

PALM BEACH COUNTY
BOARD OF COUNTY COMMISSIONERS

AGENDA ITEM SUMMARY

Meeting Date: August 16, 2016

☒ 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 Entertainment Contractor Agreements for eleven community events:

- A) Steven Vincent Cluthe, Family Night with Food Truck Invasion, Sunset Cove Amphitheater, on February 3, 2016;
- B) Peter Sarfati, A Valentine's Day Concert with Solid Brass, Seabreeze Amphitheater, on February 14, 2016;
- C) Chase Stites, Family Night with Food Truck Invasion, Sunset Cove Amphitheater, on February 17, 2016;
- D) Simply Tina, LLC, Simply Tina, Canyon Town Center Amphitheater, on February 20, 2016;
- E) Steven Vincent Cluthe, Family Night with Food Truck Invasion, Sunset Cove Amphitheater, on March 2, 2016;
- F) Chase Stites, Family Night with Food Truck Invasion, Sunset Cove Amphitheater, on March 16, 2016;
- G) 137 Entertainment Group, LLC, White Acres Band, Canyon Town Center Amphitheater, on March 19, 2016;
- H) Rocket Entertainment Group LLC, The Doors Alive Concert, Seabreeze Amphitheater, on March 19, 2016;
- I) Steven Vincent Cluthe, Family Night with Food Truck Invasion, Sunset Cove Amphitheater, on April 6, 2016;
- J) Richard Benjamin, The Fabulons, Canyon Town Center Amphitheater, on April 16, 2016; and
- K) Chase Stites, Family Night with Food Truck Invasion, Sunset Cove Amphitheater, on April 20, 2016.

Summary: The Parks and Recreation Department produces cultural activities to promote the quality of life in the communities it serves. The Parks and Recreation Department produced eleven cultural events at the Canyon Town Center, Seabreeze, and Sunset Cove Amphitheaters. These events were attended by an estimated 6,200 people and generated positive support and goodwill for the County. A sponsorship from GL Homes offset the expenses of the concerts at the Canyon Town Center Amphitheater. A sponsorship from Food Truck Invasion, Inc., offset the expenses of the Family Night with Food Truck Invasion events at Sunset Cove Amphitheater. In accordance with County PPM CW-O-051, all delegated contracts/agreements/grants must be submitted by the initiating Department as a Receive and File agenda item. The Entertainment Contractor Agreements have been fully executed on behalf of the Board of County Commissioners (Board) by the Director of the Parks and Recreation Department in accordance with Resolution 2008-1109, amended by Resolutions 2010-0644 and 2014-0168, and are now being submitted to the Board to receive and file. Districts 1,5 (AH)

Background and Justification: The Entertainment Contractor Agreement, Resolution 2008-1109, amended by Resolutions 2010-0644 and R2014-0168, was adopted by the Board to streamline the process of hiring entertainment for County sponsored events. The Board granted the Director of Parks and Recreation authority to execute Entertainment Contractor Agreements for entertainment up to \$10,000, with contracts between \$10,000 and \$50,000 requiring the County Administrator's approval and contracts over \$50,000 requiring Board approval.

The Agreements attached have been executed on behalf of the Board by the 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: Entertainment Contractor Agreements (11)

Recommended by: [Signature]
Department Director

7/20/16
Date

Approved by: [Signature]
Deputy County Administrator

8/9/16
Date

II. FISCAL IMPACT ANALYSIS

A. Five Year Summary of Fiscal Impact:

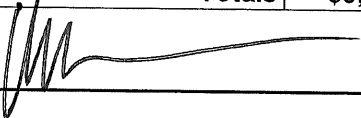
Fiscal Years	2016	2017	2018	2019	2020
Capital Expenditures	-0-	-0-	-0-	-0-	-0-
Operating Costs	6,800	-0-	-0-	-0-	-0-
External Revenues	(9,000)	-0-	-0-	-0-	-0-
Program Income (County)	-0-	-0-	-0-	-0-	-0-
In-Kind Match (County)	-0-	-0-	-0-	-0-	-0-
NET FISCAL IMPACT	(2,200)	-0-	-0-	-0-	-0-
# ADDITIONAL FTE POSITIONS (Cumulative)	0				

Is Item Included in Current Budget? Yes X No

Budget Account No.: Fund 0001 Department 580 Unit 5206/5207
Revenue Source 4729/6600 /Object 3401 Program

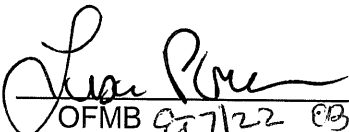
B. Recommended Sources of Funds/Summary of Fiscal Impact:

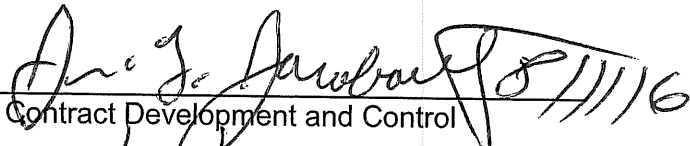
Entertainment Contractor		Revenue	Expense
A	Steven Vincent Cluthe	\$1,000	\$300
B	Peter Sarfati	\$0	\$900
C	Chase Stites	\$1,000	\$300
D	Simply Tina, LLC	\$1,000	\$1,000
E	Steven Vincent Cluthe	\$1,000	\$600
F	Chase Stites	\$1,000	\$600
G	137 Entertainment Group, LLC	\$1,000	\$800
H	Rocket Entertainment Group LLC	\$0	\$800
I	Steven Vincent Cluthe	\$1,000	\$300
J	Richard Benjamin	\$1,000	\$900
K	Chase Stites	\$1,000	\$300
Totals		\$9,000	\$6,800

C. Departmental Fiscal Review: 

III. REVIEW COMMENTS

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

 7/26/15
OFMB 7/22/15

 8/11/16
Contract Development and Control
7/24/16

B. Legal Sufficiency:

 8/9/16
Assistant County Attorney

C. Other Department Review:

Department Director

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

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

THIS ENTERTAINMENT CONTRACTOR AGREEMENT, hereinafter referred to as the "Agreement," is made and entered into on DECEMBER 30, 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 Steven Vincent Cluthe, an Individual, authorized to conduct business in the State of Florida, hereinafter referred to as "CONTRACTOR".

W I T N E S S E T H:

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

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

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

1. **Term:** This Agreement is effective Wednesday, February 3, 2016, at 5:00 PM, the date and time CONTRACTOR is scheduled to arrive at the event venue, and will terminate Wednesday, February 3, 2016, at 10:00 PM, the date and time CONTRACTOR is scheduled to depart the event venue.
2. **Amphitheater:** The event venue is Sunset Cove Amphitheater, hereinafter referred to as "Amphitheater", together with such amenities, equipment, and appurtenances as may be made available by COUNTY, in its sole discretion, all as more particularly described on the Amphitheater Designation Form, attached hereto as **Exhibit "A"**.
3. **Event:** The entertainment production to be presented at the Amphitheater is an event promoted as: Family Nights with Food Truck Invasion, hereinafter referred to as "Event", for which COUNTY hires CONTRACTOR to produce, stage, and perform, and when applicable including securing the Event's entertainment talent: Steven Vincent Cluthe, hereinafter referred to as "Entertainment".

If applicable, the sound check and/or warm-up for all Event Entertainment will begin at 5:00 PM and will conclude no later than 6:30 PM, which is no less than Thirty (30) minutes prior to time the Event is scheduled to begin.

The Event's Entertainment will begin performing at 7:00 PM and will conclude at 9:00 PM.

The performance will consist of Two (2) set(s) of Fifty Five (55) minutes per set.

If usual and customary for the type of entertainment production and/or the length of time Entertainment is scheduled to perform, the production may include One (1) intermission, of Ten (10) minutes.

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

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

4. **Payment:** The total amount payable by COUNTY to CONTRACTOR for the Event Entertainment is Three Hundred dollars (\$300.00) to be paid upon conclusion of the Event and verification that CONTRACTOR's entertainment production obligations have been completed as required herein.

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

In such event, COUNTY will remit to CONTRACTOR Zero percent (0%) of said total amount payable within Fourteen (14) days following the signing of this Agreement by COUNTY. The remaining balance of the total amount payable will be paid upon conclusion of the Event and verification that CONTRACTOR's entertainment production obligations have been completed as required herein.

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

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

7. **Performance:**

a. CONTRACTOR agrees to:

1. **use** the Amphitheater solely for the purpose for which this Agreement is entered into;
2. **accept** the Amphitheater and all equipment and improvements related to the Event in the condition existing as of the effective date of this Agreement;
3. **accept** the amount of payment defined above as full and final payment without further expectation for reimbursement of any expenses related to this Agreement;

4. **waive** any and all claims for compensation for any and all losses or damages sustained due to failure or malfunction of the Amphitheater's water or electrical power supplies;
5. **adhere** to the directives of the Department's representatives including, but not limited to, proper use and handling of COUNTY owned equipment, assignment of designated parking areas, locations for offloading and staging production equipment, and acceptable noise levels;
6. **prohibit** any activity or material related to the Event that may be considered contrary to community standards of appropriateness, including the use of profanity, obscene language, or lewd gestures, which will result in COUNTY's withholding of payment and denial of future entertainment contracting opportunities;
7. **assure** that all persons under CONTRACTOR's control conduct themselves in a socially acceptable manner including prohibiting the consumption of alcohol or illegal drugs on Amphitheater premises;
8. **obtain** the Department's written approval prior to the use of any type of pyrotechnics;
9. **obtain** the Department's written approval prior to operating any engine, motor or machinery or using any flammable agents, including but not limited to oils, camphene, kerosene, naphtha, or gasoline; with the exception of generators that have been approved by the Department's representative.
10. **assume** full responsibility for obtaining all licenses and permits required by Copyright Regulations of Title 17 of the United States Code, and agree to indemnify COUNTY and its agents for any expenses incurred as a result of CONTRACTOR's failure to obtain such licenses or permits, including, but not limited to, fines or damages collected against COUNTY or COUNTY's agents, any attorney's fees and court costs, and for any expenses incurred as a result of CONTRACTOR's failure to otherwise satisfy such regulations;
11. **identify**, as part of Event Scope and Detail, attached hereto as **Exhibit "B"**, any and all required specialty certifications, licenses and / or memberships applicable to the event;
12. **deliver** to the Department, no later than forty-eight (48) hours prior to the Event, a copy of those certain specialty certifications, licenses and / or memberships referenced above, all of which will be retained by the Department;
13. **acknowledge** that failure to deliver the required documentation referenced above may result in immediate termination of this Agreement and the return to COUNTY, within four (4) days following such termination, any percentage payment that may have been made to CONTRACTOR and forfeiture of the payment balance;
14. **remove** all equipment and materials owned by CONTRACTOR and Entertainment no later than the termination date and time specified in Article 1 above;
15. **return** the Amphitheater and all equipment and improvements related to the Event to the condition existing as of the effective date and time specified in Article 1 above;
16. **hold** COUNTY harmless for the sale or disposal of any equipment and materials considered to be abandoned due to CONTRACTOR's or Entertainment's failure to remove same from the

Amphitheater premises by the specified termination date and time and pay the cost of such removal and disposal upon receipt of COUNTY's invoice; and

17. **comply** with all Amphitheater rules and regulations and adhere to all federal, state and local laws and regulations, including Palm Beach County Code, Chapter 21, as may be amended, pertaining to Parks and Recreation, and Department standard operating procedures as all such laws, regulations, ordinances, and procedures apply to CONTRACTOR's and Entertainment's use of the Amphitheater.

b. COUNTY agrees to:

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

8. **Postponement or Cancellation of Event:** In the event emergency conditions arise which may affect public safety, the Event may be postponed or cancelled. Such emergency conditions include, but are not limited to, acts of God or issuance of an executive order indicating a state of general emergency. COUNTY, in its sole discretion, will determine the necessity to postpone or cancel the Event and will endeavor to provide CONTRACTOR at least four (4) hours notice of such postponement or cancellation prior to the Event start time specified in Article 3 above. Provided, however, COUNTY's notice of such postponement or cancellation may be given at anytime including during the Event performance.

In the event COUNTY cancels the Event due to any public safety concern or CONTRACTOR elects to cancel the Event's Entertainment rather than accept a delayed start time, the Term of this Agreement will be extended upon the same terms and conditions provided that within five (5) days following such occurrence, COUNTY and CONTRACTOR agree upon a rescheduled Event date and time. Such Term extension will be effective upon COUNTY's delivery to CONTRACTOR of a written notice specifying the agreed upon rescheduled Event date and time and detailing the circumstances leading to the Term extension.

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

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

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

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

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

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

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

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

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

12. **Relationship of the Parties:** The CONTRACTOR is, and shall be, in the performance of all work services and activities under this Agreement, an Independent Contractor, and not an employee, agent, or servant of the COUNTY. All persons engaged in any of the work or services performed pursuant to this Agreement shall at all times, and in all places, be subject to the CONTRACTOR'S sole direction, supervision, and control. The CONTRACTOR shall exercise control over the means and manner in which it and its employees perform the work, and in all respects the CONTRACTOR'S relationship and the relationship of its employees to the COUNTY shall be that of an Independent Contractor and not as employees or agents of the COUNTY.

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

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

13. **Taxes:** CONTRACTOR assumes sole responsibility for the payment of any and all federal, state, and local taxes as may be applicable to the payment made by COUNTY to CONTRACTOR. Additionally, CONTRACTOR is not eligible to benefit from the COUNTY's tax exempt status.

14. **No Assignment:** CONTRACTOR may not assign any rights, responsibilities, or obligations required under this Agreement. Any such attempted assignment is a material breach of this Agreement and cause for immediate termination.

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

Name: Donald Perez Phone Number: (561) 966-7030.

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

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

17. **Indemnification:** CONTRACTOR agrees to protect, defend, reimburse, indemnify and hold COUNTY, its agents, employees and elected officers free and harmless at all times from and against any and all claims, liability, expenses, losses, costs, fines and damages, including attorney's fees and costs at trial and appellate levels, and causes of action of every kind and character arising out of this Agreement or CONTRACTOR's use and occupancy of the Amphitheater. Such causes of action include, without limitation, those arising by

reason of; (i) any damage to property or the environment, (ii) bodily injury, including death, incurred or sustained by any party hereto, any agent or employee of any party hereto, and any third or other party whosoever, (iii) the condition of the Amphitheater existing at the effective date of this Agreement, (iv) CONTRACTOR's acts, omissions or operations hereunder, (v) the performance, non-performance or purported performance of CONTRACTOR, or (vi) any breach of the terms of this Agreement. The obligations arising under this provision will survive the expiration or termination of this Agreement.

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

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

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

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

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

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

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

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

Meeting of the Minds
Attn: Steven Vincent Cluthe
116 E Hart St.
Lantana, FL 33462

22. **Remedies:** This Agreement shall be governed by the laws of the State of Florida. Any legal action necessary to enforce the Agreement will be held in Palm Beach County. No remedy herein conferred upon any party is intended to be exclusive of any other remedy, and each and every such remedy shall be cumulative and shall be in addition to every other remedy given hereunder or now or hereafter existing at law or in equity, by statute or otherwise. No single or partial exercise by any party of any right, power, or remedy hereunder shall preclude any other or further exercise thereof.
23. **No Third Party Beneficiaries:** No provision of this Agreement is intended to, or shall be construed to, create any third party beneficiary or to provide any rights to any person or entity not a party to this Agreement, including but not limited to any citizen or employees of the COUNTY and/or CONTRACTOR.
24. **Annual Appropriations:** The fulfillment of this Agreement and all obligations of COUNTY hereunder are subject to and contingent upon annual budgetary appropriations by the Board of County Commissioners.
25. **Arrears:** CONTRACTOR is not to pledge or attempt to pledge COUNTY's credit or make it a guarantor of payment or surety for any contract, debt, obligation, judgment, lien, or any form of indebtedness. CONTRACTOR further warrants and represents that it has no obligation or indebtedness that would impair its ability to fulfill the terms of this Agreement.
26. **Authorization:** This Agreement is executed by an individual legally authorized to fully bind CONTRACTOR to all terms and conditions of this Agreement.
27. **Public Entity Crimes:** As provided in F.S. 287.132-133, by entering into this Agreement or performing any work in furtherance hereof, CONTRACTOR certifies that it, its affiliates, suppliers, subcontractors and consultants who will perform hereunder, have not been placed on the convicted vendor list maintained by the State of Florida Department of Management Services within the thirty-six (36) months immediately preceding the date hereof. This notice is required by F.S. 287.133(3)(a).
28. **Severability:** In the event any term or provision of this Agreement is held invalid or unenforceable, the remainder of this Agreement will not be affected, and every other term and provision of this Agreement will be deemed valid and enforceable to the extent permitted by law.
29. **Access and Audits:** If applicable, should any portion of the payments made to CONTRACTOR include CONTRACTOR's charges, expenses, and costs incurred in estimating and performing the services to be performed hereunder, CONTRACTOR will maintain adequate records to justify all such charges, expenses, and costs for at least three (3) years after the expiration or termination of this Agreement. The COUNTY shall have access to all such books, records, and documents for the purpose of inspection or audit during normal business hours at CONTRACTOR'S place of business.

Palm Beach County has established the Office of the Inspector General in Palm Beach County Code, Section 2-421 - 2-440, as may be amended. The Inspector General's authority includes but is not limited to the power to review past, present and proposed COUNTY contracts, transactions, accounts and records, to require the production of records, and to audit, investigate, monitor, and inspect the activities of CONTRACTOR, its officers, agents, employees, and lobbyists in order to ensure compliance with contract requirements and detect corruption and fraud.

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

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

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

CONTRACTOR 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 CONTRACTOR 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 CONTRACTOR will conform to the County's non-discrimination policy as provided in R-2014-1421, as amended.

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

33. **Criminal History Records Check:** If CONTRACTOR's employees or subcontractors are required under this contract to enter a "critical facility," as identified in Resolution R-2003-1274, the CONTRACTOR shall comply with the provisions of Chapter 2, Article IX of the Palm Beach County Code ("Criminal History Records Check" section). The CONTRACTOR acknowledges and agrees that all employees and subcontractors who are to enter a "critical facility" will be subject to a fingerprint based criminal history records check. Although COUNTY agrees to pay for all applicable FDLE/FBI fees required for criminal history record checks, the CONTRACTOR shall be solely responsible for the financial, schedule, and staffing implications associated in complying with this section of the Palm Beach County Code.

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

(REMAINDER OF PAGE INTENTIONALLY LEFT BLANK)

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

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

PSC

By: *E. Call*
Director / Assistant Director
Palm Beach County Parks and Recreation Department

**If Agreement Value
Exceeds \$10,000.00, But Not More Than \$50,000.00:**

County Administrator

By: _____

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

**COUNTY:
Board of County Commissioners**

**ATTEST:
Clerk & Comptroller**

Deputy Clerk

By: _____
Mayor

WITNESS

[Signature]
Signature
Donald Pocz
Print

CONTRACTOR – Steven Vincent Cluthe

By: *[Signature]*
Signature
Steven V Cluthe
Print

Title

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

County Attorney

Anne Helgent

EXHIBIT "A"

ENTERTAINMENT CONTRACTOR AGREEMENT

Amphitheater Designation Form

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



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

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



Viewing capacity for 2,500 – covered stage with light rigging – sound control room – three dressing rooms – green room – two private restrooms – prop room – costume room – air conditioned back stage – public restrooms detached

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



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

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

EXHIBIT "B"

(1 of 2)

ENTERTAINMENT CONTRACTOR AGREEMENT

Event Scope & Detail

Event Date: February 3, 2016

Event Name: Family Nights with Food Truck Invasion

Event Scope & Detail: Free community events open to the public providing concessions via Food Truck Invasion Inc. as well as County run event activities. Performance will consist of Steven Vincent Cluthe.

Specialty Certificates, Licenses, and Memberships:

Identify certificates, licenses, and memberships required pursuant to provision 7.a.11. of the Entertainment Contractor Agreement. Submit such documents with this *Event Scope & Detail* or indicate the date such documents will be delivered to the Department:

Not Required

EXHIBIT "B"
(2 of 2)

Amenities, Services & Equipment:

Provided By:

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

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

EXHIBIT "C"

(1 of 3)

ENTERTAINMENT SERVICES CONTRACTOR AGREEMENT

Insurance Requirements

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

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



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

☐

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

☐

Liquor Liability: if alcoholic beverages (including beer, wine, and spirits) are for sale at the event, the CONTRACTOR AND VENDOR shall maintain Liquor Liability coverage and the Certificate of Insurance must state that Liquor Liability coverage is included with a minimum limit of liability of **\$1,000,000** Each Occurrence. The policy **must not exclude** either Personal Injury/Advertising Injury, Damage to Rented Premises, or Products/Completed Operations.

If no admission or similar fee is charged at any type of event and alcoholic beverages are served at no charge, the Certificate of Insurance must state that Host Liquor Liability Coverage has been secured with a minimum limit of liability of **\$1,000,000** Each Occurrence.

☐

Participant Liability: CONTRACTOR shall maintain Participant Liability at a limit of liability not less than **\$25,000** Each Occurrence.

☐

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

☐

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

EXHIBIT "C"

(2 of 3)

☐ **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.

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

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

☐ **Certificates of Insurance:** Prior to execution of the Agreement, the CONTRACTOR shall deliver to the COUNTY Certificate(s) of Insurance evidencing that all types and amounts of insurance coverage required by this Agreement have been obtained and are in full force and effect. In addition, the CONTRACTOR shall provide this evidence to the COUNTY prior to the expiration date of any such insurance required herein. Such Certificate(s) of Insurance shall include a minimum ten (10) day endeavor to notify due to cancellation of coverage. Certificates of Insurance are to be sent to:
Palm Beach County Board of County Commissioners
C/O Parks and Recreation Department
Attn: _____
2700 Sixth Avenue South
Lake Worth, Florida 33461

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

EXHIBIT "C"

(3 of 3)



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.

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

THIS ENTERTAINMENT CONTRACTOR AGREEMENT, hereinafter referred to as the "Agreement," is made and entered into on JANUARY 8, 2016, 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 Peter Sarfati, an Individual, authorized to conduct business in the State of Florida, hereinafter referred to as "CONTRACTOR".

