

IN THE CIRCUIT COURT OF THE  
ELEVENTH JUDICIAL CIRCUIT IN AND  
FOR MIAMI-DADE COUNTY, FLORIDA

APPELLATE DIVISION

CASE NO. \_\_\_\_\_

L.T. CASE No.

Mayoral Veto of City of Miami Resolution  
No. R-19-0169

MIAMI-DADE COUNTY,

Petitioner,

v.

CITY OF MIAMI,

Respondent.

\_\_\_\_\_ /

**MIAMI-DADE COUNTY'S MOTION TO EXPEDITE BRIEFING  
AND ORAL ARGUMENT, AND TO REQUEST  
ASSIGNMENT OF PRIOR JUDICIAL PANEL**

Miami-Dade County, Florida (the "County") hereby requests that this Court expedite briefing and oral argument in this matter, and that this appeal be assigned to the judicial panel that decided the prior, related appeal. Time is of the essence in this matter. In support thereof, the County states as follows:

1. The County and Florida International University ("FIU") are long-term co-tenants on the Coconut Grove Playhouse ("Playhouse") property pursuant to a lease agreement entered into with the State of Florida ("State") in October 2013.

2. Over two years ago, on April 4, 2017, the City of Miami's Historic and

Environmental Preservation Board (“HEP Board”) approved the County’s application for the issuance of a certificate of appropriateness for a conceptual master plan to rehabilitate the Playhouse. *See* Affidavit of Michael Spring<sup>1</sup> (“Aff.”) at ¶16.

3. Two City of Miami residents who objected to the project appealed that decision to the Miami City Commission. *Id.* at ¶17. The City Commission did not hear that appeal until December 14, 2017, when it reversed the HEP Board and added several new requirements for the County to meet. *Id.*

4. On February 1, 2018, the County timely filed a petition for writ of certiorari challenging the City Commission’s decision to reverse in part the HEP Board’s issuance of a certificate of appropriateness to the County for a conceptual master plan to rehabilitate the Playhouse (“First Appeal”). *Id.* at ¶18.

5. The salient issues in the First Appeal pertained to: (a) the scope of the City’s original 2005 historic designation of the Playhouse and whether it covered the interiors of the Playhouse building; and (b) the standing of the City residents who had appealed the HEP Board’s decision to the City Commission. *See generally*, Ex. 2 (*Miami-Dade Cnty. v. City of Miami*, 26 Fla. L. Weekly Supp. 800b (Fla. 11th Cir. Ct. App. Div. Dec. 3, 2018)).

6. Following oral argument and briefing by the City, the County, and the City resident objectors, the Honorable Judges Scott Bernstein, Rosa Figarola, and

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<sup>1</sup> The Affidavit of Michael Spring is attached to this Motion as Exhibit 1.

Ramiro Areces (“Prior Judicial Panel”) issued an 8-page opinion on December 10, 2018. *Id.* The opinion quashed the decision of the City Commission denying the certificate of appropriateness and thereby upheld the decision of the HEP Board to grant the County a certificate of appropriateness for the conceptual master plan for the Playhouse, with certain conditions. *Id.*

7. As evidenced by the opinion in the First Appeal, the Prior Judicial Panel thoroughly considered the history of the Playhouse’s prior renovations, the City’s 2005 historic designation and the scope thereof, the relevant sections of the City Code pertaining to historic preservation, and the plans that the County prepared and presented for the Playhouse’s rehabilitation. *Id.* The opinion in the First Appeal found that the “2005 Designation Report did not include the interior of the [Coconut Grove Playhouse] building” and “that the preservation of the interior of the building was thus not within the purview of the [HEP] Board.” *Id.* at 8.

8. The matters considered in the First Appeal and within the scope of the resulting opinion, are *res judicata*- the law of the case- and binding on both the City and the County.

9. Immediately following the opinion in the First Appeal, the County submitted its completed, final plans for the Playhouse to the HEP Board for issuance of a certificate of appropriateness and a demolition permit; those plans were premised on the prior HEP Board decision approving demolition of the auditorium building. *See* Aff. ¶ 20. The application was originally scheduled to be heard by the

HEP Board on February 5, 2019 but was deferred by the HEP Board to, and ultimately denied at, the HEP Board's meeting of March 5, 2019. *Id.* at ¶21.

