsibility for any items or materials of Contractor while at the Facility.
- J. Contractor further represents it has inspected the Facility and that the Facility is in proper condition for the Production Services to be completed.
- K. All vehicles belonging to Contractor or Contractor's employees or agents shall be parked in the assigned area prior to the beginning of the Event.

- L. County shall provide basic electrical services for the Event, but Contractor shall be responsible for all necessary extension cords and other related equipment.
- M. If any additional requirements such as specialty certifications, licenses and/or memberships applicable to the Production Services are required, CONTRACTOR shall attach a copy of each to this Agreement as **Exhibit "C"**.
- N. Contractor shall not use or permit the use of any pyrotechnics of any type during the Event.
- O. Contractor shall not undertake or participate in any business, exhibit or activity at the Event other than herein specified.
- P. Contractor shall comply in all material respects with all federal and state laws and regulations and all applicable county and city ordinances and regulations.

### 6. Cancellation and Postponement of Event:

- A. In case of inclement weather (i.e. hurricanes, thunderstorms, tornadoes, flooding, etc.), Acts of God, nots, strikes, epidemics, and similar circumstances affecting public safety, as determined solely by County, the County may cancel or postpone this Agreement by providing Contractor with at least four (4) hours notice prior to the scheduled Event. Upon cancellation due to inclement weather, County and Contractor may negotiate another date for the Event at the Facility by Contractor, upon the same terms and conditions of this Agreement. In the event an alternate date cannot be agreed upon by both parties within three (3) days after cancellation, Contractor shall fully refund County's deposit within two (2) days of written notice by County that an alternative date for the Event cannot be negotiated. In the event an alternate date is not negotiated in accordance herewith, Contractor shall not be entitled to payment, and County shall not be liable for any lost profits or damages claimed by Contractor. County reserves the right, without liability therefore, to evacuate the Facility during any activity in progress where it is deemed necessary for the safety of the general public, patrons, or guests.
- B. In the event of sickness or acts of nature that prevent Contractor from performing the Production Services as scheduled, Contractor may fulfill the obligations of this Agreement by substituting a similar Production Company, with the prior approval of County. If a substitute Production Company performs the Production Services, Contractor shall refund County's full deposit immediately, and County may pay a lower not-to-exceed amount to the substitute Production Company.
- C. County can adjust Contractor's Production Services as deemed necessary to conclude the Event early, in consultation with Contractor. If in the reasonable discretion of County, Contractor is not performing the Production Services in a professional manner in accordance with this Agreement, the Event may be canceled early and this Agreement shall be terminated, and Contractor shall immediately return all deposits paid by County to Contractor.
- D. County may terminate this Agreement without cause upon seven (7) days prior written notice to Contractor. County shall not be liable to Contractor for any lost profits or damages claimed by Contractor. Upon early termination by County, Contractor shall refund County's full deposit within two (2) days after notice of termination.
- E. Contractor may terminate this Agreement upon written notice mailed to the County at least thirty (30) working days prior to the Event, and shall immediately refund all deposits paid by County to Contractor.
- 7. <u>Independent Contractor Status</u>: It is specifically understood that the Contractor is an independent contractor and not an employee of the County. The County and Contractor agree that this Agreement is not a contract of employment and that no relationship of Employer/Employee or Principal/Agent is or shall be created hereby nor shall hereafter exist by reason of the performance of the services herein specified.
- 8. <u>Assignment</u>: Contractor shall not assign, transfer or otherwise encumber this Agreement or any party

thereof, in any manner without the prior written consent of the County. It is further agreed that no modification, amendment or alteration in the terms and conditions contained herein shall be effective unless contained in a written document executed with the same formality and equal dignity herewith.

- 9. <u>Representatives:</u> The County's representative for this Agreement is <u>Andrew Holzinger;</u> telephone no. <u>561-966-7047.</u> The Contractor's representative for this Agreement is <u>Peter Noble</u>, telephone no. <u>561-252-6443</u>.
- 10. Indemnification: Contractor shall conduct its activities and Production Services and the activities and Production Services of its agents, employees and subcontractors at the Facility as not to endanger any person thereon and to indemnify and hold hamless the County, its officials, agents and employees from and against all claims, suits, actions, damages, liabilities, expenditures or causes of action, including attorney's fees and costs, whether at trial or appellate levels or otherwise, arising out of or in any way connected to the activity or inactivity of Contractor, its agents, employees or subcontractors, and resulting or occurring from any act, omission or error of Contractor, its agents or employees, resulting in or relating to injuries to body, life, limb or property sustained in, about or of the use of the Facility by Contractor, its agents, employees or subcontractor, its employees, agents or subcontractors, for any cause whatsoever, prior, during or subsequent to the period of time during this Agreement. This provision shall survive termination or expiration of this Agreement.
- 11. <u>Insurance:</u> County, by and through its Risk Management Department, in cooperation with the contracting/monitoring department, reserves the rights to require insurance coverages throughout the term of this Agreement. If County determines insurance is required to perform this Agreement, Contractor shall, at its sole cost and expense, maintain in full force and effect at all times during the life of this Agreement, insurance coverages and limits (including endorsements), as described in **Exhibit "D"**. Contractor shall provide the County with at least ten (10) day prior notice of any cancellation, non-renewal or material change to the insurance coverages. The requirements of Contractor to maintain or not to maintain insurance is not intended to and shall not in any manner limit or qualify the liabilities and obligations assumed by Contractor under this Agreement. County reserves the right, but not the obligation, to review and reject any insurer providing coverage because of its poor financial condition or failure to operate legally.
- 12. <u>Notices</u>: All notices required in this Agreement shall be hand delivered or sent by certified mail, return receipt requested, if sent to the COUNTY shall be mailed to:

