



City of Ketchum

February 3, 2020

Mayor Bradshaw and City Councilors
City of Ketchum
Ketchum, Idaho

Mayor Bradshaw and City Councilors:

Recommendation to Approve Contract #20445 2020 Ketchum Summer Concert Series Agreement with Will Caldwell Productions, LLC

Recommendation and Summary

Staff is recommending Council to approve Contract #20445, the 2020 Summer Concert Series agreement with Will Caldwell Productions, LLC to promote, organize, manage, coordinate and produce the 2020 Ketchum Summer Concert Series.

"I move to approve the 2020 Ketchum Summer Concert Series Agreement with Will Caldwell Productions, LLC."

The reasons for the recommendation are as follows:

- The City of Ketchum desires to promote business by enhancing the visitor and resident experience in the Ketchum area.
- The City has determined that the Ketchum Summer Concert Series serves a public purpose and is a benefit to its citizens.
- Will Caldwell Productions, LLC has performed the services necessary to produce the Ketchum Summer Concert Series over the past twenty years.

Introduction and History

The City of Ketchum Summer Concert Series includes the following events:

- Ketch'em Alive – held weekly each Tuesday from 7 to 9 p.m. at Forest Service Park. The series begins on June 16 and ends on August 11.
- Jazz in the Park – held weekly each Sunday from 6 to 8 p.m. at Rotary Park. The series begins on June 21 and ends on July 26.

Financial Impact

There is no new financial impact. Funding will be provided from the Events/Promotions line item in the Local Option Tax Fund.

Attachments:

Contract #20445



City of Ketchum

Summer Concert Series Agreement #20445 Will Caldwell Productions, LLC

THIS CONTRACT FOR SERVICES ("Agreement") is entered into effective as of this ____ day of _____ 2020 by and between Will Caldwell Productions, LLC and the City of Ketchum, an Idaho municipal corporation (Will Caldwell Productions, LLC and City of Ketchum are, collectively, the "Parties") with reference to the following facts:

RECITALS

- A. The City of Ketchum desires to promote business by enhancing the visitor and resident experience in the Ketchum/Sun Valley area with two concert series events called "Ketch'em Alive" and "Jazz in the Park," referred to collectively as the "Ketchum Summer Concert Series." Accordingly, the City has determined that the Ketchum Summer Concert Series serves a public purpose and is a benefit to its citizens.
- B. Will Caldwell Productions, LLC has the expertise necessary to promote, organize, manage, coordinate and produce the Ketchum Summer Concert Series and to assist the City of Ketchum in the management of the Ketchum Summer Concert Series from February 1, 2019 to September 30, 2019 ("Contract Period").
- C. The City of Ketchum desires to retain the services of Will Caldwell Productions, LLC and Will Caldwell Productions, LLC desires to provide the services, as set forth herein.

NOW THEREFORE, for good and valuable consideration, the receipt and adequacy of which are hereby acknowledged, the Parties agree as follows:

- General Duties.** Will Caldwell Productions, LLC agrees to promote, organize, manage, coordinate and produce the Ketchum Summer Concert Series according to the terms and conditions of this Agreement.
- Description of Services.** Will Caldwell Productions, LLC shall complete the tasks on the schedule as outlined in Addendum 1 attached hereto and incorporated herein by this reference (the "Services").
- Payment for Services.** In exchange for the Services, the City of Ketchum shall pay Will Caldwell Productions, LLC as follows:

Professional service fee – One (1) payment will be made to Will Caldwell Productions, LLC for a total of six thousand dollars (\$6,000) on or before June 1, 2019 to produce two concert series: Ketch'em Alive and Jazz in the Park.

- Term – Month to Month.** This Agreement shall be effective for a period of one month and shall renew automatically each month and expire automatically on September 30, 2019 unless terminated as provided herein. The parties hereby agree that in the event Ketchum, in its sole and exclusive opinion, lacks sufficient funds to continue paying for the Services, Ketchum may terminate this Contract without penalty upon thirty (30) days written notice to Will Caldwell Productions, LLC. Upon receipt of such notice, neither party shall have any further obligation to the other. In the event of such termination, Will Caldwell Productions, LLC shall submit a report of expenditures to the City of Ketchum. Any Ketchum funds not encumbered for authorized expenditures by Will Caldwell Productions, LLC at the date of termination shall be refunded to Ketchum within twenty (20) days.

5. **Independent Contract/No Partnerships or Employee Relationship.**

(a) By executing this Agreement, the Parties do not intend to create a partnership, joint venture, agency employee/employer relationship or any other relationship other than that of Independent Contractor. Neither Party shall have the power to bind the other in any manner whatsoever.

