

Consent Agenda Item # C - 7

VILLAGE OF ROYAL PALM BEACH

Agenda Item Summary

**AGENDA ITEM:** APPROVAL AND AUTHORIZATION FOR THE VILLAGE MANAGER TO ENTER INTO AN AGREEMENT WITH THE PALM BEACH SHAKESPEARE FESTIVAL, INC. IN THE AMOUNT OF \$20,000.00 FOR THE PRODUCTION OF FOUR (4) PERFORMANCES OF SHAKESPEARE'S "KING LEAR" IN COMMONS PARK, JULY 25-28, 2024. (Strategic Plan G-3PA06)

**ISSUE:** In an effort to bring a variety of events into the Village along with promoting the arts, this could become the Village's signature event.

**RECOMMENDED ACTION:** Staff recommends approval.

Initiator:	Village Manager	Agenda	Village Council
Director of Parks and	Approval:	Date:	Action:
Recreation		6/20/24	

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## **INDEPENDENT CONTRACTOR AGREEMENT**

This Independent Contractor Agreement (hereinafter referred to as “Agreement”) is made this \_\_\_\_ day of \_\_\_\_\_, 2024 (hereinafter referred to as the “effective date”) between The Palm Beach Shakespeare Festival, Inc., a Florida not for profit corporation (hereinafter referred to as “Contractor”), whose address is 103 U.S. Highway 1, Suite F-5, Jupiter, Florida 33477 and the Village of Royal Palm Beach, Florida, a Florida municipal corporation (hereinafter referred to as “Village”), whose address is 1050 Royal Palm Beach Boulevard, Royal Palm Beach, Florida 33411.

### **WITNESSETH**

**WHEREAS**, the Village-desires to obtain specialized services or instruction for the public; and

**WHEREAS**, the Village Manager is authorized to secure such services from a qualified independent contractor; and

**WHEREAS**, the Village finds that Contractor possesses the necessary qualifications and ability to provide the services or instruction required by the Village.

**NOW THEREFORE**, in consideration of the mutual covenants, promises and conditions contained herein, and other good and valuable consideration, the parties hereto do covenant and agree as follows:

### **1. SERVICES**

The Village hereby retains the services of Contractor to provide services as set forth below. The Contractor shall obtain all required documents for such services and shall be required to provide proof prior to execution of this Agreement. Any employees, agents, subcontractors, or representative of the Contractor who will be asked to provide services to the Village on the Contractor’s behalf must provide proof of applicable certification/registration by the appropriate agency or affiliation and is subject to approval by the Village Manager.

Contractor shall perform the following services at the request of the Village Manager, or his designee:

- Provide all required services, personnel and equipment needed to produce a quality and successful production of Shakespeare’s “King Lear.”
- Provide four (4) performances of “King Lear” on the following dates: July 25, 26, 27 and 28, 2024 at Commons Park.
- Any funds received by the Contractor through donations, sponsors, etc. may be retained by the Contractor.

### **2. TERM**

The Term of this Agreement shall commence upon the \_\_\_\_ day of June, 2024 and shall continue through October 1, 2024, unless terminated earlier in accordance with Paragraph 4. This Agreement

may be renewed and extended for four (4) additional one-year terms for the same amount of compensation as stated below in Paragraph 3, upon mutual written agreement of both parties. Such renewal shall be in the form of a written addendum to the Agreement.

### **3. COMPENSATION**

The Village agrees to pay Contractor a total fee of Twenty Thousand Dollars (\$20,000.00) to be paid in two (2) equal installments of Ten Thousand Dollars (\$10,000.00), with the first installment due to Contractor prior to the first performance and the second installment due on the date of the last performance to Contractor for Contractor's services as provided herein. Contractor shall be responsible for the payment of all taxes and withholdings in connection with earnings. The Village will report fees earned by Contractor to the Internal Revenue Service on IRS Form 1099.

Contractor shall receive no other (than listed below) compensation or benefits from the Village. Contractor shall pay all of its own expenses incurred in performing the contract services except that the Village shall reimburse Contractor for expenses pre-approved in writing by the Village Manager.

### **4. TERMINATION**

Either party may termination this Agreement without cause upon thirty (30) days written notice to the other party.

The following shall constitute default by Contractor and give the Village the right to terminate this Agreement for cause:

A. Failing to perform the services required under this Agreement or failing to timely begin services herein.

Upon default by Contractor, the Village may terminate this Agreement immediately by providing written notice of such default. Contractor shall be paid for those services actually performed and approved by the Village Manager, or his designee, up to the time of termination.

