

II. FISCAL IMPACT ANALYSIS

A. Five Year Summary of Fiscal Impact:

Fiscal Years	2023	2024	2025	2026	2027
Capital Expenditures	_____	_____	_____	_____	_____
Operating Costs	_____	_____	_____	_____	_____
External Revenues	_____	_____	_____	_____	_____
Program Income (County)	_____	_____	_____	_____	_____
In-Kind Match (County)	_____	_____	_____	_____	_____
NET FISCAL IMPACT	<u>-0-</u>	<u>-0-</u>	<u>-0-</u>	<u>-0-</u>	<u>-0-</u>
# ADDITIONAL FTE POSITIONS (Cumulative)	_____	_____	_____	_____	_____
Is Item Included in Current Budget:		Yes	<u>X</u>	No	_____
Does this item include use of federal funds?		Yes	_____	No	<u>X</u>

Budget Account No.: Fund 0001 Department 580 Unit 5206
 Revenue various / Object various Program _____

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

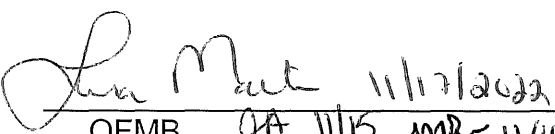

Contractor	FY2022	
	Revenue	Expense
American Cancer Society, Inc.	4,002	1,564
Totals	4,002	1,564

The revenue and expenses were recorded in FY2022.

C. Departmental Fiscal Review: 

III. REVIEW COMMENTS

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

<p><u></u> OFMB QA 11/15 AMB 11/16</p>	<p><u></u> Contract Development and Control</p>
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B. Legal Sufficiency:

Anne Helgert 11-22-22
 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 16th day of September, 2022, 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 American Cancer Society, Inc., a Foreign Not For Profit Corporation, authorized to conduct business in the State of Florida, hereinafter referred to as "RENTER".

WITNESSETH:

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

WHEREAS, COUNTY seeks to supplement the cost to improve and maintain said amphitheatres 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 Friday, October 14, 2022, at 11:00 AM, the date and time RENTER enters the amphitheater property, and will terminate Saturday, October 15, 2022, at 2:00 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, 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: Making Strides Against Breast Cancer Walk, 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: \$2,000.00, 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: .

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

In consideration of the fact that Amphitheater rental, fees, and charges are calculated as of the date of the Amphitheater rental and that all rental, fees, and charges are subject to adjustment, the amount of rental, fees,

and charges assessed at the time the Pre/Post Rental Settlement balance is calculated may differ from those in effect as of the date of this Agreement.

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

6. **Performance:**

a. RENTER agrees to:

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

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

4. **retain** control of the Amphitheater and all operations conducted on the Amphitheater premises including enforcement of all laws, rules and regulations pertaining to the safety and well-being of the public; and
 5. **collect** and dispose of any and all items either discarded or lost by patrons or others at an Amphitheater Event, without interference by RENTER or any person working for or on behalf of RENTER, the disposition of which may include retaining such items at a lost-and-found location.
7. **Postponement or Cancellation of Event:** In the event emergency conditions arise which may affect public safety, RENTER's use of the Amphitheater may be postponed or cancelled. Such emergency conditions include, but are not limited to, acts of God or issuance of an executive order indicating a state of general emergency. COUNTY, in its sole discretion, will determine the necessity to postpone or cancel RENTER's use of the Amphitheater and will endeavor to provide RENTER at least four (4) hours notice of such postponement or cancellation prior to Event's start time. Provided, however, COUNTY's notice of such postponement or cancellation may be given at anytime including during Event performance.

In the event COUNTY cancels RENTER's use of the Amphitheater due to any public safety concern, the Term of this Agreement will be extended upon the same terms and conditions provided that within five (5) business days following such cancellation, COUNTY and RENTER agree upon a rescheduled Event date. Such Term extension will be effective upon COUNTY's delivery to RENTER of a written notice specifying the agreed upon rescheduled Event date and detailing the circumstances leading to the Term extension.