10. The HEP Board's March 5, 2019 denial of the County's final plans was, again, predicated on a misguided and improper attempt to preserve the interior of the Playhouse building.

11. The County timely appealed the HEP Board's decision to the City Commission and, on May 8, 2019, the City Commission considered, and granted, the County's appeal of the HEP Board's decision and approved the County's final plans for the Playhouse, subject to certain conditions to which the County consented. *See Aff.* ¶23.

12. On May 17, 2019, City Mayor Francis Suarez vetoed the City Commission's decision, and on May 23, 2019, the City Commission failed to override the City Mayor's veto. *Id.* at ¶24. The County's petition for certiorari ensued ("Second Appeal").

13. Over two years have lapsed since the County first sought to obtain a certificate of appropriateness for the County's plans to restore the historic front Playhouse building, demolish the rear auditorium building, and rebuild a new, state-of-the-art theater. The certificate of appropriateness for the final detailed plans is the last remaining regulatory approval necessary for the County to commence construction on the Playhouse; all other regulatory approvals had been obtained as of November 7, 2018. *Aff.* ¶25.

14. The continued delay in securing approval for a certificate of appropriateness from the City is jeopardizing the County's ability to successfully and timely complete the rehabilitation of the Playhouse on or before October of 2022, which is the date by which the State maintains the construction must be completed. *Id.* at ¶¶30, 36.

15. Although the Lease Agreement with the State contains no fixed or binding deadlines for any of the phases of development or completion of construction of the Playhouse, the State nevertheless alleges that the Lease Agreement's "preliminary timetable" for the Playhouse's rehabilitation, which is expressly "contingent on variables ranging from the time necessary for . . . municipal reviews for historic preservation," and subject to "evol[ution] and change as a result of, and throughout, the design, construction and operational phases," actually contains binding deadlines. *Id.* at ¶¶36, 39.

16. As such, the State's Office of Inspector General undertook an audit between November 2017 and March 2018 and concluded that the County had "failed to adhere to the timetable for the Capital Plan as set forth in the Business Plan" in the Lease Agreement and expressed skepticism that the County would be able to complete the Playhouse's rehabilitation by October 2022. *Id.* at ¶36. Ultimately, the State sent the County a letter on August 30, 2018, alleging that the County was in breach of the Lease Agreement and gave the County 120 days to remedy the breach of face termination of the Lease Agreement, damages, and an eviction action.

*Id.* at ¶39.

17. While the County disputes the State's conclusion that it is out of compliance with the project's timeline, the State's letter nonetheless makes an expeditious resolution of this Second Appeal all the more imperative. The State has not, to date, taken any additional action in furtherance of its August 30, 2018 letter, but additional delays to the Playhouse project – especially any delay that jeopardizes the October 2022 completion goal for the project – could result in the State renewing its threats to terminate the Lease Agreement and evict the County and FIU from the Playhouse property. *Aff.* at ¶42.

18. Moreover, further delays to the Playhouse's rehabilitation may also jeopardize the County's ability to fund all of the work that needs to be done with the \$23.6 million of funding that the County has secured; costs escalate as time goes on, and significant donors to the Playhouse project (such as the John S. and James L. Knight Foundation) expect to see their investment into the Playhouse be used within a reasonable amount of time. *Id.* at ¶¶44-45.

19. Finally, County residents, and especially residents and business-owners in Coconut Grove, deserve to have great, regional theater returned to the City of Miami and economic viability and aesthetic beauty returned to that southern corner of Coconut Grove without additional delays.

20. It is for these reasons that the County seeks to have this Court facilitate a prompt resolution of this Second Appeal; to complete construction of the

Playhouse project by October 2022 without the need for an accelerated (and significantly more expensive) construction schedule, the County must have this Second Appeal resolved with sufficient time to allow the County to commence construction of the Playhouse no later than September 2020. Aff. at ¶30. And, to commence construction by September 2020, the County must issue a competitive solicitation for the selection of the contractor no later than January 2020. *Id.*

21. The prompt resolution of this Second Appeal would be best facilitated by this Court's issuance of an expedited briefing schedule for this matter, and this Court's assignment of the Prior Judicial Panel to consider this Second Appeal. The Prior Judicial Panel handled the First Appeal less than one year ago and is already familiar with the history, facts, and law surrounding the Playhouse and the County's application for a certificate of appropriateness. Appointment of the Prior Judicial Panel would not only expedite the necessary resolution of this Second Appeal, but would conserve valuable judicial resources by tasking those judges most knowledgeable with the history, law, and issues surrounding this matter with its resolution.