### **5. RELATIONSHIP/INDEPENDENT CONTRACTOR STATUS**

The parties agree and acknowledge that the Contractor is an independent contractor and is not an employee or agent of the Village for any purpose. The programs/services/classes/activities are offered on an as-needed basis to the community at large and are not considered an integral part of the Village's normal government functions. The relationship between the Village and the Contractor is dependent on the programs/services/classes/activities offered by the Village at any given time and may be short-term or limited. It is understood and agreed that nothing contained in this Agreement shall be deemed or construed as creating any other business or employment relationship, partnership, joint venture, or other contractual relationship between the Contractor and the Village.

Neither the Contractor nor any agent, staff member, employee or substitute of the Contractor shall be entitled to any benefits accorded Village employees by virtue of the services provided under this Agreement. The Village shall not be responsible for withholding or otherwise deducting federal income tax or social security or for contributing to the state industrial insurance program, or otherwise assuming the duties of an employer with respect to the Contractor, or with respect to any agent, staff member, employee or substitute of the Contractor.

## **6. TAXES**

The Contractor is solely responsible for the reporting and payment of all pertinent federal, state, or local self-employment or income taxes, licensing fees, or any other taxes or assessments levied by governmental authorities on any earnings made as a result of the Contractor's independent contractor relationship with the Village.

The Contractor agrees to hold the Village harmless for the payment of any and all pertinent federal, state, or local self-employment or income taxes, or other assessments levied by governmental authorities on any earnings made as a result of the Contractor's independent contractor relationship with the Village.

In the event (1) that any state or federal governmental agency or court determines that the relationship between the Village and the Contractor is one of employment rather than that of an independent contractor, and (2) as a result of that determination, the Village is required to pay social security or unemployment compensation taxes, or any penalty associated with the Contractor's provision of work or services associated with this Agreement for any period of time prior to that determination, the Contractor agrees to reimburse the Village to the extent of any refund received by the Contractor of taxes previously paid by the Contractor as a result of that determination.

## **7. INSURANCE**

The Village is not liable for or responsible for the provision of workers' compensation or unemployment compensation insurance for the benefit of the Contractor or any of the Contractor's staff, employees, agents, or substitutes, if any.

The Contractor understands and agrees that the Village has not represented nor does it imply in any manner that the Contractor or the Contractor's agents, substitutes, employees and staff performing the program/service/class/activity as outlined in this Agreement is/are covered in any manner by the Village's Insurance Umbrella Policy or any other Village Insurance Policy.

The Contractor is responsible for providing any insurance that is deemed necessary by the Village for the provision of the program/service/class/activity outlined in this Agreement, and is responsible for naming the Village as an additional insured on any insurance policy as deemed necessary by the Village. Prior to commencing any program/service/class/activity under this Agreement, the Contractor shall ensure that it has provided the Village with all insurance, if any, required by the Village, and shall further ensure that the Village has approved such insurance.

## **8. INDEMNIFICATION**

The Contractor understands and agrees that, with regard to the Contractor's performance of any and all programs/services/classes/activities pursuant to this Agreement, the Contractor assumes full responsibility for its compliance with all federal, state, and local laws, rules, regulations, ordinances, directives, and guidelines, or any other laws which may govern or regulate such programs/services/classes/activities, the Contractor's status as a provider of such programs/services/classes/activities, and the Contractor's employment relationship with others.

The Contractor agrees, to the fullest extent permitted by law, to indemnify, save, hold harmless, and defend the Village, its officials, representatives, agents, servants, and employees from and against any and all claims, suits, demands, liabilities, losses, and/or causes of action, including all attorney's fees and court costs, including appeals, which may arise from any and all negligent acts, gross negligent acts, intentional, willful or wanton conduct, or omissions of the Contractor or the Contractor's agents, employees, staff or substitutes during the performance of the Contractor's services under this Agreement, except those claims, suits, demands, liabilities, losses and/or causes of action that are a direct result of Village or its agents, employees or staff's gross negligence or willful misconduct. Nothing contained in this Agreement shall be deemed a waiver of the Village's sovereign immunity as set forth in Section 768.28, Florida Statutes. This indemnification provision shall survive the termination or expiration of this Agreement.