W I T N E S S E T H:

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

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

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

1. **Term:** This Agreement is effective Sunday, February 14th, 2016, at 4:00 PM, the date and time CONTRACTOR is scheduled to arrive at the event venue, and will terminate Sunday, February 14th, 2016, at 11:00 PM, the date and time CONTRACTOR is scheduled to depart the event venue.
2. **Amphitheater:** The event venue is Seabreeze Amphitheater, hereinafter referred to as "Amphitheater", together with such amenities, equipment, and appurtenances as may be made available by COUNTY, in its sole discretion, all as more particularly described on the Amphitheater Designation Form, attached hereto as **Exhibit "A"**.
3. **Event:** The entertainment production to be presented at the Amphitheater is an event promoted as: A Valentine's Day Concert with Solid Brass, hereinafter referred to as "Event", for which COUNTY hires CONTRACTOR to produce, stage, and perform, and when applicable including securing the Event's entertainment talent: Solid Brass, hereinafter referred to as "Entertainment".

If applicable, the sound check and/or warm-up for all Event Entertainment will begin at 5:00 PM and will conclude no later than 6:30 PM, which is no less than Thirty (30) minutes prior to time the Event is scheduled to begin.

The Event's Entertainment will begin performing at 7:00 PM and will conclude at 9:00 PM.

The performance will consist of Two (2) set(s) of Fifty Five (55) minutes per set.

If usual and customary for the type of entertainment production and/or the length of time Entertainment is scheduled to perform, the production may include One (1) intermission, of Ten (10) minutes.

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

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

4. **Payment:** The total amount payable by COUNTY to CONTRACTOR for the Event Entertainment is Nine Hundred Dollars (\$900.00) to be paid upon conclusion of the Event and verification that CONTRACTOR's entertainment production obligations have been completed as required herein.

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

In such event, COUNTY will remit to CONTRACTOR Fifty percent (50%) of said total amount payable within Fourteen (14) days following the signing of this Agreement by COUNTY. The remaining balance of the total amount payable will be paid upon conclusion of the Event and verification that CONTRACTOR's entertainment production obligations have been completed as required herein.

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

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

7. **Performance:**

a. CONTRACTOR agrees to:

1. **use** the Amphitheater solely for the purpose for which this Agreement is entered into;
2. **accept** the Amphitheater and all equipment and improvements related to the Event in the condition existing as of the effective date of this Agreement;
3. **accept** the amount of payment defined above as full and final payment without further expectation for reimbursement of any expenses related to this Agreement;

4. **waive** any and all claims for compensation for any and all losses or damages sustained due to failure or malfunction of the Amphitheater's water or electrical power supplies;
5. **adhere** to the directives of the Department's representatives including, but not limited to, proper use and handling of COUNTY owned equipment, assignment of designated parking areas, locations for offloading and staging production equipment, and acceptable noise levels;
6. **prohibit** any activity or material related to the Event that may be considered contrary to community standards of appropriateness, including the use of profanity, obscene language, or lewd gestures, which will result in COUNTY's withholding of payment and denial of future entertainment contracting opportunities;
7. **assure** that all persons under CONTRACTOR's control conduct themselves in a socially acceptable manner including prohibiting the consumption of alcohol or illegal drugs on Amphitheater premises;
8. **obtain** the Department's written approval prior to the use of any type of pyrotechnics;
9. **obtain** the Department's written approval prior to operating any engine, motor or machinery or using any flammable agents, including but not limited to oils, camphene, kerosene, naphtha, or gasoline; with the exception of generators that have been approved by the Department's representative.
10. **assume** full responsibility for obtaining all licenses and permits required by Copyright Regulations of Title 17 of the United States Code, and agree to indemnify COUNTY and its agents for any expenses incurred as a result of CONTRACTOR's failure to obtain such licenses or permits, including, but not limited to, fines or damages collected against COUNTY or COUNTY's agents, any attorney's fees and court costs, and for any expenses incurred as a result of CONTRACTOR's failure to otherwise satisfy such regulations;
11. **identify**, as part of Event Scope and Detail, attached hereto as **Exhibit "B"**, any and all required specialty certifications, licenses and / or memberships applicable to the event;
12. **deliver** to the Department, no later than forty-eight (48) hours prior to the Event, a copy of those certain specialty certifications, licenses and / or memberships referenced above, all of which will be retained by the Department;
13. **acknowledge** that failure to deliver the required documentation referenced above may result in immediate termination of this Agreement and the return to COUNTY, within four (4) days following such termination, any percentage payment that may have been made to CONTRACTOR and forfeiture of the payment balance;
14. **remove** all equipment and materials owned by CONTRACTOR and Entertainment no later than the termination date and time specified in Article 1 above;
15. **return** the Amphitheater and all equipment and improvements related to the Event to the condition existing as of the effective date and time specified in Article 1 above;
16. **hold** COUNTY harmless for the sale or disposal of any equipment and materials considered to be abandoned due to CONTRACTOR's or Entertainment's failure to remove same from the

Amphitheater premises by the specified termination date and time and pay the cost of such removal and disposal upon receipt of COUNTY's invoice; and

17. **comply** with all Amphitheater rules and regulations and adhere to all federal, state and local laws and regulations, including Palm Beach County Code, Chapter 21, as may be amended, pertaining to Parks and Recreation, and Department standard operating procedures as all such laws, regulations, ordinances, and procedures apply to CONTRACTOR's and Entertainment's use of the Amphitheater.

b. COUNTY agrees to:

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

8. **Postponement or Cancellation of Event:** In the event emergency conditions arise which may affect public safety, the Event may be postponed or cancelled. Such emergency conditions include, but are not limited to, acts of God or issuance of an executive order indicating a state of general emergency. COUNTY, in its sole discretion, will determine the necessity to postpone or cancel the Event and will endeavor to provide CONTRACTOR at least four (4) hours notice of such postponement or cancellation prior to the Event start time specified in Article 3 above. Provided, however, COUNTY's notice of such postponement or cancellation may be given at anytime including during the Event performance.

In the event COUNTY cancels the Event due to any public safety concern or CONTRACTOR elects to cancel the Event's Entertainment rather than accept a delayed start time, the Term of this Agreement will be extended upon the same terms and conditions provided that within five (5) days following such occurrence, COUNTY and CONTRACTOR agree upon a rescheduled Event date and time. Such Term extension will be effective upon COUNTY's delivery to CONTRACTOR of a written notice specifying the agreed upon rescheduled Event date and time and detailing the circumstances leading to the Term extension.

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

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

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

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

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

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

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

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

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

12. **Relationship of the Parties:** The CONTRACTOR is, and shall be, in the performance of all work services and activities under this Agreement, an Independent Contractor, and not an employee, agent, or servant of the COUNTY. All persons engaged in any of the work or services performed pursuant to this Agreement shall at all times, and in all places, be subject to the CONTRACTOR'S sole direction, supervision, and control. The CONTRACTOR shall exercise control over the means and manner in which it and its employees perform the work, and in all respects the CONTRACTOR'S relationship and the relationship of its employees to the COUNTY shall be that of an Independent Contractor and not as employees or agents of the COUNTY.

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

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

13. **Taxes:** CONTRACTOR assumes sole responsibility for the payment of any and all federal, state, and local taxes as may be applicable to the payment made by COUNTY to CONTRACTOR. Additionally, CONTRACTOR is not eligible to benefit from the COUNTY's tax exempt status.

14. **No Assignment:** CONTRACTOR may not assign any rights, responsibilities, or obligations required under this Agreement. Any such attempted assignment is a material breach of this Agreement and cause for immediate termination.

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

Name: Donald Perez Phone Number: 561-966-7030.

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

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

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

sustained by any party hereto, any agent or employee of any party hereto, and any third or other party whosoever, (iii) the condition of the Amphitheater existing at the effective date of this Agreement, (iv) CONTRACTOR's acts, omissions or operations hereunder, (v) the performance, non-performance or purported performance of CONTRACTOR, or (vi) any breach of the terms of this Agreement. The obligations arising under this provision will survive the expiration or termination of this Agreement.

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

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

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

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

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

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

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

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

Solid Brass
Attn: Peter Sarfati
2250 Bethel Blvd.
Boca Raton, FL 33486

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

No provision of this contract 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 contract, including but not limited to any citizen or employees of the COUNTY and/ or RENTER

23. **No Third Party Beneficiaries:** No provision of this Agreement is intended to, or shall be construed to, create any third party beneficiary or to provide any rights to any person or entity not a party to this Agreement, including but not limited to any citizen or employees of the COUNTY and/or CONTRACTOR.

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

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

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

27. **Public Entity Crimes:** As provided in F.S. 287.132-133, by entering into this Agreement or performing any work in furtherance hereof, CONTRACTOR certifies that it, its affiliates, suppliers, subcontractors and consultants who will perform hereunder, have not been placed on the convicted vendor list maintained by the State of Florida Department of Management Services within the thirty-six (36) months immediately preceding the date hereof. This notice is required by F.S. 287.133(3)(a).

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

29. **Access and Audits:** If applicable, should any portion of the payments made to CONTRACTOR include CONTRACTOR's charges, expenses, and costs incurred in estimating and performing the services to be performed hereunder, CONTRACTOR will maintain adequate records to justify all such charges, expenses, and costs for at least three (3) years after the expiration or termination of this Agreement. The COUNTY shall have access to all such books, records, and documents for the purpose of inspection or audit during normal business hours at CONTRACTOR'S place of business.

Palm Beach County has established the Office of the Inspector General in Palm Beach County Code, Section 2-421 - 2-440, as may be amended. The Inspector General's authority includes but is not limited to the power to review past, present and proposed COUNTY contracts, transactions, accounts and records, to require the production of records, and to audit, investigate, monitor, and inspect the activities of CONTRACTOR, its

officers, agents, employees, and lobbyists in order to ensure compliance with contract requirements and detect corruption and fraud.

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

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

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

CONTRACTOR 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 CONTRACTOR 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 CONTRACTOR will conform to the County's non-discrimination policy as provided in R-2014-1421, as amended.

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

33. **Criminal History Records Check:** If CONTRACTOR's employees or subcontractors are required under this contract to enter a "critical facility," as identified in Resolution R-2003-1274, the CONTRACTOR shall comply with the provisions of Chapter 2, Article IX of the Palm Beach County Code ("Criminal History Records Check" section). The CONTRACTOR acknowledges and agrees that all employees and subcontractors who are to enter a "critical facility" will be subject to a fingerprint based criminal history records check. Although COUNTY agrees to pay for all applicable FDLE/FBI fees required for criminal history record checks, the CONTRACTOR shall be solely responsible for the financial, schedule, and staffing implications associated in complying with this section of the Palm Beach County Code.

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

(REMAINDER OF PAGE INTENTIONALLY LEFT BLANK)

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

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

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

**If Agreement Value
Exceeds \$10,000.00, But Not More Than \$50,000.00:**

County Administrator

By: _____

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

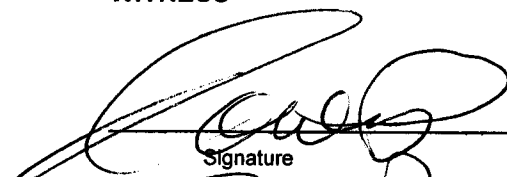
**COUNTY:
Board of County Commissioners**

By: _____
Mayor

**ATTEST:
Clerk & Comptroller**

Deputy Clerk

WITNESS


Signature
Donald Perez
Print

CONTRACTOR – PETER SARFATI

By: 
Signature
PETER SARFATI
Print
BAND MANAGER
Title

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

County Attorney




EXHIBIT "A"

ENTERTAINMENT CONTRACTOR AGREEMENT

Amphitheater Designation Form

☐

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



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



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



Viewing capacity for 2,500 – covered stage with light rigging – sound control room – three dressing rooms – green room – two private restrooms – prop room – costume room – air conditioned back stage – public restrooms detached

☐

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



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

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

EXHIBIT "B"

(1 of 2)

ENTERTAINMENT CONTRACTOR AGREEMENT

Event Scope & Detail

Event Date: Sunday, February 14th, 2016

Event Name: A Valentine's Day Concert with Solid Brass

Event Scope & Detail: A free concert featuring "Solid Brass" who will perform classic rock and R&B hits. Solid Brass consists of Peter Sarfati and seven (7) additional band members.

Specialty Certificates, Licenses, and Memberships:

Identify certificates, licenses, and memberships required pursuant to provision 7.a.11. of the Entertainment Contractor Agreement. Submit such documents with this *Event Scope & Detail* or indicate the date such documents will be delivered to the Department:

Not required

EXHIBIT "B"

(2 of 2)

Amenities, Services & Equipment:

Provided By:

N/A COUNTY CONTRACTOR

Detailed list of equipment provided by COUNTY and/or CONTRACTOR is attached to this Exhibit: See page 17

☐☒☐

Sound System: _____

☐☒☐

Sound Equipment: _____

☐☒☐

Light System: _____

☒☐☐

Lighting Equipment: _____

☒☐☐

Light Trees: _____

☐☒☐

Microphones: _____

☐☒☐

Cables: _____

☐☐☒

Backline: _____

☐☐☒

Heavy Duty/Outdoor Extension Cords: _____

☐☐☒

Sound Technician: _____

☐☒☐

Light Technician: _____

☒☐☐

Dressing Room: _____

☐☒☐

Drum Riser: _____

☐☐☒

Generators: *Department Approval Signature:* _____

☒☐☐

Fireworks / Pyrotechnics: [†] _____

☒☐☐

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

EXHIBIT "C"

(1 of 3)

ENTERTAINMENT SERVICES CONTRACTOR AGREEMENT

Insurance Requirements

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

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



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

☐

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

☐

Liquor Liability: if alcoholic beverages (including beer, wine, and spirits) are for sale at the event, the CONTRACTOR AND VENDOR shall maintain Liquor Liability coverage and the Certificate of Insurance must state that Liquor Liability coverage is included with a minimum limit of liability of **\$1,000,000** Each Occurrence. The policy **must not exclude** either Personal Injury/Advertising Injury, Damage to Rented Premises, or Products/Completed Operations.

If no admission or similar fee is charged at any type of event and alcoholic beverages are served at no charge, the Certificate of Insurance must state that Host Liquor Liability Coverage has been secured with a minimum limit of liability of **\$1,000,000** Each Occurrence.

☐

Participant Liability: CONTRACTOR shall maintain Participant Liability at a limit of liability not less than **\$25,000** Each Occurrence.

☐

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

☐

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

EXHIBIT "C"

(2 of 3)



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.



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

 ✓

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



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

Palm Beach County Board of County Commissioners
C/O Parks and Recreation Department

Attn: _____
2700 Sixth Avenue South
Lake Worth, Florida 33461

EXHIBIT "C"

(3 of 3)



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.

Sunday February 14th, 2016: A Valentine’s Day Concert with Solid Brass

The following will be provided by the County:

Qty	Item #	Description
1.00	Audio	"B" Rig PA System
4.00	Audio	Dual 18" Subs (2 per side)
4.00	Audio	Mid/High Cabs with Power
8.00	Audio	Monitor Wedges with power
1.00	Audio	32x16 Mixing Console
1.00	Audio	Mic, Stand & Cable Package
1.00	Power	200 Amp. 3 Phase Distro
1.00	Power	Backline Power

ENTERTAINMENT CONTRACTOR AGREEMENT FOR PALM BEACH COUNTY PARKS & RECREATION DEPARTMENT

THIS ENTERTAINMENT CONTRACTOR AGREEMENT, hereinafter referred to as the "Agreement," is made and entered into on JANUARY 8, 2016, 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 Chase Stites, an Individual, authorized to conduct business in the State of Florida, hereinafter referred to as "CONTRACTOR".

W I T N E S S E T H:

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

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

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

1. **Term:** This Agreement is effective Wednesday, February 17, 2016, at 5:00 PM, the date and time CONTRACTOR is scheduled to arrive at the event venue, and will terminate Wednesday, February 17, 2016, at 10:00 PM, the date and time CONTRACTOR is scheduled to depart the event venue.
2. **Amphitheater:** The event venue is Sunset Cove Amphitheater, hereinafter referred to as "Amphitheater", together with such amenities, equipment, and appurtenances as may be made available by COUNTY, in its sole discretion, all as more particularly described on the Amphitheater Designation Form, attached hereto as **Exhibit "A"**.
3. **Event:** The entertainment production to be presented at the Amphitheater is an event promoted as: Family Nights with Food Truck Invasion, hereinafter referred to as "Event", for which COUNTY hires CONTRACTOR to produce, stage, and perform, and when applicable including securing the Event's entertainment talent: Chase Stites, hereinafter referred to as "Entertainment".

If applicable, the sound check and/or warm-up for all Event Entertainment will begin at 5:00 PM and will conclude no later than 6:30 PM, which is no less than Thirty (30) minutes prior to time the Event is scheduled to begin.

The Event's Entertainment will begin performing at 7:00 PM and will conclude at 9:00 PM.

The performance will consist of Two (2) set(s) of Fifty Five (55) minutes per set.

If usual and customary for the type of entertainment production and/or the length of time Entertainment is scheduled to perform, the production may include One (1) intermission, of Ten (10) minutes.

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

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

4. **Payment:** The total amount payable by COUNTY to CONTRACTOR for the Event Entertainment is Three Hundred dollars (\$300.00) to be paid upon conclusion of the Event and verification that CONTRACTOR's entertainment production obligations have been completed as required herein.

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

In such event, COUNTY will remit to CONTRACTOR Zero percent (0%) of said total amount payable within Fourteen (14) days following the signing of this Agreement by COUNTY. The remaining balance of the total amount payable will be paid upon conclusion of the Event and verification that CONTRACTOR's entertainment production obligations have been completed as required herein.

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

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

7. **Performance:**

a. CONTRACTOR agrees to:

1. **use** the Amphitheater solely for the purpose for which this Agreement is entered into;
2. **accept** the Amphitheater and all equipment and improvements related to the Event in the condition existing as of the effective date of this Agreement;
3. **accept** the amount of payment defined above as full and final payment without further expectation for reimbursement of any expenses related to this Agreement;

4. **waive** any and all claims for compensation for any and all losses or damages sustained due to failure or malfunction of the Amphitheater's water or electrical power supplies;
5. **adhere** to the directives of the Department's representatives including, but not limited to, proper use and handling of COUNTY owned equipment, assignment of designated parking areas, locations for offloading and staging production equipment, and acceptable noise levels;
6. **prohibit** any activity or material related to the Event that may be considered contrary to community standards of appropriateness, including the use of profanity, obscene language, or lewd gestures, which will result in COUNTY's withholding of payment and denial of future entertainment contracting opportunities;
7. **assure** that all persons under CONTRACTOR's control conduct themselves in a socially acceptable manner including prohibiting the consumption of alcohol or illegal drugs on Amphitheater premises;
8. **obtain** the Department's written approval prior to the use of any type of pyrotechnics;
9. **obtain** the Department's written approval prior to operating any engine, motor or machinery or using any flammable agents, including but not limited to oils, camphene, kerosene, naphtha, or gasoline; with the exception of generators that have been approved by the Department's representative.
10. **assume** full responsibility for obtaining all licenses and permits required by Copyright Regulations of Title 17 of the United States Code, and agree to indemnify COUNTY and its agents for any expenses incurred as a result of CONTRACTOR's failure to obtain such licenses or permits, including, but not limited to, fines or damages collected against COUNTY or COUNTY's agents, any attorney's fees and court costs, and for any expenses incurred as a result of CONTRACTOR's failure to otherwise satisfy such regulations;
11. **identify**, as part of Event Scope and Detail, attached hereto as **Exhibit "B"**, any and all required specialty certifications, licenses and / or memberships applicable to the event;
12. **deliver** to the Department, no later than forty-eight (48) hours prior to the Event, a copy of those certain specialty certifications, licenses and / or memberships referenced above, all of which will be retained by the Department;
13. **acknowledge** that failure to deliver the required documentation referenced above may result in immediate termination of this Agreement and the return to COUNTY, within four (4) days following such termination, any percentage payment that may have been made to CONTRACTOR and forfeiture of the payment balance;
14. **remove** all equipment and materials owned by CONTRACTOR and Entertainment no later than the termination date and time specified in Article 1 above;
15. **return** the Amphitheater and all equipment and improvements related to the Event to the condition existing as of the effective date and time specified in Article 1 above;
16. **hold** COUNTY harmless for the sale or disposal of any equipment and materials considered to be abandoned due to CONTRACTOR's or Entertainment's failure to remove same from the

Amphitheater premises by the specified termination date and time and pay the cost of such removal and disposal upon receipt of COUNTY's invoice; and

17. **comply** with all Amphitheater rules and regulations and adhere to all federal, state and local laws and regulations, including Palm Beach County Code, Chapter 21, as may be amended, pertaining to Parks and Recreation, and Department standard operating procedures as all such laws, regulations, ordinances, and procedures apply to CONTRACTOR's and Entertainment's use of the Amphitheater.

b. COUNTY agrees to:

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

8. **Postponement or Cancellation of Event:** In the event emergency conditions arise which may affect public safety, the Event may be postponed or cancelled. Such emergency conditions include, but are not limited to, acts of God or issuance of an executive order indicating a state of general emergency. COUNTY, in its sole discretion, will determine the necessity to postpone or cancel the Event and will endeavor to provide CONTRACTOR at least four (4) hours notice of such postponement or cancellation prior to the Event start time specified in Article 3 above. Provided, however, COUNTY's notice of such postponement or cancellation may be given at anytime including during the Event performance.

In the event COUNTY cancels the Event due to any public safety concern or CONTRACTOR elects to cancel the Event's Entertainment rather than accept a delayed start time, the Term of this Agreement will be extended upon the same terms and conditions provided that within five (5) days following such occurrence, COUNTY and CONTRACTOR agree upon a rescheduled Event date and time. Such Term extension will be effective upon COUNTY's delivery to CONTRACTOR of a written notice specifying the agreed upon rescheduled Event date and time and detailing the circumstances leading to the Term extension.

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

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

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

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

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

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

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

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

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

12. **Relationship of the Parties:** The CONTRACTOR is, and shall be, in the performance of all work services and activities under this Agreement, an Independent Contractor, and not an employee, agent, or servant of the COUNTY. All persons engaged in any of the work or services performed pursuant to this Agreement shall at all times, and in all places, be subject to the CONTRACTOR'S sole direction, supervision, and control. The CONTRACTOR shall exercise control over the means and manner in which it and its employees perform the work, and in all respects the CONTRACTOR'S relationship and the relationship of its employees to the COUNTY shall be that of an Independent Contractor and not as employees or agents of the COUNTY.

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

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

13. **Taxes:** CONTRACTOR assumes sole responsibility for the payment of any and all federal, state, and local taxes as may be applicable to the payment made by COUNTY to CONTRACTOR. Additionally, CONTRACTOR is not eligible to benefit from the COUNTY's tax exempt status.

