

Agenda Item #3.M.1.

PALM BEACH COUNTY
BOARD OF COUNTY COMMISSIONERS

AGENDA ITEM SUMMARY

Meeting Date: September 1, 2015

☒ 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 Amphitheater Rental Agreement:

The Palm Beach Shakespeare Festival, Inc., Palm Beach Shakespeare Festival, Seabreeze Amphitheater, for the period July 1, 2015, through July 20, 2015.

Summary: The Palm Beach Shakespeare Festival event is co-sponsored by the Department. The Department shares in the revenue of the donations received on the nights of the performances. 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 Amphitheater Rental Agreement has been fully executed on behalf of the Board of County Commissioners (Board) by the County Administrator/Director/Assistant Director of the Parks and Recreation Department in accordance with Resolution 2009-0335, amended by Resolutions 2009-1807, 2012-1715 and 2014-0166, and is now being submitted to the Board to receive and file. This event helps to offer a balanced schedule of events which promote the quality of life in the communities we serve. An estimated 8,000 persons attended the event produced under this Amphitheater Rental Agreement. District 1 (AH)

Background and Justification: The Amphitheater Rental Agreement (Resolution 2009-0335, amended by Resolutions 2009-1807, 2012-1715 and 2014-0166) was adopted by the Board to streamline the process of renting Amphitheater facilities. The Board granted the Director/Assistant Director of Parks and Recreation authority to execute Amphitheater Rental Agreements not-to-exceed \$15,000, with rental agreements between \$15,000 and \$50,000 requiring the County Administrator's approval and rental agreements over \$50,000 requiring Board approval.

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

Attachment: Amphitheater Rental Agreement

Recommended by: _____


Department Director

7-27-2015
Date

Approved by: _____


Assistant County Administrator

8-11-15
Date

II. FISCAL IMPACT ANALYSIS

A. Five Year Summary of Fiscal Impact:

Fiscal Years	2015	2016	2017	2018	2019
Capital Expenditures	<u>-0-</u>	<u>-0-</u>	<u>-0-</u>	<u>-0-</u>	<u>-0-</u>
Operating Costs	<u>4,637</u>	<u>-0-</u>	<u>-0-</u>	<u>-0-</u>	<u>-0-</u>
External Revenues	<u>(3,539)</u>	<u>-0-</u>	<u>-0-</u>	<u>-0-</u>	<u>-0-</u>
Program Income (County)	<u>-0-</u>	<u>-0-</u>	<u>-0-</u>	<u>-0-</u>	<u>-0-</u>
In-Kind Match (County)	<u>-0-</u>	<u>-0-</u>	<u>-0-</u>	<u>-0-</u>	<u>-0-</u>
NET FISCAL IMPACT	<u>1,098</u>	<u>-0-</u>	<u>-0-</u>	<u>-0-</u>	<u>-0-</u>
# ADDITIONAL FTE POSITIONS (Cumulative)	<u>0</u>	<u></u>	<u></u>	<u></u>	<u></u>

Is Item Included in Current Budget? Yes X No
Budget Account No.: Fund 0001 Department 580 Unit 5206
Revenue 6600 / Object various Program

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

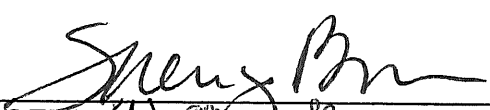
Renter	Revenue	Expense
The Palm Beach Shakespeare Festival, Inc.	\$3,539	\$4,637
Totals	\$3,539	\$4,637

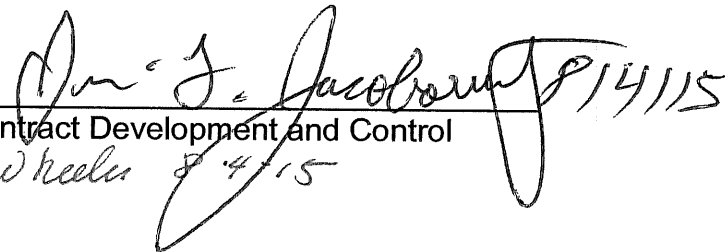
Expenses associated with event include rental of lighting equipment, port-o-lets and law enforcement services.

C. Departmental Fiscal Review: 

III. REVIEW COMMENTS

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


OFMB 8/10/15 8/29/15 8/13/15


Contract Development and Control
B Wheeler 8-4-15

B. Legal Sufficiency:

Anne Delgant 8/12/15
Assistant County Attorney

C. Other Department Review:

Department Director

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

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

THIS AMPHITHEATER RENTAL AGREEMENT, hereinafter referred to as the "Agreement," is made and entered into on JUNE 22, 2015, by and between Palm Beach County, a Political Subdivision of the State of Florida, by and through its Board of County Commissioners, hereinafter referred to as "COUNTY," and The Palm Beach Shakespeare Festival, Inc., a Florida Non-Profit Corporation, authorized to conduct business in the State of Florida, hereinafter referred to as "RENTER".