22. Accordingly, the County respectfully requests that this Court:

- a) Immediately issue an order to show cause, giving the City 30 days to file its Response Brief;
- b) Allow the County to serve its Reply Brief 20 days following the City's service of its Response Brief;

- c) Hold oral argument within 30 days of the Reply Brief;
- d) Not allow for any extensions of time; and
- e) Assign the Prior Judicial Panel to this matter.

23. This motion is filed in good-faith and not for purposes of delay or for any other improper purpose.

24. The undersigned Assistant County Attorney has conferred with counsel for the City regarding the relief sought herein, and the City has advised that it objects to the relief sought herein.

WHEREFORE, the County respectfully requests that the Court grant this motion and: (1) Immediately issue an order to show cause giving the City 30 days to file its Response Brief; (2) Allow the County to serve its Reply Brief 20 days following the City's submittal of its Response Brief; (3) Hold oral argument within 30 days of the Reply Brief; (4) In accordance with the Court's adoption of this expedited schedule, not allow for extensions of time; and (5) Assign to this matter the Prior Judicial Panel that considered and recently decided the First Appeal regarding the Playhouse.

Dated: June 17, 2019

Respectfully Submitted,

ABIGAIL PRICE-WILLIAMS  
Miami-Dade County Attorney  
Stephen P. Clark Center  
111 N.W. 1st Street, Suite 2810  
Miami, Florida 33128

By: /s/ James Edwin Kirtley, Jr.

James Edwin Kirtley, Jr.  
Fla. Bar. No. 30433  
kirtley@miamidade.gov  
Telephone: (305) 375-5151  
Dennis A. Kerbel  
Fla. Bar No. 610429  
dkerbel@miamidade.gov  
Telephone: (305) 375-5151  
Assistant County Attorneys  
*Counsel for Miami-Dade County*

**Certificate of Service**

I certify that a true and correct copy of this *Motion to Expedite Briefing and Oral Argument and To Request Assignment of Prior Judicial Panel* was served upon the counsel listed below via electronic mail generated by My Florida Courts E-Filing Portal, on June 17, 2019:

Victoria Mendez, Esq.  
City of Miami Attorney  
Office of the City Attorney  
444 S.W. 2nd Avenue, Suite 945  
Miami, Florida 33130

/s/ James Edwin Kirtley, Jr.  
Assistant County Attorney

## AFFIDAVIT OF MICHAEL SPRING

BEFORE ME, the undersigned authority, comes now Michael Spring, who first being duly sworn according to the law, deposes and says as follows:

1. I, Michael Spring, am over eighteen years of age and have personal knowledge of the facts stated in this Affidavit. I am the Director of the Miami-Dade County Department of Cultural Affairs (“Department of Cultural Affairs”) and I also serve as a Senior Advisor to the County Mayor overseeing Miami-Dade County’s arts, parks and library departments.

2. I have worked with the Department of Cultural Affairs for over 35 years, the last 29 of which have been as its Director.

3. In my capacity as Director of the Department of Cultural Affairs, I: (a) have overseen and been directly involved in the construction and renovation of numerous performing arts facilities in Miami-Dade County (the “County”), including the South Miami-Dade Cultural Arts Center in Cutler Bay, the Lyric Theater in Overtown, and the Sandrell Rivers Theater in Liberty City; and (b) oversee the management of several County-owned performing arts facilities including the South Miami-Dade Cultural Arts Center, the Miami-Dade County Auditorium, the Caleb Auditorium, and the African Heritage Cultural Arts Center.

4. It is my capacity as Director of the Department of Cultural Affairs that I have been working, for over a decade, to restore theater at the Coconut Grove Playhouse located at 3500 Main Highway in the City of Miami, Florida 33133.

5. In October 2012, following years of mismanagement of the Coconut Grove Playhouse and following material breaches of the terms of the deed from the State of Florida to

the then-owner of the Coconut Grove Playhouse, the Coconut Grove Playhouse reverted to the State of Florida.

