

PALM BEACH COUNTY  
BOARD OF COUNTY COMMISSIONERS

AGENDA ITEM SUMMARY

Meeting Date: November 22, 2016

☒ Consent   ☐ Regular  
☐ Ordinance   ☐ Public Hearing

Department: Parks and Recreation

Submitted By: Parks and Recreation Department

Submitted For: Parks and Recreation Department

I. EXECUTIVE BRIEF

**Motion and Title:** Staff recommends motion to approve: a non-standard Amphitheater Rental Agreement with Hanart Culture LLC, for a Chinese Lantern Festival from January 10, 2017, through April 21, 2017, at Sunset Cove Amphitheater and its adjacent grounds within Burt Aaronson South County Regional Park.

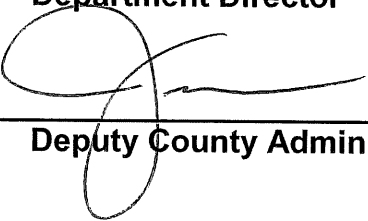
**Summary:** The Hanart Chinese Lantern Festival is an eight week festival highlighting large scale lighted Chinese lanterns. The festival operates at night illuminating the festival grounds in color. The theme of the festival will be world continents with lanterns depicting themes from around the world, inclusive of 30ft dragons, the Eiffel Tower, pandas and the Statue of Liberty. This festival has been successfully presented in Texas, North Carolina, Massachusetts, and Virginia. The Parks and Recreation Department (Department) utilizes a standard Amphitheater Rental Agreement which is executed at the Department level. However, non-standard Amphitheater Rental Agreements are sometimes required to satisfy the specific terms of a given renter. Hanart Culture LLC, and the Department request modifications to the approved standard Amphitheater Rental Agreement language which requires Board approval. The modifications clarify the responsibilities and expectations of the County and Hanart Culture LLC, for issues such as settlement of payment by week rather than by event day or conclusion of event, revenue percentage, deposit amounts and termination language. County revenues generated from the Lantern Festival are estimated at \$100,000 or greater. If successful in 2017, Hanart Culture LLC, would like to enter into a longer term agreement for subsequent years. This Agreement allows for Hanart Culture LLC, to set up for the event beginning January 10, 2017. The exhibit will be held February 17, 2017, through April 9, 2017, Wednesday through Sunday from 5:00 pm to 10:30 pm. District 5 (AH)

**Background and Justification:** The standard Amphitheater Rental Agreement is utilized in most instances for rental of County Amphitheaters and can be executed at the Department level. However, modifications to the approved standard agreement language are necessary to clarify specific terms and conditions with renter, Hanart Culture LLC, for an upcoming Lantern Festival at Burt Aaronson South County Regional Park, and the Sunset Cove Amphitheater. This non-standard Amphitheater Rental Agreement specifically clarifies the responsibilities and expectations of both the County and Hanart Culture LLC. This Agreement modifies the standard Termination clause by providing the Renter 30 days advance notice to allow for vacating the property. This Agreement changes the percentage rate of ticket sales from 10% to 7.5% in consideration of the number of event days the festival will take place. This Agreement also modifies the standard Amphitheater Rental Agreement to increase the Advance Deposit from \$3,500 to \$20,000 and increase the Damage Deposit from \$2,000 to \$10,000. This Agreement will begin on January 10, 2017, and continue through April 21, 2017. Board approval is required to move forward with this non-standard Amphitheater Rental Agreement.

**Attachment:** Non-standard Amphitheater Rental Agreement

Recommended by:   
Department Director

10/25/16  
Date

Approved by:   
Deputy County Administrator

11-15-16  
Date

## II. FISCAL IMPACT ANALYSIS

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

Fiscal Years	2017	2018	2019	2020	2021
Capital Expenditures	<u>-0-</u>	<u>-0-</u>	<u>-0-</u>	<u>-0-</u>	<u>-0-</u>
Operating Costs	<u>30,000</u>	<u>-0-</u>	<u>-0-</u>	<u>-0-</u>	<u>-0-</u>
External Revenues	<u>(100,000)</u>	<u>-0-</u>	<u>-0-</u>	<u>-0-</u>	<u>-0-</u>
Program Income (County)	<u>-0-</u>	<u>-0-</u>	<u>-0-</u>	<u>-0-</u>	<u>-0-</u>
In-Kind Match (County)	<u>-0-</u>	<u>-0-</u>	<u>-0-</u>	<u>-0-</u>	<u>-0-</u>
<b>NET FISCAL IMPACT</b>	<b><u>*(70,000)</u></b>	<b><u>-0-</u></b>	<b><u>-0-</u></b>	<b><u>-0-</u></b>	<b><u>-0-</u></b>
<b># ADDITIONAL FTE POSITIONS (Cumulative)</b>	<b><u>0</u></b>	<b><u>0</u></b>	<b><u>0</u></b>	<b><u>0</u></b>	<b><u>0</u></b>

Is Item Included in Current Budget? Yes \_\_\_\_\_ No X  
 Budget Account No.: Fund 0001 Department 580 Unit 5207  
 Object various /Revenue various Program \_\_\_\_\_

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

Renter	Revenue	Expense
Hanart Culture	\$100,000	\$30,000

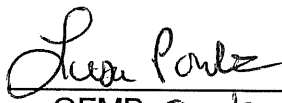
\* Estimated net fiscal impact for this agreement is \$70,000. Actual revenue and operating costs will be determined at the termination of the agreement.