Director of Special Facilities Palm Beach County Parks and Recreation Department 2700 Sixth Avenue South Lake Worth, FL 33461

and if sent to the CONTRACTOR shall be mailed to:

CONTRACTOR'S Name: Blackwood Productions LLC/Peter Noble

CONTRACTOR'S Address: 3646 23rd Avenue South, Unit 107 Lake Worth FL, 33461

CONTRACTOR'S Phone No.: 561-252-6443

- 13. <u>Remedies:</u> This Agreement shall be governed by the laws of the State of Florida. Any legal action necessary to enforce this Agreement shall be held in Palm Beach County, Florida. Nothing herein shall be construed as creating any personal liability on the part of any officer or agent of the County, or shall it be construed as giving any rights or benefits hereunder to anyone other than the County and the Contractor.
- 14. <u>Authorization:</u> Any individual executing this Agreement on behalf of Contractor warrants he or she has full legal authority to do so, and his/her execution shall bind the Contractor, its employees, agents and subcontractors to the terms and conditions herein.
- 15. <u>Availability of Funds</u>: The County's performance and obligation to pay under this Agreement for

subsequent fiscal years is contingent upon annual appropriations for its purpose by the Board of County Commissioners.

- 16. <u>Arrears:</u> The Contractor shall not pledge the County's credit or make it a guarantor of payment or surety for any contract, debt, obligation, judgment, lien, or any form of indebtedness. The Contractor further warrants and represents that it has no obligation or indebtedness that would impair its ability to fulfill the terms of this Agreement.
- 17. <u>Public Entity Crimes:</u> As provided in F.S. 287.132-133, by entering into this Agreement or performing any work in furtherance hereof, the Contractor certifies that it, its affiliates, suppliers, subcontractors and consultants who will perform hereunder, have not been placed on the convicted vendor list maintained by the State of Florida Department of Management Services within the 36 months immediately preceding the date hereof. This notice is required by F.S. 287.133(3)(a).
- 18. <u>Severability:</u> If any term or provision of this Agreement, or the application thereof to any person or circumstances shall, to any extent, be held invalid or unenforceable, the remainder of this Agreement, or the application of such terms or provision, to persons or circumstances other than those as to which it is held invalid or unenforceable, shall not be affected, and every other term and provision of this Agreement shall be deemed valid and enforceable to the extent permitted by law.
- 19. <u>Entirety of Contractual Agreement:</u> The County and the Contractor agree that this Agreement sets forth the entire agreement between the parties, and that there are no promises or understandings other than those stated herein. None of the provisions, terms and conditions contained in this Agreement may be added to, modified, superseded or otherwise altered, except by written instrument executed by the parties hereto.
- 20. <u>Waiver</u>: Failure of County to insist upon strict performance of any covenant or condition of this Agreement, or to execute any right herein contained, shall not be construed as a waiver or relinquishment for the failure of such covenant, condition, or right, but the same shall remain in full force and effect.
- 21. <u>Nondiscrimination</u>: 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 and expression, or genetic information.
- 22. <u>No Third Party Beneficiary:</u> 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 or the Contractor.
- 23. <u>Criminal History Records Check:</u> If Contractor's employees or subcontractors are required under this Agreement to enter a "critical facility," as identified in Resolution R-2003-1274, the Contractor 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.

#### (REMAINDER OF THIS PAGE INTENTIONALY LEFT BLANK)

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

PALM BEACH COUNTY WITNESS SIGNATURE HOLZINGER P NAME (TYPE OR PRIN PALM BEACH COUNT DEPARTMENT DIRECTOR COUNTY ADMINISTRATOR (If contract value exceeds \$10,000.) CONTRACTOR - (Blackwood Productions LLC) G. M. E NAME & CONTRACTOR WITNES SIGNATUR NAME (T E OR PRINT) Approved as to Form and Legal Sufficiency By: <u>Mre</u> <u>Belyon</u> Assistant County Attorney

### EXHIBIT "A"

### Scope of Work

## March 28, 2014 – Blackwood Productions LLC

Contractor will review the artist technical rider or production requirements with Amphitheater staff prior to the event to determine if the facility sound and lighting equipment meets the minimal needs of the event, and if not, outside equipment or supplemental equipment shall be provided by the Contractor.

Contractor will assist National Act production crew to tie into County's existing light system if approved by Amphitheater Manager and requested by production crew.

Contractor will set up and tie-in the County's existing sound equipment if required.

Contractor will assist National Act production crew to tie into County's existing Lexcon Powergates if required.

Contractor will enable Powergates in mechanical room if required.

Contractor will monitor power levels at the front of house station during sound checks and for the duration of show to ensure that the County's sound system is not being pushed past the DC One limiter presets.

Contractor will alert the Amphitheater Staff immediately if the County's sound system is being pushed past acceptable preset limits for the system.

Contractor will monitor sound levels at the front of house using the County's supplied Decibel reader. Decibel reader may not exceed 110 Decibels at the front of house station.

Contractor will alert the Amphitheater Staff immediately if the Decibel level is exceeding 110 Decibels.

Contractor will assist National Act production crew to unplug from the County's existing sound system and Lexcon Powergates if required at the conclusion of the show.

Contractor will ensure that stage lighting has been returned to its original state by the rigging crew post show if required by County.

# EXHIBIT "B"

# Equipment Provided

# March 28, 2014 - Blackwood Productions LLC

The County's light system provided is detailed on the attached equipment list. No other County equipment required.



# **Lighting System**

Stage Lighting Console Strand Palette 48/96

Lighting Altman Outdoor PAR 64-1000watt Fixture (44 on front overhang rail, 11 on first inside rail) Altman R-40 Striplight-250watt Fixtures (4 per row on second, third and fourth inside rail)

# EXHIBIT "C"

9

Specialty certifications, licenses and/or memberships

Not required for this performance

### EXHIBIT "D"

### Insurance

Commercial General Liability with limits of at least \$1,000,000 each occurrence is required. 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 shall be provided on a primary basis.