14. **No Assignment:** CONTRACTOR may not assign any rights, responsibilities, or obligations required under this Agreement. Any such attempted assignment is a material breach of this Agreement and cause for immediate termination.

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

Name: Donald Perez Phone Number: (561) 966-7030.

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

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

17. **Indemnification:** CONTRACTOR agrees to protect, defend, reimburse, indemnify and hold COUNTY, its agents, employees and elected officers free and harmless at all times from and against any and all claims, liability, expenses, losses, costs, fines and damages, including attorney's fees and costs at trial and appellate levels, and causes of action of every kind and character arising out of this Agreement or CONTRACTOR's use and occupancy of the Amphitheater. Such causes of action include, without limitation, those arising by

reason of; (i) any damage to property or the environment, (ii) bodily injury, including death, incurred or sustained by any party hereto, any agent or employee of any party hereto, and any third or other party whosoever, (iii) the condition of the Amphitheater existing at the effective date of this Agreement, (iv) CONTRACTOR's acts, omissions or operations hereunder, (v) the performance, non-performance or purported performance of CONTRACTOR, or (vi) any breach of the terms of this Agreement. The obligations arising under this provision will survive the expiration or termination of this Agreement.

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

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

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

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

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

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

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

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

The Last Word
Attn: Chase Stites
1409 Lake Ave
Lake Worth FL 33460

22. **Remedies:** This Agreement shall be governed by the laws of the State of Florida. Any legal action necessary to enforce the Agreement will be held in Palm Beach County. No remedy herein conferred upon any party is intended to be exclusive of any other remedy, and each and every such remedy shall be cumulative and shall be in addition to every other remedy given hereunder or now or hereafter existing at law or in equity, by statute or otherwise. No single or partial exercise by any party of any right, power, or remedy hereunder shall preclude any other or further exercise thereof.
- No provision of this contract 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 contract, including but not limited to any citizen or employees of the COUNTY and/ or RENTER
23. **No Third Party Beneficiaries:** No provision of this Agreement is intended to, or shall be construed to, create any third party beneficiary or to provide any rights to any person or entity not a party to this Agreement, including but not limited to any citizen or employees of the COUNTY and/or CONTRACTOR.
24. **Annual Appropriations:** The fulfillment of this Agreement and all obligations of COUNTY hereunder are subject to and contingent upon annual budgetary appropriations by the Board of County Commissioners.
25. **Arrears:** CONTRACTOR is not to pledge or attempt to pledge COUNTY's credit or make it a guarantor of payment or surety for any contract, debt, obligation, judgment, lien, or any form of indebtedness. CONTRACTOR further warrants and represents that it has no obligation or indebtedness that would impair its ability to fulfill the terms of this Agreement.
26. **Authorization:** This Agreement is executed by an individual legally authorized to fully bind CONTRACTOR to all terms and conditions of this Agreement.
27. **Public Entity Crimes:** As provided in F.S. 287.132-133, by entering into this Agreement or performing any work in furtherance hereof, CONTRACTOR certifies that it, its affiliates, suppliers, subcontractors and consultants who will perform hereunder, have not been placed on the convicted vendor list maintained by the State of Florida Department of Management Services within the thirty-six (36) months immediately preceding the date hereof. This notice is required by F.S. 287.133(3)(a).
28. **Severability:** In the event any term or provision of this Agreement is held invalid or unenforceable, the remainder of this Agreement will not be affected, and every other term and provision of this Agreement will be deemed valid and enforceable to the extent permitted by law.
29. **Access and Audits:** If applicable, should any portion of the payments made to CONTRACTOR include CONTRACTOR's charges, expenses, and costs incurred in estimating and performing the services to be performed hereunder, CONTRACTOR will maintain adequate records to justify all such charges, expenses, and costs for at least three (3) years after the expiration or termination of this Agreement. The COUNTY shall have access to all such books, records, and documents for the purpose of inspection or audit during normal business hours at CONTRACTOR'S place of business.

Palm Beach County has established the Office of the Inspector General in Palm Beach County Code, Section 2-421 - 2-440, as may be amended. The Inspector General's authority includes but is not limited to the power to review past, present and proposed COUNTY contracts, transactions, accounts and records, to require the production of records, and to audit, investigate, monitor, and inspect the activities of CONTRACTOR, its

officers, agents, employees, and lobbyists in order to ensure compliance with contract requirements and detect corruption and fraud.

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

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

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

CONTRACTOR 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 CONTRACTOR 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 CONTRACTOR will conform to the County's non-discrimination policy as provided in R-2014-1421, as amended.

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

33. **Criminal History Records Check:** If CONTRACTOR's employees or subcontractors are required under this contract to enter a "critical facility," as identified in Resolution R-2003-1274, the CONTRACTOR shall comply with the provisions of Chapter 2, Article IX of the Palm Beach County Code ("Criminal History Records Check" section). The CONTRACTOR acknowledges and agrees that all employees and subcontractors who are to enter a "critical facility" will be subject to a fingerprint based criminal history records check. Although COUNTY agrees to pay for all applicable FDLE/FBI fees required for criminal history record checks, the CONTRACTOR shall be solely responsible for the financial, schedule, and staffing implications associated in complying with this section of the Palm Beach County Code.

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

(REMAINDER OF PAGE INTENTIONALLY LEFT BLANK)

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

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

PSC

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

**If Agreement Value
Exceeds \$10,000.00, But Not More Than \$50,000.00:**

County Administrator

By: _____

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

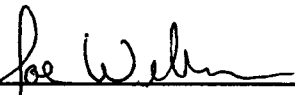
**COUNTY:
Board of County Commissioners**

**ATTEST:
Clerk & Comptroller**

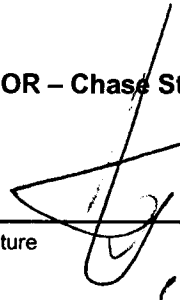
Deputy Clerk

By: _____
Mayor

WITNESS


Signature
Joe Wilhelme
Print

CONTRACTOR – Chase Stites

By: 
Signature
CHASE STITES
Print
BAND LEADER
Title

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

County Attorney

Anne Delgant

EXHIBIT "A"

ENTERTAINMENT CONTRACTOR AGREEMENT

Amphitheater Designation Form

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



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

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



Viewing capacity for 2,500 – covered stage with light rigging – sound control room – three dressing rooms – green room – two private restrooms – prop room – costume room – air conditioned back stage – public restrooms detached

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



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

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

EXHIBIT "B"

(1 of 2)

ENTERTAINMENT CONTRACTOR AGREEMENT

Event Scope & Detail

Event Date: February 17, 2016

Event Name: Family Nights with Food Truck Invasion

Event Scope & Detail: Free community events open to the public providing concessions via Food Truck Invasion Inc. as well as County run event activities. Performance will consist of Chase Stites.

Specialty Certificates, Licenses, and Memberships:

Identify certificates, licenses, and memberships required pursuant to provision 7.a.11. of the Entertainment Contractor Agreement. Submit such documents with this *Event Scope & Detail* or indicate the date such documents will be delivered to the Department:

Not Required

EXHIBIT "B"
(2 of 2)

Amenities, Services & Equipment:

Provided By:

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

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

EXHIBIT "C"

(1 of 3)

ENTERTAINMENT SERVICES CONTRACTOR AGREEMENT

Insurance Requirements

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

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



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

☐

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

☐

Liquor Liability: if alcoholic beverages (including beer, wine, and spirits) are for sale at the event, the CONTRACTOR AND VENDOR shall maintain Liquor Liability coverage and the Certificate of Insurance must state that Liquor Liability coverage is included with a minimum limit of liability of **\$1,000,000** Each Occurrence. The policy **must not exclude** either Personal Injury/Advertising Injury, Damage to Rented Premises, or Products/Completed Operations. If no admission or similar fee is charged at any type of event and alcoholic beverages are served at no charge, the Certificate of Insurance must state that Host Liquor Liability Coverage has been secured with a minimum limit of liability of **\$1,000,000** Each Occurrence.

☐

Participant Liability: CONTRACTOR shall maintain Participant Liability at a limit of liability not less than **\$25,000** Each Occurrence.

☐

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

☐

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

EXHIBIT "C"

(2 of 3)



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.



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



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



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

Palm Beach County Board of County Commissioners

C/O Parks and Recreation Department

Attn: _____

2700 Sixth Avenue South


Lake Worth, Florida 33461



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

EXHIBIT "C"

(3 of 3)



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.

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

THIS ENTERTAINMENT CONTRACTOR AGREEMENT, hereinafter referred to as the "Agreement," is made and entered into on JANUARY 12, 2016 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 Simply Tina, LLC, a company, authorized to conduct business in the State of Florida, hereinafter referred to as "CONTRACTOR".

WITNESSETH:

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

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

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

1. **Term:** This Agreement is effective Saturday, February 20th, 2016, at 4:00PM, the date and time CONTRACTOR is scheduled to arrive at the event venue, and will terminate Saturday, February 20th, 2016, at 11:00PM, the date and time CONTRACTOR is scheduled to depart the event venue.
2. **Amphitheater:** The event venue is Canyon Amphitheater, hereinafter referred to as "Amphitheater", together with such amenities, equipment, and appurtenances as may be made available by COUNTY, in its sole discretion, all as more particularly described on the Amphitheater Designation Form, attached hereto as **Exhibit "A"**.
3. **Event:** The entertainment production to be presented at the Amphitheater is an event promoted as: Simply Tina, hereinafter referred to as "Event", for which COUNTY hires CONTRACTOR to produce, stage, and perform, and when applicable including securing the Event's entertainment talent: Simply Tina, hereinafter referred to as "Entertainment".

If applicable, the sound check and/or warm-up for all Event Entertainment will begin at 6:00 PM and will conclude no later than 6:30 PM, which is no less than Thirty (30) minutes prior to time the Event is scheduled to begin.

The Event's Entertainment will begin performing at 7:00PM and will conclude at 9:00PM.

The performance will consist of Two (2) set(s) of Fifty Five (55) minutes per set.

If usual and customary for the type of entertainment production and/or the length of time Entertainment is scheduled to perform, the production may include one (1) intermission(s), of ten (10) minutes each. Unless otherwise specifically agreed to by COUNTY prior to the signing of this Agreement, no portion of the Event's Entertainment production is to include prerecorded audio or video.

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

4. **Payment:** The total amount payable by COUNTY to CONTRACTOR for the Event Entertainment is One Thousand dollars (\$1,000.00) to be paid upon conclusion of the Event and verification that CONTRACTOR's entertainment production obligations have been completed as required herein.

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

In such event, COUNTY will remit to CONTRACTOR Fifty percent (50%) of said total amount payable within Fourteen (14) days following the signing of this Agreement by COUNTY. The remaining balance of the total amount payable will be paid upon conclusion of the Event and verification that CONTRACTOR's entertainment production obligations have been completed as required herein.

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

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

7. **Performance:**

a. CONTRACTOR agrees to:

1. use the Amphitheater solely for the purpose for which this Agreement is entered into;
2. accept the Amphitheater and all equipment and improvements related to the Event in the condition existing as of the effective date of this Agreement;
3. accept the amount of payment defined above as full and final payment without further expectation for reimbursement of any expenses related to this Agreement;

4. **waive** any and all claims for compensation for any and all losses or damages sustained due to failure or malfunction of the Amphitheater's water or electrical power supplies;
5. **adhere** to the directives of the Department's representatives including, but not limited to, proper use and handling of COUNTY owned equipment, assignment of designated parking areas, locations for offloading and staging production equipment, and acceptable noise levels;
6. **prohibit** any activity or material related to the Event that may be considered contrary to community standards of appropriateness, including the use of profanity, obscene language, or lewd gestures, which will result in COUNTY's withholding of payment and denial of future entertainment contracting opportunities;
7. **assure** that all persons under CONTRACTOR's control conduct themselves in a socially acceptable manner including prohibiting the consumption of alcohol or illegal drugs on Amphitheater premises;
8. **obtain** the Department's written approval prior to the use of any type of pyrotechnics;
9. **obtain** the Department's written approval prior to operating any engine, motor or machinery or using any flammable agents, including but not limited to oils, camphene, kerosene, naphtha, or gasoline; with the exception of generators that have been approved by the Department's representative.
10. **assume** full responsibility for obtaining all licenses and permits required by Copyright Regulations of Title 17 of the United States Code, and agree to indemnify COUNTY and its agents for any expenses incurred as a result of CONTRACTOR's failure to obtain such licenses or permits, including, but not limited to, fines or damages collected against COUNTY or COUNTY's agents, any attorney's fees and court costs, and for any expenses incurred as a result of CONTRACTOR's failure to otherwise satisfy such regulations;
11. **identify**, as part of Event Scope and Detail, attached hereto as **Exhibit "B"**, any and all required specialty certifications, licenses and / or memberships applicable to the event;
12. **deliver** to the Department, no later than forty-eight (48) hours prior to the Event, a copy of those certain specialty certifications, licenses and / or memberships referenced above, all of which will be retained by the Department;
13. **acknowledge** that failure to deliver the required documentation referenced above may result in immediate termination of this Agreement and the return to COUNTY, within four (4) days following such termination, any percentage payment that may have been made to CONTRACTOR and forfeiture of the payment balance;
14. **remove** all equipment and materials owned by CONTRACTOR and Entertainment no later than the termination date and time specified in Article 1 above;
15. **return** the Amphitheater and all equipment and improvements related to the Event to the condition existing as of the effective date and time specified in Article 1 above;
16. **hold** COUNTY harmless for the sale or disposal of any equipment and materials considered to be abandoned due to CONTRACTOR's or Entertainment's failure to remove same from the

Amphitheater premises by the specified termination date and time and pay the cost of such removal and disposal upon receipt of COUNTY's invoice; and

17. **comply** with all Amphitheater rules and regulations and adhere to all federal, state and local laws and regulations, including Palm Beach County Code, Chapter 21, as may be amended, pertaining to Parks and Recreation, and Department standard operating procedures as all such laws, regulations, ordinances, and procedures apply to CONTRACTOR's and Entertainment's use of the Amphitheater.

b. COUNTY agrees to:

1. **promote** the Event;
 2. **deliver** the Amphitheater and associated premises in a safe, clean, and orderly condition;
 3. **assign** sufficient staff to provide logistical support and oversee all aspects of the Event including authority to make final decisions and issue directives on behalf of COUNTY;
 4. **provide** support services including law enforcement, technical staff and skilled maintenance as may be determined necessary by the Department;
 5. **retain** control of the Amphitheater and all operations conducted on the Amphitheater premises including enforcement of all laws, rules, regulations pertaining to the safety and wellbeing of the public; and
 6. **collect** and dispose of any and all items either discarded or lost by patrons or others at the Event, without interference by CONTRACTOR or Entertainment or any person working for or on their behalf.
8. **Postponement or Cancellation of Event:** In the event emergency conditions arise which may affect public safety, the Event may be postponed or cancelled. Such emergency conditions include, but are not limited to, acts of God or issuance of an executive order indicating a state of general emergency. COUNTY, in its sole discretion, will determine the necessity to postpone or cancel the Event and will endeavor to provide CONTRACTOR at least four (4) hours notice of such postponement or cancellation prior to the Event start time specified in Article 3 above. Provided, however, COUNTY's notice of such postponement or cancellation may be given at anytime including during the Event performance.

In the event COUNTY cancels the Event due to any public safety concern or CONTRACTOR elects to cancel the Event's Entertainment rather than accept a delayed start time, the Term of this Agreement will be extended upon the same terms and conditions provided that within five (5) days following such occurrence, COUNTY and CONTRACTOR agree upon a rescheduled Event date and time. Such Term extension will be effective upon COUNTY's delivery to CONTRACTOR of a written notice specifying the agreed upon rescheduled Event date and time and detailing the circumstances leading to the Term extension.

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

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

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

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

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

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

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

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

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

12. **Relationship of the Parties:** The CONTRACTOR is, and shall be, in the performance of all work services and activities under this Agreement, an Independent Contractor, and not an employee, agent, or servant of the COUNTY. All persons engaged in any of the work or services performed pursuant to this Agreement shall at all times, and in all places, be subject to the CONTRACTOR'S sole direction, supervision, and control. The CONTRACTOR shall exercise control over the means and manner in which it and its employees perform the work, and in all respects the CONTRACTOR'S relationship and the relationship of its employees to the COUNTY shall be that of an Independent Contractor and not as employees or agents of the COUNTY.

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

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

13. **Taxes:** CONTRACTOR assumes sole responsibility for the payment of any and all federal, state, and local taxes as may be applicable to the payment made by COUNTY to CONTRACTOR. Additionally, CONTRACTOR is not eligible to benefit from the COUNTY's tax exempt status.

14. **No Assignment:** CONTRACTOR may not assign any rights, responsibilities, or obligations required under this Agreement. Any such attempted assignment is a material breach of this Agreement and cause for immediate termination.

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

Name: Donald Perez Phone Number: 561-966-7030.

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

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

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

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

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

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

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

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

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

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

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

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

Simply Tina, LLC.
Attn: Mike Silverman
1380 Coral Ridge Dr.
Coral Springs, FL 33071-6434

22. **Remedies:** This Agreement shall be governed by the laws of the State of Florida. Any legal action necessary to enforce the Agreement will be held in Palm Beach County. No remedy herein conferred upon any party is intended to be exclusive of any other remedy, and each and every such remedy shall be cumulative and shall be in addition to every other remedy given hereunder or now or hereafter existing at law or in equity, by statute or otherwise. No single or partial exercise by any party of any right, power, or remedy hereunder shall preclude any other or further exercise thereof.
- No provision of this contract 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 contract, including but not limited to any citizen or employees of the COUNTY and/ or RENTER
23. **No Third Party Beneficiaries:** No provision of this Agreement is intended to, or shall be construed to, create any third party beneficiary or to provide any rights to any person or entity not a party to this Agreement, including but not limited to any citizen or employees of the COUNTY and/or CONTRACTOR.
24. **Annual Appropriations:** The fulfillment of this Agreement and all obligations of COUNTY hereunder are subject to and contingent upon annual budgetary appropriations by the Board of County Commissioners.
25. **Arrears:** CONTRACTOR is not to pledge or attempt to pledge COUNTY's credit or make it a guarantor of payment or surety for any contract, debt, obligation, judgment, lien, or any form of indebtedness. CONTRACTOR further warrants and represents that it has no obligation or indebtedness that would impair its ability to fulfill the terms of this Agreement.
26. **Authorization:** This Agreement is executed by an individual legally authorized to fully bind CONTRACTOR to all terms and conditions of this Agreement.
27. **Public Entity Crimes:** As provided in F.S. 287.132-133, by entering into this Agreement or performing any work in furtherance hereof, CONTRACTOR certifies that it, its affiliates, suppliers, subcontractors and consultants who will perform hereunder, have not been placed on the convicted vendor list maintained by the State of Florida Department of Management Services within the thirty-six (36) months immediately preceding the date hereof. This notice is required by F.S. 287.133(3)(a).
28. **Severability:** In the event any term or provision of this Agreement is held invalid or unenforceable, the remainder of this Agreement will not be affected, and every other term and provision of this Agreement will be deemed valid and enforceable to the extent permitted by law.
29. **Access and Audits:** If applicable, should any portion of the payments made to CONTRACTOR include CONTRACTOR's charges, expenses, and costs incurred in estimating and performing the services to be performed hereunder, CONTRACTOR will maintain adequate records to justify all such charges, expenses, and costs for at least three (3) years after the expiration or termination of this Agreement. The COUNTY shall have access to all such books, records, and documents for the purpose of inspection or audit during normal business hours at CONTRACTOR'S place of business.

Palm Beach County has established the Office of the Inspector General in Palm Beach County Code, Section 2-421 - 2-440, as may be amended. The Inspector General's authority includes but is not limited to the power to review past, present and proposed COUNTY contracts, transactions, accounts and records, to require the production of records, and to audit, investigate, monitor, and inspect the activities of CONTRACTOR, its

officers, agents, employees, and lobbyists in order to ensure compliance with contract requirements and detect corruption and fraud.

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

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

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

CONTRACTOR 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 CONTRACTOR 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 CONTRACTOR will conform to the County's non-discrimination policy as provided in R-2014-1421, as amended.

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

33. **Criminal History Records Check:** If CONTRACTOR's employees or subcontractors are required under this contract to enter a "critical facility," as identified in Resolution R-2003-1274, the CONTRACTOR shall comply with the provisions of Chapter 2, Article IX of the Palm Beach County Code ("Criminal History Records Check" section). The CONTRACTOR acknowledges and agrees that all employees and subcontractors who are to enter a "critical facility" will be subject to a fingerprint based criminal history records check. Although COUNTY agrees to pay for all applicable FDLE/FBI fees required for criminal history record checks, the CONTRACTOR shall be solely responsible for the financial, schedule, and staffing implications associated in complying with this section of the Palm Beach County Code.

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

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

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

pdc

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

**If Agreement Value
Exceeds \$10,000.00, But Not More Than \$50,000.00:**

County Administrator

By: _____

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


**COUNTY:
Board of County Commissioners**

By: _____
Mayor


**ATTEST:
Clerk & Comptroller**

Deputy Clerk

WITNESS


Signature
Davena Rahman
Print

CONTRACTOR – Simply Tina, LLC

By: 
Signature
Michael Silverman
Print
Owner - Simply Tina, LLC
Title

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

County Attorney

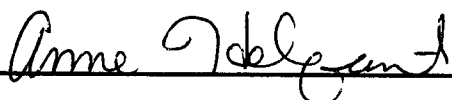


EXHIBIT "A"

ENTERTAINMENT CONTRACTOR AGREEMENT

Amphitheater Designation Form

☐

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



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

☐

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



Viewing capacity for 2,500 – covered stage with light rigging – sound control room – three dressing rooms – green room – two private restrooms – prop room – costume room – air conditioned back stage – public restrooms detached

☒

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



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

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

EXHIBIT "B"

(1 of 2)

ENTERTAINMENT CONTRACTOR AGREEMENT

Event Scope & Detail

Event Date: Saturday, February 20th, 2016

Event Name: Simply Tina

Event Scope & Detail: A Tina Turner Tribute Band

Specialty Certificates, Licenses, and Memberships:

Identify certificates, licenses, and memberships required pursuant to provision 7.a.11. of the Entertainment Contractor Agreement. Submit such documents with this *Event Scope & Detail* or indicate the date such documents will be delivered to the Department:

EXHIBIT "B"

(2 of 2)

Amenities, Services & Equipment:

Provided By:

N/A COUNTY CONTRACTOR

Detailed list of equipment provided by COUNTY and/or CONTRACTOR is attached to this Exhibit: _____

Sound System: _____

Sound Equipment: _____

Light System: _____

Lighting Equipment: _____

Light Trees: Two light trees w/four – PAR64 cans per tree.