WITNESSETH:

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

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

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

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

1. **Term:** This Agreement is effective July 1, 2015, at 8:00am, the date and time RENTER enters the amphitheater property, and will terminate July 20, 2015, at 5:00pm, the date and time RENTER is to complete vacating the amphitheater property.

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

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

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

3. **Use:** The purpose for which RENTER is granted use of the Amphitheater is specifically limited to the production and conduct of a certain event promoted as: Palm Beach Shakespeare Festival, as hereinafter referred to as "Event". The scope and detail of the Event is more particularly described on the Rental Scope and Detail, attached hereto as **Exhibit "B"**.

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

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

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

- a. **Non-Refundable Booking Deposit:** \$0.00, to be paid at the time the Amphitheater rental date is confirmed, amount is credited to the Pre/Post Rental Settlement, attached hereto as **Exhibit "C"**.
- b. **Presettlement:** Fourteen (14) days prior to Event, RENTER shall make payment to COUNTY in accordance with the Pre/Post Rental Settlement form provided by COUNTY. Such Presettlement payment shall be credited to the Pre/Post Rental Settlement RENTER is required to pay immediately following the Event. Any additional charges that accrue after Presettlement payment of the Pre/Post Rental Settlement shall be due immediately following Event.
- c. **Amphitheater Rental:** The greater of, \$0.00, the Amphitheater's daily rental fee times the number of days the Term of this Agreement is effective plus any additional fees as outlined on Exhibit "C", or zero (0) % of the adjusted gross ticket sales up to \$0.00, the amount of which is applied to the Pre/Post Rental Settlement balance and paid by July 20, 2015. RENTER shall pay COUNTY 50% of its adjusted gross donations RENTER receives during the term of this Agreement.

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

- d. **Final Settlement Payment:** Any payment made by RENTER pursuant to Section a-c above shall be subtracted from the Pre/Post Rental Settlement. Immediately following Event, RENTER shall pay COUNTY any and all balances due, including any additional fees and charges shown on the Pre/Post Rental Settlement form.
- e. **Use and Service Charges:** Charges for use of equipment, staff overtime, and support services such as law enforcement, technical staff and skilled maintenance, the amount of which is applied to the Pre/Post Rental Settlement balance.
- f. **Damage Deposit:** In addition to the rental, fees and charges referenced above, the Department reserves the right to require RENTER to submit a damage deposit. The decision to require such a deposit may be made at any time during the Term of this Agreement and will be made on a case-by-case basis. In the event such a deposit is required, RENTER will remit payment of the deposit immediately upon notice from the Department. The deposit may be fully or partially retained as compensation for damages or cost of clean-up. Following the Amphitheater rental the Department will assess the condition of the Amphitheater, its equipment, improvements, appurtenances, and associated premises. For purposes of this Agreement, "associated premises" are those areas which the use of is included in the amphitheater rental and therefore not subject to a separate rental charge. In the event damages are discovered and/or further clean-up is necessary, the cost to repair such damages and/or the cost of further clean-up exceeds the amount of the damage deposit, RENTER will immediately remit the difference. Provided the

Amphitheater is returned in a condition satisfactory to the Department, the deposit will be refunded within forty-five (45) days following the date of the Amphitheater rental.

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

5. **Termination:** In addition to the cancellation rights provided in Article 8 below, COUNTY reserves the right to terminate this Agreement at anytime without cause effective upon delivery of written notice of termination to RENTER. In such event, COUNTY will not be held liable for any lost profits or damages resulting from such termination. Though such termination may be effective immediately, the Department will not unreasonably limit the time necessary for RENTER to vacate the Amphitheater premises. Additionally, in the event of such termination, RENTER's Booking Deposit will be refunded within forty-five (45) days following the date of termination together with any other fees and charges paid by RENTER.

6. **Performance:**

a. RENTER agrees to:

1. **use** the Amphitheater solely for the purpose for which this Agreement is entered into;
2. **remain** on-site for the duration of the rental setup and Event or assign an authorized representative who will be on-site to act on RENTER's behalf;
3. **accept** the Amphitheater and all equipment and improvements related to the rental in the condition existing as of the date of this Agreement;
4. **waive** any and all claims for compensation for any and all losses or damages sustained due to failure or malfunction of the Amphitheater's water or electrical power supplies;
5. **adhere** to the directives of the Department's representatives including, but not limited to, proper use and handling of COUNTY owned equipment, assignment of designated parking areas, locations for offloading and staging production equipment, and acceptable noise levels;
6. **prohibit** any activity on the Amphitheater premises that may be considered contrary to community standards of appropriateness;
7. **assure** that all persons under RENTER's control conduct themselves in a socially acceptable manner;
8. **obtain** the Department's written approval prior to the use of any type of pyrotechnics;
9. **obtain** the Department's written approval prior to operating any engine, motor or machinery or using any flammable agents, including but not limited to oils, camphene, kerosene, naphtha, or gasoline; with the exception of generators that have been approved by the Department's representative;