Required for this performance, see attached



# **CERTIFICATE OF LIABILITY INSURANCE**

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 From:
 pete@blackwoodsy.com

 To:
 Andrew Holzinger, Donald Perez; Ashley Slone N.

 Subject:
 Worker's Comp Letter

 Date:
 Friday, January 10, 2014 2:21:25 PM

Blackwood Productions, LLC has no employees. Should that status change, I will notify you prior to any event.

Thank you Pete Noble President/ General Manager Blackwood Productions, LLC 561-252-6443 www.blackwoodsv.com

ACCOUNT: 0001-580-5207-3401	VENDOR CODE: VS000001301	CONTRACT: Blackwood Productions LLC
MC: DP 11.16.13 PS	FSS: CC:	CA: DD:
U	X	NTRACTOR AGREEMENT FOR

This Agreement is made as of the  $\underline{19}^{1}$  day of  $\underline{MARCH}$ ,  $20\underline{19}$ , by and between Palm Beach County, a Political Subdivision of the State of Florida, by and through its Board of Commissioners, hereinafter referred to as the "County" and Blackwood Productions LLC, a Florida Limited Liability Company hereinafter referred to as "Contractor".

### WITNESSETH:

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

WHEREAS, as part of the Event, the County desires to hire Production Services, which shall consist of **Production Staff** hereinafter referred to as "Production Services"; and

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

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

WHEREAS, providing Production Services at the Facility serves a public purpose; and

WHEREAS, both parties desire to enter into this Agreement.

**NOW THEREFORE**, in consideration of the mutual covenants and promises contained herein, the County and Contractor hereby agree as follows:

- 1. <u>Recitals:</u> The foregoing recitals are true and correct and are incorporated herein by reference.
- 2. <u>Term</u>: The Contractor shall commence its Production Services on Saturday, March 29, 2014 at 7:00 am and shall complete all services by Sunday, March 30, 2014 at 2:00 am.
- 3. Payments To Contractor: County shall pay Contractor a total amount not-to-exceed Four Hundred and Fifty dollars (\$450.00) for Production Services as described above. The total amount not-to-exceed Four Hundred and Fifty dollars (\$450.00) shall be paid to Contractor upon completion of the Production Services at the Facility, and upon verification by County that all services have been performed in accordance with this Agreement. If Contractor cancels or fails to appear at the Event, Contractor and County shall negotiate an alternate date for the Production Services. If an alternative date for the Production Services cannot be negotiated within three (3) days after cancellation, Contractor shall fully refund County's deposit within two (2) days of written notice by County that an alternative date for the Production Services cannot be negotiated. Contractor shall furnish at its expense all transportation to and from the Event and Facility. All transportation, travel, food and lodging expenses are included in the not-to-exceed amount mentioned above.
- 4. <u>Taxes:</u> The County is exempt from payment of Florida State Sales and Use Taxes. The County will sign an exemption certificate submitted by the Contractor. The Contractor shall not be exempted from paying sales tax to its suppliers for materials used to fulfill contractual obligations with the County, nor is Contractor authorized to use the County's Tax Exemption Number in securing such materials.

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

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

#### 5. <u>Contractor's Responsibilities:</u>

- A. Contractor shall provide Production Services as more particularly described in **Exhibit "A"**, the Scope of Work, attached hereto and incorporated herein by reference.
- B. Contractor's Production Services shall begin at 7:00 am Saturday, March 29, 2014, and end at 2:00 am Sunday, March 30, 2014.
- C. Contractor may arrive at the Facility to begin setting up at 7:00 am, but shall arrive no later than three hundred and sixty (360) minutes prior to the scheduled Entertainment time and shall have completed all sound checks and warm-ups, if applicable, at least one hundred and twenty (120) minutes prior to the scheduled Entertainment time.
- D. Contractor shall break down and remove all equipment and other materials it brings to the Event immediately upon completion of the Event, and shall leave the Facility in the same condition the Facility was in prior to conducting the Production Services.
- E. Contractor shall appear and perform Production Services for at least ninety percent (90%) of the scheduled Event time. Failure to adhere to this provision shall result in a downward adjustment in compensation payable to Contractor. County shall be the sole decision maker as to whether this provision has been complied with.
- F. Contractor shall perform the Production Services set forth in this Agreement in accordance with all applicable association/governing body rules and regulations, and in a competent, professional, safe, and responsible manner with full regard for the safety of the participants as well as the Facility.
- G. 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 the 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.

- H. No alcohol or illegal drugs shall be consumed by Contractor, its employees or agents prior to, during or subsequent to the Event while on County property.
- I. County will provide the sound equipment and lighting for Production Services, as more specifically described in Exhibit "B", attached hereto and incorporated herein by reference. All other equipment, instruments, supplies and props not identified in Exhibit "B" that are necessary for the Entertainment shall be provided and transported by Contractor. County assumes no responsibility for any items or materials of Contractor while at the Facility.
- J. Contractor further represents it has inspected the Facility and that the Facility is in proper condition for the Production Services to be completed.
- K. All vehicles belonging to Contractor or Contractor's employees or agents shall be parked in the assigned area prior to the beginning of the Event.

- L. County shall provide basic electrical services for the Event, but Contractor shall be responsible for all necessary extension cords and other related equipment.
- M. If any additional requirements such as specialty certifications, licenses and/or memberships applicable to the Production Services are required, CONTRACTOR shall attach a copy of each to this Agreement as **Exhibit "C"**.
- N. Contractor shall not use or permit the use of any pyrotechnics of any type during the Event.
- O. Contractor shall not undertake or participate in any business, exhibit or activity at the Event other than herein specified.
- P. Contractor shall comply in all material respects with all federal and state laws and regulations and all applicable county and city ordinances and regulations.