Microphones: _____

Cables: _____

Backline: _____

Heavy Duty/Outdoor Extension Cords: _____

Sound Technician: _____

Light Technician: _____

Dressing Room: _____

Drum Riser: _____

Generators: *Department Approval Signature:* _____

Fireworks / Pyrotechnics: [†] _____

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

EXHIBIT "C"

(1 of 2)

ENTERTAINMENT CONTRACTOR AGREEMENT

Insurance Requirements

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

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

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

☐

Commercial General Liability: CONTRACTOR shall maintain Commercial General Liability at a limit of liability not less than **\$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.

☐

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

☐

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

EXHIBIT "C"

(2 of 2)



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



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



Certificates of Insurance: Prior to execution of the Agreement, the CONTRACTOR shall deliver to the COUNTY Certificate(s) of Insurance evidencing that all types and amounts of insurance coverage required by this Agreement have been obtained and are in full force and effect. In addition, the CONTRACTOR shall provide this evidence to the COUNTY prior to the expiration date of any such insurance required herein. Such Certificate(s) of Insurance shall include a minimum ten (10) day endeavor to notify due to cancellation of coverage. Certificates of Insurance are to be sent to:
Palm Beach County Board of County Commissioners
C/O Parks and Recreation Department
Attn: _____
2700 Sixth Avenue South
Lake Worth, Florida 33461



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



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

ENTERTAINMENT CONTRACTOR AGREEMENT FOR PALM BEACH COUNTY PARKS & RECREATION DEPARTMENT

THIS ENTERTAINMENT CONTRACTOR AGREEMENT, hereinafter referred to as the "Agreement," is made and entered into on FEBRUARY 29, 2016, 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 Steven Vincent Cluthe, an Individual, authorized to conduct business in the State of Florida, hereinafter referred to as "CONTRACTOR".

WITNESSETH:

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

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

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

1. **Term:** This Agreement is effective Wednesday, March 2, 2016, at 5:00 PM, the date and time CONTRACTOR is scheduled to arrive at the event venue, and will terminate Wednesday, March 2, 2016, at 10:00 PM, the date and time CONTRACTOR is scheduled to depart the event venue.
2. **Amphitheater:** The event venue is Sunset Cove Amphitheater, hereinafter referred to as "Amphitheater", together with such amenities, equipment, and appurtenances as may be made available by COUNTY, in its sole discretion, all as more particularly described on the Amphitheater Designation Form, attached hereto as **Exhibit "A"**.
3. **Event:** The entertainment production to be presented at the Amphitheater is an event promoted as: Family Nights with Food Truck Invasion, hereinafter referred to as "Event", for which COUNTY hires CONTRACTOR to produce, stage, and perform, and when applicable including securing the Event's entertainment talent: Meeting of the Minds, hereinafter referred to as "Entertainment".

If applicable, the sound check and/or warm-up for all Event Entertainment will begin at 5:00 PM and will conclude no later than 6:30 PM, which is no less than Thirty (30) minutes prior to time the Event is scheduled to begin.

The Event's Entertainment will begin performing at 7:00 PM and will conclude at 9:00 PM.

The performance will consist of Two (2) set(s) of Fifty Five (55) minutes per set.

If usual and customary for the type of entertainment production and/or the length of time Entertainment is scheduled to perform, the production may include One (1) intermission, of Ten (10) minutes.

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

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

4. **Payment:** The total amount payable by COUNTY to CONTRACTOR for the Event Entertainment is Six Hundred dollars (\$600.00) to be paid upon conclusion of the Event and verification that CONTRACTOR's entertainment production obligations have been completed as required herein.

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

In such event, COUNTY will remit to CONTRACTOR Zero percent (0%) of said total amount payable within Fourteen (14) days following the signing of this Agreement by COUNTY. The remaining balance of the total amount payable will be paid upon conclusion of the Event and verification that CONTRACTOR's entertainment production obligations have been completed as required herein.

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

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

7. **Performance:**

a. CONTRACTOR agrees to:

1. **use** the Amphitheater solely for the purpose for which this Agreement is entered into;
2. **accept** the Amphitheater and all equipment and improvements related to the Event in the condition existing as of the effective date of this Agreement;
3. **accept** the amount of payment defined above as full and final payment without further expectation for reimbursement of any expenses related to this Agreement;

4. **waive** any and all claims for compensation for any and all losses or damages sustained due to failure or malfunction of the Amphitheater's water or electrical power supplies;
5. **adhere** to the directives of the Department's representatives including, but not limited to, proper use and handling of COUNTY owned equipment, assignment of designated parking areas, locations for offloading and staging production equipment, and acceptable noise levels;
6. **prohibit** any activity or material related to the Event that may be considered contrary to community standards of appropriateness, including the use of profanity, obscene language, or lewd gestures, which will result in COUNTY's withholding of payment and denial of future entertainment contracting opportunities;
7. **assure** that all persons under CONTRACTOR's control conduct themselves in a socially acceptable manner including prohibiting the consumption of alcohol or illegal drugs on Amphitheater premises;
8. **obtain** the Department's written approval prior to the use of any type of pyrotechnics;
9. **obtain** the Department's written approval prior to operating any engine, motor or machinery or using any flammable agents, including but not limited to oils, camphene, kerosene, naphtha, or gasoline; with the exception of generators that have been approved by the Department's representative.
10. **assume** full responsibility for obtaining all licenses and permits required by Copyright Regulations of Title 17 of the United States Code, and agree to indemnify COUNTY and its agents for any expenses incurred as a result of CONTRACTOR's failure to obtain such licenses or permits, including, but not limited to, fines or damages collected against COUNTY or COUNTY's agents, any attorney's fees and court costs, and for any expenses incurred as a result of CONTRACTOR's failure to otherwise satisfy such regulations;
11. **identify**, as part of Event Scope and Detail, attached hereto as **Exhibit "B"**, any and all required specialty certifications, licenses and / or memberships applicable to the event;
12. **deliver** to the Department, no later than forty-eight (48) hours prior to the Event, a copy of those certain specialty certifications, licenses and / or memberships referenced above, all of which will be retained by the Department;
13. **acknowledge** that failure to deliver the required documentation referenced above may result in immediate termination of this Agreement and the return to COUNTY, within four (4) days following such termination, any percentage payment that may have been made to CONTRACTOR and forfeiture of the payment balance;
14. **remove** all equipment and materials owned by CONTRACTOR and Entertainment no later than the termination date and time specified in Article 1 above;
15. **return** the Amphitheater and all equipment and improvements related to the Event to the condition existing as of the effective date and time specified in Article 1 above;
16. **hold** COUNTY harmless for the sale or disposal of any equipment and materials considered to be abandoned due to CONTRACTOR's or Entertainment's failure to remove same from the

Amphitheater premises by the specified termination date and time and pay the cost of such removal and disposal upon receipt of COUNTY's invoice; and

17. **comply** with all Amphitheater rules and regulations and adhere to all federal, state and local laws and regulations, including Palm Beach County Code, Chapter 21, as may be amended, pertaining to Parks and Recreation, and Department standard operating procedures as all such laws, regulations, ordinances, and procedures apply to CONTRACTOR's and Entertainment's use of the Amphitheater.

b. COUNTY agrees to:

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

8. **Postponement or Cancellation of Event:** In the event emergency conditions arise which may affect public safety, the Event may be postponed or cancelled. Such emergency conditions include, but are not limited to, acts of God or issuance of an executive order indicating a state of general emergency. COUNTY, in its sole discretion, will determine the necessity to postpone or cancel the Event and will endeavor to provide CONTRACTOR at least four (4) hours notice of such postponement or cancellation prior to the Event start time specified in Article 3 above. Provided, however, COUNTY's notice of such postponement or cancellation may be given at anytime including during the Event performance.

In the event COUNTY cancels the Event due to any public safety concern or CONTRACTOR elects to cancel the Event's Entertainment rather than accept a delayed start time, the Term of this Agreement will be extended upon the same terms and conditions provided that within five (5) days following such occurrence, COUNTY and CONTRACTOR agree upon a rescheduled Event date and time. Such Term extension will be effective upon COUNTY's delivery to CONTRACTOR of a written notice specifying the agreed upon rescheduled Event date and time and detailing the circumstances leading to the Term extension.

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

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

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

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

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

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

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

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

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

12. **Relationship of the Parties:** The CONTRACTOR is, and shall be, in the performance of all work services and activities under this Agreement, an Independent Contractor, and not an employee, agent, or servant of the COUNTY. All persons engaged in any of the work or services performed pursuant to this Agreement shall at all times, and in all places, be subject to the CONTRACTOR'S sole direction, supervision, and control. The CONTRACTOR shall exercise control over the means and manner in which it and its employees perform the work, and in all respects the CONTRACTOR'S relationship and the relationship of its employees to the COUNTY shall be that of an Independent Contractor and not as employees or agents of the COUNTY.

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

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

13. **Taxes:** CONTRACTOR assumes sole responsibility for the payment of any and all federal, state, and local taxes as may be applicable to the payment made by COUNTY to CONTRACTOR. Additionally, CONTRACTOR is not eligible to benefit from the COUNTY's tax exempt status.

14. **No Assignment:** CONTRACTOR may not assign any rights, responsibilities, or obligations required under this Agreement. Any such attempted assignment is a material breach of this Agreement and cause for immediate termination.

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

Name: Donald Perez Phone Number: (561) 966-7030.

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

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

17. **Indemnification:** CONTRACTOR agrees to protect, defend, reimburse, indemnify and hold COUNTY, its agents, employees and elected officers free and harmless at all times from and against any and all claims, liability, expenses, losses, costs, fines and damages, including attorney's fees and costs at trial and appellate levels, and causes of action of every kind and character arising out of this Agreement or CONTRACTOR's use and occupancy of the Amphitheater. Such causes of action include, without limitation, those arising by

reason of; (i) any damage to property or the environment, (ii) bodily injury, including death, incurred or sustained by any party hereto, any agent or employee of any party hereto, and any third or other party whosoever, (iii) the condition of the Amphitheater existing at the effective date of this Agreement, (iv) CONTRACTOR's acts, omissions or operations hereunder, (v) the performance, non-performance or purported performance of CONTRACTOR, or (vi) any breach of the terms of this Agreement. The obligations arising under this provision will survive the expiration or termination of this Agreement.

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

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

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

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

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

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

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

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

Meeting of the Minds
Attn: Steven Vincent Cluthe
116 E Hart St.
Lantana, FL 33462

22. **Remedies:** This Agreement shall be governed by the laws of the State of Florida. Any legal action necessary to enforce the Agreement will be held in a court of competent jurisdiction located in Palm Beach County, Florida. 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.

No provision of this contract 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 contract, including but not limited to any citizen or employees of the COUNTY and/or RENTER.

23. **No Third Party Beneficiaries:** No provision of this Agreement is intended to, or shall be construed to, create any third party beneficiary or to provide any rights to any person or entity not a party to this Agreement, including but not limited to any citizen or employees of the COUNTY and/or CONTRACTOR.

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

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

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

27. **Public Entity Crimes:** As provided in F.S. 287.132-133, by entering into this Agreement or performing any work in furtherance hereof, CONTRACTOR certifies that it, its affiliates, suppliers, subcontractors and consultants who will perform hereunder, have not been placed on the convicted vendor list maintained by the State of Florida Department of Management Services within the thirty-six (36) months immediately preceding the date hereof. This notice is required by F.S. 287.133(3)(a).

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

29. **Access and Audits:** If applicable, should any portion of the payments made to CONTRACTOR include CONTRACTOR's charges, expenses, and costs incurred in estimating and performing the services to be performed hereunder, CONTRACTOR will maintain adequate records to justify all such charges, expenses, and costs for at least three (3) years after the expiration or termination of this Agreement. The COUNTY shall have access to all such books, records, and documents for the purpose of inspection or audit during normal business hours at CONTRACTOR'S place of business.

Palm Beach County has established the Office of the Inspector General in Palm Beach County Code, Section 2-421 - 2-440, as may be amended. The Inspector General's authority includes but is not limited to the power to review past, present and proposed COUNTY contracts, transactions, accounts and records, to require the

production of records, and to audit, investigate, monitor, and inspect the activities of CONTRACTOR, its officers, agents, employees, and lobbyists in order to ensure compliance with contract requirements and detect corruption and fraud.

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

30. **Waiver:** The failure of COUNTY to insist upon strict performance of any of the agreements, terms, covenants or conditions of this Agreement, does not constitute a waiver of any rights or remedies that COUNTY may have for any subsequent breach, default, or non-performance, and COUNTY's right to insist on strict performance of this Agreement will not be affected by any previous waiver of course or dealing.
31. **Nondiscrimination:** CONTRACTOR warrants and represents that all of its employees are treated equally during employment without regard to race, color, religion, disability, sex, age, national origin, ancestry, marital status, familial status, sexual orientation, gender identity and expression, or genetic information.
- CONTRACTOR 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 CONTRACTOR 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 CONTRACTOR will conform to the County's non-discrimination policy as provided in R-2014-1421, as amended.
32. **Regulation; Licensing Requirements:** CONTRACTOR agrees to comply with all laws, ordinances and regulations applicable to its use of the Amphitheater premises. CONTRACTOR is presumed to be familiar with all applicable federal, state, and local laws, ordinances, codes and regulations.
33. **Criminal History Records Check:** If CONTRACTOR's employees or subcontractors are required under this contract to enter a "critical facility," as identified in Resolution R-2003-1274, the CONTRACTOR shall comply with the provisions of Chapter 2, Article IX of the Palm Beach County Code ("Criminal History Records Check" section). The CONTRACTOR acknowledges and agrees that all employees and subcontractors who are to enter a "critical facility" will be subject to a fingerprint based criminal history records check. Although COUNTY agrees to pay for all applicable FDLE/FBI fees required for criminal history record checks, the CONTRACTOR shall be solely responsible for the financial, schedule, and staffing implications associated in complying with this section of the Palm Beach County Code.
34. **Entirety of Agreement:** COUNTY and CONTRACTOR agree that this Agreement sets forth the entire agreement between the parties, and that there are no promises or understandings other than those stated herein. None of the provisions, terms and conditions contained in this Agreement may be added to, modified, superseded or otherwise altered, except by written instrument executed by the parties hereto.

(REMAINDER OF PAGE INTENTIONALLY LEFT BLANK)

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

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

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

**If Agreement Value
Exceeds \$10,000.00, But Not More Than \$50,000.00:**

County Administrator

By: _____

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

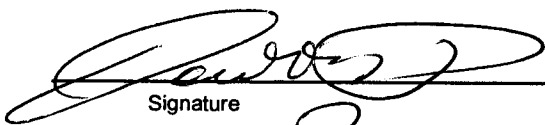
**COUNTY:
Board of County Commissioners**

**ATTEST:
Clerk & Comptroller**

Deputy Clerk

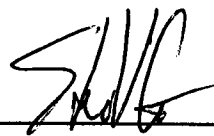
By: _____
Mayor

WITNESS


Signature

Donald Perez
Print

CONTRACTOR – Steven Vincent Cluthe

By: 
Signature

Steven V. Cluthe
Print

Title

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

County Attorney



Anne Helgert

EXHIBIT "A"

ENTERTAINMENT CONTRACTOR AGREEMENT

Amphitheater Designation Form

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



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

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



Viewing capacity for 2,500 – covered stage with light rigging – sound control room – three dressing rooms – green room – two private restrooms – prop room – costume room – air conditioned back stage – public restrooms detached

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



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

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

EXHIBIT "B"

(1 of 2)

ENTERTAINMENT CONTRACTOR AGREEMENT

Event Scope & Detail

Event Date: March 2, 2016

Event Name: Family Nights with Food Truck Invasion

Event Scope & Detail: Free community events open to the public providing concessions via Food Truck Invasion Inc. as well as County run event activities. Meeting of the Minds Performance will consist of Steven Vincent Cluthe and two additional band members

Specialty Certificates, Licenses, and Memberships:

Identify certificates, licenses, and memberships required pursuant to provision 7.a.11. of the Entertainment Contractor Agreement. Submit such documents with this *Event Scope & Detail* or indicate the date such documents will be delivered to the Department:

Not Required

EXHIBIT "B"

(2 of 2)

Amenities, Services & Equipment:

Provided By:

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

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

EXHIBIT "C"

(1 of 3)

ENTERTAINMENT SERVICES CONTRACTOR AGREEMENT

Insurance Requirements

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

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



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

☐

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

☐

Liquor Liability: if alcoholic beverages (including beer, wine, and spirits) are for sale at the event, the CONTRACTOR AND VENDOR shall maintain Liquor Liability coverage and the Certificate of Insurance must state that Liquor Liability coverage is included with a minimum limit of liability of **\$1,000,000** Each Occurrence. The policy **must not exclude** either Personal Injury/Advertising Injury, Damage to Rented Premises, or Products/Completed Operations.

If no admission or similar fee is charged at any type of event and alcoholic beverages are served at no charge, the Certificate of Insurance must state that Host Liquor Liability Coverage has been secured with a minimum limit of liability of **\$1,000,000** Each Occurrence.

☐

Participant Liability: CONTRACTOR shall maintain Participant Liability at a limit of liability not less than **\$25,000** Each Occurrence.

☐

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

☐

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

EXHIBIT "C"

(2 of 3)



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.



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



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



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

Palm Beach County Board of County Commissioners

C/O Parks and Recreation Department

Attn: _____

2700 Sixth Avenue South

Lake Worth, Florida 33461



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

EXHIBIT "C"

(3 of 3)



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.

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

THIS ENTERTAINMENT CONTRACTOR AGREEMENT, hereinafter referred to as the "Agreement," is made and entered into on MARCH 8, 2016 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 Chase Stites, an Individual, authorized to conduct business in the State of Florida, hereinafter referred to as "CONTRACTOR".

WITNESSETH:

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

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

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

1. **Term:** This Agreement is effective Wednesday, March 16, 2016, at 5:00 PM, the date and time CONTRACTOR is scheduled to arrive at the event venue, and will terminate Wednesday, March 16, 2016, at 10:00 PM, the date and time CONTRACTOR is scheduled to depart the event venue.
2. **Amphitheater:** The event venue is Sunset Cove Amphitheater, hereinafter referred to as "Amphitheater", together with such amenities, equipment, and appurtenances as may be made available by COUNTY, in its sole discretion, all as more particularly described on the Amphitheater Designation Form, attached hereto as **Exhibit "A"**.
3. **Event:** The entertainment production to be presented at the Amphitheater is an event promoted as: Family Nights with Food Truck Invasion, hereinafter referred to as "Event", for which COUNTY hires CONTRACTOR to produce, stage, and perform, and when applicable including securing the Event's entertainment talent: The Last Word, hereinafter referred to as "Entertainment".

If applicable, the sound check and/or warm-up for all Event Entertainment will begin at 5:00 PM and will conclude no later than 6:30 PM, which is no less than Thirty (30) minutes prior to time the Event is scheduled to begin.

The Event's Entertainment will begin performing at 7:00 PM and will conclude at 9:00 PM.

The performance will consist of Two (2) set(s) of Fifty Five (55) minutes per set.

If usual and customary for the type of entertainment production and/or the length of time Entertainment is scheduled to perform, the production may include One (1) intermission, of Ten (10) minutes.

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

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

4. **Payment:** The total amount payable by COUNTY to CONTRACTOR for the Event Entertainment is Six Hundred dollars (\$600.00) to be paid upon conclusion of the Event and verification that CONTRACTOR's entertainment production obligations have been completed as required herein.

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

In such event, COUNTY will remit to CONTRACTOR Zero percent (0%) of said total amount payable within Fourteen (14) days following the signing of this Agreement by COUNTY. The remaining balance of the total amount payable will be paid upon conclusion of the Event and verification that CONTRACTOR's entertainment production obligations have been completed as required herein.

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

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

7. **Performance:**

a. CONTRACTOR agrees to:

1. **use** the Amphitheater solely for the purpose for which this Agreement is entered into;
2. **accept** the Amphitheater and all equipment and improvements related to the Event in the condition existing as of the effective date of this Agreement;
3. **accept** the amount of payment defined above as full and final payment without further expectation for reimbursement of any expenses related to this Agreement;

4. **waive** any and all claims for compensation for any and all losses or damages sustained due to failure or malfunction of the Amphitheater's water or electrical power supplies;
5. **adhere** to the directives of the Department's representatives including, but not limited to, proper use and handling of COUNTY owned equipment, assignment of designated parking areas, locations for offloading and staging production equipment, and acceptable noise levels;
6. **prohibit** any activity or material related to the Event that may be considered contrary to community standards of appropriateness, including the use of profanity, obscene language, or lewd gestures, which will result in COUNTY's withholding of payment and denial of future entertainment contracting opportunities;
7. **assure** that all persons under CONTRACTOR's control conduct themselves in a socially acceptable manner including prohibiting the consumption of alcohol or illegal drugs on Amphitheater premises;
8. **obtain** the Department's written approval prior to the use of any type of pyrotechnics;
9. **obtain** the Department's written approval prior to operating any engine, motor or machinery or using any flammable agents, including but not limited to oils, camphene, kerosene, naphtha, or gasoline; with the exception of generators that have been approved by the Department's representative.
10. **assume** full responsibility for obtaining all licenses and permits required by Copyright Regulations of Title 17 of the United States Code, and agree to indemnify COUNTY and its agents for any expenses incurred as a result of CONTRACTOR's failure to obtain such licenses or permits, including, but not limited to, fines or damages collected against COUNTY or COUNTY's agents, any attorney's fees and court costs, and for any expenses incurred as a result of CONTRACTOR's failure to otherwise satisfy such regulations;
11. **identify**, as part of Event Scope and Detail, attached hereto as **Exhibit "B"**, any and all required specialty certifications, licenses and / or memberships applicable to the event;
12. **deliver** to the Department, no later than forty-eight (48) hours prior to the Event, a copy of those certain specialty certifications, licenses and / or memberships referenced above, all of which will be retained by the Department;
13. **acknowledge** that failure to deliver the required documentation referenced above may result in immediate termination of this Agreement and the return to COUNTY, within four (4) days following such termination, any percentage payment that may have been made to CONTRACTOR and forfeiture of the payment balance;
14. **remove** all equipment and materials owned by CONTRACTOR and Entertainment no later than the termination date and time specified in Article 1 above;
15. **return** the Amphitheater and all equipment and improvements related to the Event to the condition existing as of the effective date and time specified in Article 1 above;
16. **hold** COUNTY harmless for the sale or disposal of any equipment and materials considered to be abandoned due to CONTRACTOR's or Entertainment's failure to remove same from the

Amphitheater premises by the specified termination date and time and pay the cost of such removal and disposal upon receipt of COUNTY's invoice; and

17. **comply** with all Amphitheater rules and regulations and adhere to all federal, state and local laws and regulations, including Palm Beach County Code, Chapter 21, as may be amended, pertaining to Parks and Recreation, and Department standard operating procedures as all such laws, regulations, ordinances, and procedures apply to CONTRACTOR's and Entertainment's use of the Amphitheater.

b. COUNTY agrees to:

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

8. **Postponement or Cancellation of Event:** In the event emergency conditions arise which may affect public safety, the Event may be postponed or cancelled. Such emergency conditions include, but are not limited to, acts of God or issuance of an executive order indicating a state of general emergency. COUNTY, in its sole discretion, will determine the necessity to postpone or cancel the Event and will endeavor to provide CONTRACTOR at least four (4) hours notice of such postponement or cancellation prior to the Event start time specified in Article 3 above. Provided, however, COUNTY's notice of such postponement or cancellation may be given at anytime including during the Event performance.