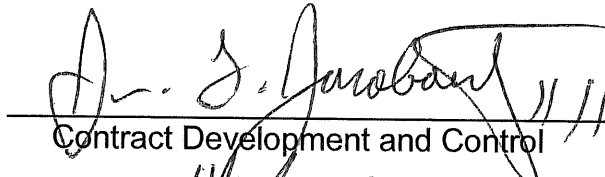
### C. Departmental Fiscal Review:



## III. REVIEW COMMENTS

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

 11/2/14  
 OFMB 2/10/31 EP 11/2

 11/10/16  
 Contract Development and Control 11/10/16

### B. Legal Sufficiency:

 11-15-16  
 Assistant County Attorney

### C. Other Department Review:

\_\_\_\_\_  
 Department Director

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

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

**THIS AMPHITHEATER RENTAL AGREEMENT**, hereinafter referred to as the "Agreement," is made and entered into on \_\_\_\_\_, 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 HANART CULTURE LLC, a Foreign LLC, authorized to conduct business in the State of Florida, hereinafter referred to as "RENTER".

**WITNESSETH:**

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

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

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

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

1. **Term:** This Agreement is effective January 10, 2017, at 8:00 Am, the date and time RENTER enters the amphitheater property, and will terminate April 21, 2017, at 8:00 Pm, the date and time RENTER is to complete vacating the amphitheater property.

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

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

2. **Amphitheater:** The amphitheater available for use by RENTER is Sunset Cove Amphitheater and Grounds, hereinafter referred to as "Amphitheater", together with certain equipment, improvements, and appurtenances thereto all as more particularly described on the Rental Selection Form, attached hereto as **Exhibit "A"**.
3. **Use:** The purpose for which RENTER is granted use of the Amphitheater is specifically limited to the production and conduct of a certain event promoted as: Chinese Lantern Festival, as hereinafter referred to as "Event". The scope and detail of the Event is more particularly described on the Rental Scope and Detail, attached hereto as **Exhibit "B"**.

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



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

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

- a. **Non-Refundable Booking Deposit:** **\$20,000.00**, to be paid at the time the Amphitheater rental date is confirmed, amount is credited to the Pre/Post Rental Settlement, attached hereto as **Exhibit "C"**.
- b. **Presettlement:** Fourteen (14) days prior to Event, RENTER shall make payment to COUNTY in accordance with the Pre/Post Rental Settlement form provided by COUNTY. Such Presettlement payment shall be credited to the Pre/Post Rental Settlement RENTER is required to pay immediately following the Event. Any additional charges that accrue after Presettlement payment of the Pre/Post Rental Settlement shall be due immediately following Event.
- c. **Amphitheater Rental:** The greater of, **\$20,000.00**, or 7.5% of the adjusted gross ticket sales up to **\$500,000.00** the amount of which is applied to the Pre/Post Rental Settlement balance and paid by April 12, 2017.

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

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

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

5. **Termination:** In addition to the cancellation rights provided in Article 8 below, COUNTY reserves the right to terminate this Agreement without cause upon thirty (30) days written notice of termination to RENTER. In such event, COUNTY will not be held liable for any lost profits or damages resulting from such termination. The Department will not unreasonably limit the time necessary for RENTER to vacate the Amphitheater premises. Additionally, in the event of such termination, RENTER's Booking Deposit will be refunded within forty-five (45) days following the date of termination together with any other fees and charges paid by RENTER.

6. **Performance:**

a. RENTER agrees to:

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



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

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



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

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

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

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

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

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

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

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



13. **No Assignment or Brokerage:** RENTER may not assign any rights, responsibilities, or obligations under this Agreement nor act as an agent or broker for the renting of the Amphitheater. Any attempt to re-let the Amphitheater is a material breach of this Agreement and cause for immediate termination.
14. **Department Representative:** The Department's authorized representative for this Agreement is:  
Name: Andrew Holzinger Phone Number: 561-966-7047
15. **Insurance Requirements:** It is the responsibility of RENTER to provide proof of the required insurance coverages specified on Insurance Requirements, attached hereto as **Exhibit "D"**.  
  