### 6. <u>Cancellation and Postponement of Event:</u>

- A. In case of inclement weather (i.e. hurricanes, thunderstorms, tornadoes, flooding, etc.), Acts of God, riots, strikes, epidemics, and similar circumstances affecting public safety, as determined solely by County, the County may cancel or postpone this Agreement by providing Contractor with at least four (4) hours notice prior to the scheduled Event. Upon cancellation due to inclement weather, County and Contractor may negotiate another date for the Event at the Facility by Contractor, upon the same terms and conditions of this Agreement. In the event an alternate date cannot be agreed upon by both parties within three (3) days after cancellation, Contractor shall fully refund County's deposit within two (2) days of written notice by County that an alternative date for the Event cannot be negotiated. In the event an alternate date is not negotiated in accordance herewith, Contractor shall not be entitled to payment, and County shall not be liable for any lost profits or damages claimed by Contractor. County reserves the right, without liability therefore, to evacuate the Facility during any activity in progress where it is deemed necessary for the safety of the general public, patrons, or guests.
- B. In the event of sickness or acts of nature that prevent Contractor from performing the Production Services as scheduled, Contractor may fulfill the obligations of this Agreement by substituting a similar Production Company, with the prior approval of County. If a substitute Production Company performs the Production Services, Contractor shall refund County's full deposit immediately, and County may pay a lower not-to-exceed amount to the substitute Production Company.
- C. County can adjust Contractor's Production Services as deemed necessary to conclude the Event early, in consultation with Contractor. If in the reasonable discretion of County, Contractor is not performing the Production Services in a professional manner in accordance with this Agreement, the Event may be canceled early and this Agreement shall be terminated, and Contractor shall immediately return all deposits paid by County to Contractor.
- D. County may terminate this Agreement without cause upon seven (7) days prior written notice to Contractor. County shall not be liable to Contractor for any lost profits or damages claimed by Contractor. Upon early termination by County, Contractor shall refund County's full deposit within two (2) days after notice of termination.
- E. Contractor may terminate this Agreement upon written notice mailed to the County at least thirty (30) working days prior to the Event, and shall immediately refund all deposits paid by County to Contractor.
- 7. <u>Independent Contractor Status</u>: It is specifically understood that the Contractor is an independent contractor and not an employee of the County. The County and Contractor agree that this Agreement is not a contract of employment and that no relationship of Employer/Employee or Principal/Agent is or shall be created hereby nor shall hereafter exist by reason of the performance of the services herein specified.
- 8. <u>Assignment</u>: Contractor shall not assign, transfer or otherwise encumber this Agreement or any party

thereof, in any manner without the prior written consent of the County. It is further agreed that no modification, amendment or alteration in the terms and conditions contained herein shall be effective unless contained in a written document executed with the same formality and equal dignity herewith.

- 9. <u>Representatives:</u> The County's representative for this Agreement is <u>Andrew Holzinger;</u> telephone no. <u>561-966-7047.</u> The Contractor's representative for this Agreement is <u>Peter Noble</u>, telephone no. <u>561-252-6443</u>.
- 10. Indemnification: Contractor shall conduct its activities and Production Services and the activities and Production Services of its agents, employees and subcontractors at the Facility as not to endanger any person thereon and to indemnify and hold harmless the County, its officials, agents and employees from and against all claims, suits, actions, damages, liabilities, expenditures or causes of action, including attorney's fees and costs, whether at trial or appellate levels or otherwise, arising out of or in any way connected to the activity or inactivity of Contractor, its agents, employees or subcontractors, and resulting or occurring from any act, omission or error of Contractor, its agents or employees, resulting in or relating to injuries to body, life, limb or property sustained in, about or of the use of the Facility by Contractor, its agents, employees or subcontractor, its employees, agents or subcontractors, for any property damage or bodily injury sustained by Contractor, its employees, agents or subcontractors, for any cause whatsoever, prior, during or subsequent to the period of time during this Agreement. This provision shall survive termination or expiration of this Agreement.
- 11. <u>Insurance:</u> County, by and through its Risk Management Department, in cooperation with the contracting/monitoring department, reserves the rights to require insurance coverages throughout the term of this Agreement. If County determines insurance is required to perform this Agreement, Contractor shall, at its sole cost and expense, maintain in full force and effect at all times during the life of this Agreement, insurance coverages and limits (including endorsements), as described in **Exhibit "D"**. Contractor shall provide the County with at least ten (10) day prior notice of any cancellation, non-renewal or material change to the insurance coverages. The requirements of Contractor to maintain or not to maintain insurance is not intended to and shall not in any manner limit or qualify the liabilities and obligations assumed by Contractor under this Agreement. County reserves the right, but not the obligation, to review and reject any insurer providing coverage because of its poor financial condition or failure to operate legally.
- 12. <u>Notices</u>: All notices required in this Agreement shall be hand delivered or sent by certified mail, return receipt requested, if sent to the COUNTY shall be mailed to:

Director of Special Facilities Palm Beach County Parks and Recreation Department 2700 Sixth Avenue South Lake Worth, FL 33461

and if sent to the CONTRACTOR shall be mailed to:

CONTRACTOR'S Name: Blackwood Productions LLC/Peter Noble

CONTRACTOR'S Address: 3646 23rd Avenue South, Unit 107 Lake Worth FL, 33461

CONTRACTOR'S Phone No.: 561-252-6443

- 13. <u>Remedies:</u> This Agreement shall be governed by the laws of the State of Florida. Any legal action necessary to enforce this Agreement shall be held in Palm Beach County, Florida. Nothing herein shall be construed as creating any personal liability on the part of any officer or agent of the County, or shall it be construed as giving any rights or benefits hereunder to anyone other than the County and the Contractor.
- 14. <u>Authorization</u>: Any individual executing this Agreement on behalf of Contractor warrants he or she has full legal authority to do so, and his/her execution shall bind the Contractor, its employees, agents and subcontractors to the terms and conditions herein.
- 15. <u>Availability of Funds</u>: The County's performance and obligation to pay under this Agreement for

subsequent fiscal years is contingent upon annual appropriations for its purpose by the Board of County Commissioners.

