

RESOLUTION NO. 2018 – 3804

A RESOLUTION OF THE MAYOR AND THE CITY COUNCIL OF THE CITY OF MIAMI SPRINGS, FLORIDA, APPROVING A THEATRICAL SERVICES AGREEMENT WITH PELICAN PLAYHOUSE, INC.; PROVIDING FOR AUTHORIZATION; PROVIDING FOR IMPLEMENTATION; AND PROVIDING FOR AN EFFECTIVE DATE

WHEREAS, the City of Miami Springs (the “City”) Recreation Department is desirous of providing the widest variety of recreational and educational activities for citizens on a continuing basis; and

WHEREAS, Pelican Playhouse, Inc. (“Provider”) has provided theatrical productions and classes in the City for many years; and

WHEREAS, the City Council seeks to approve a Theatrical Services Agreement between the City and Provider, in substantially the form attached hereto as Exhibit “A” (“Agreement”), and authorize the City Manager to execute the Agreement and take action in furtherance hereof; and

WHEREAS, the City Council finds that this Resolution is in the best interest and welfare of the citizens of the City.

NOW, THEREFORE, BE IT RESOLVED BY THE MAYOR AND CITY COUNCIL OF THE CITY OF MIAMI SPRINGS, FLORIDA, AS FOLLOWS:

Section 1. Recitals. The above recitals are true and correct and are incorporated herein by this reference.

Section 2. Approval. The City Council hereby approves the Agreement with Provider in substantially the form attached hereto as Exhibit “A.”

Section 3. Authorization. The City Council hereby authorizes the City Manager to execute the Agreement with Provider, subject to approval by the City Attorney as to form, content, and legal sufficiency.

Section 4. Implementation. The City Council hereby authorizes the City Manager to take any action which is reasonably necessary to implement the purpose of this Resolution.

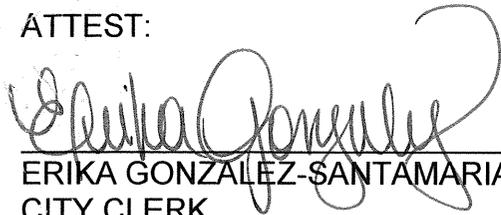
Section 5. Effective Date. This Resolution shall become effective immediately upon adoption.

The foregoing Resolution was offered by Councilman Best who moved its adoption. The motion was seconded by Councilwoman Mitchell and upon being put to a vote, the vote was as follows:

Vice Mayor Mara Zapata	<u>NO</u>
Councilman Bob Best	<u>YES</u>
Councilwoman Maria Puente Mitchell	<u>YES</u>
Councilman Jaime Petralanda	<u>YES</u>
Mayor Billy Bain	<u>YES</u>

PASSED AND ADOPTED this 27th day of August, 2018.

ATTEST:


ERIKA GONZALEZ-SANTAMARIA, MMG
CITY CLERK



APPROVED AS TO FORM AND LEGAL SUFFICIENCY
FOR THE USE AND RELIANCE OF THE CITY OF MIAMI SPRINGS ONLY:


WEISS SEROTA HELFMAN COLE & BIERMANN, P.L.
CITY ATTORNEY

EXHIBIT A

**THEATRICAL SERVICES AGREEMENT
BETWEEN
THE CITY OF MIAMI SPRINGS, FLORIDA
AND
PELICAN PLAYHOUSE, INC.
2018-2019**

**THEATRICAL SERVICES AGREEMENT
BETWEEN
THE CITY OF MIAMI SPRINGS, FLORIDA
AND
PELICAN PLAYHOUSE, INC.**

THIS AGREEMENT (“Agreement”) is entered into this _____ day of September, 2018 by and between the City of Miami Springs, Florida, a Florida Municipal Corporation, (“City”) and Pelican Playhouse, Inc., a Florida Corporation (“Provider”).

RECITALS:

WHEREAS, Provider has provided theatrical productions and classes in the City for many years; and

WHEREAS, the City is desirous of providing the widest variety of cultural, recreational, and educational activities for citizens on a continuing basis; and

WHEREAS, the City Council has reviewed and considered this Agreement and has determined that it is in the best interests of the City and its citizens to approve this Agreement.