10. **assume** all responsibility for Event promotions and ticket sales, all of which is subject to the review and approval of COUNTY including attendance tracking, ticket accounting and financial reporting;
 11. **limit** Event attendance to the capacity specified by the Department, the final decision regarding all issues related to ticketing, attendance and capacity will be made by the Department's designated representative for Event;
 12. **assume** full responsibility for obtaining all licenses and permits required by Copyright Regulations of Title 17 of the United States Code, and agree to indemnify COUNTY and its agents for any expenses incurred as a result of RENTER's failure to obtain such licenses or permits, including, but not limited to, fines or damages collected against COUNTY or COUNTY's agents, any attorney's fees and court costs, and for any expenses incurred as a result of RENTER's failure to otherwise satisfy such regulations;
 13. **identify**, as part of Rental Scope and Detail, attached hereto as **Exhibit "B-1"**, any and all required specialty certifications, licenses and / or memberships applicable to Event;
 14. **deliver** to the Department, no later than forty-eight (48) hours prior to the Amphitheater Event, a copy of those certain specialty certifications, licenses and / or memberships referenced above, all of which will be retained by the Department;
 15. **acknowledge** that failure to deliver the required documentation referenced above may result in immediate termination of this Agreement which includes forfeiture of the Booking Deposit and a demand for payment of all administrative costs incurred by COUNTY in association with this Agreement;
 16. **remove** all equipment and materials owned by RENTER and subcontractors no later than the termination date and time specified in Article 1 above;
 17. **return** the Amphitheater and all equipment and improvements related to the rental to the condition existing as of the effective date and time specified in Article 1 above;
 18. **hold** COUNTY harmless for the sale or disposal of any equipment and materials considered to be abandoned due to RENTER's failure to remove same from the Amphitheater premises by the specified termination date and time and pay the cost of such removal and disposal upon receipt of COUNTY's invoice; and
 19. **comply** with all Amphitheater rules and regulations and adhere to all federal, state and local laws and regulations, including Palm Beach County Code, Chapter 21, as may be amended, pertaining to Parks and Recreation, and Department standard operating procedures as all such laws, regulations, ordinances, and procedures apply to RENTER's use of the Amphitheater.
- b. COUNTY agrees to:
1. **deliver** the Amphitheater and associated premises in a safe, clean, and orderly condition;

2. **assign** staff to provide logistical support and oversee all aspects of the rental including authority to make final decisions and issue directives on behalf of COUNTY;
 3. **provide** equipment and support services including law enforcement, technical staff and skilled maintenance as specified on the Rental Scope and Detail, attached hereto as **Exhibit "B"**;
 4. **retain** control of the Amphitheater and all operations conducted on the Amphitheater premises including enforcement of all laws, rules and regulations pertaining to the safety and well-being of the public; and
 5. **collect** and dispose of any and all items either discarded or lost by patrons or others at an Amphitheater Event, without interference by RENTER or any person working for or on behalf of RENTER, the disposition of which may include retaining such items at a lost-and-found location.
7. **Postponement or Cancellation of Event:** In the event emergency conditions arise which may affect public safety, RENTER's use of the Amphitheater may be postponed or cancelled. Such emergency conditions include, but are not limited to, acts of God or issuance of an executive order indicating a state of general emergency. COUNTY, in its sole discretion, will determine the necessity to postpone or cancel RENTER's use of the Amphitheater and will endeavor to provide RENTER at least four (4) hours notice of such postponement or cancellation prior to Event's start time. Provided, however, COUNTY's notice of such postponement or cancellation may be given at anytime including during Event performance.
- In the event COUNTY cancels RENTER's use of the Amphitheater due to any public safety concern, the Term of this Agreement will be extended upon the same terms and conditions provided that within five (5) business days following such cancellation, COUNTY and RENTER agree upon a rescheduled Event date. Such Term extension will be effective upon COUNTY's delivery to RENTER of a written notice specifying the agreed upon rescheduled Event date and detailing the circumstances leading to the Term extension.
8. **Cancellation for Cause:** The occurrence of any one or more of the following acts constitutes a material default and breach of this Agreement by RENTER and will result in cancellation of RENTER's use of the Amphitheater:
- RENTER elects to cancel Event rather than accept the delayed start time ordered by COUNTY due to a public safety concern;
 - RENTER fails to agree upon a rescheduled Event date within five (5) business days following COUNTY's cancellation of Event due to a public safety concern;
 - RENTER cancels use of the Amphitheater;
 - RENTER misrepresents its intended use of the Amphitheater including acting as a broker or agent by attempting to re-let the Amphitheater;
 - RENTER's use of the Amphitheater expands beyond the scope and purpose for which this Agreement is entered into;

- RENTER provided materially false information relating to this Agreement;
- Any person under the control of RENTER, including subcontractors, is responsible for purposely damaging the Amphitheater or any COUNTY owned equipment; or
- Any person under the control of RENTER, including subcontractors, is guilty of gross misconduct or unlawful behavior while on the Amphitheater premises.