- 16. <u>Arrears:</u> The Contractor shall not pledge the County's credit or make it a guarantor of payment or surety for any contract, debt, obligation, judgment, lien, or any form of indebtedness. The Contractor further warrants and represents that it has no obligation or indebtedness that would impair its ability to fulfill the terms of this Agreement.
- 17. <u>Public Entity Crimes:</u> As provided in F.S. 287.132-133, by entering into this Agreement or performing any work in furtherance hereof, the Contractor certifies that it, its affiliates, suppliers, subcontractors and consultants who will perform hereunder, have not been placed on the convicted vendor list maintained by the State of Florida Department of Management Services within the 36 months immediately preceding the date hereof. This notice is required by F.S. 287.133(3)(a).
- 18. <u>Severability:</u> If any term or provision of this Agreement, or the application thereof to any person or circumstances shall, to any extent, be held invalid or unenforceable, the remainder of this Agreement, or the application of such terms or provision, to persons or circumstances other than those as to which it is held invalid or unenforceable, shall not be affected, and every other term and provision of this Agreement shall be deemed valid and enforceable to the extent permitted by law.
- 19. <u>Entirety of Contractual Agreement:</u> The County and the Contractor agree that this Agreement sets forth the entire agreement between the parties, and that there are no promises or understandings other than those stated herein. None of the provisions, terms and conditions contained in this Agreement may be added to, modified, superseded or otherwise altered, except by written instrument executed by the parties hereto.
- 20. <u>Waiver</u>: Failure of County to insist upon strict performance of any covenant or condition of this Agreement, or to execute any right herein contained, shall not be construed as a waiver or relinquishment for the failure of such covenant, condition, or right, but the same shall remain in full force and effect.
- 21. <u>Nondiscrimination</u>: 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 and expression, or genetic information.
- 22. <u>No Third Party Beneficiary:</u> 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 or the Contractor.
- 23. <u>Criminal History Records Check:</u> If Contractor's employees or subcontractors are required under this Agreement to enter a "critical facility," as identified in Resolution R-2003-1274, the Contractor 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.

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

PALM BEACH COUNTY WITNESS SIGNATURE OLZENGEN Gr vsp. NAME (TYPE OR PALM BEACH COUNTY 00 DEPARTMENT DIRECTOR COUNTY ADMINISTRATOR (If contract value exceeds \$10,000.) CONTRACTOR - (Blackwood Productions LLC) SIC 5.M CONTRACTOR WITNESS SIGNATURE NAME (1 Approved as to Form and Legal Sufficiency Unne By:\_ 1 sn

Assistant County Attorney

## EXHIBIT "A"

### Scope of Work

### Date: Saturday, March 29, 2014 - Blackwood Productions LLC

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Contractor will assist National Act production crew to tie into County's existing Lexcon Powergates if required.

Contractor will enable Powergates in mechanical room if required.

Contractor will monitor power levels at the front of house station during sound checks and for the duration of show to ensure that the County's sound system is not being pushed past the DC One limiter presets.

Contractor will monitor sound levels at the front of house using the County's supplied Decibel reader. Decibel reader may not exceed 110 Decibels at the front of house station.

Contractor will alert the Amphitheater Staff immediately if the Decibel level is exceeding 110 Decibels.

Contractor will assist National Act production crew to unplug from the County's existing sound system and Lexcon Powergates if required at the conclusion of the show.

# EXHIBIT "B"

# Equipment Provided

# Date: Saturday, March 29, 2014 - Blackwood Productions LLC

The County's light system provided is detailed on the attached equipment list. No other County equipment required.



# Lighting System

Stage Lighting Console Strand Palette 48/96

Lighting Altman Outdoor PAR 64-1000watt Fixture (44 on front overhang rail, 11 on first inside rail) Altman R-40 Striplight-250watt Fixtures (4 per row on second, third and fourth inside rail)

# EXHIBIT "C"

9

# Specialty certifications, licenses and/or memberships

Not required for this performance

## EXHIBIT "D"

### Insurance

Commercial General Liability with limits of at least \$1,000,000 each occurrence is required. 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 shall be provided on a primary basis.

Required for this performance, see attached

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H.G	. Holdam Insurance				PHONE	(504)	434-4451	FAX (A/C, No):	(561	) 434-3505
383	0 Jog Road				E-MAIL		@hgholdam.cor			,
Lak	e Worth, FL 33467						SURER(S) AFFOR			NAIC #
Pho		ax (5	61)4	34-3505	INSUR	ERA: Penn A	merica Ins Co			
INSL	IRED				INSUR	ER B :				
Blac	kwood Productions, LLC				INSUR	ERC:				
364	6 23rd Ave S #107				INSUR	ER D :				
Lak	e Worth, FL 33461		:	561	INSUR					
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	AND EMPLOYERS' LIABILITY Y / N									
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	Palm Beach County Board Of County Commissioners				THE	<b>EXPIRATION</b>	DATE THEREC	ESCRIBED POLICIES BE CAN F, NOTICE WILL BE DELIVE Y PROVISIONS.		
	2700 6th Ave South Lake Worth, FL 33461				AUTHO	RIZED REPRESE	NTATIVE	<b>P16</b> 4	4	2

ACORD 25 (2010/05) QF

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 From:
 pete@blackwoodsv.com

 To:
 Andrew Holzinger; Donald Perez; Ashley Slone N.