8. **Cancellation for Cause:** The occurrence of any one or more of the following acts constitutes a material default and breach of this Agreement by RENTER and will result in cancellation of RENTER's use of the Amphitheater:
- RENTER elects to cancel Event rather than accept the delayed start time ordered by COUNTY due to a public safety concern;
 - RENTER fails to agree upon a rescheduled Event date within five (5) business days following COUNTY's cancellation of Event due to a public safety concern;
 - RENTER cancels use of the Amphitheater;
 - RENTER misrepresents its intended use of the Amphitheater including acting as a broker or agent by attempting to re-let the Amphitheater;
 - RENTER's use of the Amphitheater expands beyond the scope and purpose for which this Agreement is entered into;
 - RENTER provided materially false information relating to this Agreement;
 - Any person under the control of RENTER, including subcontractors, is responsible for purposely damaging the Amphitheater or any COUNTY owned equipment; or
 - Any person under the control of RENTER, including subcontractors, is guilty of gross misconduct or unlawful behavior while on the Amphitheater premises.

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

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

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

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

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

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

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

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

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

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

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: Special Facilities Director
2700 6th Avenue South
Lake Worth, Florida 33461

RENTER:

American Cancer Society, Inc.
Attn Lindsay Bennett
3380 Chastain Meadows Parkway, NW, Suite 200
Kennesaw, GA 30144

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.

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 five (5) years following completion or termination of this Agreement and agrees to produce such records for audit immediately upon receipt of COUNTY's notice.

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.

29. **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.
30. **Nondiscrimination:** The COUNTY is committed to assuring equal opportunity in the award of contracts and complies with all laws prohibiting discrimination. Pursuant to Palm Beach County Resolution R2017-1770, as may be amended, the RENTER warrants and represents that throughout the term of the Contract, including any renewals thereof, if applicable, all of its employees are treated equally during employment without regard to race, color, national origin, religion, ancestry, sex, age, familial status, marital status, sexual orientation, gender identity or expression, disability, or genetic information. Failure to meet this requirement shall be considered default of the Contract.

31. **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.

32. **Criminal History Records Check:** The RENTER, RENTER's employees, subcontractors of the RENTER and employees of subcontractors shall comply with Palm Beach County Code, Section 2-371 – 2-377, the Palm Beach County Criminal History Records Check Ordinance ("Ordinance"), for unescorted access to critical facilities ("Critical Facilities") or criminal justice information facilities ("CJI Facilities") as identified in Resolutions R2013-1470 and R2015-0572, as amended. The RENTER is solely responsible for the financial, schedule, and/or staffing implications of this Ordinance. Further, the RENTER acknowledges that its Contract price includes any and all direct or indirect costs associated with compliance with this Ordinance, except for the applicable FDLE/FBI fees that shall be paid by the COUNTY.

This Contract may include sites and/or buildings which have been designated as either "critical facilities" or "criminal justice information facilities" pursuant to the Ordinance and above referenced Resolutions, as amended. COUNTY staff representing the COUNTY department will contact the RENTER(S) and provide specific instructions for meeting the requirements of this Ordinance. Individuals passing the background check will be issued a badge. The RENTER shall make every effort to collect the badges of its employees and its subcontractors' employees upon conclusion of the contract and return them to the COUNTY. If the RENTER or its subcontractor(s) terminates an employee who has been issued a badge, the RENTER must notify the COUNTY within two (2) hours. At the time of termination, the RENTER shall retrieve the badge and shall return it to the COUNTY in a timely manner.

The COUNTY reserves the right to suspend the RENTER if the RENTER 1) does not comply with the requirements of County Code Section 2-371 – 2-377, as amended; 2) does not contact the COUNTY regarding a terminated RENTER employee or subcontractor employee within the stated time; or 3) fails to make a good faith effort in attempting to comply with the badge retrieval policy.

33. **Counterparts:** This Agreement, including the exhibits referenced herein, may be executed in one or more counterparts, all of which shall constitute collectively but one and the same Agreement. The COUNTY may execute the Agreement through electronic or manual means. RENTER shall execute by manual means only, unless the COUNTY provides otherwise.