(b) In rendering the services contemplated by this Agreement, Will Caldwell Productions, LLC is at all times acting as an Independent Contractor and not as an employee of the City of Ketchum. Will Caldwell Productions, LLC shall have no rights or obligations as an employee by reason of the Agreement, and the City of Ketchum shall not provide Will Caldwell Productions, LLC with any employee benefits, including without limitation, any City of Ketchum sponsored retirement, vacation or health insurance program.

(c) The City of Ketchum shall not exercise any control whatsoever over the manner in which Will Caldwell Productions, LLC performs the obligations contemplated herein.

(d) Will Caldwell Productions, LLC may perform services similar in nature to the services contemplated in this Agreement for other individuals and entities during the term of this Agreement.

(e) The City of Ketchum shall not withhold any local, state, or federal payroll or employment taxes of any kind from any compensation paid to Will Caldwell Productions, LLC. Will Caldwell Productions, LLC hereby warrants and represents that it will pay all such employment and payroll taxes, if any, and hereby releases, holds harmless and indemnifies City of Ketchum and the directors, officers, members, employees and agents thereof from any and all costs, expenses or liability of any kind whatsoever that may be incurred as a result of Will Caldwell Productions, LLC's failure to pay such payroll or employment taxes.

6. **Assignment.** Neither Party shall assign any of its rights and/or obligations under this Agreement to any other person or entity.

7. **Representations and Warranties by Will Caldwell Productions, LLC.** Will Caldwell Productions, LLC hereby represents and warrants to the City of Ketchum as follows:

(a) Will Caldwell Productions, LLC has the knowledge, experience and expertise and office equipment resources necessary to promote, organize, manage, coordinate and produce the Ketchum Summer Concert Series.

(b) The City of Ketchum shall retain proprietary rights over all Ketchum Summer Concert Series electronic and physical records and files, mailing lists, ideas, contracts and other items relating to the event.

(c) Public Records. Will Caldwell Productions, LLC hereby acknowledges that all writings and documents, including without limitation, email containing information relating to the conduct or administration of the public's business prepared by Will Caldwell Productions, LLC for Ketchum, regardless of physical form or characteristics, may be public records pursuant to Idaho Code Section 9-337 *et seq.* Will Caldwell Productions, LLC further acknowledges that, subject to certain limitations, the public may examine and take a copy of all such public writings and records. Accordingly, Will Caldwell Productions, LLC shall maintain such writings and records in such a manner that they may be readily identified, retrieved and made available for such inspection and copying.

(d) Will Caldwell Productions, LLC shall provide all Ketchum Summer Concert Series materials to the City of Ketchum immediately upon request.

(e) Will Caldwell Productions, LLC maintains no control over the personnel, equipment or operation of any airline, surface carrier, bus or limousine company, transportation company, hotel, restaurant, venue, audiovisual,

staging, lighting, décor, entertainment or other person, corporation or other entity furnishing services or products connected to the event and that all such suppliers are independent contractors.

8. **Default.** In the event either Party hereto defaults in its performance of any of the obligations created hereunder, the other Party may pursue any and all remedies whether at law or equity, including without limitation terminating this Agreement.
9. **Voluntary Agreement.** This Agreement is freely and voluntarily entered into by each of the Parties. The Parties acknowledge and agree that each has been represented in the negotiation of this Agreement by counsel of its own choosing or has had an opportunity and ability to obtain such representation, that it has read this Agreement or had it read to it, that it understands this Agreement, and that it is fully aware of the contents and legal effects of this Agreement.
10. **Binding Agreement.** The provisions of this Agreement shall be binding upon, and shall obligate, extend to, and inure to the benefit of, each of the legal successors, assigns, transferees, grantees, and heirs of each of the Parties, and all persons who may assume any or all of the above-described capacities subsequent to the execution of this Agreement.
11. **Meditation.** Should a dispute arise and is not resolved by the Parties, the Parties shall first proceed in good faith to submit the matter to non-binding mediation with a mediator licensed in the State of Idaho. Upon completion of one attempt at mediation, either party may pursue any available legal or equitable remedy.
12. **Attorneys' Fees and Costs.** In the event that any of the Parties is required to incur attorneys' fees and/or costs to enforce or interpret any provision of this Agreement or is required to defend any action brought by any of the Parties, based on, arising from or related to this Agreement, the unsuccessful Parties agree to pay to the prevailing Parties their reasonable actual costs and attorney fees, whether or not litigation is actually commenced and including reasonable attorney fees and costs on appeal.
13. **Entire Agreement.** This Agreement contains the final, complete, exclusive, and entire agreement and understanding between the Parties on this topic and supersedes and/or replaces any and all prior negotiations, proposed agreements, and agreements, whether written or oral on such topic.
14. **Modification.** This Agreement may not be modified except by a writing signed by all Parties affected by such purported modification.
15. **Waiver.** In the event of any default hereunder by either Party, if the other Party fails or neglects for any reason to demand full performance, such failure or neglect shall not be deemed to be a waiver of the right to demand full performance or a waiver of any cause of action, or as a waiver of any of the covenants, terms or conditions of this Agreement or of the performance thereof. None of the covenants, terms or conditions of this Agreement can be waived by either Party hereto except in a signed writing.
16. **Severability.** In the event that any portion of this Agreement is held by a court of competent jurisdiction to be invalid, illegal or unenforceable in any respect, the validity, legality, and enforceability of the remaining portions of this Agreement and the application thereof shall not in any way be affected thereby.
17. **Interpretation.**
 - a. Whenever in this Agreement the context may so require, the neuter gender shall be deemed to refer to and include the masculine and the feminine, the singular number shall be deemed to refer to and include the plural, and vice versa.