## **9. INSPECTOR GENERAL**

Pursuant to Sec. 2-421–2-432 of the Palm Beach County Code of Ordinances, the Office of the Inspector General has jurisdiction to investigate municipal matters, review and audit municipal contracts and other transactions, and make reports and recommendations to municipal governing bodies based on such audits, reviews or investigations. All parties doing business with the Village shall fully cooperate with the Inspector General in the exercise of the inspector general's functions, authority and power. The Inspector General has the power to subpoena witnesses, administer oaths, require the production of records, and to audit, monitor, investigate and inspect the activities of the Village as well as contractors and lobbyists of the Village in order to ensure compliance with this Agreement, and to detect waste, corruption and fraud.

## **10. PUBLIC RECORDS**

In accordance with Sec. 119.0701, *Florida Statutes*, Contractor must keep and maintain this Agreement and any other records associated therewith and that are associated with the performance of the work described in the Proposal or Bid. Upon request from the Village's custodian of public records, Contractor must provide the Village with copies of requested records, or allow such records to be inspected or copied, within a reasonable time in accordance with access and cost requirements of Chapter 119, *Florida Statutes*. A Contractor who fails to provide the public records to the Village, or fails to make them available for inspection or copying, within a reasonable time may be subject to attorney's fees and costs pursuant to Sec. 119.0701, *Florida Statutes*, and other penalties pursuant to Sec. 119.10, *Florida Statutes*. Further, Contractor shall

ensure that any exempt or confidential records associated with this Agreement or associated with the performance of the work described in the Proposal or Bid are not disclosed except as authorized by law for the duration of the Agreement term, and following completion of the Agreement if the Contractor does not transfer the records to the Village. Finally, upon completion of the Agreement, Contractor shall transfer, at no cost to the Village, all public records in possession of the Contractor, or keep and maintain public records required by the Village. If the Contractor transfers all public records to the Village upon completion of the Agreement, 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 Agreement, the Contractor shall meet all applicable requirements for retaining public records. Records that are stored electronically must be provided to the Village, upon request from the Village's custodian of public records, in a format that is compatible with the Village's information technology systems.

**IF CONTRACTOR HAS QUESTIONS REGARDING THE APPLICATION OF CHAPTER 119, FLORIDA STATUTES, TO CONTRACTOR'S DUTY TO PROVIDE PUBLIC RECORDS RELATING TO THIS AGREEMENT, PLEASE CONTACT THE VILLAGE CLERK, RECORDS CUSTODIAN FOR THE VILLAGE, AT (561) 790-5100, OR AT [Ddisanto@RoyalPalmBeachFL.gov](mailto:Ddisanto@RoyalPalmBeachFL.gov), OR AT 1050 ROYAL PALM BEACH BLVD., ROYAL PALM BEACH, FLORIDA 33411.**

#### **11. E-VERIFY EMPLOYMENT ELIGIBILITY**

CONSULTANT warrants and represents that it is in compliance with Sec. 448.095, *Florida Statutes*. No later than January 1, 2021, CONSULTANT shall: (1) register with and use the E-Verify System (E-Verify.gov) to electronically verify the employment eligibility of all newly hired workers; and (2) verify that all of the CONSULTANT'S subconsultants performing the duties and obligations of this Agreement are registered with and use the E-Verify System to electronically verify the employment eligibility of all newly hired workers. CONSULTANT shall obtain from each of its subconsultants an affidavit stating that the subconsultant does not employ, contract with, or subcontract with an Unauthorized Alien, as that term is defined in Sec. 448.095(1)(k), *Florida Statutes*, as may be amended. CONSULTANT shall maintain a copy of any such affidavit from a subconsultant 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.

The VILLAGE shall terminate this Agreement if it has a good faith belief that CONSULTANT has knowingly violated Sec. 448.09(1), *Florida Statutes*, as may be amended.

If VILLAGE has a good faith belief that CONSULTANT'S subconsultant has knowingly violated Sec. 448.09(1), *Florida Statutes*, as may be amended, VILLAGE shall notify CONSULTANT to terminate its contract with the subconsultant and CONSULTANT shall immediately terminate its contract with the subconsultant.

## **12. PUBLIC ENTITIES CRIMES ACT**

As provided in Secs. 287.132-133, *Florida Statutes*, by entering into this Agreement or performing any work in furtherance hereof, the CONSULTANT 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 thirty-six (36) months immediately preceding the date hereof. This notice is required by Sec. 287.133(3)(a), *Florida Statutes*.