 Subject:
 Worker's Comp Letter

 Date:
 Friday, January 10, 2014 2:21:25 PM

Blackwood Productions, LLC has no employees. Should that status change, I will notify you prior to any event.

Thank you Pete Noble President/ General Manager Blackwood Productions, LLC 561-252-6443 www.blackwoodsy.com

	SPECIAL FACILITIES DIV	ISION
ACCOUNT: 0001-580-5207-3401	VENDOR CODE: VC000001301	CONTRACT: Blackwood Productions LLC
MC: DP 11.16.13 PS	FSS: CC:	CA: DD:

# SOUND AND LIGHT PRODUCTION SERVICES CONTRACTOR AGREEMENT FOR PALM BEACH COUNTY PARKS & RECREATION DEPARTMENT

This Agreement is made as of the  $1^{57}$  day of  $4pq_{0}$ ,  $20^{14}$ , by and between Palm Beach County, a Political Subdivision of the State of Florida, by and through its Board of Commissioners, hereinafter referred to as the "County" and Blackwood Productions LLC, a Florida Limited Liability Company, hereinafter referred to as "Contractor".

## WITNESSETH:

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

WHEREAS, as part of the Event, the County desires to hire Production Services, which shall consist of Production Staff hereinafter referred to as "Production Services"; and

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

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

WHEREAS, providing Production Services at the Facility serves a public purpose; and

WHEREAS, both parties desire to enter into this Agreement.

**NOW THEREFORE**, in consideration of the mutual covenants and promises contained herein, the County and Contractor hereby agree as follows:

- 1. <u>Recitals:</u> The foregoing recitals are true and correct and are incorporated herein by reference.
- 2. <u>Term</u>: The Contractor shall commence its Production Services on Saturday, April 12, 2014 at 8:00 am and shall complete all services by Sunday, April 13, 2014 at 2:00 am.
- 3. <u>Payments To Contractor:</u> County shall pay Contractor a total amount not-to-exceed Four Hundred and Fifty dollars (\$450.00) for Production Services as described above. The total amount not-to-exceed Four Hundred and Fifty dollars (\$450.00) shall be paid to Contractor upon completion of the Production Services at the Facility, and upon verification by County that all services have been performed in accordance with this Agreement. If Contractor cancels or fails to appear at the Event, Contractor and County shall negotiate an alternate date for the Production Services. If an alternative date for the Production Services cannot be negotiated within three (3) days after cancellation, Contractor shall fully refund County's deposit within two (2) days of written notice by County that an alternative date for the Production Services cannot be negotiated. Contractor shall furnish at its expense all transportation to and from the Event and Facility. All transportation, travel, food and lodging expenses are included in the not-toexceed amount mentioned above.
- 4. <u>Taxes:</u> The County is exempt from payment of Florida State Sales and Use Taxes. The County will sign an exemption certificate submitted by the Contractor. The Contractor shall not be exempted from paying sales tax to its suppliers for materials used to fulfill contractual obligations with the County, nor is Contractor authorized to use the County's Tax Exemption Number in securing such materials.

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

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

#### 5. <u>Contractor's Responsibilities:</u>

- A. Contractor shall provide Production Services as more particularly described in **Exhibit "A"**, the Scope of Work, attached hereto and incorporated herein by reference.
- B. Contractor's Production Services shall begin at 8:00 am Saturday, April 12, 2014, and end at 2:00 am Sunday, April 13, 2014.
- C. Contractor may arrive at the Facility to begin setting up at 8:00 am, but shall arrive no later than three hundred and sixty (360) minutes prior to the scheduled Entertainment time and shall have completed all sound checks and warm-ups, if applicable, at least one hundred and twenty (120) minutes prior to the scheduled Entertainment time.
- D. Contractor shall break down and remove all equipment and other materials it brings to the Event immediately upon completion of the Event, and shall leave the Facility in the same condition the Facility was in prior to conducting the Production Services.
- E. Contractor shall appear and perform Production Services for at least ninety percent (90%) of the scheduled Event time. Failure to adhere to this provision shall result in a downward adjustment in compensation payable to Contractor. County shall be the sole decision maker as to whether this provision has been complied with.
- F. Contractor shall perform the Production Services set forth in this Agreement in accordance with all applicable association/governing body rules and regulations, and in a competent, professional, safe, and responsible manner with full regard for the safety of the participants as well as the Facility.
- G. 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 the 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.

- H. No alcohol or illegal drugs shall be consumed by Contractor, its employees or agents prior to, during or subsequent to the Event while on County property.
- County will provide the sound equipment and lighting for Production Services, as more specifically described in Exhibit "B", attached hereto and incorporated herein by reference. All other equipment, instruments, supplies and props not identified in Exhibit "B" that are necessary for the Entertainment shall be provided and transported by Contractor. County assumes no responsibility for any items or materials of Contractor while at the Facility.
- J. Contractor further represents it has inspected the Facility and that the Facility is in proper condition for the Production Services to be completed.
- K. All vehicles belonging to Contractor or Contractor's employees or agents shall be parked in the assigned area prior to the beginning of the Event.

- L. County shall provide basic electrical services for the Event, but Contractor shall be responsible for all necessary extension cords and other related equipment.
- M. If any additional requirements such as specialty certifications, licenses and/or memberships applicable to the Production Services are required, CONTRACTOR shall attach a copy of each to this Agreement as **Exhibit "C"**.
- N. Contractor shall not use or permit the use of any pyrotechnics of any type during the Event.
- O. Contractor shall not undertake or participate in any business, exhibit or activity at the Event other than herein specified.
- P. Contractor shall comply in all material respects with all federal and state laws and regulations and all applicable county and city ordinances and regulations.