6. On October 8, 2013, the State of Florida entered into a lease agreement with Florida International University (“FIU”) and the County, as co-tenants, for the Coconut Grove Playhouse property (“Lease Agreement”). The Lease Agreement is attached hereto as **Exhibit A**. The Lease Agreement is for an initial term of 50 years.

7. Exhibit “B” to the Lease Agreement is a Business Plan for the rehabilitation and operation of the Coconut Grove Playhouse property, which Business Plan was specifically approved by the Cabinet of the State of Florida, sitting as the Trust for the Internal Improvement Fund of the State of Florida, on August 20, 2013.

8. The Lease Agreement requires the County and FIU to develop the Coconut Grove Playhouse property consistent with the Business Plan. *See* Lease Agreement, §8.

9. The Business Plan includes a sub-section titled “Timetable for the Capital Plan”, wherein it is acknowledged that the “County and FIU are committed to working quickly and responsibly to accomplishing the capital plan” for the rehabilitation of the Coconut Grove Playhouse. *See* Exhibit “B” to the Lease Agreement, at 9.

10. The Business Plan also includes a “preliminary timetable” for the rehabilitation of the Coconut Grove Playhouse to include, in sequential order, the competitive solicitation for and approval of the architectural and engineering services completed within 6 to 12 months; the planning and design phase completed within 18 to 24 months thereafter; competitive bidding for construction completed within 6 to 12 months thereafter; and permitting, construction and commissioning completed within 26 to 60 months thereafter. *Id.*

11. The preliminary timetable in the Business Plan thus anticipates that the Coconut Grove Playhouse project capital plan will be completed no later than October of 2022.

12. However, the Business Plan also expressly states that the “preliminary timetable” included therein was “contingent on variables ranging from the time necessary for the variety of necessary governmental approvals (ranging from County contracts for architectural and construction services to municipal reviews for historic preservation, permitting and inspections) to unforeseen existing site conditions and weather factors.” *See* Exhibit “B” to the Lease Agreement, at 9.

13. Additionally, the Lease Agreement provides that “all parties understand and agree that that [sic] details of the [Business] Plan may evolve and change as a result of, and throughout, the design, construction and operational phases of the [Business] Plan.” *See* Lease Agreement, §8.

14. The County has experienced precisely the types of delays in rehabilitating the Coconut Grove Playhouse that were contemplated by the parties at the time that they entered into the Lease Agreement; namely, the municipal reviews for historic preservation.

15. More than two years after the County first applied to the City of Miami (the “City”), through its Historic and Environmental Preservation Board (“HEP Board”), for approval of its rehabilitation plan for the Coconut Grove Playhouse, the County has still not received such final approval and therefore cannot commence construction of the project.

16. The County first applied to the City for a certificate of appropriateness (“COA”) for a conceptual master plan to rehabilitate the Coconut Grove Playhouse in early 2017; a February 7, 2017 informational presentation to the HEP Board of the Coconut Grove Playhouse project was

followed by site visits throughout February and March, 2017 for individual HEP Board members; and culminated with the formal presentation of the County's application for a COA at the HEP Board's April 4, 2017 meeting. At that April 4, 2017 meeting, the HEP Board approved the County's application with certain conditions.

17. Two City residents who objected to the project appealed the HEP Board's approval to the City Commission, and, on December 14, 2017, the City Commission voted to grant, in part, the appeal and overturn, in part, the decision of its HEP Board.

18. The County timely appealed the City's decision, and, in December 2018, the Appellate Division of the Eleventh Judicial Circuit Court (the "Court") issued a decision reversing the City Commission's decision, finding that the City Commission had improperly attempted to regulate the interior of the Playhouse, which the City had not previously designated as historic.

19. While awaiting the Court's decision on the historic preservation issue, the County had concurrently sought and obtained the other City regulatory approvals that the final plans required. Thus, by December 2018, only the historic preservation approval remained outstanding.

20. Following the Court's decision, the County submitted its final plans for the Playhouse rehabilitation project to the HEP Board for issuance of a COA and a demolition permit. This application was originally scheduled to be heard by the HEP Board on February 5, 2019.

21. A technical issue on the City's side required the HEP Board to defer the County's application at the February 5, 2019 HEP Board meeting, so the HEP Board finally considered, and denied, the County's application for a COA and demolition permit at its meeting of March 5, 2019.