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

9. **Photography / Recording:** Except for Event performances and materials covered by copyright laws, licensing fees or other legal regulations, COUNTY may photograph and/or record audio and video during any Amphitheater Event. Such photos and recordings may be used by COUNTY for promotional and informational purposes only. RENTER agrees to provide assistance as needed to accommodate such photography and recording. RENTER is responsible for being aware of and advising COUNTY of any copyright infringements or other legal limitations that may apply to photographing and/or recording during Event.

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

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

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

11. **Taxes:** RENTER assumes sole responsibility for the payment of any and all federal, state, and local taxes as may be applicable to RENTER's use of the Amphitheater and its business operations thereon. Additionally, RENTER is not eligible to benefit from the COUNTY's tax exempt status.
12. **Subcontracting:** Those employed by any entity performing any work or service on behalf of RENTER at the Amphitheater is considered to be a subcontractor for whom RENTER is responsible. Any agreement between RENTER and a subcontracting entity will be provided to the Department upon request.

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

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

Name: Donald Perez Phone Number: 561-966-7047

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

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

16. **Indemnification:** RENTER 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 RENTER's use and occupancy of the Amphitheater. Such causes of action include, without limitation, those arising by reason of; (i) any damage to property or the environment, (ii) bodily injury, including death, incurred or sustained by any party hereto, any agent or employee of any party hereto, and any third or other party whosoever, (iii) the condition of the Amphitheater existing at the effective date of this Agreement, (iv) RENTER's acts, omissions or operations hereunder, (v) the performance, non-performance or purported performance of RENTER, or (vi) any breach of the terms of this Agreement. The obligations arising under this provision will survive the expiration or termination of this Agreement.

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

Additionally, RENTER is prohibited from defacing the Amphitheater in any way including using nails, hooks, tacks, screws or any other fastening device. RENTER is also prohibited from painting any areas of the Amphitheater or painting any items including personal property anywhere on the Amphitheater premises. No

signs, advertisements, show-bills, lithographs, posters, placards or any other such items are to be posted or otherwise displayed anywhere on the Amphitheater premises without the express consent of the Department's authorized representative. Any such unapproved items will be immediately removed at the sole cost and expense of RENTER.

18. **Termination Upon Destruction or other Casualty:** In the event the Amphitheater or any part thereof is destroyed or damaged in whole or part by fire, water, or any other cause, or if any other casualty or unforeseen occurrence renders the fulfillment of this Agreement impossible, as determined by COUNTY in its sole discretion, this Agreement will terminate effective upon notice to RENTER and RENTER agrees to not hold COUNTY liable for any claim for damages or compensation should this Agreement be so terminated.

19. **COUNTY Not Liable:** COUNTY will not be responsible or liable to RENTER for any claims for compensation or any losses, damages or injury sustained by RENTER resulting from failure of any water supply, electrical current, sewerage or drainage facility, or caused by natural physical conditions of the Amphitheater premises, whether on the surface or underground, including displacement of materials by fire, water, windstorm, tornado, hurricane, act of God or any cause beyond the control of COUNTY. All personal property placed on or moved onto the Amphitheater premises will be done so at the sole risk of RENTER or owner thereof and RENTER expressly acknowledges and agrees that COUNTY will not be liable for any damage to or loss of such personal property.

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

COUNTY:

Palm Beach County Parks and Recreation Department
Attn: Director of Special Facilities
2700 6th Avenue South
Lake Worth, Florida 33461

RENTER:

The Palm Beach Shakespeare Festival, Inc.
Attn: Elizabeth Dashiell
103 U.S. Highway 1, Suite F-5,
Jupiter FL 33477

21.

Remedies: This Agreement shall be governed by the laws of the State of Florida. Any legal action necessary to enforce the Agreement will be held in Palm Beach County. No remedy herein conferred upon any party is intended to be exclusive of any other remedy, and each and every such remedy shall be cumulative and shall be in addition to every other remedy given hereunder or now or hereafter existing at law or in equity, by statute or otherwise. No single or partial exercise by any party of any right, power, or remedy hereunder shall preclude any other or further exercise thereof.