#### 6. <u>Cancellation and Postponement of Event:</u>

- A. In case of inclement weather (i.e. hurricanes, thunderstorms, tornadoes, flooding, etc.), Acts of God, riots, strikes, epidemics, and similar circumstances affecting public safety, as determined solely by County, the County may cancel or postpone this Agreement by providing Contractor with at least four (4) hours notice prior to the scheduled Event. Upon cancellation due to inclement weather, County and Contractor may negotiate another date for the Event at the Facility by Contractor, upon the same terms and conditions of this Agreement. In the event an alternate date cannot be agreed upon by both parties within three (3) days after cancellation, Contractor shall fully refund County's deposit within two (2) days of written notice by County that an alternative date for the Event cannot be negotiated. In the event an alternate date is not negotiated in accordance herewith, Contractor shall not be entitled to payment, and County shall not be liable for any lost profits or damages claimed by Contractor. County reserves the right, without liability therefore, to evacuate the Facility during any activity in progress where it is deemed necessary for the safety of the general public, patrons, or guests.
- B. In the event of sickness or acts of nature that prevent Contractor from performing the Production Services as scheduled, Contractor may fulfill the obligations of this Agreement by substituting a similar Production Company, with the prior approval of County. If a substitute Production Company performs the Production Services, Contractor shall refund County's full deposit immediately, and County may pay a lower not-to-exceed amount to the substitute Production Company.
- C. County can adjust Contractor's Production Services as deemed necessary to conclude the Event early, in consultation with Contractor. If in the reasonable discretion of County, Contractor is not performing the Production Services in a professional manner in accordance with this Agreement, the Event may be canceled early and this Agreement shall be terminated, and Contractor shall immediately return all deposits paid by County to Contractor.
- D. County may terminate this Agreement without cause upon seven (7) days prior written notice to Contractor. County shall not be liable to Contractor for any lost profits or damages claimed by Contractor. Upon early termination by County, Contractor shall refund County's full deposit within two (2) days after notice of termination.
- E. Contractor may terminate this Agreement upon written notice mailed to the County at least thirty (30) working days prior to the Event, and shall immediately refund all deposits paid by County to Contractor.
- 7. <u>Independent Contractor Status</u>: It is specifically understood that the Contractor is an independent contractor and not an employee of the County. The County and Contractor agree that this Agreement is not a contract of employment and that no relationship of Employer/Employee or Principal/Agent is or shall be created hereby nor shall hereafter exist by reason of the performance of the services herein specified.
- 8. <u>Assignment</u>: Contractor shall not assign, transfer or otherwise encumber this Agreement or any party

thereof, in any manner without the prior written consent of the County. It is further agreed that no modification, amendment or alteration in the terms and conditions contained herein shall be effective unless contained in a written document executed with the same formality and equal dignity herewith.

- 9. <u>Representatives:</u> The County's representative for this Agreement is <u>Andrew Holzinger;</u> telephone no. <u>561-966-7047.</u> The Contractor's representative for this Agreement is <u>Peter Noble</u>, telephone no. <u>561-252-6443</u>.
- 10. Indemnification: Contractor shall conduct its activities and Production Services and the activities and Production Services of its agents, employees and subcontractors at the Facility as not to endanger any person thereon and to indemnify and hold hamless the County, its officials, agents and employees from and against all claims, suits, actions, damages, liabilities, expenditures or causes of action, including attorney's fees and costs, whether at trial or appellate levels or otherwise, arising out of or in any way connected to the activity or inactivity of Contractor, its agents, employees or subcontractors, and resulting or occurring from any act, omission or error of Contractor, its agents or employees, resulting in or relating to injuries to body, life, limb or property sustained in, about or of the use of the Facility by Contractor, its agents, employees or subcontractors. County shall not be liable for any property damage or bodily injury sustained by Contractor, its employees, agents or subcontractors, for any cause whatsoever, prior, during or subsequent to the period of time during this Agreement. This provision shall survive termination or expiration of this Agreement.
- 11. <u>Insurance:</u> County, by and through its Risk Management Department, in cooperation with the contracting/monitoring department, reserves the rights to require insurance coverages throughout the term of this Agreement. If County determines insurance is required to perform this Agreement, Contractor shall, at its sole cost and expense, maintain in full force and effect at all times during the life of this Agreement, insurance coverages and limits (including endorsements), as described in Exhibit "D". Contractor shall provide the County with at least ten (10) day prior notice of any cancellation, non-renewal or material change to the insurance coverages. The requirements of Contractor to maintain or not to maintain insurance is not intended to and shall not in any manner limit or qualify the liabilities and obligations assumed by Contractor under this Agreement. County reserves the right, but not the obligation, to review and reject any insurer providing coverage because of its poor financial condition or failure to operate legally.
- 12. <u>Notices</u>: All notices required in this Agreement shall be hand delivered or sent by certified mail, return receipt requested, if sent to the COUNTY shall be mailed to:

Director of Special Facilities Palm Beach County Parks and Recreation Department 2700 Sixth Avenue South Lake Worth, FL 33461

and if sent to the CONTRACTOR shall be mailed to:

CONTRACTOR'S Name: Blackwood Productions LLC/Peter Noble

CONTRACTOR'S Address: 3646 23rd Avenue South, Unit 107 Lake Worth FL, 33461

CONTRACTOR'S Phone No.: 561-252-6443

- 13. <u>Remedies:</u> This Agreement shall be governed by the laws of the State of Florida. Any legal action necessary to enforce this Agreement shall be held in Palm Beach County, Florida. Nothing herein shall be construed as creating any personal liability on the part of any officer or agent of the County, or shall it be construed as giving any rights or benefits hereunder to anyone other than the County and the Contractor.
- 14. <u>Authorization:</u> Any individual executing this Agreement on behalf of Contractor warrants he or she has full legal authority to do so, and his/her execution shall bind the Contractor, its employees, agents and subcontractors to the terms and conditions herein.
- 15. <u>Availability of Funds</u>: The County's performance and obligation to pay under this Agreement for

subsequent fiscal years is contingent upon annual appropriations for its purpose by the Board of County Commissioners.