NOW, THEREFORE, in consideration of the mutual covenants contained herein, the mutual sufficiency of which is hereby acknowledged, the parties hereby agree as follows:

Section 1. **Definitions.** The following words and phrases shall have the meaning set forth herein:

- a. “City” shall mean the City of Miami Springs, Florida.
- b. “Community Center” shall mean the building located at 1401 Westward Drive, Miami Springs, Florida 33166.
- c. “Miami Springs Service Organization” shall mean any private or public school or 501(c)(3) non-profit organization located within the City limits.
- d. “Premises” shall mean the Community Center, the Senior Center, and/or any other location that the Provider is authorized to use pursuant to this Agreement.
- e. “Provider” shall mean Pelican Playhouse, Inc., a Florida Corporation.
- f. “Senior Center” shall mean the building located at 343 Payne Drive, Miami Springs, Florida 33166.

Section 2. **Intent.** It is the intent of this Agreement for the City to permit and authorize the Provider to provide theatrical productions and theatrical classes for the City and its citizens while utilizing the theater facilities in the Premises.

Section 3. **Provider Services.** The Provider agrees to provide, at a minimum, the following services to the City (collectively, the “Services”):

- a. The services set forth in attached **Exhibit #1** for the production schedule for the term of this Agreement and other information related to the productions.

- b. Provide acting classes for all ages (14 weeks per session; 3 sessions a year).
- c. Supervise the use, storage and condition of all City furnishings, equipment and systems and advise of any noted defects or broken items.
- d. Organize and store all costumes, set pieces and props at the Community Center in the assigned areas designated on the sketch attached hereto as **Exhibit #2**. It is further agreed that all of the foregoing will be removed from the dressing room areas, with the exception of the “green room” area, prior to any use by any other group or production company. All areas must be properly cleaned, maintained and kept in a proper manner and order.
- e. Pay for all production costs for performances required by this Agreement.
- f. Perform all ticketing, promotion and advertising for all productions required by this Agreement and submit an accounting of all costs incurred and revenues received following each production.
- g. Consult with the City in regard to theater facility requirements in the Community Center.
- h. Research availability and pricing of theater supplies (curtains, lighting, seating, etc.)
- i. Maintain an on-line ticketing system.
- j. Maintain a website for notification and advertising of City entertainment events/productions and productions by the Provider and visiting companies.
- k. Provide an integrated marketing program to promote greater awareness of the Provider and Community Center.
- l. Recruitment of other visiting entertainment companies to perform at the theater in the Community Center.
- m. Provide supervision of visiting entertainment companies. Supervision shall include, but not be limited to, the following:
 - i. Procure set-up instructions and diagrams for stage, risers and chairs.
 - ii. Loading into the space when scheduled;
 - iii. Rehearsals when scheduled;
 - iv. Performances when scheduled;
 - v. Strike and load out when scheduled after completion of all performances.
- n. Provide to visiting entertainment companies technical support (lights, sound, box office) when visiting entertainment companies use theater.
- o. Provide training, support and supervision to City Staff when City uses theater and theater equipment for purposes other than Provider theatrical productions.
- p. Provide quarterly status reports on all theatrical activities conducted during the preceding quarter to the City Recreation Director on January 1, 2019, May 1, 2019, and September 30, 2019 for inclusion within the City Manager’s monthly update reports.
- q. Reports shall be provided to the City Recreation Director of any theatrical productions or other performances that have been denied permission to perform in the

Rebeca Sosa Theatre by the Provider due to a determination that the rating of “G” would be exceeded by the proposed production or performance. In addition, Provider shall provide a copy of the written Notice of Denial to the City Recreation Director to insure that each such notice contains a provision that advises that any denial of permission to perform in the theater is subject to the review of the City Council within thirty (30) days of receipt of the written denial notice from the Provider.