22. The County timely appealed the HEP Board's decision to the City Commission, and it was originally scheduled for the April 25, 2019 City Commission meeting. But the City

Commission instead deferred the appeal—a deferral that the County did not seek and that was initiated at the request of Congresswoman Frederica Wilson.

23. On May 8, 2019, the City Commission finally considered, and granted, the County’s appeal of the HEP Board’s decision and approved the County’s final plans for the Playhouse rehabilitation project, subject to certain conditions to which the County consented.

24. On May 17, 2019, City Mayor Francis Suarez vetoed the City Commission’s decision, and on May 23, 2019, the City Commission failed to override the City Mayor’s veto.

25. The continued delay in securing COA approval from the City is jeopardizing the County’s plans and its ability to successfully and timely complete the Coconut Grove Playhouse rehabilitation project. The COA is the last remaining regulatory approval necessary for the County to commence the construction work on the Playhouse; all other regulatory approvals had been obtained as of November 7, 2018.

26. The County is currently preparing the solicitation for the selection of a construction contractor to undertake the construction of the Coconut Grove Playhouse theater building. The County is also currently preparing to submit its final plans for the Coconut Grove Playhouse through a “dry-run” permitting process with the City to confirm that there are no revisions needed to its final architectural and design plans.

27. However, the City will not issue building permits until: (a) the City has issued historic preservation approvals of the County’s final plans for the Coconut Grove Playhouse; and (b) a construction contractor licensed in the State of Florida and under contract with the County to undertake the rehabilitation of the Coconut Grove Playhouse has filed an application for said building permits.

28. Once the County has a construction contractor selected and under contract, I estimate, based on my past experience overseeing the construction of other similar projects, that the construction of the Coconut Grove Playhouse theater will take approximately 17-19 months to complete, including an approximately 3-month period for the County to install and deliver all of the equipment and furniture and undertake commissioning of all of the building systems, sound systems, lighting systems, and rigging in the theater to make sure that they are functioning properly.

29. I estimate that the reconstruction of the Playhouse's historic front building will require an additional 3 to 5 months, beyond the 17 to 19 months required for the theater building, to be completed.

30. Consequently, construction of the theater building and historic front building will need to commence no later than September 2020 to meet the October 2022 estimated timeline for completion of construction set forth in the Lease Agreement. Commencing construction any later than September 2020 will likely result in the need for an accelerated (and significantly more expensive) construction schedule.

31. To commence construction by September 2020, it is my opinion that the solicitation for the selection of the construction contractor should be issued no later than January 2020. Construction contractors will then have at least 2 months to review all of the plans and specifications, ask questions, and submit bids.

32. My staff and I will then need another 3-4 months to evaluate bids, assess bidder responsiveness and responsibility, and ultimately award the construction contract. Once a notice of intent to award is issued by the County Mayor, another approximately 1-2 months need to be

set aside to address and resolve any bid protests filed by non-successful bidders, and to allow for the awarded bidder to purchase and deliver the statutorily-required payment and performance bonds and insurance certificates.

33. It is extremely important, for three principal reasons, for the County to complete the Playhouse rehabilitation project on or before October 2022.

34. First, although the Lease Agreement with the State of Florida expressly contemplates that the timelines for completion of the capital plan for the Playhouse are contingent on variables and are approximations, the State of Florida has nevertheless taken a rigid interpretation of these timelines.

35. On November 17, 2017, one day following my letter to the then-Lieutenant Governor of Florida addressing concerns and questions he raised about the Playhouse project, the Office of the Inspector General (“OIG”) for Florida’s Department of Environmental Protection (“DEP”), sent me an e-mail to notify the County that it was initiating an audit of the Lease Agreement. The November 16, 2017 letter from me to Lt. Governor Carlos Lopez-Cantera is attached hereto as **Exhibit B**, and the November 17, 2017 e-mail from the OIG to the County and the County’s December 13, 2017 response thereto is attached hereto as **Exhibit C**.

36. On January 5, 2018, the County submitted to the OIG additional information and responses to all of its questions. Nevertheless, on March 12, 2018,, the OIG issued an audit report alleging that the County had “failed to adhere to the timetable for the Capital Plan as set forth in the Business Plan” and that “the continued delays and ongoing updates” by the County to its project development schedule “diminished the reliability” of the County’s commitment to complete the

Coconut Grove Playhouse Project by October 2022. The OIG Audit Report is attached hereto as **Exhibit D**.