- 16. <u>Arrears:</u> The Contractor shall not pledge the County's credit or make it a guarantor of payment or surety for any contract, debt, obligation, judgment, lien, or any form of indebtedness. The Contractor further warrants and represents that it has no obligation or indebtedness that would impair its ability to fulfill the terms of this Agreement.
- 17. <u>Public Entity Crimes:</u> As provided in F.S. 287.132-133, by entering into this Agreement or performing any work in furtherance hereof, the Contractor certifies that it, its affiliates, suppliers, subcontractors and consultants who will perform hereunder, have not been placed on the convicted vendor list maintained by the State of Florida Department of Management Services within the 36 months immediately preceding the date hereof. This notice is required by F.S. 287.133(3)(a).
- 18. <u>Severability:</u> If any term or provision of this Agreement, or the application thereof to any person or circumstances shall, to any extent, be held invalid or unenforceable, the remainder of this Agreement, or the application of such terms or provision, to persons or circumstances other than those as to which it is held invalid or unenforceable, shall not be affected, and every other term and provision of this Agreement shall be deemed valid and enforceable to the extent permitted by law.
- 19. <u>Entirety of Contractual Agreement:</u> The County and the Contractor agree that this Agreement sets forth the entire agreement between the parties, and that there are no promises or understandings other than those stated herein. None of the provisions, terms and conditions contained in this Agreement may be added to, modified, superseded or otherwise altered, except by written instrument executed by the parties hereto.
- 20. <u>Waiver</u>: Failure of County to insist upon strict performance of any covenant or condition of this Agreement, or to execute any right herein contained, shall not be construed as a waiver or relinquishment for the failure of such covenant, condition, or right, but the same shall remain in full force and effect.
- 21. <u>Nondiscrimination:</u> 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 and expression.
- 22. <u>No Third Party Beneficiary:</u> 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 or the Contractor.
- 23. <u>Criminal History Records Check:</u> If Contractor's employees or subcontractors are required under this Agreement to enter a "critical facility," as identified in Resolution R-2003-1274, the Contractor 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.

#### (REMAINDER OF THIS PAGE INTENTIONALY LEFT BLANK)

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

PALM BEACH, COUNTY WITNESS SIGNATURE ANDREW HOLZINGER PALM BEACH COUNTY DEPARTMENT DIRECTOR COUNTY ADMINISTRATOR (If contract value exceeds \$10,000.) CONTRACTOR – (Blackwood Productions LLC) SIGNATUR BLE G.M. NAME CONTRACTOR WITNESS SIGNATU NAME Approved as to Form and Legal Sufficiency Assistant County Attorney By: (

## EXHIBIT "A"

#### Scope of Work

#### April 12, 2014 – Blackwood Productions LLC

Contractor will review the artist technical rider or production requirements with Amphitheater staff prior to the event to determine if the facility sound and lighting equipment meets the minimal needs of the event.

Contractor will assist National Act production crew to tie into County's existing light system if approved by Amphitheater Manager and requested by production crew.

Contractor will assist National Act production crew to tie into County's existing Lexcon Powergates if required.

Contractor will enable Powergates in mechanical room if required.

Contractor will monitor power levels at the front of house station during sound checks and for the duration of show to ensure that the County's sound system is not being pushed past the DC One limiter presets.

Contractor will monitor sound levels at the front of house using the County's supplied Decibel reader. Decibel reader may not exceed 110 Decibels at the front of house station.

Contractor will alert the Amphitheater Staff immediately if the Decibel level is exceeding 110 Decibels.

Contractor will assist National Act production crew to unplug from the County's existing sound system and Lexcon Powergates if required at the conclusion of the show.

Contractor will ensure that stage lighting has been returned to its original state by the rigging crew post show if required by County.

# **EXHIBIT "B"**

## **Equipment Provided**

# April 12, 2014 - Blackwood Productions LLC

The County's light system provided is detailed on the attached equipment list. No other County equipment required.

# EXHIBIT "C"

9

Specialty certifications, licenses and/or memberships

Not required for this performance

# EXHIBIT "D"

## Insurance

Commercial General Liability with limits of at least \$1,000,000 each occurrence is required. 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 shall be provided on a primary basis.

Required for this performance, see attached



# Lighting System

Stage Lighting Console Strand Palette 48/96

Lighting Altman Outdoor PAR 64-1000watt Fixture (44 on front overhang rail, 11 on first inside rail) Altman R-40 Striplight-250watt Fixtures (4 per row on second, third and fourth inside rail)



# **CERTIFICATE OF LIABILITY INSURANCE**

DATE (MM/DD/YYYY) 02/25/14

I

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H.G	. Holdam Insurance					-	) 434-4451	FAX (A/C, No): (56	1) 434-3505
383	0 Jog Road				E-MAIL	- omia/	@hgholdam.coi		
Lak	e Worth, FL 33467				ADDRESS: Claig@righoldam.com INSURER(S) AFFORDING COVERAGE NAM				
Pho	ne (561) 434-4451 Fa	61) 4	34-3505	INSUR	ERA: Penn A	merica Ins Co			
INSU	IRED			INSUR	ER B :				
Blackwood Productions, LLC						ER C :			
364	6 23rd Ave S #107				INSUR	ER D :			
Lake	e Worth, FL 33461		ł	561	INSUR	ER E :			
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	ANY PROPRIETOR/PARTNER/EXECUTIVE OFFICER/MEMBER EXCLUDED?	N / A						E.L. EACH ACCIDENT \$	
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	2700 6th Ave South Lake Worth, FL 33461					DRIZED REPRES	ENTATIVE	POG	C

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Thank you Pete Noble President/ General Manager Blackwood Productions, LLC 561-252-6443 www.blackwoodsv.com