b. This Agreement is the result of negotiations, and no Party shall be deemed to have drafted this Agreement for purposes of construing any portion of the Agreement for or against any Party.

c. The descriptive headings in this Agreement are included for convenience of reference and are not intended to affect the meaning or construction of any of the provisions herein.

d. Any exhibit attached hereto shall be deemed to have been incorporated herein by this reference as if set forth herein at length.

18. **Time is of the Essence.** Time is hereby made expressly of the essence in every term.

19. **Governing Law and Jurisdiction.** This Agreement shall in all respects be interpreted, enforced, and governed by and under the laws of the State of Idaho without giving effect to its conflicts of law provisions. The Parties each expressly agree to the appropriateness of and consent to the venue and jurisdiction of the State of Idaho in the County of Blaine and all state and federal courts having geographical jurisdiction for such County as the exclusive forum for the purposes of any action to enforce or interpret this Agreement.

20. **Capacity to Execute.** Each of the Parties, and each person signing this Agreement, represents and warrants that it and its representative(s) executing this Agreement on its behalf each has the authority and capacity to execute this Agreement.

21. **Counterparts.** The Parties may execute this Agreement, and any modification(s) hereof, in two or more counterparts, which shall, in the aggregate, be signed by all Parties. Each counterpart shall be deemed an original instrument as against any Party who has signed it. A faxed copy of the signature of any of the Parties shall have the same force and effect as an original signature of such Party.

22. **Indemnification.** Will Caldwell Productions, LLC agrees to indemnify and hold the City of Ketchum harmless from and against all claims, suits, damages (including without limitation, damages to persons and property including deaths), costs, losses, and expenses, in any manner related to or arising from the acts or omissions of Will Caldwell Productions, LLC, its managers, members, directors, officers, shareholders, agents and employees.

IN WITNESS WHEREOF, the City and Contractor have executed this Agreement as of the effective date specified above.

CITY OF KETCHUM

WILL CALDWELL PRODUCTIONS, LLC

Neil Bradshaw
Mayor

Will Caldwell, President

ATTEST:

Robin Crotty
City Clerk

Addendum 1: Description of Services

Will Caldwell Productions, LLC agrees to:

1. Maintain individual bank accounts for Ketch'em Alive and Jazz in the Park, and provide the city access to those accounts;
2. Collect sponsorships and donations for deposit into the City's Trust Fund accounts for Ketch'em Alive and Jazz in the Park;
3. Provide detailed budget at the beginning of each concert series, and an updated budget as needed;
4. Pay all vendors from individual Will Caldwell Productions, LLC bank accounts (e.g. bands);
5. Secure housing, and any equipment needed for production (e.g. sound system);
6. Maintain a current Facebook page for Ketch'em Alive according to communications parameters set forth by the City of Ketchum and provide the City administrative permissions for that page.
7. Any promotional materials, advertising, or identification materials associated with Ketch'em Alive and Jazz in the Park shall identify the events as City of Ketchum of events.

City of Ketchum agrees to:

1. Provide exclusive and dedicated space for both Ketch'em Alive (Forest Service Park) and Jazz in the Park (Rotary Park) on a predetermined schedule;
2. Provide maintenance services for park areas and restrooms both before and after each individual concert, including the proper management of irrigation systems;
3. Provide recycling services for each individual concert through a contract with the Environmental Resource Center.