22. **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 RENTER.
23. **Annual Appropriations:** The fulfillment of this Agreement and all obligations of COUNTY hereunder are subject to and contingent upon annual budgetary appropriations by the Board of County Commissioners.
24. **Arrears:** RENTER is not to pledge or attempt to pledge COUNTY's credit or make it a guarantor of payment or surety for any contract, debt, obligation, judgment, lien, or any form of indebtedness. RENTER further warrants and represents that it has no obligation or indebtedness that would impair its ability to fulfill the terms of this Agreement.
25. **Authorization:** This Agreement is executed by an individual legally authorized to fully bind RENTER to all terms and conditions of this Agreement.
26. **Public Entity Crimes:** As provided in F.S. 287.132-133, by entering into this Agreement or performing any work in furtherance hereof, RENTER certifies that it, its affiliates, suppliers, subcontractors and consultants who will perform hereunder, have not been placed on the convicted vendor list maintained by the State of Florida Department of Management Services within the thirty-six (36) months immediately preceding the date hereof. This notice is required by F.S. 287.133(3)(a).
27. **Severability:** In the event any term or provision of this Agreement is held invalid or unenforceable, the remainder of this Agreement will not be affected, and every other term and provision of this Agreement will be deemed valid and enforceable to the extent permitted by law.
28. **Access and Audits:** In the event that any part of the payment due and owed to COUNTY is calculated as a portion or percentage of ticket sales, gate admissions, vehicle parking or any other attendance information, RENTER will maintain the necessary records sufficient to adequately substantiate all such calculations for three (3) years following completion or termination of this Agreement and agrees to produce such records for audit immediately upon receipt of COUNTY's notice.
29. **Office of the Inspector General:** Palm Beach County has established the Office of the Inspector General in Palm Beach County Code, Section 2-421 - 2-440, as may be amended. The Inspector General's authority includes but is not limited to the power to review past, present and proposed COUNTY contracts, transactions, accounts and records, to require the production of records, and to audit, investigate, monitor, and inspect the activities of RENTER, its officers, agents, employees, and lobbyists in order to ensure compliance with contract requirements and detect corruption and fraud.

Failure to cooperate with the Inspector General or interfering with or impeding any investigation shall be in violation of Palm Beach County Code, Section 2-421 - 2-440, and punished pursuant to Section 125.69, Florida Statutes, in the same manner as a second degree misdemeanor.

30. **Waiver:** The failure of COUNTY to insist upon strict performance of any of the agreements, terms, covenants or conditions of this Agreement, does not constitute a waiver of any rights or remedies that COUNTY may have for any subsequent breach, default, or non-performance, and COUNTY's right to insist on strict performance of this Agreement will not be affected by any previous waiver of course or dealing.

31. **Nondiscrimination:** RENTER warrants and represents that all of its employees are treated equally during employment without regard to race, color, religion, disability, sex, age, national origin, ancestry, marital status, familial status, sexual orientation, gender identity and expression, or genetic information.

Renter has submitted to County a copy of its non-discrimination policy which is consistent with the above paragraph, as contained in Resolution R-2014-1421, as amended, or in the alternative, if the Renter does not have a written non-discrimination policy or one that conforms to the County's policy, it has acknowledged through a signed statement provided to COUNTY that Renter will conform to the County's non-discrimination policy as provided in R-2014-1421, as amended.

32. **Regulation; Licensing Requirements:** RENTER agrees to comply with all laws, ordinances and regulations applicable to its use and rental of the Amphitheater premises. RENTER is presumed to be familiar with all applicable federal, state, and local laws, ordinances, codes and regulations.

33. **Criminal History Records Check:** If RENTER's employees or subcontractors are required under this contract to enter a "critical facility," as identified in Resolution R-2003-1274, the RENTER shall comply with the provisions of Chapter 2, Article IX of the Palm Beach County Code ("Criminal History Records Check" section). The RENTER 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 RENTER shall be solely responsible for the financial, schedule, and staffing implications associated in complying with this section of the Palm Beach County Code.

34. **Entirety of Agreement:** COUNTY and RENTER agree that this Agreement sets forth the entire agreement between the parties, and that there are no promises or understandings other than those stated herein. None of the provisions, terms and conditions contained in this Agreement may be added to, modified, superseded or otherwise altered, except by written instrument executed by the parties hereto.

(REMAINDER OF PAGE INTENTIONALLY LEFT BLANK)

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

PALM BEACH COUNTY
BOARD OF COUNTY COMMISSIONERS:

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

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

County Administrator

By: _____

If Agreement Value
Exceeds \$50,000.00:


COUNTY:
Board of County Commissioners

ATTEST:
Clerk & Comptroller

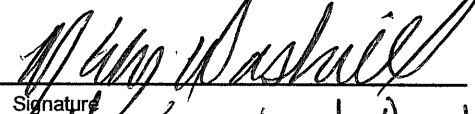
Deputy Clerk

By: _____
Mayor

WITNESS


Signature
JOSEPH A. A. DASILVA
Print

RENTER – Palm Beach Shakespeare Festival, Inc.