37. The OIG's allegations were irreconcilable with the OIG's acknowledgement in its report that the timeframes in the Lease Agreement were "approximate and contingent on the variables indicated in the Capital Plan." *See id.* at 4.

38. On August 30, 2018, following numerous exchanges of correspondence between DEP and the County pertaining to the progress of the Playhouse rehabilitation project and the County's difficulties with obtaining all of the regulatory approvals from the City, DEP sent the County a letter notifying the County that it was in breach of the Lease Agreement. The correspondence between the County and DEP in May through August 2018 is attached as **Composite Exhibit E**, and the August 30, 2018 letter alleging breach is attached as **Exhibit F**.

39. DEP's only stated reason for alleging breach was that the County had failed to adhere to the (estimated) timetables for project development in the Lease Agreement. *See Exhibit F*. DEP alleged that the theater was nearly two years behind schedule and gave the County 120 days to remedy the breach or face termination of the Lease Agreement, damages, and an action to recover the property. *Id.*

40. On December 27, 2018, I sent a letter to DEP, on behalf of the County, again reiterating that the Lease Agreement contained no fixed and binding timetables or deadlines for any of the phases or even for completion of the Playhouse rehabilitation project; the broad timeframes were expressly qualified as being "preliminary," "contingent on variables," and "approximate." The December 27, 2018 letter from the County to DEP is attached as **Exhibit G**.

I concluded my letter by requesting that DEP withdraw its notice stating that the County was in breach of the Lease Agreement. *Id.* at 5.

41. DEP has not, to date, withdrawn its notice that the County is in breach of the Lease Agreement. But DEP has also not taken any further action to find the County in breach, terminate the Lease Agreement, or evict the County and FIU from the Playhouse property.

42. I fear, however, that any additional delays to the development of this project, and especially any delay that jeopardizes the October 2022 completion goal for the project—even if completely outside the control, and despite the best efforts, of the County and FIU—could result in DEP renewing its threats to terminate the Lease and evict the County and FIU.

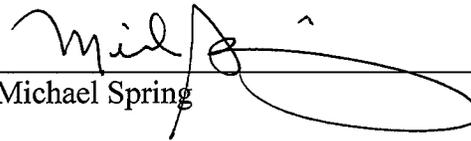
43. The second principal reason why it is imperative that the County complete the Playhouse rehabilitation project as expeditiously as possible is to return great theater to this location and to preserve and restore the Coconut Grove Playhouse’s historically significant architecture. After decades of continuous live theater performances, hosting hundreds of thousands of visitors and patrons, and exhibiting nationally-renowned actors and directors, the Coconut Grove Playhouse has been shuttered for 13 years. The southern corner of Coconut Grove where the Playhouse stands needs to be reactivated and restored as soon as possible for the economic and aesthetic benefit and enjoyment of the Grove’s residents and businesses.

44. The third principal reason why time is of the essence for the Playhouse rehabilitation project is directly related to ensuring that the \$23.6 million of County funding secured for the project does not lose its value as a result of delays and time-based cost escalations for constructing and equipping the Playhouse. It is critically important to be sure that sufficient

funds remain available to build and outfit the Playhouse to the high-quality standards necessary to make the theater a success.

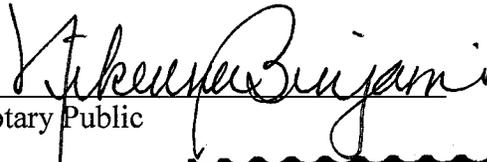
45. In addition, the \$23.6 million of secured funds includes a \$2 million grant to the County from the John S. and James L. Knight Foundation (Knight Foundation). While the Knight Foundation grant does not have a deadline for use of the funds, there is a performance expectation that the grant will be used in a reasonable amount of time, consistent with the terms of the Lease. Therefore, further delays also could jeopardize the Knight Foundation grant.

Dated: June 17, 2019

  
Michael Spring

STATE OF FLORIDA  
COUNTY OF MIAMI-DADE

Sworn to (or affirmed) and subscribed before me this 17 day of June,  
2019, by Michael Spring.

  
Notary Public

Personally known  OR Produced Identification .

Type of Identification Produced: \_\_\_\_\_