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.

35. **E-verify – Employment Eligibility:** RENTER warrants and represents that it is in compliance with section 448.095, Florida Statutes, as may be amended, and that it: (1) is registered with the E-Verify System (E-

Verify.gov), and uses the E-Verify System to electronically verify the employment eligibility of all newly hired workers; and (2) has verified that all of RENTER's subcontractors performing the duties and obligations of this Agreement are registered with the E-Verify System, and uses the E-Verify System to electronically verify the employment eligibility of all newly hired workers.

RENTER shall obtain from each of its subcontractors an affidavit stating that the subcontractor does not employ, contract with, or subcontract with an Unauthorized Alien, as that term is defined in section 448.095(1)(k), Florida Statutes, as may be amended. RENTER shall maintain a copy of any such affidavit from a subcontractor for, at a minimum, the duration of the subcontract and any extension thereof. This provision shall not supersede any provision of this Agreement which requires a longer retention period.

COUNTY shall terminate this Agreement if it has a good faith belief that RENTER has knowingly violated Section 448.09(1), Florida Statutes, as may be amended. If COUNTY has a good faith belief that RENTER's subcontractor has knowingly violated section 448.09(1), Florida Statutes, as may be amended, COUNTY shall notify RENTER to terminate its contract with the subcontractor and RENTER shall immediately terminate its contract with the subcontractor. If COUNTY terminates this Agreement pursuant to the above, RENTER shall be barred from being awarded a future contract by COUNTY for a period of one (1) year from the date on which this Agreement was terminated. In the event of such contract termination, RENTER shall also be liable for any additional costs incurred by COUNTY as a result of the termination.

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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:**

By: *[Signature]* 9/10/22
Signature Date
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: _____
Signature Date

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

**COUNTY:
Board of County Commissioners**

By: _____
Mayor

**ATTEST:
Clerk of the Circuit Court & Comptroller**

Deputy Clerk

WITNESS

DocuSigned by:
Lindsay Bennett 9/7/2022
Signature Date
Lindsay Bennett
Print
Senior Development Manager

RENTER - American Cancer Society, Inc.

DocuSigned by:
Karen Knudsen 9/7/2022
Signature Date
Dr. Karen Knudsen
Print
Chief Executive Officer
Title

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

County Attorney

Anne Adelant 9/13/22
Signature Date

**APPROVED AS TO
TERMS & CONDITIONS:**

Division Director

[Signature] 9/15/22
Signature Date

EXHIBIT "A"

AMPHITHEATER RENTAL AGREEMENT

Rental Selection Form

- SUNSET COVE AMPHITHEATER:** Located in South County Regional Park
20405 Amphitheater Circle
Boca Raton



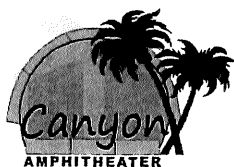
Seating for 6,000 – covered stage with rigging points – four dressing rooms – private restrooms – air conditioned back stage – covered vendor area with hook-up – public restrooms attached

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



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

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



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

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

EXHIBIT "B-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.13. of the Amphitheater Rental Agreement. Submit such documents with this *Rental Scope & Detail* or indicate the date such documents will be delivered to the Department:

Host Certificate of Insurance

Amenities, Services & Equipment:

Procured By RENTER:

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

Procured By:

Paid By:

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

EXHIBIT "B-1"
(2 of 2)

Amenities, Services & Equipment - continued:

Procured By:			Paid By:	
<u>N/A</u>	<u>COUNTY</u>	<u>RENTER</u>	<u>COUNTY *</u>	<u>RENTER</u>
<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/> Dumpster	<input type="checkbox"/>	<input checked="" type="checkbox"/>
<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/> MOT	<input type="checkbox"/>	<input checked="" type="checkbox"/>
<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/> Electrician	<input type="checkbox"/>	<input checked="" type="checkbox"/>
<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/> Plumber	<input type="checkbox"/>	<input type="checkbox"/>
<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/> Sound Technician	<input type="checkbox"/>	<input type="checkbox"/>
<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/> Tents	<input type="checkbox"/>	<input checked="" type="checkbox"/>
<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/> Tables	<input type="checkbox"/>	<input checked="" type="checkbox"/>
<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/> Chairs	<input type="checkbox"/>	<input type="checkbox"/>
<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/> Port-o-lets	<input type="checkbox"/>	<input checked="" type="checkbox"/>
<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/> Light Towers	<input type="checkbox"/>	<input checked="" type="checkbox"/>
<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/> Message Board	<input type="checkbox"/>	<input checked="" type="checkbox"/>
<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/> Event Parking Crew	<input type="checkbox"/>	<input checked="" type="checkbox"/>
<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/> Event Security Crew	<input type="checkbox"/>	<input checked="" type="checkbox"/>
<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/> Fireworks / Pyrotechnics †	<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.

† 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

PBC AMPHITHEATERS SETTLEMENT							
Event Name:			Event Date:			Event Venue:	
Reservation #:			Household:			Organization Name:	
Category	Description	Cost	Quantity	Total	Tax	Account Line	GL Code
Amphitheater Advance Deposit	Applicable towards final balance		0.00	\$0.00	N/A		
Facility Rental Fee*	Advance deposit minimum or applicable % of adjusted gross ticket sales,	Adjusted Gross Total \$0.00	0.00	\$0.00	\$0.00		
Load-in/ Out Fee*	\$250.00 per day	\$250.00	0	\$0.00	\$0.00		
Parks & Recreation Other Fees - Pavilion Rentals*	\$155.00 per day/ pavilion	\$155.00	0	\$0.00	\$0.00		
Parking Fee*	20% of parking fees collected	Total Parking Collected \$0.00	20% of Total Parking \$0.00	\$0.00	\$0.00		
Administrative Fee	\$250 - \$3,500	\$0.00	0	\$0.00	N/A		
Parks & Recreation Other Fees- Janitorial*	\$20.00 per/ hr	\$20.00	0	\$0.00	\$0.00		
Parks & Recreation Other Fees- Food Concession **	Select one		0	\$0.00	N/A		
	Select one		0	\$0.00	N/A		
Parks & Recreation Other Fees Concession Souvenirs*	Select one		0	\$0.00	\$0.00		
Parks & Recreation Other Fees	Production Services	\$650.00	0	\$0.00	\$0.00		
	Special Requests	\$250.00	0	\$0.00	\$0.00		
Parks & Recreation Other Fees	Dumpster	\$300.00	0	\$0.00	\$0.00		
	Light Tower	\$300.00	0	\$0.00	\$0.00		
	Portalet	\$76.00	0	\$0.00	\$0.00		
Parks & Recreation Fees - Other Law Enforcement Services*	Select one		0	\$0.00	\$0.00		
	Select one		0	\$0.00	\$0.00		
Parks & Recreation Other Fees/ Maintenance*	Parks Maintenance	\$16.50	0	\$0.00	\$0.00		
	Parks Electrician	\$51.00	0	\$0.00	\$0.00		
	Parks Plumber	\$16.50	0	\$0.00	\$0.00		
Parks/ Maintenance Materials**	Maintenance/ Materials	\$0.00	N/A	\$0.00	N/A		
Contributions/ Donations**	Contributions/ Donations	\$0.00	N/A	\$0.00	N/A		
Security Deposit**	(Not applicable toward balance) (Refundable pending final walkthrough)	\$500 - \$3000	N/A	\$0.00	N/A		
Tax		\$0.00	Date Paid				
Subtotal with Tax		\$0.00					
Advance Deposit		\$0.00				Renter	Date
Refundable Damage Deposit		\$0.00					
Pre Settlement Payment		\$0.00					
Balance Owed		\$0.00					
*Subject to sales Tax			Facility Manager			Date	
**Non-Taxable							

Payment Instructions : Please make all checks payable to Palm Beach Board of County Commissioners or "PBC-BOCC"

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.
- 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.

EXHIBIT "D"

(2 of 2)

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