Such proof of insurance must be provided to the Department's authorized representative prior to the execution of this Agreement or no later than ten (10) days prior to the effective date hereof, at the COUNTY's discretion.
16. **Indemnification:** RENTER agrees to protect, defend, reimburse, indemnify and hold COUNTY, its agents, employees and elected officers free and harmless at all times from and against any and all claims, liability, expenses, losses, costs, fines and damages, including attorney's fees and costs at trial and appellate levels, and causes of action of every kind and character arising out of this Agreement or RENTER's use and occupancy of the Amphitheater. Such causes of action include, without limitation, those arising by reason of; (i) any damage to property or the environment, (ii) bodily injury, including death, incurred or sustained by any party hereto, any agent or employee of any party hereto, and any third or other party whosoever, (iii) the condition of the Amphitheater existing at the effective date of this Agreement, (iv) RENTER's acts, omissions or operations hereunder, (v) the performance, non-performance or purported performance of RENTER, or (vi) any breach of the terms of this Agreement. The obligations arising under this provision will survive the expiration or termination of this Agreement.
17. **Damage or Destruction of Amphitheater:** RENTER hereby assumes full responsibility for the character, acts, and conduct of all persons admitted to the Amphitheater by or with the actual or constructive consent of any person acting for or on behalf of RENTER. If the Amphitheater, or any part thereof, during the Term of this Agreement, is damaged by the act, default, or negligence of RENTER, or of RENTER's members, agents, employees, officers, representatives, guests, invitees, contractors, or any person whomsoever, RENTER is to immediately restore the Amphitheater, at its sole cost and expense, to the condition existing prior to such damage as determined by COUNTY. If RENTER fails to restore the Amphitheater in the timely manner prescribed by COUNTY, such restoration will be completed by COUNTY and RENTER assumes responsibility for payment of all such costs, plus twenty-five percent (25%) administrative overhead. Such restoration cost, plus the administrative cost, constitutes additional rent which is due and payable upon receipt of invoice.

Additionally, RENTER is prohibited from defacing the Amphitheater in any way including using nails, hooks, tacks, screws or any other fastening device. RENTER is also prohibited from painting any areas of the Amphitheater or painting any items including personal property anywhere on the Amphitheater premises. No signs, advertisements, show-bills, lithographs, posters, placards or any other such items are to be posted or

otherwise displayed anywhere on the Amphitheater premises without the express consent of the Department's authorized representative. Any such unapproved items will be immediately removed at the sole cost and expense of RENTER.

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

COUNTY:

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

RENTER:

Hanart Culture LLC  
Attn: Ziwen Zhao  
6750 N Andrews Avenue, Suite 200  
Fort Lauderdale, FL, 33309

21. **Remedies:** This Agreement shall be governed by the laws of the State of Florida. Any legal action necessary to enforce the Agreement will be held in 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

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

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



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

(REMAINDER OF PAGE INTENTIONALLY LEFT BLANK)

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

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

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

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

County Administrator

By: \_\_\_\_\_

If Agreement Value  
Exceeds \$50,000.00:


COUNTY:  
Board of County Commissioners

By: \_\_\_\_\_  
Mayor

**ATTEST:**  
Clerk & Comptroller

\_\_\_\_\_  
Deputy Clerk

**WITNESS**


  
Signature \_\_\_\_\_ Date \_\_\_\_\_  
ANDREW HOVSLEN  
Print

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

County Attorney

\_\_\_\_\_

**RENTER – HANART CULTURE LLC**

By:  Oct. 19, 2016  
Signature \_\_\_\_\_ Date \_\_\_\_\_  
Ziwen Zhao  
Print  
Principal  
Title

## EXHIBIT "A"

### AMPHITHEATER RENTAL AGREEMENT

#### ***Rental Selection 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. The use of additional grounds around the amphitheatre raises the overall event area capacity to 10,000.

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



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

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



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

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



## EXHIBIT "B"

### AMPHITHEATER RENTAL AGREEMENT

#### ***Rental Scope & Detail***

Event Name: Chinese Lantern Festival

Rental to include:

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

Event scope and detail: Chinese Lantern festival is an outdoor art exhibit of structures located on land and lake shore waters. The festival will also have stage performances, merchandising, food, beverage and Alcohol for sale. Admission is required for entrance to each night. Festival is to begin loading on to site, on January 10, 2017. Exhibit to be held from February 17, 2017 through April 9, 2017 every Wednesday, Thursday, Friday, Saturday and Sunday from 5:00PM to 10:30PM. Site to be secured and vacated each night by 11:30 PM. Site to be cleared of all event logistics and property, by end of contract, April 21, 2017, 8:00 PM.