Section 4. **Provider’s Use of Premises.** The Parties agree that Provider shall have the following use of the Premises:

- a. Eighty-eight (88) days of use of the theater facility in the new Community Center for two (2) theatrical and one (1) summer recital productions and related activities.
- b. Twelve (12) additional days of use of the theater facility in the new Community Center for two (2) theatrical productions and related activities by visiting companies.
- c. Forty-two (42) days of either Saturday or Sunday use for production rehearsals at the Community Center.
- d. It is further understood and agreed that a more detailed schedule of use is provided in Exhibit #1 attached hereto, and that any additional use not provided herein, or in Exhibit #1, must be approved, in advance, by the City Manager, following receipt of reasonable prior notice of the additional requested use.
- e. The Parties acknowledge and agree that no keys or security codes to the Community Center will be provided to the Provider and that any “after hours” access to the facility must be requested at least twenty-four (24) hours in advance unless an emergency situation arises in which case only reasonable notice for access is required.
- f. Notwithstanding the foregoing, the City reserves the right to utilize the areas being provided to Provider upon reasonable advance notice for City-related or sponsored activities, so long as a suitable alternate location is provided.

Section 5. **City’s Services.** The City agrees to provide the following services to Provider in furtherance of this Agreement:

- a. Maintain the Community Center building and theater area contained therein.
- b. Provide the number of days set forth herein for Provider and visiting company use in the Community Center Theater.
- c. Pay for all required utility services.
- d. Maintain public liability and property damage insurance on all City owned facilities to be used by Provider.
- e. Maintain City owned theater equipment in proper condition (lights, microphones, soundboard, speakers, lightboard, stage risers, curtains, etc.) when advised of being broken or in defective condition by the Provider.
- f. Provide an internet connection for an online ticketing system.
- g. Provide adequate security during Provider use of the City facilities.

- h. Provide locations for the storage of equipment, costumes, set pieces and props. (See Exhibit #2 attached hereto for sketch of designated storage areas.)
- i. Arrange for the set-up and removal of stage, risers, and chairs for theatrical productions. Any changes made to the City's initial "set-up" will be charged to the party requesting the changes.
- j. Provide all initial required furnishings and equipment for theatrical productions by Provider (as set forth on **Exhibit #3** attached hereto). It is to be expressly understood that said furnishings and equipment may not be removed from the Community Center without the written authorization of the City Manager.
- k. Provide reimbursement to Provider for fees advanced on behalf of City to contractors providing special services (lighting, sound, etc.) for City programs, productions and other activities.

Section 6. Compensation. The Parties agree that:

- a. The City will pay Provider Twenty Four Thousand (\$24,000) Dollars for Services rendered to the City pursuant to this Agreement. The aforesaid amount shall be payable as follows: \$8,000.00 shall be paid on or December 1, 2018, \$8,000.00 shall be paid on or February 1, 2019, and \$8,000.00 shall be paid on or June 1, 2019.
- b. Provider may retain all funds received from ticket sales from its own theatrical productions and all acting class fees.
- c. Theatrical productions by visiting companies (which shall include concerts, dance recitals and other cultural arts programs and activities) and Miami Springs Service Organizations will be billed for the use of the City's facilities in accordance with the flat fee schedule attached hereto as **Exhibit #4**. The Provider will receive thirty (30%) percent of the flat fee amount charged to the visiting company by the City for the use of the theater facilities and the City shall retain seventy (70%) percent of the flat fee amount. Any fees charged to the visiting companies for lighting or sound services provided by Provider shall be entirely retained by the Provider.
- d. The City further agrees to disburse to the Provider the balance of the Five Thousand (\$5,000.00) Dollars budgeted in FY2018-2019 by the City for "equipment repairs" that remains unused as of September 30, 2019.

Section 7. Maintenance of Premises. Provider agrees to clean and maintain the Premises used for its Services so that it is returned to the City in the same condition as received. In the event that Provider does not comply with this section, Provider agrees to pay the City for the actual costs incurred in restoring the Premises following its use to the same or better condition as received.

Section 8. Tax-Exemption Status. In partial consideration of the execution of this Agreement by the City, the Provider agrees to maintain its current 501-C-3 status from the Federal Government, and to file all appropriate applications for county, state and federal grants for the benefit of the Provider and the City. The distribution of all grants received shall be

governed by the terms, conditions and requirements of the granting authority and the grant agreement required for the receipt of funding.

Section 9. Financial Records. In addition to any other requirement of this Agreement, the Provider shall be required to provide the City with copies of its annual financial statements and income tax returns prepared and/or filed during the term of this Agreement.

Section 10. Acceptance of Agreement. Provider hereby accepts this Agreement granted by the City upon the terms and conditions set forth herein.