In the event COUNTY cancels the Event due to any public safety concern or CONTRACTOR elects to cancel the Event's Entertainment rather than accept a delayed start time, the Term of this Agreement will be extended upon the same terms and conditions provided that within five (5) days following such occurrence, COUNTY and CONTRACTOR agree upon a rescheduled Event date and time. Such Term extension will be effective upon COUNTY's delivery to CONTRACTOR of a written notice specifying the agreed upon rescheduled Event date and time and detailing the circumstances leading to the Term extension.

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

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

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

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

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

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

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

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

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

12. **Relationship of the Parties:** The CONTRACTOR is, and shall be, in the performance of all work services and activities under this Agreement, an Independent Contractor, and not an employee, agent, or servant of the COUNTY. All persons engaged in any of the work or services performed pursuant to this Agreement shall at all times, and in all places, be subject to the CONTRACTOR'S sole direction, supervision, and control. The CONTRACTOR shall exercise control over the means and manner in which it and its employees perform the work, and in all respects the CONTRACTOR'S relationship and the relationship of its employees to the COUNTY shall be that of an Independent Contractor and not as employees or agents of the COUNTY.

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

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

13. **Taxes:** CONTRACTOR assumes sole responsibility for the payment of any and all federal, state, and local taxes as may be applicable to the payment made by COUNTY to CONTRACTOR. Additionally, CONTRACTOR is not eligible to benefit from the COUNTY's tax exempt status.

14. **No Assignment:** CONTRACTOR may not assign any rights, responsibilities, or obligations required under this Agreement. Any such attempted assignment is a material breach of this Agreement and cause for immediate termination.

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

Name: Donald Perez Phone Number: (561) 966-7030.

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

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

17. **Indemnification:** CONTRACTOR agrees to protect, defend, reimburse, indemnify and hold COUNTY, its agents, employees and elected officers free and harmless at all times from and against any and all claims, liability, expenses, losses, costs, fines and damages, including attorney's fees and costs at trial and appellate levels, and causes of action of every kind and character arising out of this Agreement or CONTRACTOR's use and occupancy of the Amphitheater. Such causes of action include, without limitation, those arising by

reason of; (i) any damage to property or the environment, (ii) bodily injury, including death, incurred or sustained by any party hereto, any agent or employee of any party hereto, and any third or other party whosoever, (iii) the condition of the Amphitheater existing at the effective date of this Agreement, (iv) CONTRACTOR's acts, omissions or operations hereunder, (v) the performance, non-performance or purported performance of CONTRACTOR, or (vi) any breach of the terms of this Agreement. The obligations arising under this provision will survive the expiration or termination of this Agreement.

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

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

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

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

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

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

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

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

The Last Word
Attn: Chase Stites
1409 Lake Ave
Lake Worth FL 33460

22. **Remedies:** This Agreement shall be governed by the laws of the State of Florida. Any legal action necessary to enforce the Agreement will be held in a court of competent jurisdiction located in Palm Beach County, Florida. 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. No provision of this contract 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 contract, including but not limited to any citizen or employees of the COUNTY and/or RENTER.
23. **No Third Party Beneficiaries:** No provision of this Agreement is intended to, or shall be construed to, create any third party beneficiary or to provide any rights to any person or entity not a party to this Agreement, including but not limited to any citizen or employees of the COUNTY and/or CONTRACTOR.
24. **Annual Appropriations:** The fulfillment of this Agreement and all obligations of COUNTY hereunder are subject to and contingent upon annual budgetary appropriations by the Board of County Commissioners.
25. **Arrears:** CONTRACTOR is not to pledge or attempt to pledge COUNTY's credit or make it a guarantor of payment or surety for any contract, debt, obligation, judgment, lien, or any form of indebtedness. CONTRACTOR further warrants and represents that it has no obligation or indebtedness that would impair its ability to fulfill the terms of this Agreement.
26. **Authorization:** This Agreement is executed by an individual legally authorized to fully bind CONTRACTOR to all terms and conditions of this Agreement.
27. **Public Entity Crimes:** As provided in F.S. 287.132-133, by entering into this Agreement or performing any work in furtherance hereof, CONTRACTOR certifies that it, its affiliates, suppliers, subcontractors and consultants who will perform hereunder, have not been placed on the convicted vendor list maintained by the State of Florida Department of Management Services within the thirty-six (36) months immediately preceding the date hereof. This notice is required by F.S. 287.133(3)(a).
28. **Severability:** In the event any term or provision of this Agreement is held invalid or unenforceable, the remainder of this Agreement will not be affected, and every other term and provision of this Agreement will be deemed valid and enforceable to the extent permitted by law.
29. **Access and Audits:** If applicable, should any portion of the payments made to CONTRACTOR include CONTRACTOR's charges, expenses, and costs incurred in estimating and performing the services to be performed hereunder, CONTRACTOR will maintain adequate records to justify all such charges, expenses, and costs for at least three (3) years after the expiration or termination of this Agreement. The COUNTY shall have access to all such books, records, and documents for the purpose of inspection or audit during normal business hours at CONTRACTOR'S place of business.

Palm Beach County has established the Office of the Inspector General in Palm Beach County Code, Section 2-421 - 2-440, as may be amended. The Inspector General's authority includes but is not limited to the power to review past, present and proposed COUNTY contracts, transactions, accounts and records, to require the production of records, and to audit, investigate, monitor, and inspect the activities of CONTRACTOR, its

officers, agents, employees, and lobbyists in order to ensure compliance with contract requirements and detect corruption and fraud.

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

30. **Waiver:** The failure of COUNTY to insist upon strict performance of any of the agreements, terms, covenants or conditions of this Agreement, does not constitute a waiver of any rights or remedies that COUNTY may have for any subsequent breach, default, or non-performance, and COUNTY's right to insist on strict performance of this Agreement will not be affected by any previous waiver of course or dealing.
31. **Nondiscrimination:** CONTRACTOR warrants and represents that all of its employees are treated equally during employment without regard to race, color, religion, disability, sex, age, national origin, ancestry, marital status, familial status, sexual orientation, gender identity and expression, or genetic information.
- CONTRACTOR 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 CONTRACTOR 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 CONTRACTOR will conform to the County's non-discrimination policy as provided in R-2014-1421, as amended.
32. **Regulation; Licensing Requirements:** CONTRACTOR agrees to comply with all laws, ordinances and regulations applicable to its use of the Amphitheater premises. CONTRACTOR is presumed to be familiar with all applicable federal, state, and local laws, ordinances, codes and regulations.
33. **Criminal History Records Check:** If CONTRACTOR's employees or subcontractors are required under this contract to enter a "critical facility," as identified in Resolution R-2003-1274, the CONTRACTOR shall comply with the provisions of Chapter 2, Article IX of the Palm Beach County Code ("Criminal History Records Check" section). The CONTRACTOR acknowledges and agrees that all employees and subcontractors who are to enter a "critical facility" will be subject to a fingerprint based criminal history records check. Although COUNTY agrees to pay for all applicable FDLE/FBI fees required for criminal history record checks, the CONTRACTOR shall be solely responsible for the financial, schedule, and staffing implications associated in complying with this section of the Palm Beach County Code.
34. **Entirety of Agreement:** COUNTY and CONTRACTOR agree that this Agreement sets forth the entire agreement between the parties, and that there are no promises or understandings other than those stated herein. None of the provisions, terms and conditions contained in this Agreement may be added to, modified, superseded or otherwise altered, except by written instrument executed by the parties hereto.

(REMAINDER OF PAGE INTENTIONALLY LEFT BLANK)

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

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

PDC

By: _____

Director / Assistant Director
Palm Beach County Parks and Recreation Department

**If Agreement Value
Exceeds \$10,000.00, But Not More Than \$50,000.00:**

County Administrator

By: _____

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

**COUNTY:
Board of County Commissioners**

**ATTEST:
Clerk & Comptroller**

Deputy Clerk

By: _____
Mayor

WITNESS

Signature

Print

CONTRACTOR – Chase Stites

By: _____
Signature

Print

Title

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

County Attorney

Anne Helgent

EXHIBIT "A"

ENTERTAINMENT CONTRACTOR AGREEMENT

Amphitheater Designation Form

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



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

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



Viewing capacity for 2,500 – covered stage with light rigging – sound control room – three dressing rooms – green room – two private restrooms – prop room – costume room – air conditioned back stage – public restrooms detached

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



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

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

EXHIBIT "B"

(1 of 2)

ENTERTAINMENT CONTRACTOR AGREEMENT

Event Scope & Detail

Event Date: March 16, 2016

Event Name: Family Nights with Food Truck Invasion

Event Scope & Detail: Free community events open to the public providing concessions via Food Truck Invasion Inc. as well as County run event activities. Performance will consist of Chase Stites and two (2) additional band members.

Specialty Certificates, Licenses, and Memberships:

Identify certificates, licenses, and memberships required pursuant to provision 7.a.11. of the Entertainment Contractor Agreement. Submit such documents with this *Event Scope & Detail* or indicate the date such documents will be delivered to the Department:

Not Required

EXHIBIT "B"
(2 of 2)

Amenities, Services & Equipment:

Provided By:

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

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

EXHIBIT "C"

(1 of 3)

ENTERTAINMENT SERVICES CONTRACTOR AGREEMENT

Insurance Requirements

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

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



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

☐

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

☐

Liquor Liability: if alcoholic beverages (including beer, wine, and spirits) are for sale at the event, the CONTRACTOR AND VENDOR shall maintain Liquor Liability coverage and the Certificate of Insurance must state that Liquor Liability coverage is included with a minimum limit of liability of **\$1,000,000** Each Occurrence. The policy **must not exclude** either Personal Injury/Advertising Injury, Damage to Rented Premises, or Products/Completed Operations.

If no admission or similar fee is charged at any type of event and alcoholic beverages are served at no charge, the Certificate of Insurance must state that Host Liquor Liability Coverage has been secured with a minimum limit of liability of **\$1,000,000** Each Occurrence.

☐

Participant Liability: CONTRACTOR shall maintain Participant Liability at a limit of liability not less than **\$25,000** Each Occurrence.

☐

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

☐

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

EXHIBIT "C"

(2 of 3)



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.



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



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



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

Palm Beach County Board of County Commissioners

C/O Parks and Recreation Department

Attn: _____

2700 Sixth Avenue South

Lake Worth, Florida 33461



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

EXHIBIT "C"

(3 of 3)



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.

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

THIS ENTERTAINMENT CONTRACTOR AGREEMENT, hereinafter referred to as the "Agreement," is made and entered into on MARCH 8, 2016, 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 137 Entertainment Group, LLC, a Florida Limited liability Company, authorized to conduct business in the State of Florida, hereinafter referred to as "CONTRACTOR".

WITNESSETH:

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

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

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

1. **Term:** This Agreement is effective Saturday, March 19, 2016, at 4:00PM, the date and time CONTRACTOR is scheduled to arrive at the event venue, and will terminate Saturday, March 19, 2016, at 11:00PM, the date and time CONTRACTOR is scheduled to depart the event venue.
2. **Amphitheater:** The event venue is Canyon Amphitheater, hereinafter referred to as "Amphitheater", together with such amenities, equipment, and appurtenances as may be made available by COUNTY, in its sole discretion, all as more particularly described on the Amphitheater Designation Form, attached hereto as **Exhibit "A"**.
3. **Event:** The entertainment production to be presented at the Amphitheater is an event promoted as: White Acres, hereinafter referred to as "Event", for which COUNTY hires CONTRACTOR to produce, stage, and perform, and when applicable including securing the Event's entertainment talent: White Acres, hereinafter referred to as "Entertainment".

If applicable, the sound check and/or warm-up for all Event Entertainment will begin at 6:00 PM and will conclude no later than 6:30 PM, which is no less than Thirty (30) minutes prior to time the Event is scheduled to begin.

The Event's Entertainment will begin performing at 7:00PM and will conclude at 9:00PM.

The performance will consist of Two (2) set(s) of Fifty Five (55) minutes per set.

If usual and customary for the type of entertainment production and/or the length of time Entertainment is scheduled to perform, the production may include one (1) intermission(s), of ten (10) minutes each.

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

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

4. **Payment:** The total amount payable by COUNTY to CONTRACTOR for the Event Entertainment is Eight Hundred dollars (\$ 800.00) to be paid upon conclusion of the Event and verification that CONTRACTOR's entertainment production obligations have been completed as required herein.

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

In such event, COUNTY will remit to CONTRACTOR Fifty percent (50%) of said total amount payable within Fourteen (14) days following the signing of this Agreement by COUNTY. The remaining balance of the total amount payable will be paid upon conclusion of the Event and verification that CONTRACTOR's entertainment production obligations have been completed as required herein.

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

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

7. **Performance:**

a. CONTRACTOR agrees to:

1. **use** the Amphitheater solely for the purpose for which this Agreement is entered into;
2. **accept** the Amphitheater and all equipment and improvements related to the Event in the condition existing as of the effective date of this Agreement;
3. **accept** the amount of payment defined above as full and final payment without further expectation for reimbursement of any expenses related to this Agreement;

4. **waive** any and all claims for compensation for any and all losses or damages sustained due to failure or malfunction of the Amphitheater's water or electrical power supplies;
5. **adhere** to the directives of the Department's representatives including, but not limited to, proper use and handling of COUNTY owned equipment, assignment of designated parking areas, locations for offloading and staging production equipment, and acceptable noise levels;
6. **prohibit** any activity or material related to the Event that may be considered contrary to community standards of appropriateness, including the use of profanity, obscene language, or lewd gestures, which will result in COUNTY's withholding of payment and denial of future entertainment contracting opportunities;
7. **assure** that all persons under CONTRACTOR's control conduct themselves in a socially acceptable manner including prohibiting the consumption of alcohol or illegal drugs on Amphitheater premises;
8. **obtain** the Department's written approval prior to the use of any type of pyrotechnics;
9. **obtain** the Department's written approval prior to operating any engine, motor or machinery or using any flammable agents, including but not limited to oils, camphene, kerosene, naphtha, or gasoline; with the exception of generators that have been approved by the Department's representative.
10. **assume** full responsibility for obtaining all licenses and permits required by Copyright Regulations of Title 17 of the United States Code, and agree to indemnify COUNTY and its agents for any expenses incurred as a result of CONTRACTOR's failure to obtain such licenses or permits, including, but not limited to, fines or damages collected against COUNTY or COUNTY's agents, any attorney's fees and court costs, and for any expenses incurred as a result of CONTRACTOR's failure to otherwise satisfy such regulations;
11. **identify**, as part of Event Scope and Detail, attached hereto as **Exhibit "B"**, any and all required specialty certifications, licenses and / or memberships applicable to the event;
12. **deliver** to the Department, no later than forty-eight (48) hours prior to the Event, a copy of those certain specialty certifications, licenses and / or memberships referenced above, all of which will be retained by the Department;
13. **acknowledge** that failure to deliver the required documentation referenced above may result in immediate termination of this Agreement and the return to COUNTY, within four (4) days following such termination, any percentage payment that may have been made to CONTRACTOR and forfeiture of the payment balance;
14. **remove** all equipment and materials owned by CONTRACTOR and Entertainment no later than the termination date and time specified in Article 1 above;
15. **return** the Amphitheater and all equipment and improvements related to the Event to the condition existing as of the effective date and time specified in Article 1 above;
16. **hold** COUNTY harmless for the sale or disposal of any equipment and materials considered to be abandoned due to CONTRACTOR's or Entertainment's failure to remove same from the

Amphitheater premises by the specified termination date and time and pay the cost of such removal and disposal upon receipt of COUNTY's invoice; and

17. **comply** with all Amphitheater rules and regulations and adhere to all federal, state and local laws and regulations, including Palm Beach County Code, Chapter 21, as may be amended, pertaining to Parks and Recreation, and Department standard operating procedures as all such laws, regulations, ordinances, and procedures apply to CONTRACTOR's and Entertainment's use of the Amphitheater.

b. COUNTY agrees to:

1. **promote** the Event;
 2. **deliver** the Amphitheater and associated premises in a safe, clean, and orderly condition;
 3. **assign** sufficient staff to provide logistical support and oversee all aspects of the Event including authority to make final decisions and issue directives on behalf of COUNTY;
 4. **provide** support services including law enforcement, technical staff and skilled maintenance as may be determined necessary by the Department;
 5. **retain** control of the Amphitheater and all operations conducted on the Amphitheater premises including enforcement of all laws, rules, regulations pertaining to the safety and wellbeing of the public; and
 6. **collect** and dispose of any and all items either discarded or lost by patrons or others at the Event, without interference by CONTRACTOR or Entertainment or any person working for or on their behalf.
8. **Postponement or Cancellation of Event:** In the event emergency conditions arise which may affect public safety, the Event may be postponed or cancelled. Such emergency conditions include, but are not limited to, acts of God or issuance of an executive order indicating a state of general emergency. COUNTY, in its sole discretion, will determine the necessity to postpone or cancel the Event and will endeavor to provide CONTRACTOR at least four (4) hours notice of such postponement or cancellation prior to the Event start time specified in Article 3 above. Provided, however, COUNTY's notice of such postponement or cancellation may be given at anytime including during the Event performance.

In the event COUNTY cancels the Event due to any public safety concern or CONTRACTOR elects to cancel the Event's Entertainment rather than accept a delayed start time, the Term of this Agreement will be extended upon the same terms and conditions provided that within five (5) days following such occurrence, COUNTY and CONTRACTOR agree upon a rescheduled Event date and time. Such Term extension will be effective upon COUNTY's delivery to CONTRACTOR of a written notice specifying the agreed upon rescheduled Event date and time and detailing the circumstances leading to the Term extension.

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

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

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

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

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

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

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

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

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

12. **Relationship of the Parties:** The CONTRACTOR is, and shall be, in the performance of all work services and activities under this Agreement, an Independent Contractor, and not an employee, agent, or servant of the COUNTY. All persons engaged in any of the work or services performed pursuant to this Agreement shall at all times, and in all places, be subject to the CONTRACTOR'S sole direction, supervision, and control. The CONTRACTOR shall exercise control over the means and manner in which it and its employees perform the work, and in all respects the CONTRACTOR'S relationship and the relationship of its employees to the COUNTY shall be that of an Independent Contractor and not as employees or agents of the COUNTY.

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

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

13. **Taxes:** CONTRACTOR assumes sole responsibility for the payment of any and all federal, state, and local taxes as may be applicable to the payment made by COUNTY to CONTRACTOR. Additionally, CONTRACTOR is not eligible to benefit from the COUNTY's tax exempt status.

14. **No Assignment:** CONTRACTOR may not assign any rights, responsibilities, or obligations required under this Agreement. Any such attempted assignment is a material breach of this Agreement and cause for immediate termination.

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

Name: Donald Perez Phone Number: 561-966-7030.

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

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

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

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

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

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

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

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

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

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

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

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

137 Entertainment Group, LLC
Attn: Janice Whitacre
P.O. Box 3102
Tequesta, FL 33461

22. **Remedies:** This Agreement shall be governed by the laws of the State of Florida. Any legal action necessary to enforce the Agreement will be held in a court of competent jurisdiction located in Palm Beach County, Florida. 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.

No provision of this contract 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 contract, including but not limited to any citizen or employees of the COUNTY and/or RENTER.

23. **No Third Party Beneficiaries:** No provision of this Agreement is intended to, or shall be construed to, create any third party beneficiary or to provide any rights to any person or entity not a party to this Agreement, including but not limited to any citizen or employees of the COUNTY and/or CONTRACTOR.

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

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

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

27. **Public Entity Crimes:** As provided in F.S. 287.132-133, by entering into this Agreement or performing any work in furtherance hereof, CONTRACTOR certifies that it, its affiliates, suppliers, subcontractors and consultants who will perform hereunder, have not been placed on the convicted vendor list maintained by the State of Florida Department of Management Services within the thirty-six (36) months immediately preceding the date hereof. This notice is required by F.S. 287.133(3)(a).

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

29. **Access and Audits:** If applicable, should any portion of the payments made to CONTRACTOR include CONTRACTOR's charges, expenses, and costs incurred in estimating and performing the services to be performed hereunder, CONTRACTOR will maintain adequate records to justify all such charges, expenses, and costs for at least three (3) years after the expiration or termination of this Agreement. The COUNTY shall have access to all such books, records, and documents for the purpose of inspection or audit during normal business hours at CONTRACTOR'S place of business.

Palm Beach County has established the Office of the Inspector General in Palm Beach County Code, Section 2-421 - 2-440, as may be amended. The Inspector General's authority includes but is not limited to the power to review past, present and proposed COUNTY contracts, transactions, accounts and records, to require the production of records, and to audit, investigate, monitor, and inspect the activities of CONTRACTOR, its

officers, agents, employees, and lobbyists in order to ensure compliance with contract requirements and detect corruption and fraud.