By: 
Signature
M. Elizabeth Dashiell
Print
Producer
Title

APPROVED AS TO
FORM AND LEGAL SUFFICIENCY:

County Attorney

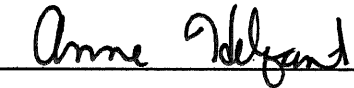


EXHIBIT "A"

AMPHITHEATER RENTAL AGREEMENT

Rental Selection Form

☐

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



Seating for 6,000 – covered stage with rigging points – four dressing rooms – private restrooms – air conditioned back stage – covered vendor area with hook-up – public restrooms attached



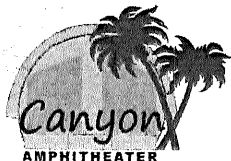
SEABREEZE AMPHITHEATER: Located in Carlin Park
750 South State Road A1A
Jupiter



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

☐

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



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

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

EXHIBIT "B"

AMPHITHEATER RENTAL AGREEMENT

Rental Scope & Detail

Event Name: Palm Beach Shakespeare Festival

Rental to include:

- | | |
|---|--|
| <input checked="" type="checkbox"/> Full Facility | <input type="checkbox"/> Restrooms |
| <input type="checkbox"/> Lawn | <input type="checkbox"/> Equipment / Materials <i>[Include Details Below]</i> |
| <input type="checkbox"/> Stage & Lawn | <input type="checkbox"/> Technicians / Staff Services <i>[Include Details Below]</i> |
| <input type="checkbox"/> Parking Areas | <input type="checkbox"/> _____ |
| <input type="checkbox"/> Overflow Parking | <input type="checkbox"/> _____ |

Event scope and detail: Rental fees are waived. Renter has been granted permission to collect donations on event show dates. Fifty percent of the adjusted gross donations will be paid to the County. That amount shall be due at settlement following the conclusion of the event and will appear documented on the settlement form. Damage Deposit is not required for this rental. Palm Beach Shakespeare Festival is a non-ticketed event and patrons are encouraged to bring their picnic baskets and blankets to watch this Shakespeare production. Event show dates will be performed Thursday through Sunday nights on July 9, 2015 through July 19, 2015 beginning at 8:00pm. Food and beverage concessions will be on site. Nightly attendance is expected at 500-2000 patrons. Palm Beach County is a cosponsor for this event. crosswalk assistance law Enforcement will be procured and paid for by the County. Additional law enforcement required for alcohol sales compliance and crowd control will be at the expense of the Renter. Renter is required to submit a stage plot and lighting input list to County staff for review and approval by June 1st 2015.

NOTE: COUNTY reserves the right to refuse any Amphitheater rental request that may be deemed contrary to community standards of appropriateness. Such decision is final and without liability for any costs.

EXHIBIT "B-1"
(1 of 2)

AMPHITHEATER RENTAL AGREEMENT
Rental Scope & Detail

Specialty Certificates, Licenses, and Memberships:

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

Host Certificate of Insurance.

Amenities, Services & Equipment:

Procured By RENTER:

- ☐ Liquor
- ☒ Food and Beverages
- ☐ Vendor Merchandise
- ☒ Production Staff
- ☐ Generators
- ☒ Volunteers
- ☒ Signs / Banners
- ☐ Barbeques / Grills
- ☐ Stage Security Detail

Department Approval Signature

Procured By:

Paid By:

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

(2 of 2)

Procured By:

Paid By:

N/A	COUNTY	RENTER	COUNTY *	RENTER
		Dumpster		
		MOT		
		Electrician		
		Plumber		
		Sound Technician		
		Tents		
		Tables		
		Chairs		
		Portolets		
		Light Towers		
		Message Board		
		Event Parking Crew		
		Event Security Crew		
		Fireworks / Pyrotechnics [†]		
		<u>(6) Picnic Tables</u>		

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

In addition to such costs, COUNTY reserves the right to assess a twenty-five percent (25%) administrative overhead fee to the procurement costs of such amenities, services and equipment. In such event, RENTER will be notified of such assessment prior to COUNTY's procurement.

† Requests to include fireworks or any other form of pyrotechnics display will be considered on a case-by-case basis. Any such displays require the approval of the Department Director, and must be conducted in accordance with the permit issued by the Fire Rescue Department having municipal jurisdiction of the Amphitheater. Also, the presence of the Fire Rescue Department is required. Additional insurance coverages as well as charges for the presence of Fire Rescue equipment and personnel will apply.

EXHIBIT "C"
AMPHITHEATER RENTAL AGREEMENT
Pre/Post Rental Settlement

EXAMPLE...