Section 11. Term of Agreement. This Agreement shall be for a period of one (1) year beginning on October 1, 2018 and ending on September 30, 2019.

Section 12. Effective Date. The effective date of this Agreement shall be October 1, 2018 (“Effective Date”).

Section 13. Renewal of Agreement. This Agreement may be renewed upon the written, mutual consent and agreement of the parties hereto, after approval by the City Council by resolution.

Section 14. Termination of Agreement – Without Cause. This Agreement may be terminated by either party hereto, without cause, by providing the other party written notice thereof by certified mail, return receipt requested, or by hand delivery, to be effective thirty (30) days from receipt of said written notice.

Section 15. Termination of Agreement – With Cause. Notwithstanding anything to the contrary contained herein, the Parties mutually agree that this Agreement may be terminated by either party for cause. In accordance with the foregoing, if either party hereto is in violation of any of the terms, conditions, covenants, and provisions of this Agreement, the non-violating party shall give the violating party written notice of the claimed violation(s) and given thirty (30) days, from the receipt of said notice, in which to cure said violation(s). If the violation(s) are not cured within the curative periods provided herein, the non-violating party may then serve the violating party with a Termination for Cause Notice which shall terminate this Agreement between the parties upon receipt by the violating party. For the purposes of this provision, the following, although not intended to be a listing of all possible agreement violations, shall constitute violations of this Agreement, to-wit:

- a. Any acts, actions or omissions in violation of the terms, conditions, covenants, and provisions of this Agreement.
- b. Any failure to provide or file any required document, report or form.
- c. Any failure to abide by any rules, regulations, laws, statutes, ordinances or policies.
- d. Any actions that would jeopardize or threaten the validity or existence of any required license, permit or insurance coverage.
- e. The filing of any general assignment for the benefit of creditors.
- f. The filing of any voluntary or involuntary bankruptcy.
- g. The filing of any corporate liquidation, dissolution, or reorganization.
- h. The appointment of any trustee, receiver or liquidator.
- i. Any actions filed against a party hereto seeking any of the foregoing.

Section 16. **Insurance.** Provider shall secure and maintain throughout the duration of this Agreement insurance of such types and in such amounts not less than those specified below as satisfactory to the City, naming the City as an Additional Insured, underwritten by a firm rated A-X or better by A.M. Best and qualified to do business in the State of Florida. The insurance coverage shall be primary insurance with respect to the City, its officials, employees, agents and volunteers naming the City as additional insured. Any insurance maintained by the City shall be in excess of Provider's insurance and shall not contribute to Provider's insurance. The insurance coverage shall include at a minimum the amounts set forth in this Section and may be increased by the City as it deems necessary or prudent.

- a. **Commercial General Liability.** Provider shall secure and maintain Commercial General Liability coverage with limits of liability of not less than a \$1,000,000 per Occurrence combined single limit for Bodily Injury and Property Damage. This Liability Insurance shall also include Completed Operations and Product Liability coverage and eliminate the exclusion with respect to property under the care, custody and control of the City. The General Aggregate Liability limit and the Products/Completed Operations Liability Aggregate limit shall be in the amount of \$2,000,000 each.
- b. **Workers Compensation and Employer's Liability.** Provider shall secure and maintain Workers Compensation and Employer's Liability insurance, to apply for all employees for statutory limits as required by applicable State and Federal laws. The policy(ies) must include Employer's Liability with minimum limits of \$1,000,000.00 each accident. No employee, subcontractor or agent of Provider shall be allowed to provide services or act pursuant to this Agreement who is not covered by Worker's Compensation insurance.
- c. **Business Automobile Liability.** Provider shall secure and maintain Business Automobile Liability insurance with minimum limits of \$1,000,000 per Occurrence, combined single limit for Bodily Injury and Property Damage. Coverage must be afforded on a form no more restrictive than the latest edition of the Business Automobile Liability policy, without restrictive endorsements, as filed by the Insurance Service Office, and must include Owned, Hired, and Non-Owned Vehicles.
- d. **Certificate of Insurance.** Certificates of Insurance shall be provided to the City, reflecting the City as an Additional Insured (except with respect to Worker's Compensation Insurance), no later than ten (10) days prior to the Effective Date of this Agreement. Each certificate shall include no less than (30) thirty-days' advance written notice to City prior to cancellation, termination, or material alteration of said policies or insurance. Provider shall be responsible for assuring that the insurance certificates required by this Section remain in full force and effect for the duration of this Agreement, including any extensions or renewals that may be granted by the City. The Certificates of Insurance shall not only name the types of policy(ies) provided, but also shall refer specifically to this Agreement and shall state that such