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

30. **Waiver:** The failure of COUNTY to insist upon strict performance of any of the agreements, terms, covenants or conditions of this Agreement, does not constitute a waiver of any rights or remedies that COUNTY may have for any subsequent breach, default, or non-performance, and COUNTY's right to insist on strict performance of this Agreement will not be affected by any previous waiver of course or dealing.
31. **Nondiscrimination:** CONTRACTOR warrants and represents that all of its employees are treated equally during employment without regard to race, color, religion, disability, sex, age, national origin, ancestry, marital status, familial status, sexual orientation, gender identity and expression, or genetic information.
- CONTRACTOR 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 CONTRACTOR 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 CONTRACTOR will conform to the County's non-discrimination policy as provided in R-2014-1421, as amended.
32. **Regulation; Licensing Requirements:** CONTRACTOR agrees to comply with all laws, ordinances and regulations applicable to its use of the Amphitheater premises. CONTRACTOR is presumed to be familiar with all applicable federal, state, and local laws, ordinances, codes and regulations.
33. **Criminal History Records Check:** If CONTRACTOR's employees or subcontractors are required under this contract to enter a "critical facility," as identified in Resolution R-2003-1274, the CONTRACTOR shall comply with the provisions of Chapter 2, Article IX of the Palm Beach County Code ("Criminal History Records Check" section). The CONTRACTOR acknowledges and agrees that all employees and subcontractors who are to enter a "critical facility" will be subject to a fingerprint based criminal history records check. Although COUNTY agrees to pay for all applicable FDLE/FBI fees required for criminal history record checks, the CONTRACTOR shall be solely responsible for the financial, schedule, and staffing implications associated in complying with this section of the Palm Beach County Code.
34. **Entirety of Agreement:** COUNTY and CONTRACTOR agree that this Agreement sets forth the entire agreement between the parties, and that there are no promises or understandings other than those stated herein. None of the provisions, terms and conditions contained in this Agreement may be added to, modified, superseded or otherwise altered, except by written instrument executed by the parties hereto.

(REMAINDER OF PAGE INTENTIONALLY LEFT BLANK)

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

PALM BEACH COUNTY
BOARD OF COUNTY COMMISSIONERS:

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

If Agreement Value
Exceeds \$10,000.00, But Not More Than \$50,000.00:

County Administrator

By: _____

If Agreement Value
Exceeds \$50,000.00:

COUNTY:
Board of County Commissioners

By: _____
Mayor

ATTEST:
Clerk & Comptroller

Deputy Clerk

WITNESS

Lindsey Villari
Signature
Lindsey Villari
Print

CONTRACTOR – 137 Entertainment Group, LLC

By: Janice Whitacre
Signature
Janice Whitacre
Print
Mgr
Title

APPROVED AS TO
FORM AND LEGAL SUFFICIENCY:

County Attorney

Anne Helgent

EXHIBIT "A"

ENTERTAINMENT CONTRACTOR AGREEMENT

Amphitheater Designation Form

☐

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



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

☐

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



Viewing capacity for 2,500 – covered stage with light rigging – sound control room – three dressing rooms – green room – two private restrooms – prop room – costume room – air conditioned back stage – public restrooms detached

☒

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



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

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

EXHIBIT "B"
(1 of 2)

ENTERTAINMENT CONTRACTOR AGREEMENT

Event Scope & Detail

Event Date: Saturday, March 19, 2016

Event Name: White Acres Band

Event Scope & Detail: White Acres Band is a sister duo with a four piece band backing them. Their sound is fresh Melodic Country blending the best of country, folk and rock music married to clever and engaging lyrics with rich harmonies.

Specialty Certificates, Licenses, and Memberships:

Identify certificates, licenses, and memberships required pursuant to provision 7.a.11. of the Entertainment Contractor Agreement. Submit such documents with this *Event Scope & Detail* or indicate the date such documents will be delivered to the Department:

Not Required

EXHIBIT “B”
(2 of 2)

Amenities, Services & Equipment:

Provided By:

	N/A	COUNTY	CONTRACTOR
Detailed list of equipment provided by COUNTY and/or CONTRACTOR is attached to this Exhibit: _____	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Sound System: _____	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
Sound Equipment: _____	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
Light System: _____	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
Lighting Equipment: _____	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
Light Trees: <u>Two light trees w/four – PAR64 cans per tree.</u>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>
Microphones: _____	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
Cables: _____	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
Backline: _____	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
Heavy Duty/Outdoor Extension Cords: _____	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
Sound Technician: _____	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
Light Technician: _____	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
Dressing Room: _____	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Drum Riser: _____	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
Generators: <i>Department Approval Signature:</i> _____	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Fireworks / Pyrotechnics: [†] _____	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

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

EXHIBIT "C"

(1 of 3)

ENTERTAINMENT SERVICES CONTRACTOR AGREEMENT

Insurance Requirements

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

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



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

☐

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

☐

Liquor Liability: if alcoholic beverages (including beer, wine, and spirits) are for sale at the event, the CONTRACTOR AND VENDOR shall maintain Liquor Liability coverage and the Certificate of Insurance must state that Liquor Liability coverage is included with a minimum limit of liability of **\$1,000,000** Each Occurrence. The policy **must not exclude** either Personal Injury/Advertising Injury, Damage to Rented Premises, or Products/Completed Operations.

If no admission or similar fee is charged at any type of event and alcoholic beverages are served at no charge, the Certificate of Insurance must state that Host Liquor Liability Coverage has been secured with a minimum limit of liability of **\$1,000,000** Each Occurrence.

☐

Participant Liability: CONTRACTOR shall maintain Participant Liability at a limit of liability not less than **\$25,000** Each Occurrence.

☐

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

☐

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

EXHIBIT "C"

(2 of 3)



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.



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: Special Facilities Director
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.

EXHIBIT "C"

(3 of 3)



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.

ENTERTAINMENT CONTRACTOR AGREEMENT FOR PALM BEACH COUNTY PARKS & RECREATION DEPARTMENT

THIS ENTERTAINMENT CONTRACTOR AGREEMENT, hereinafter referred to as the "Agreement," is made and entered into on JANUARY 14, 2016 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 Rocket Entertainment Group LLC, a Florida Limited Liability Company, authorized to conduct business in the State of Florida, hereinafter referred to as "CONTRACTOR".

WITNESSETH:

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

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

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

1. **Term:** This Agreement is effective Saturday, March 19th, 2016, at 4:00 PM, the date and time CONTRACTOR is scheduled to arrive at the event venue, and will terminate Saturday, March 19th, 2016, at 11:00 PM, the date and time CONTRACTOR is scheduled to depart the event venue.
2. **Amphitheater:** The event venue is Seabreeze Amphitheater, hereinafter referred to as "Amphitheater", together with such amenities, equipment, and appurtenances as may be made available by COUNTY, in its sole discretion, all as more particularly described on the Amphitheater Designation Form, attached hereto as **Exhibit "A"**.
3. **Event:** The entertainment production to be presented at the Amphitheater is an event promoted as: The Doors Alive Concert, hereinafter referred to as "Event", for which COUNTY hires CONTRACTOR to produce, stage, and perform, and when applicable including securing the Event's entertainment talent: The Doors Alive, hereinafter referred to as "Entertainment".

If applicable, the sound check and/or warm-up for all Event Entertainment will begin at 5:00 PM and will conclude no later than 6:30 PM, which is no less than Thirty (30) minutes prior to time the Event is scheduled to begin.

The Event's Entertainment will begin performing at 7:00 PM and will conclude at 9:00 PM.

The performance will consist of Two (2) set(s) of Fifty Five (55) minutes per set.

If usual and customary for the type of entertainment production and/or the length of time Entertainment is scheduled to perform, the production may include One (1) intermission, of Ten (10) minutes.

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

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

4. **Payment:** The total amount payable by COUNTY to CONTRACTOR for the Event Entertainment is Eight Hundred dollars (\$800.00) to be paid upon conclusion of the Event and verification that CONTRACTOR's entertainment production obligations have been completed as required herein.

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

In such event, COUNTY will remit to CONTRACTOR Fifty percent (50%) of said total amount payable within Fourteen (14) days following the signing of this Agreement by COUNTY. The remaining balance of the total amount payable will be paid upon conclusion of the Event and verification that CONTRACTOR's entertainment production obligations have been completed as required herein.

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

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

7. **Performance:**

a. CONTRACTOR agrees to:

1. **use** the Amphitheater solely for the purpose for which this Agreement is entered into;
2. **accept** the Amphitheater and all equipment and improvements related to the Event in the condition existing as of the effective date of this Agreement;
3. **accept** the amount of payment defined above as full and final payment without further expectation for reimbursement of any expenses related to this Agreement;

4. **waive** any and all claims for compensation for any and all losses or damages sustained due to failure or malfunction of the Amphitheater's water or electrical power supplies;
5. **adhere** to the directives of the Department's representatives including, but not limited to, proper use and handling of COUNTY owned equipment, assignment of designated parking areas, locations for offloading and staging production equipment, and acceptable noise levels;
6. **prohibit** any activity or material related to the Event that may be considered contrary to community standards of appropriateness, including the use of profanity, obscene language, or lewd gestures, which will result in COUNTY's withholding of payment and denial of future entertainment contracting opportunities;
7. **assure** that all persons under CONTRACTOR's control conduct themselves in a socially acceptable manner including prohibiting the consumption of alcohol or illegal drugs on Amphitheater premises;
8. **obtain** the Department's written approval prior to the use of any type of pyrotechnics;
9. **obtain** the Department's written approval prior to operating any engine, motor or machinery or using any flammable agents, including but not limited to oils, camphene, kerosene, naphtha, or gasoline; with the exception of generators that have been approved by the Department's representative.
10. **assume** full responsibility for obtaining all licenses and permits required by Copyright Regulations of Title 17 of the United States Code, and agree to indemnify COUNTY and its agents for any expenses incurred as a result of CONTRACTOR's failure to obtain such licenses or permits, including, but not limited to, fines or damages collected against COUNTY or COUNTY's agents, any attorney's fees and court costs, and for any expenses incurred as a result of CONTRACTOR's failure to otherwise satisfy such regulations;
11. **identify**, as part of Event Scope and Detail, attached hereto as **Exhibit "B"**, any and all required specialty certifications, licenses and / or memberships applicable to the event;
12. **deliver** to the Department, no later than forty-eight (48) hours prior to the Event, a copy of those certain specialty certifications, licenses and / or memberships referenced above, all of which will be retained by the Department;
13. **acknowledge** that failure to deliver the required documentation referenced above may result in immediate termination of this Agreement and the return to COUNTY, within four (4) days following such termination, any percentage payment that may have been made to CONTRACTOR and forfeiture of the payment balance;
14. **remove** all equipment and materials owned by CONTRACTOR and Entertainment no later than the termination date and time specified in Article 1 above;
15. **return** the Amphitheater and all equipment and improvements related to the Event to the condition existing as of the effective date and time specified in Article 1 above;
16. **hold** COUNTY harmless for the sale or disposal of any equipment and materials considered to be abandoned due to CONTRACTOR's or Entertainment's failure to remove same from the

Amphitheater premises by the specified termination date and time and pay the cost of such removal and disposal upon receipt of COUNTY's invoice; and

17. **comply** with all Amphitheater rules and regulations and adhere to all federal, state and local laws and regulations, including Palm Beach County Code, Chapter 21, as may be amended, pertaining to Parks and Recreation, and Department standard operating procedures as all such laws, regulations, ordinances, and procedures apply to CONTRACTOR's and Entertainment's use of the Amphitheater.

b. COUNTY agrees to:

1. **promote** the Event;
 2. **deliver** the Amphitheater and associated premises in a safe, clean, and orderly condition;
 3. **assign** sufficient staff to provide logistical support and oversee all aspects of the Event including authority to make final decisions and issue directives on behalf of COUNTY;
 4. **provide** support services including law enforcement, technical staff and skilled maintenance as may be determined necessary by the Department;
 5. **retain** control of the Amphitheater and all operations conducted on the Amphitheater premises including enforcement of all laws, rules, regulations pertaining to the safety and wellbeing of the public; and
 6. **collect** and dispose of any and all items either discarded or lost by patrons or others at the Event, without interference by CONTRACTOR or Entertainment or any person working for or on their behalf.
8. **Postponement or Cancellation of Event:** In the event emergency conditions arise which may affect public safety, the Event may be postponed or cancelled. Such emergency conditions include, but are not limited to, acts of God or issuance of an executive order indicating a state of general emergency. COUNTY, in its sole discretion, will determine the necessity to postpone or cancel the Event and will endeavor to provide CONTRACTOR at least four (4) hours notice of such postponement or cancellation prior to the Event start time specified in Article 3 above. Provided, however, COUNTY's notice of such postponement or cancellation may be given at anytime including during the Event performance.

In the event COUNTY cancels the Event due to any public safety concern or CONTRACTOR elects to cancel the Event's Entertainment rather than accept a delayed start time, the Term of this Agreement will be extended upon the same terms and conditions provided that within five (5) days following such occurrence, COUNTY and CONTRACTOR agree upon a rescheduled Event date and time. Such Term extension will be effective upon COUNTY's delivery to CONTRACTOR of a written notice specifying the agreed upon rescheduled Event date and time and detailing the circumstances leading to the Term extension.

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

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

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

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

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

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

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

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

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

12. **Relationship of the Parties:** The CONTRACTOR is, and shall be, in the performance of all work services and activities under this Agreement, an Independent Contractor, and not an employee, agent, or servant of the COUNTY. All persons engaged in any of the work or services performed pursuant to this Agreement shall at all times, and in all places, be subject to the CONTRACTOR'S sole direction, supervision, and control. The CONTRACTOR shall exercise control over the means and manner in which it and its employees perform the work, and in all respects the CONTRACTOR'S relationship and the relationship of its employees to the COUNTY shall be that of an Independent Contractor and not as employees or agents of the COUNTY.

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

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

13. **Taxes:** CONTRACTOR assumes sole responsibility for the payment of any and all federal, state, and local taxes as may be applicable to the payment made by COUNTY to CONTRACTOR. Additionally, CONTRACTOR is not eligible to benefit from the COUNTY's tax exempt status.

14. **No Assignment:** CONTRACTOR may not assign any rights, responsibilities, or obligations required under this Agreement. Any such attempted assignment is a material breach of this Agreement and cause for immediate termination.

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

Name: Donald Perez Phone Number: 561-966-7030.

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

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

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

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

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

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

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

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

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

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

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

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

Rocket Entertainment Group LLC
Attn: Lawrence Schlossberg
16499 SW 30th Street
Hollywood, FL 33027

22. **Remedies:** This Agreement shall be governed by the laws of the State of Florida. Any legal action necessary to enforce the Agreement will be held in Palm Beach County. No remedy herein conferred upon any party is

intended to be exclusive of any other remedy, and each and every such remedy shall be cumulative and shall be in addition to every other remedy given hereunder or now or hereafter existing at law or in equity, by statute or otherwise. No single or partial exercise by any party of any right, power, or remedy hereunder shall preclude any other or further exercise thereof.

No provision of this contract 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 contract, including but not limited to any citizen or employees of the COUNTY and/ or RENTER

23. **No Third Party Beneficiaries:** No provision of this Agreement is intended to, or shall be construed to, create any third party beneficiary or to provide any rights to any person or entity not a party to this Agreement, including but not limited to any citizen or employees of the COUNTY and/or CONTRACTOR.
24. **Annual Appropriations:** The fulfillment of this Agreement and all obligations of COUNTY hereunder are subject to and contingent upon annual budgetary appropriations by the Board of County Commissioners.
25. **Arrears:** CONTRACTOR is not to pledge or attempt to pledge COUNTY's credit or make it a guarantor of payment or surety for any contract, debt, obligation, judgment, lien, or any form of indebtedness. CONTRACTOR further warrants and represents that it has no obligation or indebtedness that would impair its ability to fulfill the terms of this Agreement.
26. **Authorization:** This Agreement is executed by an individual legally authorized to fully bind CONTRACTOR to all terms and conditions of this Agreement.
27. **Public Entity Crimes:** As provided in F.S. 287.132-133, by entering into this Agreement or performing any work in furtherance hereof, CONTRACTOR certifies that it, its affiliates, suppliers, subcontractors and consultants who will perform hereunder, have not been placed on the convicted vendor list maintained by the State of Florida Department of Management Services within the thirty-six (36) months immediately preceding the date hereof. This notice is required by F.S. 287.133(3)(a).
28. **Severability:** In the event any term or provision of this Agreement is held invalid or unenforceable, the remainder of this Agreement will not be affected, and every other term and provision of this Agreement will be deemed valid and enforceable to the extent permitted by law.
29. **Access and Audits:** If applicable, should any portion of the payments made to CONTRACTOR include CONTRACTOR's charges, expenses, and costs incurred in estimating and performing the services to be performed hereunder, CONTRACTOR will maintain adequate records to justify all such charges, expenses, and costs for at least three (3) years after the expiration or termination of this Agreement. The COUNTY shall have access to all such books, records, and documents for the purpose of inspection or audit during normal business hours at CONTRACTOR'S place of business.

Palm Beach County has established the Office of the Inspector General in Palm Beach County Code, Section 2-421 - 2-440, as may be amended. The Inspector General's authority includes but is not limited to the power to review past, present and proposed COUNTY contracts, transactions, accounts and records, to require the production of records, and to audit, investigate, monitor, and inspect the activities of CONTRACTOR, its officers, agents, employees, and lobbyists in order to ensure compliance with contract requirements and detect corruption and fraud.

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

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

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

CONTRACTOR 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 CONTRACTOR 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 CONTRACTOR will conform to the County's non-discrimination policy as provided in R-2014-1421, as amended.

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

33. **Criminal History Records Check:** If CONTRACTOR's employees or subcontractors are required under this contract to enter a "critical facility," as identified in Resolution R-2003-1274, the CONTRACTOR shall comply with the provisions of Chapter 2, Article IX of the Palm Beach County Code ("Criminal History Records Check" section). The CONTRACTOR acknowledges and agrees that all employees and subcontractors who are to enter a "critical facility" will be subject to a fingerprint based criminal history records check. Although COUNTY agrees to pay for all applicable FDLE/FBI fees required for criminal history record checks, the CONTRACTOR shall be solely responsible for the financial, schedule, and staffing implications associated in complying with this section of the Palm Beach County Code.

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

(REMAINDER OF PAGE INTENTIONALLY LEFT BLANK)

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

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

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

**If Agreement Value
Exceeds \$10,000.00, But Not More Than \$50,000.00:**

County Administrator

By: _____

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

**ATTEST:
Clerk & Comptroller**

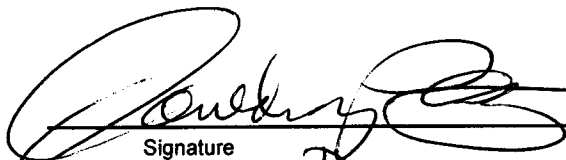
**COUNTY:
Board of County Commissioners**

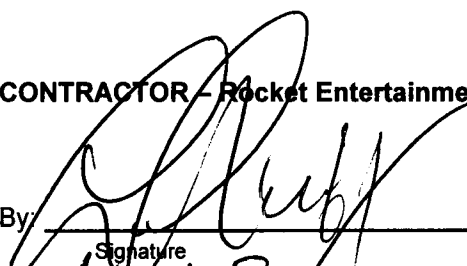
Deputy Clerk

By: _____
Mayor

WITNESS

CONTRACTOR - Rocket Entertainment Group LLC


Signature
Donald A. Perez
Print

By: 
Signature
LARRY SCHLOSSBERG
Print
General Manager
Title

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

County Attorney

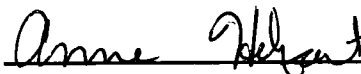


EXHIBIT "A"

ENTERTAINMENT CONTRACTOR AGREEMENT

Amphitheater Designation Form

☐

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



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

☒

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



Viewing capacity for 2,500 – covered stage with light rigging – sound control room – three dressing rooms – green room – two private restrooms – prop room – costume room – air conditioned back stage – public restrooms detached

☐

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



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

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

EXHIBIT "B"

(1 of 2)

ENTERTAINMENT CONTRACTOR AGREEMENT

Event Scope & Detail

Event Date: Saturday, March 19th, 2016

Event Name: The Doors Alive Concert

Event Scope & Detail: A free two (2) hour concert featuring "The Doors Alive" who will be performing original songs from The Doors. "The Doors Alive" consists of Dirk Gilbert and four (4) other band members.

Specialty Certificates, Licenses, and Memberships:

Identify certificates, licenses, and memberships required pursuant to provision 7.a.11. of the Entertainment Contractor Agreement. Submit such documents with this *Event Scope & Detail* or indicate the date such documents will be delivered to the Department:

Not Required

EXHIBIT "B"

(2 of 2)

Amenities, Services & Equipment:

Provided By:

N/A COUNTY CONTRACTOR

Detailed list of equipment provided by COUNTY and/or CONTRACTOR is attached to this Exhibit: See page 17

☐ ☒ ☐

Sound System: _____

☐ ☒ ☐

Sound Equipment: _____

☐ ☒ ☐

Light System: _____

☒ ☐ ☐

Lighting Equipment: _____

☒ ☐ ☐

Light Trees: _____

☐ ☒ ☐

Microphones: _____

☐ ☒ ☐

Cables: _____

☐ ☐ ☒

Backline: _____

☐ ☐ ☒

Heavy Duty/Outdoor Extension Cords: _____

☐ ☐ ☒

Sound Technician: _____

☐ ☒ ☐

Light Technician: _____

☒ ☐ ☐

Dressing Room: _____

☐ ☒ ☐

Drum Riser: _____

☐ ☐ ☒

Generators: *Department Approval Signature:* _____

☒ ☐ ☐

Fireworks / Pyrotechnics: [†] _____

☒ ☐ ☐

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

EXHIBIT "C"

(1 of 3)

ENTERTAINMENT SERVICES CONTRACTOR AGREEMENT

Insurance Requirements

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

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



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

☐

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

☐

Liquor Liability: if alcoholic beverages (including beer, wine, and spirits) are for sale at the event, the CONTRACTOR AND VENDOR shall maintain Liquor Liability coverage and the Certificate of Insurance must state that Liquor Liability coverage is included with a minimum limit of liability of **\$1,000,000** Each Occurrence. The policy **must not exclude** either Personal Injury/Advertising Injury, Damage to Rented Premises, or Products/Completed Operations.

If no admission or similar fee is charged at any type of event and alcoholic beverages are served at no charge, the Certificate of Insurance must state that Host Liquor Liability Coverage has been secured with a minimum limit of liability of **\$1,000,000** Each Occurrence.

☐

Participant Liability: CONTRACTOR shall maintain Participant Liability at a limit of liability not less than **\$25,000** Each Occurrence.

☐

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

☐

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

EXHIBIT "C"

(2 of 3)



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.



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



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



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

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

Exhibit "C"

(3 of 3)



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.