ACCOUNT NUMBER	DESCRIPTION	PRE RENTAL SETTLEMENT AMOUNT	POST RENTAL SETTLEMENT AMOUNT
5206 – 01 – 4735	SEABREEZE / Facility Rental	\$	\$
5207 – 4735	SUNSET COVE / Facility Rental	\$	\$
5206 – 03 – 4735	CANYON TOWN CENTER / Facility Rental	\$	\$
5207 – 4725–14	SUNSET COVE / Parking	\$	\$
5206/7 – (01,03) – 4729–24	Food, Beverage & Alcohol	\$	\$
5206/7 – (01,03) – 4729–25	Souvenirs & Event Products	\$	\$
5206/7 – (01,03) – 4729–26	Non Event Related Merchandise	\$	\$
5206/7 – (01,03) – 4729–09	Cleaning (Hourly / per person)	\$	\$
5221 – 4729–13	Parks Maintenance / Wages Regular	\$	\$
5221 – 4729–14	Parks Maintenance / Wages Overtime	\$	\$
5206/7 – (01,03) – 4729–15	Law Enforcement / PBSO	\$	\$
5206/7 – (01) – 4729–01	Pavilion Rental	\$	\$
5207 – 4734	SUNSET COVE / Equipment Rental	\$	\$
5206/7 – (01,03) – 4721–09	Administrative Fee	\$	\$
0001 – 2170 – STAX	Sales Tax	\$	\$
0001 – 2230 – SEAD/AMAD	Advance Deposit / Booking Deposit	\$ ()	\$ ()
Balance Due		\$	\$

Damage Deposit: \$ _____
0001 – 2230 – SESD/AMSD

Palm Beach County
Parks and Recreation Department:

Date Received: _____

By: _____ Date: _____
Authorized Representative / Amphitheater Manager

RENTER:

By: _____ Date: _____
Authorized Representative for:

EXHIBIT "D"

(1 of 2)

AMPHITHEATER RENTAL AGREEMENT

Insurance Requirements

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

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

☐

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

JS ✓

Commercial General Liability: CONTRACTOR shall maintain Commercial General Liability at a limit of liability not less than **\$1,000,000** Each Occurrence. Coverage shall not contain any endorsement(s) excluding Contractual Liability or Cross Liability.

☐

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

JS ✓


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


☐


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

EXHIBIT "D"

(2 of 2)


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

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

 **Certificates of Insurance:** Prior to execution of the Agreement, the CONTRACTOR shall deliver to the COUNTY Certificate(s) of Insurance evidencing that all types and amounts of insurance coverage required by this Agreement have been obtained and are in full force and effect. In addition, the CONTRACTOR shall provide this evidence to the COUNTY prior to the expiration date of any such insurance required herein. Such Certificate(s) of Insurance shall include a minimum ten (10) day endeavor to notify due to cancellation of coverage. Certificates of Insurance are to be sent to:

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

☐ **Umbrella or Excess Liability:** If necessary, CONTRACTOR may satisfy the minimum limits required above for Commercial General Liability, Business Auto Liability, and Employer's Liability coverage under Umbrella or Excess Liability. The Umbrella or Excess Liability shall have an Aggregate limit not less than the highest "Each Occurrence" limit for Commercial General Liability, Business Auto Liability, or Employer's Liability. The COUNTY shall be specifically endorsed as an "Additional Insured" on the Umbrella or Excess Liability, unless the Certificate of Insurance notes the Umbrella or Excess Liability provides coverage on a "Follow-Form" basis.

 **Right to Revise or Reject:** COUNTY, by and through its Risk Management Department, in cooperation with the contracting/monitoring department, reserves the right to review, modify, reject, or accept any required policies of insurance, including limits, coverage, or endorsements, herein from time to time throughout the term of this Agreement. COUNTY reserves the right, but not the obligation, to review and reject any insurer providing coverage because of its poor financial condition or failure to operate legally.