insurance is as required by this Agreement. The City reserves the right to inspect and return a certified copy of such policies, upon written request by the City. If a policy is due to expire prior to the Effective Date of this Agreement, renewal Certificates of Insurance shall be furnished thirty (30) calendar days prior to the date of their policy expiration. Each policy certificate shall be endorsed with a provision that not less than thirty (30) calendar days' written notice shall be provided to the City before any policy or coverage is cancelled or restricted. Acceptance of the Certificate(s) is subject to approval of the City.

- e. **Additional Insured.** Except with respect to Worker's Compensation Insurance, the City is to be specifically included as an Additional Insured for the liability of the Provider resulting from the services performed by or on behalf of the Provider in performance of this Agreement. Provider's insurance, including that applicable to the City as an Additional Insured, shall apply on a primary basis and any other insurance maintained by the City shall be in excess of and shall not contribute to the Provider's insurance. Provider's insurance shall contain a severability of interest provision providing that, except with respect to the total limits of liability, the insurance shall apply to each Insured or Additional Insured (for applicable policies) in the same manner as if separate policies had been issued to each.
- f. **Deductibles.** All deductibles or self-insured retentions must be declared to and be reasonably approved by the City. Provider shall be responsible for the payment of any deductible or self-insured retention in the event of any claim.
- g. **Additional Insurance Requirements.** All visiting theatrical production companies shall be required to provide the City (and to name the City as an additional insured) with "special event" insurance coverage for each production performance, in an amount to be determined in advance by the City, which shall not be less than One Million (\$1,000,000) Dollars.
- h. **Survival.** The provisions of this section shall survive termination of this Agreement.

Section 17. Hold Harmless and Indemnification. In addition to the aforementioned required insurance coverage to be provided to the City, Provider, its agents, representatives, and all visiting production companies, including all their volunteers, employees, staff, representatives, officials and officers shall hold the City, including its officials, employees and representatives, harmless and indemnify it against all claims, demands, damages, actions, causes of actions, liability, costs, expenses, and attorney's fees arising out of, or resulting from, injury to or death of persons, or damage to or loss of property, sustained on or about the Premises, arising from the services, acts, actions, omissions or failures to act of Provider or of any of its employees, agents, representatives, invitees, guests, or any visiting production companies, including all their volunteers, employees, staff, representatives, officials and officers, invitees, or guests. Additionally, the protections provided by this provision shall also include any costs, expenses, or legal fees the City may incur in establishing that Provider or its insurer are responsible to provide protection, coverage, and representation to the City, its officials,

employees, and representatives for any incident that may occur during the term hereof. This section shall survive termination of this Agreement.

- a. **First Aid Indemnification.** Provider further releases the City and its officers, agents, employees, servants, representatives, and volunteers from any and all suits, liability, claims or judgment of any kind, including attorney's fees, and including without limitation, any claims by third parties, in any way concerning, relating to, arising out of, or in any manner connected with any first aid treatment or lack thereof, or any services rendered or lack thereof, for injuries or illnesses during participation in any activities contemplated by this Agreement. This section shall survive termination of this Agreement.

Section 18. Licensed or Registered Personnel. All services to be rendered by Provider pursuant to this Agreement, which are required by law to be performed by or under the direction of a duly-licensed or registered professional, shall be rendered in compliance with such requirements.