Saturday, March 19th, 2016: The Doors Alive Concert

The following will be provided by County/Blackwood Productions LLC:

Qty	Item #	Description
1.00	Audio	"B" Rig PA System
4.00	Audio	Dual 18" Subs (2 per side)
4.00	Audio	Single 15" Tops (2 per side)
4.00	Audio	Single 15" Monitors
1.00	Audio	Mixing Console
1.00	Audio	Mic, Stand & Cable Package

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

THIS ENTERTAINMENT CONTRACTOR AGREEMENT, hereinafter referred to as the "Agreement," is made and entered into on APRIL 4, 2016, 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 Steven Vincent Cluthe, an Individual, authorized to conduct business in the State of Florida, hereinafter referred to as "CONTRACTOR".

WITNESSETH:

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

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

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

1. **Term:** This Agreement is effective Wednesday, April 6, 2016, at 5:00 PM, the date and time CONTRACTOR is scheduled to arrive at the event venue, and will terminate Wednesday, April 6, 2016, at 10:00 PM, the date and time CONTRACTOR is scheduled to depart the event venue.
2. **Amphitheater:** The event venue is Sunset Cove Amphitheater, hereinafter referred to as "Amphitheater", together with such amenities, equipment, and appurtenances as may be made available by COUNTY, in its sole discretion, all as more particularly described on the Amphitheater Designation Form, attached hereto as **Exhibit "A"**.
3. **Event:** The entertainment production to be presented at the Amphitheater is an event promoted as: Family Nights with Food Truck Invasion, hereinafter referred to as "Event", for which COUNTY hires CONTRACTOR to produce, stage, and perform, and when applicable including securing the Event's entertainment talent: Steven Vincent Cluthe, hereinafter referred to as "Entertainment".

If applicable, the sound check and/or warm-up for all Event Entertainment will begin at 5:00 PM and will conclude no later than 6:30 PM, which is no less than Thirty (30) minutes prior to time the Event is scheduled to begin.

The Event's Entertainment will begin performing at 7:00 PM and will conclude at 9:00 PM.

The performance will consist of Two (2) set(s) of Fifty Five (55) minutes per set.

If usual and customary for the type of entertainment production and/or the length of time Entertainment is scheduled to perform, the production may include One (1) intermission, of Ten (10) minutes. Unless otherwise specifically agreed to by COUNTY prior to the signing of this Agreement, no portion of the Event's Entertainment production is to include prerecorded audio or video.

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

4. **Payment:** The total amount payable by COUNTY to CONTRACTOR for the Event Entertainment is Three Hundred dollars (\$300.00) to be paid upon conclusion of the Event and verification that CONTRACTOR's entertainment production obligations have been completed as required herein.

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

In such event, COUNTY will remit to CONTRACTOR Zero percent (0%) of said total amount payable within Fourteen (14) days following the signing of this Agreement by COUNTY. The remaining balance of the total amount payable will be paid upon conclusion of the Event and verification that CONTRACTOR's entertainment production obligations have been completed as required herein.

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

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

7. **Performance:**

a. CONTRACTOR agrees to:

1. **use** the Amphitheater solely for the purpose for which this Agreement is entered into;
2. **accept** the Amphitheater and all equipment and improvements related to the Event in the condition existing as of the effective date of this Agreement;
3. **accept** the amount of payment defined above as full and final payment without further expectation for reimbursement of any expenses related to this Agreement;

4. **waive** any and all claims for compensation for any and all losses or damages sustained due to failure or malfunction of the Amphitheater's water or electrical power supplies;
5. **adhere** to the directives of the Department's representatives including, but not limited to, proper use and handling of COUNTY owned equipment, assignment of designated parking areas, locations for offloading and staging production equipment, and acceptable noise levels;
6. **prohibit** any activity or material related to the Event that may be considered contrary to community standards of appropriateness, including the use of profanity, obscene language, or lewd gestures, which will result in COUNTY's withholding of payment and denial of future entertainment contracting opportunities;
7. **assure** that all persons under CONTRACTOR's control conduct themselves in a socially acceptable manner including prohibiting the consumption of alcohol or illegal drugs on Amphitheater premises;
8. **obtain** the Department's written approval prior to the use of any type of pyrotechnics;
9. **obtain** the Department's written approval prior to operating any engine, motor or machinery or using any flammable agents, including but not limited to oils, camphene, kerosene, naphtha, or gasoline; with the exception of generators that have been approved by the Department's representative.
10. **assume** full responsibility for obtaining all licenses and permits required by Copyright Regulations of Title 17 of the United States Code, and agree to indemnify COUNTY and its agents for any expenses incurred as a result of CONTRACTOR's failure to obtain such licenses or permits, including, but not limited to, fines or damages collected against COUNTY or COUNTY's agents, any attorney's fees and court costs, and for any expenses incurred as a result of CONTRACTOR's failure to otherwise satisfy such regulations;
11. **identify**, as part of Event Scope and Detail, attached hereto as **Exhibit "B"**, any and all required specialty certifications, licenses and / or memberships applicable to the event;
12. **deliver** to the Department, no later than forty-eight (48) hours prior to the Event, a copy of those certain specialty certifications, licenses and / or memberships referenced above, all of which will be retained by the Department;
13. **acknowledge** that failure to deliver the required documentation referenced above may result in immediate termination of this Agreement and the return to COUNTY, within four (4) days following such termination, any percentage payment that may have been made to CONTRACTOR and forfeiture of the payment balance;
14. **remove** all equipment and materials owned by CONTRACTOR and Entertainment no later than the termination date and time specified in Article 1 above;
15. **return** the Amphitheater and all equipment and improvements related to the Event to the condition existing as of the effective date and time specified in Article 1 above;
16. **hold** COUNTY harmless for the sale or disposal of any equipment and materials considered to be abandoned due to CONTRACTOR's or Entertainment's failure to remove same from the

Amphitheater premises by the specified termination date and time and pay the cost of such removal and disposal upon receipt of COUNTY's invoice; and

17. **comply** with all Amphitheater rules and regulations and adhere to all federal, state and local laws and regulations, including Palm Beach County Code, Chapter 21, as may be amended, pertaining to Parks and Recreation, and Department standard operating procedures as all such laws, regulations, ordinances, and procedures apply to CONTRACTOR's and Entertainment's use of the Amphitheater.

b. COUNTY agrees to:

1. **promote** the Event;
 2. **deliver** the Amphitheater and associated premises in a safe, clean, and orderly condition;
 3. **assign** sufficient staff to provide logistical support and oversee all aspects of the Event including authority to make final decisions and issue directives on behalf of COUNTY;
 4. **provide** support services including law enforcement, technical staff and skilled maintenance as may be determined necessary by the Department;
 5. **retain** control of the Amphitheater and all operations conducted on the Amphitheater premises including enforcement of all laws, rules, regulations pertaining to the safety and wellbeing of the public; and
 6. **collect** and dispose of any and all items either discarded or lost by patrons or others at the Event, without interference by CONTRACTOR or Entertainment or any person working for or on their behalf.
8. **Postponement or Cancellation of Event:** In the event emergency conditions arise which may affect public safety, the Event may be postponed or cancelled. Such emergency conditions include, but are not limited to, acts of God or issuance of an executive order indicating a state of general emergency. COUNTY, in its sole discretion, will determine the necessity to postpone or cancel the Event and will endeavor to provide CONTRACTOR at least four (4) hours notice of such postponement or cancellation prior to the Event start time specified in Article 3 above. Provided, however, COUNTY's notice of such postponement or cancellation may be given at anytime including during the Event performance.

In the event COUNTY cancels the Event due to any public safety concern or CONTRACTOR elects to cancel the Event's Entertainment rather than accept a delayed start time, the Term of this Agreement will be extended upon the same terms and conditions provided that within five (5) days following such occurrence, COUNTY and CONTRACTOR agree upon a rescheduled Event date and time. Such Term extension will be effective upon COUNTY's delivery to CONTRACTOR of a written notice specifying the agreed upon rescheduled Event date and time and detailing the circumstances leading to the Term extension.

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

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

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

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

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

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

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

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

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

12. **Relationship of the Parties:** The CONTRACTOR is, and shall be, in the performance of all work services and activities under this Agreement, an Independent Contractor, and not an employee, agent, or servant of the COUNTY. All persons engaged in any of the work or services performed pursuant to this Agreement shall at all times, and in all places, be subject to the CONTRACTOR'S sole direction, supervision, and control. The CONTRACTOR shall exercise control over the means and manner in which it and its employees perform the work, and in all respects the CONTRACTOR'S relationship and the relationship of its employees to the COUNTY shall be that of an Independent Contractor and not as employees or agents of the COUNTY.

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

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

13. **Taxes:** CONTRACTOR assumes sole responsibility for the payment of any and all federal, state, and local taxes as may be applicable to the payment made by COUNTY to CONTRACTOR. Additionally, CONTRACTOR is not eligible to benefit from the COUNTY's tax exempt status.

14. **No Assignment:** CONTRACTOR may not assign any rights, responsibilities, or obligations required under this Agreement. Any such attempted assignment is a material breach of this Agreement and cause for immediate termination.

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

Name: Donald Perez Phone Number: (561) 966-7030.

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

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

17. **Indemnification:** CONTRACTOR agrees to protect, defend, reimburse, indemnify and hold COUNTY, its agents, employees and elected officers free and harmless at all times from and against any and all claims, liability, expenses, losses, costs, fines and damages, including attorney's fees and costs at trial and appellate levels, and causes of action of every kind and character arising out of this Agreement or CONTRACTOR's use and occupancy of the Amphitheater. Such causes of action include, without limitation, those arising by

reason of; (i) any damage to property or the environment, (ii) bodily injury, including death, incurred or sustained by any party hereto, any agent or employee of any party hereto, and any third or other party whosoever, (iii) the condition of the Amphitheater existing at the effective date of this Agreement, (iv) CONTRACTOR's acts, omissions or operations hereunder, (v) the performance, non-performance or purported performance of CONTRACTOR, or (vi) any breach of the terms of this Agreement. The obligations arising under this provision will survive the expiration or termination of this Agreement.

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

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

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

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

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

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

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

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

Meeting of the Minds
Attn: Steven Vincent Cluthe
116 E Hart St.
Lantana, FL 33462

22. **Remedies**: This Agreement shall be governed by the laws of the State of Florida. Any legal action necessary to enforce the Agreement will be held in Palm Beach County. No remedy herein conferred upon any party is intended to be exclusive of any other remedy, and each and every such remedy shall be cumulative and shall be in addition to every other remedy given hereunder or now or hereafter existing at law or in equity, by statute or otherwise. No single or partial exercise by any party of any right, power, or remedy hereunder shall preclude any other or further exercise thereof.
23. **No Third Party Beneficiaries**: No provision of this Agreement is intended to, or shall be construed to, create any third party beneficiary or to provide any rights to any person or entity not a party to this Agreement, including but not limited to any citizen or employees of the COUNTY and/or CONTRACTOR.
24. **Annual Appropriations**: The fulfillment of this Agreement and all obligations of COUNTY hereunder are subject to and contingent upon annual budgetary appropriations by the Board of County Commissioners.
25. **Arrears**: CONTRACTOR is not to pledge or attempt to pledge COUNTY's credit or make it a guarantor of payment or surety for any contract, debt, obligation, judgment, lien, or any form of indebtedness. CONTRACTOR further warrants and represents that it has no obligation or indebtedness that would impair its ability to fulfill the terms of this Agreement.
26. **Authorization**: This Agreement is executed by an individual legally authorized to fully bind CONTRACTOR to all terms and conditions of this Agreement.
27. **Public Entity Crimes**: As provided in F.S. 287.132-133, by entering into this Agreement or performing any work in furtherance hereof, CONTRACTOR certifies that it, its affiliates, suppliers, subcontractors and consultants who will perform hereunder, have not been placed on the convicted vendor list maintained by the State of Florida Department of Management Services within the thirty-six (36) months immediately preceding the date hereof. This notice is required by F.S. 287.133(3)(a).
28. **Severability**: In the event any term or provision of this Agreement is held invalid or unenforceable, the remainder of this Agreement will not be affected, and every other term and provision of this Agreement will be deemed valid and enforceable to the extent permitted by law.
29. **Access and Audits**: If applicable, should any portion of the payments made to CONTRACTOR include CONTRACTOR's charges, expenses, and costs incurred in estimating and performing the services to be performed hereunder, CONTRACTOR will maintain adequate records to justify all such charges, expenses, and costs for at least three (3) years after the expiration or termination of this Agreement. The COUNTY shall have access to all such books, records, and documents for the purpose of inspection or audit during normal business hours at CONTRACTOR'S place of business.

Palm Beach County has established the Office of the Inspector General in Palm Beach County Code, Section 2-421 - 2-440, as may be amended. The Inspector General's authority includes but is not limited to the power to review past, present and proposed COUNTY contracts, transactions, accounts and records, to require the production of records, and to audit, investigate, monitor, and inspect the activities of CONTRACTOR, its officers, agents, employees, and lobbyists in order to ensure compliance with contract requirements and detect corruption and fraud.

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

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

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

CONTRACTOR 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 CONTRACTOR 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 CONTRACTOR will conform to the County's non-discrimination policy as provided in R-2014-1421, as amended.

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

33. **Criminal History Records Check:** If CONTRACTOR's employees or subcontractors are required under this contract to enter a "critical facility," as identified in Resolution R-2003-1274, the CONTRACTOR shall comply with the provisions of Chapter 2, Article IX of the Palm Beach County Code ("Criminal History Records Check" section). The CONTRACTOR acknowledges and agrees that all employees and subcontractors who are to enter a "critical facility" will be subject to a fingerprint based criminal history records check. Although COUNTY agrees to pay for all applicable FDLE/FBI fees required for criminal history record checks, the CONTRACTOR shall be solely responsible for the financial, schedule, and staffing implications associated in complying with this section of the Palm Beach County Code.

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

(REMAINDER OF PAGE INTENTIONALLY LEFT BLANK)

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

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

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

**If Agreement Value
Exceeds \$10,000.00, But Not More Than \$50,000.00:**

County Administrator

By: _____

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

**COUNTY:
Board of County Commissioners**

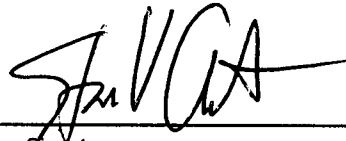
By: _____
Mayor

**ATTEST:
Clerk & Comptroller**

Deputy Clerk

WITNESS

CONTRACTOR – Steven Vincent Cluthe

By: 
Signature
Steven V Cluthe
Print

Title

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

County Attorney

Anne Helgert

EXHIBIT "A"

ENTERTAINMENT CONTRACTOR AGREEMENT

Amphitheater Designation Form

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



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

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



Viewing capacity for 2,500 – covered stage with light rigging – sound control room – three dressing rooms – green room – two private restrooms – prop room – costume room – air conditioned back stage – public restrooms detached

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



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

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

EXHIBIT "B"
(1 of 2)

ENTERTAINMENT CONTRACTOR AGREEMENT

Event Scope & Detail

Event Date: April 6, 2016

Event Name: Family Nights with Food Truck Invasion

Event Scope & Detail: Free community events open to the public providing concessions via Food Truck Invasion Inc. as well as County run event activities. Performance will consist of Steven Vincent Cluthe.

Specialty Certificates, Licenses, and Memberships:

Identify certificates, licenses, and memberships required pursuant to provision 7.a.11. of the Entertainment Contractor Agreement. Submit such documents with this *Event Scope & Detail* or indicate the date such documents will be delivered to the Department:

Not Required

EXHIBIT "B"

(2 of 2)

Amenities, Services & Equipment:

Provided By:

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

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

EXHIBIT "C"

(1 of 3)

ENTERTAINMENT SERVICES CONTRACTOR AGREEMENT

Insurance Requirements

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

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



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

☐

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

☐

Liquor Liability: if alcoholic beverages (including beer, wine, and spirits) are for sale at the event, the CONTRACTOR AND VENDOR shall maintain Liquor Liability coverage and the Certificate of Insurance must state that Liquor Liability coverage is included with a minimum limit of liability of **\$1,000,000** Each Occurrence. The policy **must not exclude** either Personal Injury/Advertising Injury, Damage to Rented Premises, or Products/Completed Operations.

If no admission or similar fee is charged at any type of event and alcoholic beverages are served at no charge, the Certificate of Insurance must state that Host Liquor Liability Coverage has been secured with a minimum limit of liability of **\$1,000,000** Each Occurrence.

☐

Participant Liability: CONTRACTOR shall maintain Participant Liability at a limit of liability not less than **\$25,000** Each Occurrence.

☐

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

☐

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

EXHIBIT "C"

(2 of 3)

☐ **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.

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

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

☐ **Certificates of Insurance:** Prior to execution of the Agreement, the CONTRACTOR shall deliver to the COUNTY Certificate(s) of Insurance evidencing that all types and amounts of insurance coverage required by this Agreement have been obtained and are in full force and effect. In addition, the CONTRACTOR shall provide this evidence to the COUNTY prior to the expiration date of any such insurance required herein. Such Certificate(s) of Insurance shall include a minimum ten (10) day endeavor to notify due to cancellation of coverage. Certificates of Insurance are to be sent to:
Palm Beach County Board of County Commissioners
C/O Parks and Recreation Department
Attn: _____
2700 Sixth Avenue South
Lake Worth, Florida 33461

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

EXHIBIT "C"

(3 of 3)



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.

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

THIS ENTERTAINMENT CONTRACTOR AGREEMENT, hereinafter referred to as the "Agreement," is made and entered into on APRIL 5, 2016, 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 Richard Benjamin, an individual, authorized to conduct business in the State of Florida, hereinafter referred to as "CONTRACTOR".

WITNESSETH:

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

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

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

1. **Term:** This Agreement is effective Saturday, April 16th, 2016, at 4:00PM, the date and time CONTRACTOR is scheduled to arrive at the event venue, and will terminate Saturday, April 16th, 2016, at 11:00PMPM, the date and time CONTRACTOR is scheduled to depart the event venue.
2. **Amphitheater:** The event venue is Canyon Amphitheater, hereinafter referred to as "Amphitheater", together with such amenities, equipment, and appurtenances as may be made available by COUNTY, in its sole discretion, all as more particularly described on the Amphitheater Designation Form, attached hereto as **Exhibit "A"**.
3. **Event:** The entertainment production to be presented at the Amphitheater is an event promoted as: The Fabulons, hereinafter referred to as "Event", for which COUNTY hires CONTRACTOR to produce, stage, and perform, and when applicable including securing the Event's entertainment talent: The Fabulons, hereinafter referred to as "Entertainment".

If applicable, the sound check and/or warm-up for all Event Entertainment will begin at 6:00 PM and will conclude no later than 6:30 PM, which is no less than Thirty (30) minutes prior to time the Event is scheduled to begin.

The Event's Entertainment will begin performing at 7:00PM and will conclude at 9:00PM.

The performance will consist of Two (2) set(s) of Fifty Five (55) minutes per set.

If usual and customary for the type of entertainment production and/or the length of time Entertainment is scheduled to perform, the production may include one (1) intermission(s), of ten (10) minutes each.

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

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

4. **Payment:** The total amount payable by COUNTY to CONTRACTOR for the Event Entertainment is Nine Hundred dollars (\$900.00) to be paid upon conclusion of the Event and verification that CONTRACTOR's entertainment production obligations have been completed as required herein.

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

In such event, COUNTY will remit to CONTRACTOR Fifty percent (50%) of said total amount payable within Fourteen (14) days following the signing of this Agreement by COUNTY. The remaining balance of the total amount payable will be paid upon conclusion of the Event and verification that CONTRACTOR's entertainment production obligations have been completed as required herein.

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

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

7. **Performance:**

a. CONTRACTOR agrees to:

1. **use** the Amphitheater solely for the purpose for which this Agreement is entered into;
2. **accept** the Amphitheater and all equipment and improvements related to the Event in the condition existing as of the effective date of this Agreement;
3. **accept** the amount of payment defined above as full and final payment without further expectation for reimbursement of any expenses related to this Agreement;

4. **waive** any and all claims for compensation for any and all losses or damages sustained due to failure or malfunction of the Amphitheater's water or electrical power supplies;
5. **adhere** to the directives of the Department's representatives including, but not limited to, proper use and handling of COUNTY owned equipment, assignment of designated parking areas, locations for offloading and staging production equipment, and acceptable noise levels;
6. **prohibit** any activity or material related to the Event that may be considered contrary to community standards of appropriateness, including the use of profanity, obscene language, or lewd gestures, which will result in COUNTY's withholding of payment and denial of future entertainment contracting opportunities;
7. **assure** that all persons under CONTRACTOR's control conduct themselves in a socially acceptable manner including prohibiting the consumption of alcohol or illegal drugs on Amphitheater premises;
8. **obtain** the Department's written approval prior to the use of any type of pyrotechnics;
9. **obtain** the Department's written approval prior to operating any engine, motor or machinery or using any flammable agents, including but not limited to oils, camphene, kerosene, naphtha, or gasoline; with the exception of generators that have been approved by the Department's representative.
10. **assume** full responsibility for obtaining all licenses and permits required by Copyright Regulations of Title 17 of the United States Code, and agree to indemnify COUNTY and its agents for any expenses incurred as a result of CONTRACTOR's failure to obtain such licenses or permits, including, but not limited to, fines or damages collected against COUNTY or COUNTY's agents, any attorney's fees and court costs, and for any expenses incurred as a result of CONTRACTOR's failure to otherwise satisfy such regulations;
11. **identify**, as part of Event Scope and Detail, attached hereto as **Exhibit "B"**, any and all required specialty certifications, licenses and / or memberships applicable to the event;
12. **deliver** to the Department, no later than forty-eight (48) hours prior to the Event, a copy of those certain specialty certifications, licenses and / or memberships referenced above, all of which will be retained by the Department;
13. **acknowledge** that failure to deliver the required documentation referenced above may result in immediate termination of this Agreement and the return to COUNTY, within four (4) days following such termination, any percentage payment that may have been made to CONTRACTOR and forfeiture of the payment balance;
14. **remove** all equipment and materials owned by CONTRACTOR and Entertainment no later than the termination date and time specified in Article 1 above;
15. **return** the Amphitheater and all equipment and improvements related to the Event to the condition existing as of the effective date and time specified in Article 1 above;
16. **hold** COUNTY harmless for the sale or disposal of any equipment and materials considered to be abandoned due to CONTRACTOR's or Entertainment's failure to remove same from the

Amphitheater premises by the specified termination date and time and pay the cost of such removal and disposal upon receipt of COUNTY's invoice; and

17. **comply** with all Amphitheater rules and regulations and adhere to all federal, state and local laws and regulations, including Palm Beach County Code, Chapter 21, as may be amended, pertaining to Parks and Recreation, and Department standard operating procedures as all such laws, regulations, ordinances, and procedures apply to CONTRACTOR's and Entertainment's use of the Amphitheater.

b. COUNTY agrees to:

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

8. **Postponement or Cancellation of Event:** In the event emergency conditions arise which may affect public safety, the Event may be postponed or cancelled. Such emergency conditions include, but are not limited to, acts of God or issuance of an executive order indicating a state of general emergency. COUNTY, in its sole discretion, will determine the necessity to postpone or cancel the Event and will endeavor to provide CONTRACTOR at least four (4) hours notice of such postponement or cancellation prior to the Event start time specified in Article 3 above. Provided, however, COUNTY's notice of such postponement or cancellation may be given at anytime including during the Event performance.