CERTIFICATE OF LIABILITY INSURANCE

PBSHA-1 OP ID: D1
DATE (MM/DD/YYYY)
02/02/2015

THIS CERTIFICATE IS ISSUED AS A MATTER OF INFORMATION ONLY AND CONFERS NO RIGHTS UPON THE CERTIFICATE HOLDER. THIS CERTIFICATE DOES NOT AFFIRMATIVELY OR NEGATIVELY AMEND, EXTEND OR ALTER THE COVERAGE AFFORDED BY THE POLICIES BELOW. THIS CERTIFICATE OF INSURANCE DOES NOT CONSTITUTE A CONTRACT BETWEEN THE ISSUING INSURER(S), AUTHORIZED REPRESENTATIVE OR PRODUCER, AND THE CERTIFICATE HOLDER.	
IMPORTANT: If the certificate holder is an ADDITIONAL INSURED, the policy(ies) must be endorsed. If SUBROGATION IS WAIVED, subject to the terms and conditions of the policy, certain policies may require an endorsement. A statement on this certificate does not confer rights to the certificate holder in lieu of such endorsement(s).	
PRODUCER The Plastridge Agency-PBGO 10337 N Military Trail Palm Beach Gardens, FL 33410	CONTACT NAME: PHONE (A/C, No, Ext): 561-630-4955 FAX (A/C, No): 561-630-4966 E-MAIL ADDRESS: INSURER(S) AFFORDING COVERAGE INSURER A : Axis Surplus Ins. Co. INSURER B : INSURER C : INSURER D : INSURER E : INSURER F :
INSURED The Palm Beach Shakespeare Festival, Inc. 103 So. U.S. Hwy. 1 Ste F-5 Jupiter, FL 33477	

COVERAGES		CERTIFICATE 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.						
INSR LTR	TYPE OF INSURANCE	ADDL SUBR INSD WVD	POLICY NUMBER	POLICY EFF (MM/DD/YYYY)	POLICY EXP (MM/DD/YYYY)	LIMITS
A	<input checked="" type="checkbox"/> COMMERCIAL GENERAL LIABILITY <input type="checkbox"/> CLAIMS-MADE <input checked="" type="checkbox"/> OCCUR GEN'L AGGREGATE LIMIT APPLIES PER: <input checked="" type="checkbox"/> POLICY <input type="checkbox"/> PRO-JECT <input type="checkbox"/> LOC OTHER:	X	FLGLN01233AX	01/29/2015	01/29/2016	EACH OCCURRENCE \$ 1,000,000 DAMAGE TO RENTED PREMISES (Ea occurrence) \$ 50,000 MED EXP (Any one person) \$ 5,000 PERSONAL & ADV INJURY \$ 1,000,000 GENERAL AGGREGATE \$ 2,000,000 PRODUCTS - COMP/OP AGG \$ Included
	AUTOMOBILE LIABILITY <input type="checkbox"/> ANY AUTO <input type="checkbox"/> ALL OWNED AUTOS <input type="checkbox"/> SCHEDULED AUTOS <input type="checkbox"/> HIRED AUTOS <input type="checkbox"/> NON-OWNED AUTOS					COMBINED SINGLE LIMIT (Ea accident) \$ BODILY INJURY (Per person) \$ BODILY INJURY (Per accident) \$ PROPERTY DAMAGE (Per accident) \$
	UMBRELLA LIAB <input type="checkbox"/> OCCUR EXCESS LIAB <input type="checkbox"/> CLAIMS-MADE DED <input type="checkbox"/> RETENTION \$					EACH OCCURRENCE \$ AGGREGATE \$
	WORKERS COMPENSATION AND EMPLOYERS' LIABILITY ANY PROPRIETOR/PARTNER/EXECUTIVE OFFICER/MEMBER EXCLUDED? (Mandatory In NH) If yes, describe under DESCRIPTION OF OPERATIONS below	Y/N <input type="checkbox"/> N/A				PER STATUTE <input type="checkbox"/> OTH-ER <input type="checkbox"/> E.L. EACH ACCIDENT \$ E.L. DISEASE - EA EMPLOYEE \$ E.L. DISEASE - POLICY LIMIT \$
DESCRIPTION OF OPERATIONS / LOCATIONS / VEHICLES (ACORD 101, Additional Remarks Schedule, may be attached if more space is required) Palm Beach County Board of County Commissioners is endorsed as Additional Insured on Commercial General Liability Donald Perez Fax: 561-242-6964						

CERTIFICATE HOLDER	CANCELLATION
PALM BEACH COUNTY BOARD OF COMMISSIONERS C/O SPECIAL EVENTS DEPARTMENT 2700 6th Ave South Lake Worth, FL 33461	SHOULD ANY OF THE ABOVE DESCRIBED POLICIES BE CANCELLED BEFORE THE EXPIRATION DATE THEREOF, NOTICE WILL BE DELIVERED IN ACCORDANCE WITH THE POLICY PROVISIONS. AUTHORIZED REPRESENTATIVE

From: Elizabeth
To: Donald Perex
Cc: kernit christman
Subject: Workman's Compensation for the Palm Beach Shakespeare Festival, Inc.
Date: Wednesday, March 26, 2014 11:22:34 AM

Please be advised The Palm Beach Shakespeare Festival Incorporated has no more than (3) employees and therefore does not require Workers Compensation Insurance. This letter is authorized and accurate until further notice.

Sincerely,

Elizabeth Dashiell
Vice President
Palm Beach Shakespeare Festival, Inc.
561-543-8276
palmbeachpr@yahoo.com