Section 19. Prohibited Activities and Compliance with Laws. Provider shall not use the Premises for any inappropriate or unlawful purpose and shall comply with all Federal, State, County and City laws, statutes, ordinances, policies, rules and regulations applicable now, or in the future, for the operation of the services required by this Agreement and use of the premises. Provider shall not permit any offensive, or dangerous activity, nor any nuisance or other conduct in violation of the public policy of the City, County, State, or Federal government on the Premises. Provider shall not use the premises for any purpose or activity regulated or prohibited by Chapter 132 of the Miami Springs Code of Ordinances or for any unlawful, immoral, unethical, or disruptive purpose and shall comply with all laws and permitted requirements applicable now, or in the future, to the operation of the Community Center or Senior Center premises. Provider shall not permit any offensive, noisy, or dangerous activity, nor any nuisance or other conduct in violation of any statute, law, ordinance, rule, regulation or policy of the City, county or state on the Community Center or Senior Center premises. Provider shall not permit any employees, representatives, subcontractors or volunteers, except Ralph Wakefield and Richard Reed, from using and operating the City's scissor lift machine. In addition, neither Wakefield nor Reed shall be permitted to use the scissor lift machine until executing a Release, Hold Harmless and Indemnity Agreement in favor of the City. Further, no special equipment, furnishings or theatrical props shall be allowed inside the Community Center without the prior approval of the City Manager or designee.

Section 20. Nondiscrimination. Provider represents and warrants to the City that it does not and will not engage in discriminatory practices and that there shall be no discrimination in connection with the performance of this Agreement on account of race, color, sex, religion, age, handicap, marital status or national origin. Provider further covenants that no otherwise qualified individual shall, solely by reason of his/her race, color, sex, religion, age, handicap, marital status or national origin, be excluded from participation in, be denied services, or be subject to discrimination under any provision of this Agreement.

Section 21. Drug-Free Workplace. The Provider agrees to operate a drug-free workplace and ensure that a drug-free workplace employee program is maintained for the term of this Agreement.

Section 22. Assignment. This Agreement shall not be assigned, in whole or in part, without the prior written consent of the City Manager, whose consent may be withheld or conditioned in the City Manager's sole and exclusive discretion.

Section 23. Independent Relationships. None of the provisions of this Agreement are intended to create nor shall they be deemed or construed to create any relationship between the City and Provider other than that of independent entities contracting with each other hereunder solely for the purpose of effecting the provisions of this Agreement. Neither of the Parties hereto, nor any of their respective employees shall be construed to be the employer, agent or representative of the other.

Section 24. Third Party Beneficiaries. Neither Provider nor the City intends to directly or substantially benefit a third party by this Agreement. Therefore, the Parties agree that there are no third party beneficiaries to this Agreement and that no third party shall be entitled to assert a claim against either of them based upon this Agreement.

Section 25. No Authority to Bind Municipality. Provider shall have no authority to contract for or legally bind the City with respect to any matter, including but not limited to the subject matter of this Agreement.

Section 26. Non-Exclusivity. This Agreement is considered a non-exclusive Agreement between the Parties. The City shall have the right to contract for the same or similar kind of services to be provided by the Provider from other sources at the Premises or other City-owned or leased facilities during the term of this Agreement. The Provider is not precluded from providing the same or similar services for other parties so long as such other engagements do not interfere with the Provider's provision of services to the City.

Section 27. Audit and Inspection Rights.

- a. The City may, at reasonable times, and for a period of up to three years following the termination of this Agreement, audit, or cause to be audited, those books and records of Provider that are related to Provider's performance under this Agreement. Provider agrees to maintain all such books and records at its principal place of business for a period of three years after final payment is made under this Agreement.
- b. The City may, at reasonable times during the term hereof, inspect Provider's facilities and perform such inspections as the City deems reasonably necessary to determine whether the services required to be provided by Provider under this Agreement conform to the terms of this Agreement. Provider shall make available to the City all reasonable facilities and assistance to facilitate the performance of inspections by the City's representative(s).

Section 28. Public Records. The Parties agree that they will comply with any and all requirements imposed upon them by Chapter 119, Florida Statutes, Florida's Public Records Act. Where the words "Contractor," "Public Agency," or "Contract" are used in this Section, they

shall be deemed to mean “Provider,” the “City,” and “Agreement,” respectively. The Contractor is required to comply with Florida’s public records law and specifically to:

- a. Keep and maintain public records required by the Public Agency to perform the service.
- b. Upon request from the Public Agency’s custodian of public records, provide the Public Agency with a copy of the requested records or allow the records to be inspected or copied within a reasonable time at a cost that does not exceed the cost provided in this chapter or as otherwise provided by law.
- c. Ensure that public records that are exempt or confidential and exempt from public records disclosure requirements are not disclosed except as authorized by law for the duration of the Contract term and following completion of the Contract if the Contractor does not transfer the records to the Public Agency.
- d. Upon completion of the Contract, transfer, at no cost, to the Public Agency all public records in possession of the Contractor or keep and maintain public records required by the Public Agency to perform the service. If the Contractor transfers all public records to the Public Agency upon completion of this Contract, the Contractor shall destroy any duplicate public records that are exempt or confidential and exempt from public records disclosure requirements. If the Contractor keeps and maintains public records upon completion of the Contract, the Contractor shall meet all applicable requirements for retaining public records. All records stored electronically must be provided to the Public Agency, upon request from the Public Agency’s custodian of public records, in a format that is compatible with the information technology systems of the Public Agency.
- e. **Public Records Disclosure Pursuant to Section 119.0701, Florida Statutes: IF THE CONTRACTOR HAS QUESTIONS REGARDING THE APPLICATION OF CHAPTER 119, FLORIDA STATUTES, TO THE CONTRACTOR’S DUTY TO PROVIDE PUBLIC RECORDS RELATING TO THIS CONTRACT, CONTACT THE CUSTODIAN OF PUBLIC RECORDS AT: CITY OF MIAMI SPRINGS, ATTN; CITY CLERK, 201 WESTWARD DRIVE, MIAMI SPRINGS, FLORIDA 33166, 305-805-5006.**

Section 29. Binding Effect. This Agreement shall be binding upon and enforceable against any successors of each respective party.

Section 30. Waiver. There shall be no waiver of any right related to this Agreement unless in writing and signed by the party waiving such right. No delay or failure to exercise a right under this Agreement shall impair such right or shall be construed to be a waiver of such right. Any waiver shall be limited to the particular right so waived and shall not be deemed a waiver of the same right at a later time or of any other right under this Agreement. Waiver by any party of any breach of any provision of this Agreement shall not be considered as or

constitute a continuing waiver or a waiver of any other breach of the same or any other provision of this Agreement.

Section 31. **Intent to be Legally Bound.** By signing this Agreement, the Parties confirm and state that they have carefully read the Agreement, that they know the contents thereof, that they fully expect to carry out each and every provision, and that they intend to be legally bound by the rights and obligations set forth herein.

Section 32. **Headings.** The headings for each section in this Agreement are for the purposes of reference only and shall not limit or otherwise affect the meaning of any provision.

Section 33. **Complete Agreement.** This document shall represent the complete agreement of the Parties. This document incorporates and includes all prior negotiations, correspondence, conversations, agreements or understandings applicable to the matters contained herein; and the Parties agree that there are no commitments, agreements or understandings concerning the subject matter of this Agreement that are not contained in this document. Accordingly, the Parties agree that no deviation from the terms hereof shall be predicated upon any prior representations or agreements, whether oral or written.

Section 34. **Amendments or Modifications.** Any amendment or modification to this Agreement must be in writing and duly executed by all Parties.

Section 35. **Severability.** The provisions of this Agreement are intended to be severable. If any provision of this Agreement shall be held to be invalid or unenforceable in whole or in part by a court of competent jurisdiction, such provision shall be ineffective to the extent of such invalidity or unenforceability without in any manner affecting the validity or enforceability of the remaining provisions of this Agreement.

Section 36. **Execution and Counterparts.** The Parties hereto will execute three originals. The Parties may execute this Agreement in any number of separate counterparts, each of which, when executed and delivered by the Parties hereto, shall have the same force and effect of an original. All such counterparts shall be deemed to constitute one and the same instrument.

Section 37. **Authority.** Each individual executing this Agreement represents that he or she has the authority to enter into this Agreement on behalf of him/her self or the Party that he or she represents, and where this Agreement is entered into on behalf of another, that he or she has the authority to do so and to bind that other person to the terms of this Agreement.

Section 38. **Governing Law and Venue.** This Agreement shall be governed by and construed in accordance with the laws of the State of Florida. Venue for any lawsuit by either party against the other party or otherwise arising out of this Agreement and for any other legal proceeding shall be in Miami-Dade County, Florida, or, in the event of federal jurisdiction, in the Southern District of Florida.