In the event COUNTY cancels the Event due to any public safety concern or CONTRACTOR elects to cancel the Event's Entertainment rather than accept a delayed start time, the Term of this Agreement will be extended upon the same terms and conditions provided that within five (5) days following such occurrence, COUNTY and CONTRACTOR agree upon a rescheduled Event date and time. Such Term extension will be effective upon COUNTY's delivery to CONTRACTOR of a written notice specifying the agreed upon rescheduled Event date and time and detailing the circumstances leading to the Term extension.

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

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

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

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

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

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

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

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

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

12. **Relationship of the Parties:** The CONTRACTOR is, and shall be, in the performance of all work services and activities under this Agreement, an Independent Contractor, and not an employee, agent, or servant of the COUNTY. All persons engaged in any of the work or services performed pursuant to this Agreement shall at all times, and in all places, be subject to the CONTRACTOR'S sole direction, supervision, and control. The CONTRACTOR shall exercise control over the means and manner in which it and its employees perform the work, and in all respects the CONTRACTOR'S relationship and the relationship of its employees to the COUNTY shall be that of an Independent Contractor and not as employees or agents of the COUNTY.

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

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

13. **Taxes:** CONTRACTOR assumes sole responsibility for the payment of any and all federal, state, and local taxes as may be applicable to the payment made by COUNTY to CONTRACTOR. Additionally, CONTRACTOR is not eligible to benefit from the COUNTY's tax exempt status.

14. **No Assignment:** CONTRACTOR may not assign any rights, responsibilities, or obligations required under this Agreement. Any such attempted assignment is a material breach of this Agreement and cause for immediate termination.

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

Name: Donald Perez Phone Number: 561-966-7030.

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

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

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

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

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

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

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

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

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

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

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

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

The Fabulons
Attn: Richard Benjamin
4349 SW 49th St.
Dania Beach, FL 33314

5. **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 a court of competent jurisdiction located in Palm Beach County, Florida. 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.

No provision of this contract 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 contract, including but not limited to any citizen or employees of the COUNTY and/ or RENTER

6. **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.
7. **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.
8. **Arrears:** CONTRACTOR is not to pledge or attempt to pledge COUNTY's credit or make it a guarantor of payment or surety for any contract, debt, obligation, judgment, lien, or any form of indebtedness. CONTRACTOR further warrants and represents that it has no obligation or indebtedness that would impair its ability to fulfill the terms of this Agreement.
9. **Authorization:** This Agreement is executed by an individual legally authorized to fully bind CONTRACTOR to all terms and conditions of this Agreement.
10. **Public Entity Crimes:** As provided in F.S. 287.132-133, by entering into this Agreement or performing any work in furtherance hereof, CONTRACTOR certifies that it, its affiliates, suppliers, subcontractors and consultants who will perform hereunder, have not been placed on the convicted vendor list maintained by the State of Florida Department of Management Services within the thirty-six (36) months immediately preceding the date hereof. This notice is required by F.S. 287.133(3)(a).
11. **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.
12. **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.

13. **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.

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

CONTRACTOR 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 CONTRACTOR 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 CONTRACTOR will conform to the County's non-discrimination policy as provided in R-2014-1421, as amended.

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

16. **Criminal History Records Check:** If CONTRACTOR's employees or subcontractors are required under this contract to enter a "critical facility," as identified in Resolution R-2003-1274, the CONTRACTOR shall comply with the provisions of Chapter 2, Article IX of the Palm Beach County Code ("Criminal History Records Check" section). The CONTRACTOR acknowledges and agrees that all employees and subcontractors who are to enter a "critical facility" will be subject to a fingerprint based criminal history records check. Although COUNTY agrees to pay for all applicable FDLE/FBI fees required for criminal history record checks, the CONTRACTOR shall be solely responsible for the financial, schedule, and staffing implications associated in complying with this section of the Palm Beach County Code.

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

(REMAINDER OF PAGE INTENTIONALLY LEFT BLANK)

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

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

PBC

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

**If Agreement Value
Exceeds \$10,000.00, But Not More Than \$50,000.00:**

County Administrator

By: _____

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

**COUNTY:
Board of County Commissioners**

By: _____
Mayor

**ATTEST:
Clerk & Comptroller**

Deputy Clerk

WITNESS

Pamela Benjamin
Signature
Pamela Benjamin
Print

CONTRACTOR – Richard Benjamin

By: *Richard Benjamin*
Signature
Richard Benjamin
Print
Owner / Business Manager
Title

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

County Attorney

Anne Helgant

EXHIBIT "A"

ENTERTAINMENT CONTRACTOR AGREEMENT

Amphitheater Designation Form

☐

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



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

☐

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



Viewing capacity for 2,500 – covered stage with light rigging – sound control room – three dressing rooms – green room – two private restrooms – prop room – costume room – air conditioned back stage – public restrooms detached



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



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

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

EXHIBIT "B"

(1 of 2)

ENTERTAINMENT CONTRACTOR AGREEMENT

Event Scope & Detail

Event Date: Saturday, April 16, 2016

Event Name: The Fabulons

Event Scope & Detail: A free concert featuring the "Fabulons" who will perform hits from the 60's and 70's. The Fabulons concists of Richard Benjiman and six (6) additional band members.

Specialty Certificates, Licenses, and Memberships:

Identify certificates, licenses, and memberships required pursuant to provision 7.a.11. of the Entertainment Contractor Agreement. Submit such documents with this *Event Scope & Detail* or indicate the date such documents will be delivered to the Department:

Not Required

EXHIBIT "B"

(2 of 2)

Amenities, Services & Equipment:

Provided By:

	N/A	COUNTY	CONTRACTOR
Detailed list of equipment provided by COUNTY and/or CONTRACTOR is attached to this Exhibit: _____	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Sound System: _____	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
Sound Equipment: _____	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
Light System: _____	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
Lighting Equipment: _____	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
Light Trees: <u>Two light trees w/four – PAR64 cans per tree.</u>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>
Microphones: _____	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
Cables: _____	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
Backline: _____	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
Heavy Duty/Outdoor Extension Cords: _____	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
Sound Technician: _____	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
Light Technician: _____	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
Dressing Room: _____	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Drum Riser: _____	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
Generators: <i>Department Approval Signature:</i> _____	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Fireworks / Pyrotechnics: [†] _____	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

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

EXHIBIT "C"

(1 of 3)

ENTERTAINMENT SERVICES CONTRACTOR AGREEMENT

Insurance Requirements

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

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



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

☐

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

☐

Liquor Liability: if alcoholic beverages (including beer, wine, and spirits) are for sale at the event, the CONTRACTOR AND VENDOR shall maintain Liquor Liability coverage and the Certificate of Insurance must state that Liquor Liability coverage is included with a minimum limit of liability of **\$1,000,000** Each Occurrence. The policy **must not exclude** either Personal Injury/Advertising Injury, Damage to Rented Premises, or Products/Completed Operations.

If no admission or similar fee is charged at any type of event and alcoholic beverages are served at no charge, the Certificate of Insurance must state that Host Liquor Liability Coverage has been secured with a minimum limit of liability of **\$1,000,000** Each Occurrence.

☐

Participant Liability: CONTRACTOR shall maintain Participant Liability at a limit of liability not less than **\$25,000** Each Occurrence.

☐

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

☐

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

EXHIBIT "C"

(2 of 3)



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.



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: Special Facilities Director
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.

EXHIBIT "C"

(3 of 3)



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.

ENTERTAINMENT CONTRACTOR AGREEMENT FOR PALM BEACH COUNTY PARKS & RECREATION DEPARTMENT

THIS ENTERTAINMENT CONTRACTOR AGREEMENT, hereinafter referred to as the "Agreement," is made and entered into on APRIL 5, 2016, 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 Chase Stites, an Individual, authorized to conduct business in the State of Florida, hereinafter referred to as "CONTRACTOR".

WITNESSETH:

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

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

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

1. **Term:** This Agreement is effective Wednesday, April 20, 2016, at 5:00 PM, the date and time CONTRACTOR is scheduled to arrive at the event venue, and will terminate Wednesday, April 20, 2016, at 10:00 PM, the date and time CONTRACTOR is scheduled to depart the event venue.
2. **Amphitheater:** The event venue is Sunset Cove Amphitheater, hereinafter referred to as "Amphitheater", together with such amenities, equipment, and appurtenances as may be made available by COUNTY, in its sole discretion, all as more particularly described on the Amphitheater Designation Form, attached hereto as **Exhibit "A"**.
3. **Event:** The entertainment production to be presented at the Amphitheater is an event promoted as: Family Nights with Food Truck Invasion, hereinafter referred to as "Event", for which COUNTY hires CONTRACTOR to produce, stage, and perform, and when applicable including securing the Event's entertainment talent: Chase Stites, hereinafter referred to as "Entertainment".

If applicable, the sound check and/or warm-up for all Event Entertainment will begin at 5:00 PM and will conclude no later than 6:30 PM, which is no less than Thirty (30) minutes prior to time the Event is scheduled to begin.

The Event's Entertainment will begin performing at 7:00 PM and will conclude at 9:00 PM.

The performance will consist of Two (2) set(s) of Fifty Five (55) minutes per set.

If usual and customary for the type of entertainment production and/or the length of time Entertainment is scheduled to perform, the production may include One (1) intermission, of Ten (10) minutes.

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

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

4. **Payment:** The total amount payable by COUNTY to CONTRACTOR for the Event Entertainment is Three Hundred dollars (\$300.00) to be paid upon conclusion of the Event and verification that CONTRACTOR's entertainment production obligations have been completed as required herein.

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

In such event, COUNTY will remit to CONTRACTOR Zero percent (0%) of said total amount payable within Fourteen (14) days following the signing of this Agreement by COUNTY. The remaining balance of the total amount payable will be paid upon conclusion of the Event and verification that CONTRACTOR's entertainment production obligations have been completed as required herein.

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

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

7. **Performance:**

a. CONTRACTOR agrees to:

1. **use** the Amphitheater solely for the purpose for which this Agreement is entered into;
2. **accept** the Amphitheater and all equipment and improvements related to the Event in the condition existing as of the effective date of this Agreement;
3. **accept** the amount of payment defined above as full and final payment without further expectation for reimbursement of any expenses related to this Agreement;
4. **waive** any and all claims for compensation for any and all losses or damages sustained due to failure or malfunction of the Amphitheater's water or electrical power supplies;

5. **adhere** to the directives of the Department's representatives including, but not limited to, proper use and handling of COUNTY owned equipment, assignment of designated parking areas, locations for offloading and staging production equipment, and acceptable noise levels;
6. **prohibit** any activity or material related to the Event that may be considered contrary to community standards of appropriateness, including the use of profanity, obscene language, or lewd gestures, which will result in COUNTY's withholding of payment and denial of future entertainment contracting opportunities;
7. **assure** that all persons under CONTRACTOR's control conduct themselves in a socially acceptable manner including prohibiting the consumption of alcohol or illegal drugs on Amphitheater premises;
8. **obtain** the Department's written approval prior to the use of any type of pyrotechnics;
9. **obtain** the Department's written approval prior to operating any engine, motor or machinery or using any flammable agents, including but not limited to oils, camphene, kerosene, naphtha, or gasoline; with the exception of generators that have been approved by the Department's representative.
10. **assume** full responsibility for obtaining all licenses and permits required by Copyright Regulations of Title 17 of the United States Code, and agree to indemnify COUNTY and its agents for any expenses incurred as a result of CONTRACTOR's failure to obtain such licenses or permits, including, but not limited to, fines or damages collected against COUNTY or COUNTY's agents, any attorney's fees and court costs, and for any expenses incurred as a result of CONTRACTOR's failure to otherwise satisfy such regulations;
11. **identify**, as part of Event Scope and Detail, attached hereto as **Exhibit "B"**, any and all required specialty certifications, licenses and / or memberships applicable to the event;
12. **deliver** to the Department, no later than forty-eight (48) hours prior to the Event, a copy of those certain specialty certifications, licenses and / or memberships referenced above, all of which will be retained by the Department;
13. **acknowledge** that failure to deliver the required documentation referenced above may result in immediate termination of this Agreement and the return to COUNTY, within four (4) days following such termination, any percentage payment that may have been made to CONTRACTOR and forfeiture of the payment balance;
14. **remove** all equipment and materials owned by CONTRACTOR and Entertainment no later than the termination date and time specified in Article 1 above;
15. **return** the Amphitheater and all equipment and improvements related to the Event to the condition existing as of the effective date and time specified in Article 1 above;
16. **hold** COUNTY harmless for the sale or disposal of any equipment and materials considered to be abandoned due to CONTRACTOR's or Entertainment's failure to remove same from the Amphitheater premises by the specified termination date and time and pay the cost of such removal and disposal upon receipt of COUNTY's invoice; and

17. **comply** with all Amphitheater rules and regulations and adhere to all federal, state and local laws and regulations, including Palm Beach County Code, Chapter 21, as may be amended, pertaining to Parks and Recreation, and Department standard operating procedures as all such laws, regulations, ordinances, and procedures apply to CONTRACTOR's and Entertainment's use of the Amphitheater.

b. COUNTY agrees to:

1. **promote** the Event;
 2. **deliver** the Amphitheater and associated premises in a safe, clean, and orderly condition;
 3. **assign** sufficient staff to provide logistical support and oversee all aspects of the Event including authority to make final decisions and issue directives on behalf of COUNTY;
 4. **provide** support services including law enforcement, technical staff and skilled maintenance as may be determined necessary by the Department;
 5. **retain** control of the Amphitheater and all operations conducted on the Amphitheater premises including enforcement of all laws, rules, regulations pertaining to the safety and wellbeing of the public; and
 6. **collect** and dispose of any and all items either discarded or lost by patrons or others at the Event, without interference by CONTRACTOR or Entertainment or any person working for or on their behalf.
8. **Postponement or Cancellation of Event:** In the event emergency conditions arise which may affect public safety, the Event may be postponed or cancelled. Such emergency conditions include, but are not limited to, acts of God or issuance of an executive order indicating a state of general emergency. COUNTY, in its sole discretion, will determine the necessity to postpone or cancel the Event and will endeavor to provide CONTRACTOR at least four (4) hours notice of such postponement or cancellation prior to the Event start time specified in Article 3 above. Provided, however, COUNTY's notice of such postponement or cancellation may be given at anytime including during the Event performance.

In the event COUNTY cancels the Event due to any public safety concern or CONTRACTOR elects to cancel the Event's Entertainment rather than accept a delayed start time, the Term of this Agreement will be extended upon the same terms and conditions provided that within five (5) days following such occurrence, COUNTY and CONTRACTOR agree upon a rescheduled Event date and time. Such Term extension will be effective upon COUNTY's delivery to CONTRACTOR of a written notice specifying the agreed upon rescheduled Event date and time and detailing the circumstances leading to the Term extension.

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

9. **Cancellation, Rescheduling and Substitution of Entertainment:** In the event CONTRACTOR fails to perform or otherwise cancels the Event's Entertainment for any reason, including illness, at any time, the Term of this Agreement may be extended upon the same terms and conditions provided that within five (5)

days following such cancellation, COUNTY and CONTRACTOR agree upon a rescheduled Event date and time. Such Term extension will be effective upon COUNTY's delivery to CONTRACTOR of a written notice specifying the agreed upon rescheduled Event date and time and detailing the circumstances leading to the Term extension.

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

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

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

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

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

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

12. **Relationship of the Parties:** The CONTRACTOR is, and shall be, in the performance of all work services and activities under this Agreement, an Independent Contractor, and not an employee, agent, or servant of the COUNTY. All persons engaged in any of the work or services performed pursuant to this Agreement shall at all times, and in all places, be subject to the CONTRACTOR'S sole direction, supervision, and control. The CONTRACTOR shall exercise control over the means and manner in which it and its employees perform the work, and in all respects the CONTRACTOR'S relationship and the relationship of its employees to the COUNTY shall be that of an Independent Contractor and not as employees or agents of the COUNTY.

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

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

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

Name: Donald Perez Phone Number: (561) 966-7030.

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

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

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

purported performance of CONTRACTOR, or (vi) any breach of the terms of this Agreement. The obligations arising under this provision will survive the expiration or termination of this Agreement.

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

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

19. **Termination Upon Destruction or other Casualty:** In the event the Amphitheater or any part thereof is destroyed or damaged in whole or part, or if any other casualty or unforeseen occurrence renders the fulfillment of this Agreement impossible, as determined by COUNTY in its sole discretion, this Agreement will terminate effective upon COUNTY's delivery to CONTRACTOR of a written notice of termination. In the event of any such termination, this Agreement will terminate without further action or payment and CONTRACTOR will return to COUNTY, within four (4) days following such termination, any percentage payment that may have been made to CONTRACTOR. COUNTY will not be held liable for any lost profits or damages resulting from any such termination.
20. **COUNTY Not Liable:** All personal property placed on or moved onto the Amphitheater premises will be done so at the sole risk of CONTRACTOR or owner thereof and CONTRACTOR expressly acknowledges and agrees that COUNTY will not be liable for any damage to or loss of such personal property.
21. **Notices:** All notices required by this Agreement are to be hand delivered or sent by certified mail, return receipt requested to:

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

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

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

The Last Word
Attn: Chase Stites
1409 Lake Ave
Lake Worth FL 33460

5. **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 a court of competent jurisdiction located in Palm Beach County, Florida. 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.

No provision of this contract 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 contract, including but not limited to any citizen or employees of the COUNTY and/ or RENTER

6. **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.
7. **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.
8. **Arrears:** CONTRACTOR is not to pledge or attempt to pledge COUNTY's credit or make it a guarantor of payment or surety for any contract, debt, obligation, judgment, lien, or any form of indebtedness. CONTRACTOR further warrants and represents that it has no obligation or indebtedness that would impair its ability to fulfill the terms of this Agreement.
9. **Authorization:** This Agreement is executed by an individual legally authorized to fully bind CONTRACTOR to all terms and conditions of this Agreement.
10. **Public Entity Crimes:** As provided in F.S. 287.132-133, by entering into this Agreement or performing any work in furtherance hereof, CONTRACTOR certifies that it, its affiliates, suppliers, subcontractors and consultants who will perform hereunder, have not been placed on the convicted vendor list maintained by the State of Florida Department of Management Services within the thirty-six (36) months immediately preceding the date hereof. This notice is required by F.S. 287.133(3)(a).
11. **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.
12. **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.

13. **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.

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

CONTRACTOR 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 CONTRACTOR 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 CONTRACTOR will conform to the County's non-discrimination policy as provided in R-2014-1421, as amended.

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

16. **Criminal History Records Check:** If CONTRACTOR's employees or subcontractors are required under this contract to enter a "critical facility," as identified in Resolution R-2003-1274, the CONTRACTOR shall comply with the provisions of Chapter 2, Article IX of the Palm Beach County Code ("Criminal History Records Check" section). The CONTRACTOR acknowledges and agrees that all employees and subcontractors who are to enter a "critical facility" will be subject to a fingerprint based criminal history records check. Although COUNTY agrees to pay for all applicable FDLE/FBI fees required for criminal history record checks, the CONTRACTOR shall be solely responsible for the financial, schedule, and staffing implications associated in complying with this section of the Palm Beach County Code.

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

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

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

Pad By: *Eric Call*
Director / Assistant Director
Palm Beach County Parks and Recreation Department

**If Agreement Value
Exceeds \$10,000.00, But Not More Than \$50,000.00:**

County Administrator

By: _____

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

**COUNTY:
Board of County Commissioners**

By: _____
Mayor

**ATTEST:
Clerk & Comptroller**

Deputy Clerk

WITNESS

Joe Wilhelm
Signature
Joe Wilhelm
Print

CONTRACTOR – Chase Stites

By: *[Signature]*
Signature
CHASE STITES
Print
BAND LEADER
Title

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

County Attorney

Anne Helgert

EXHIBIT "A"

ENTERTAINMENT CONTRACTOR AGREEMENT

Amphitheater Designation Form

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



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

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



Viewing capacity for 2,500 – covered stage with light rigging – sound control room – three dressing rooms – green room – two private restrooms – prop room – costume room – air conditioned back stage – public restrooms detached

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



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

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

EXHIBIT "B"

(1 of 2)

ENTERTAINMENT CONTRACTOR AGREEMENT

Event Scope & Detail

Event Date: April 20, 2016

Event Name: Family Nights with Food Truck Invasion

Event Scope & Detail: Free community events open to the public providing concessions via Food Truck Invasion Inc. as well as County run event activities. Performance will consist of Chase Stites.

Specialty Certificates, Licenses, and Memberships:

Identify certificates, licenses, and memberships required pursuant to provision 7.a.11. of the Entertainment Contractor Agreement. Submit such documents with this *Event Scope & Detail* or indicate the date such documents will be delivered to the Department:

Not Required

EXHIBIT "B"
(2 of 2)

Amenities, Services & Equipment:

Provided By:

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

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

EXHIBIT "C"

(1 of 3)

ENTERTAINMENT SERVICES CONTRACTOR AGREEMENT

Insurance Requirements

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

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



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

☐

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

☐

Liquor Liability: if alcoholic beverages (including beer, wine, and spirits) are for sale at the event, the CONTRACTOR AND VENDOR shall maintain Liquor Liability coverage and the Certificate of Insurance must state that Liquor Liability coverage is included with a minimum limit of liability of **\$1,000,000** Each Occurrence. The policy **must not exclude** either Personal Injury/Advertising Injury, Damage to Rented Premises, or Products/Completed Operations.
If no admission or similar fee is charged at any type of event and alcoholic beverages are served at no charge, the Certificate of Insurance must state that Host Liquor Liability Coverage has been secured with a minimum limit of liability of **\$1,000,000** Each Occurrence.

☐

Participant Liability: CONTRACTOR shall maintain Participant Liability at a limit of liability not less than **\$25,000** Each Occurrence.

☐

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

☐

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

EXHIBIT "C"

(2 of 3)



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.



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."

AB

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.

EXHIBIT "C"

(3 of 3)



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.