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

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

EXHIBIT "B-1"  
(1 of 2)

AMPHITHEATER RENTAL AGREEMENT  
*Rental Scope & Detail*

Specialty Certificates, Licenses, and Memberships:

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

Amenities, Services & Equipment:

Procured By RENTER:

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

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

EXHIBIT "B-1"  
(2 of 2)

Amenities, Services & Equipment - continued:

Procured By:

Paid By:

N/A	COUNTY	RENTER		COUNTY *	RENTER
<input type="checkbox"/>		<input type="checkbox"/>	Dumpster		<input type="checkbox"/>
<input type="checkbox"/>		<input type="checkbox"/>	MOT		<input type="checkbox"/>
<input type="checkbox"/>			Electrician		
<input type="checkbox"/>		<input type="checkbox"/>	Plumber		<input type="checkbox"/>
<input type="checkbox"/>	<input type="checkbox"/>		Sound Technician	<input type="checkbox"/>	
<input type="checkbox"/>	<input type="checkbox"/>		Tents	<input type="checkbox"/>	
<input type="checkbox"/>	<input type="checkbox"/>		Tables	<input type="checkbox"/>	
<input type="checkbox"/>	<input type="checkbox"/>		Chairs	<input type="checkbox"/>	
	<input type="checkbox"/>	<input type="checkbox"/>	Portolets	<input type="checkbox"/>	<input type="checkbox"/>
<input type="checkbox"/>	<input type="checkbox"/>		Light Towers	<input type="checkbox"/>	
	<input type="checkbox"/>	<input type="checkbox"/>	Message Board	<input type="checkbox"/>	<input type="checkbox"/>
<input type="checkbox"/>	<input type="checkbox"/>		Event Parking Crew	<input type="checkbox"/>	
<input type="checkbox"/>	<input type="checkbox"/>		Event Security Crew	<input type="checkbox"/>	
	<input type="checkbox"/>	<input type="checkbox"/>	Fireworks / Pyrotechnics <sup>†</sup>	<input type="checkbox"/>	<input type="checkbox"/>
<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>		<input type="checkbox"/>	<input type="checkbox"/>
<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>		<input type="checkbox"/>	<input type="checkbox"/>

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

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

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



**EXHIBIT "C"**

**AMPHITHEATER RENTAL AGREEMENT**

***Pre/Post Rental Settlement***

**EXAMPLE...**

	Gross Ticket Sales	7.5%	Applied Advance Deposit	Amount Due	Date Due	Advance Deposit Balance
Advance Deposit	NA	NA	NA	\$10,000	12/1/16	\$10,000
Damage Deposit	NA	NA	NA	\$10,000	12/28/16	NA
Advance Deposit	NA	NA	NA	\$10,000	12/28/16	\$20,000
Week 1 2/17-19			-\$2,500		2/22/17	\$17,500
Week 2 2/22-26			-\$2,500		3/1/17	\$15,000
Week 3 3/1-5			-\$2,500		3/8/17	\$12,500
Week 4 3/8-12			-\$2,500		3/15/17	\$10,000
Week 5 3/15-19			-\$2,500		3/22/17	\$7,500
Week 6 3/22-26			-\$2,500		3/29/17	\$5,000
Week 7 3/29- 4/2			-\$2,500		4/5/17	\$2,500
Week 8 4/5-4/9			-\$2,500		4/12/17	\$0
Return of Damage Deposit	NA	NA	NA	To Be Determined By 5/1/17	Balance Issued By 7/10/17	NA

## EXHIBIT "D"

(1 of 2)

### AMPHITHEATER RENTAL AGREEMENT

### ***Insurance Requirements***

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

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

☐

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



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



**Auto Liability:** RENTER 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 RENTER owns no automobiles, the Business Auto Liability requirement shall be amended allowing RENTER 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.



## EXHIBIT "D"

(2 of 3)



**Professional Liability:** RENTER 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 RENTER's most recent annual report or audited financial statement. For policies written on a "Claims-Made" basis, RENTER 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, RENTER 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:** RENTER hereby waives any and all rights of Subrogation against the COUNTY, its officers, employees and agents for each required policy. When required by the insurer, or should a policy condition not permit an insured to enter into a pre-loss agreement to waive subrogation without an endorsement, then RENTER shall notify the insurer and request the policy be endorsed with a Waiver of Transfer of Rights of Recovery Against Others, or its equivalent. This Waiver of Subrogation requirement shall not apply to any policy which includes a condition to the policy specifically prohibiting such an endorsement or voids coverage should RENTER enter into such an agreement on a pre-loss basis.



**Certificates of Insurance:** Prior to execution of the Agreement, the RENTER 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 RENTER shall provide this evidence to the COUNTY prior to the expiration date of any such insurance required herein. Such Certificate(s) of Insurance shall include 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



## EXHIBIT "D"

(3 of 3)



**Umbrella or Excess Liability:** If necessary, RENTER 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.