Section 39. **Waiver of Trial By Jury.** BY ENTERING INTO THIS AGREEMENT, THE CITY AND PROVIDER EXPRESSLY WAIVE ANY RIGHTS EITHER PARTY MAY HAVE TO A TRIAL BY JURY OF ANY CIVIL LITIGATION RELATED TO OR ARISING OUT OF THIS AGREEMENT.

Section 40. **Attorneys' Fees and Costs.** If the City or Provider incurs any expense in enforcing the terms of this Agreement through litigation, the prevailing party in that litigation shall be entitled to recover all such costs and expenses, including but not limited to court costs, and reasonable attorneys' fees incurred during litigation, including any trials and appeals.

Section 41. **Deadlines.** Whenever a deadline designated in this Agreement falls on a Saturday, Sunday, or Legal Holiday as defined in Section 683.01, Florida Statutes, as it may be amended from time to time, the deadline shall be extended to the next business day.

Section 42. **Calendar Days.** Unless otherwise stated, all references to "days" shall mean calendar days, not business days.

Section 43. **Time.** Time is of the essence as to each term of this Agreement.

Section 44. **Miscellaneous.**

- a. It is understood that Provider shall perform all services set forth herein in a good and workable manner. City reserves the right to terminate this Agreement for any reason at any time, including, but not limited to, Provider misconduct, insufficient number of participants, or unavailability of facilities. In the event of termination by the City, the Provider shall not be entitled to any damages and shall not be entitled to any compensation other than that earned prior to notification by the City that this Agreement has been terminated.
- b. Provider shall, without expense to the City, be responsible for obtaining any necessary licenses in connection with the services specified herein.
- c. Provider shall take proper safety and health precautions, including the employment of needed assistance, to protect guests, invitees, licensees, the City, and the public property of others. Provider shall be responsible for all Services performed until completion of this Agreement.

Section 45. **Notices.** All notices to be given hereunder shall be in writing and shall be deemed to have been given if sent by hand delivery, recognized overnight courier (such as Federal Express), or by certified U.S. mail, with return receipt requested, addressed to the party for whom it is intended, at the place specified. For the present, the Parties designate the following as the respective places for notice purposes:

- a. For the City of Miami Springs: City of Miami Springs, Attn: William Alonso, City Manager, 201 Westward Drive, Miami Springs, FL 33166
 - i. With a copy to the City Attorney: Daniel Espino, Esq., City Attorney, Weiss Serota Helfman Cole & Bierman, P.L., 2525 Ponce De Leon Boulevard, Suite 700, Coral Gables, FL 33143
- b. For Pelican Playhouse, Inc.: Pelican Playhouse, Inc., Attn: Ralph Wakefield, 255 Springs Avenue, Miami Springs, FL 33166

[THIS SPACE INTENTIONALLY LEFT BLANK. SIGNATURE PAGE FOLLOWS.]

IN WITNESS WHEREOF, the Parties hereto execute this Agreement as of the date first written above and affirm that they have the power to do so on behalf of the City of Miami Springs, Florida and Pelican Playhouse, Inc.

WITNESSES:

CITY OF MIAMI SPRINGS, FLORIDA

By: _____

Print Name: _____

By: _____

City Manager

By: _____

Print Name: _____

State of Florida
County of Miami-Dade

The foregoing instrument was acknowledged before me this _____ day of _____, 2018, by **William Alonso, as City Manager of the City of Miami Springs, Florida**, who is personally known to me or who has produced _____ as identification, and did take an oath.

Notary Commission

Notary Public, State of Florida

Approved as to form and legal sufficiency
for the sole use and benefit of the
City of Miami Springs, Florida:

By: _____

City Attorney
Weiss Serota Helfman Cole & Bierman, P.L.

WITNESSES:

PELICAN PLAYHOUSE, INC.

By: _____

Print Name: _____

By: _____

Ralph Wakefield, as its President

By: _____

Print Name: _____

State of Florida

County of Miami-Dade

The foregoing instrument was acknowledged before me this ____ day of _____, 2018, by **Ralph Wakefield as President of Pelican Playhouse, Inc.**, who is personally known to me or who has produced _____ as identification, and did take an oath.

Notary Commission

Notary Public, State of Florida