## **13. SCRUTINIZED COMPANIES**

For Contracts under \$1M, the CONSULTANT certifies that it is not on the Scrutinized Companies that Boycott Israel List created pursuant to Sec. 215.4725, *Florida Statutes*, and that it is not engaged in a boycott of Israel. The VILLAGE may terminate this Agreement at the VILLAGE'S option if the CONSULTANT is found to have submitted a false certification as provided under Sec. 287.135(5), *Florida Statutes*, if the CONSULTANT has been placed on the Scrutinized Companies that Boycott Israel List created pursuant to Sec. 215.4725, *Florida Statutes*, or if CONSULTANT is engaged in a boycott of Israel.

For Contracts over \$1M, the CONSULTANT certifies that it is not on the Scrutinized Companies with Activities in Sudan List, the Scrutinized Companies with Activities in the Iran Petroleum Energy Sector List, or the Scrutinized Companies that Boycott Israel List created pursuant to Sec. 215.4725, *Florida Statutes*. The CONSULTANT further certifies that it is not engaged in a boycott of Israel, and that it does not have business operations in Cuba or Syria, as similarly provided in Sec. 287.135, *Florida Statutes*. The VILLAGE may terminate this Agreement at the VILLAGE'S option if the CONSULTANT is found to have submitted a false certification as provided under Sec. 287.135(5), *Florida Statutes* or if the CONSULTANT has been placed on one of the aforementioned lists created pursuant to Sec. 215.4725, *Florida Statutes*. Additionally, the VILLAGE may terminate this Agreement at the VILLAGE'S option if the CONSULTANT is engaged in a boycott of Israel or has been engaged in business operations in Cuba or Syria, as defined in Sec. 287.135, *Florida Statutes*.

#### **14. COUNTERPARTS**

This Agreement may be executed in two or more counterparts, each of which shall be deemed an original, but all of which shall constitute the same agreement. A facsimile signature on a counterpart shall be acceptable and binding.

#### **15. ASSIGNMENT**

The services of Contractor are personal in nature. Accordingly, the Contractor shall not transfer or assign any of the services covered by this Agreement without the express prior written consent of the Village.

#### **16. NOTICES**

All notices and communications to the Village or Contractor shall be in writing and shall be deemed to have been properly given if transmitted by registered or certified mail or hand delivery or private delivery service. All notices and communications shall be effective upon receipt. Notices shall be addressed as follows:

Village:	Village of Royal Palm Beach 1050 Royal Palm Beach Blvd. Royal Palm Beach, Florida 33411 ATTN: Village Manager
Contractor:	The Palm Beach Shakespeare Festival, Inc. 103 U.S. Highway 1, Suite F-5 Jupiter, Florida 33477 Attn: Mary Elizabeth Dashiell, Registered Agent

#### **17. CONSTRUCTION AND SEVERABILITY**

The Village and the Contractor agree that this Agreement shall be construed as if the parties jointly prepared it so that any uncertainty or ambiguity shall not be interpreted against any one party and in favor of the other. If any provision in this Agreement is held by a court of competent jurisdiction to be invalid, void, or unenforceable, that provision shall be deemed severed from the Agreement and the balance of the Agreement shall be construed and enforced as if the Agreement did not contain that particular provision held to be invalid, void or unenforceable.

#### **18. GOVERNING LAW AND VENUE**

This Agreement shall be governed in accordance with the laws of the State of Florida, and venue for any action enforcing the terms of this Agreement shall be Palm Beach County, Florida.



**19. ENTIRE AGREEMENT**

This Agreement, including any exhibits or addenda attached hereto, supersedes any and all agreements, either oral or written, between the parties with respect to the rendering of services by the Contractor for the Village, and contains the entire understanding with respect to the rendering of such services. No other statements, promises, representations, or agreements, whether oral or written, which are not contained in this Agreement, are valid or binding or have any effect on this Agreement. No modifications to this Agreement shall be effective unless such modifications are in writing and signed by both the Contractor and an authorized representative of the Village, and attached hereto as an addendum to this Agreement.

**IN WITNESS WHEREOF**, the undersigned parties have executed this Agreement on the \_\_\_\_ day of \_\_\_\_\_, 2024.

**VILLAGE OF ROYAL PALM BEACH**

\_\_\_\_\_  
Raymond C. Liggins, Village Manager

ATTEST:

\_\_\_\_\_  
Diane DiSanto, Village Clerk

APPROVED AS TO FORM AND LEGALITY

\_\_\_\_\_  
Village Attorney

**THE PALM BEACH  
SHAKESPEARE FESTIVAL, INC.**

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

Print Name: \_\_\_\_\_

Title: \_\_\_\_\_

WITNESS:

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

Print Name: \_\_\_\_\_

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

Print Name: \_\_\_\_\_