



City of Ketchum

May 2, 2022

Mayor Bradshaw and City Councilors
City of Ketchum
Ketchum, Idaho

Mayor Bradshaw and City Councilors:

Recommendation to Approve Contract #22087 Summer Solstice Celebration – Powell Brothers Productions

Recommendation and Summary

Staff is recommending Council to approve Contract #22087, the Summer Solstice Celebration agreement with Powell Brothers Productions to perform at Warm Springs Preserve for the Summer Solstice celebration.

“I move to approve Independent Contractor Agreement #22087 with Powell Brothers Productions ”

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/Sun Valley area with the Summer Solstice Celebration. Accordingly, the City has determined that the Summer Solstice Celebration serves a public purpose and is a benefit to its citizens.
- The Summer Solstice Celebration has been a successful addition to the event and one that the community looks forward to.
- The City desires to contract with an artist unique to this town to perform at the Summer Solstice Celebration.

Introduction and History

This year’s Summer Solstice Celebration will be held at Warm Springs Preserve to acknowledge the community for their support in acquiring the property. This event will be the start of an annual tradition of the Summer Solstice Celebration at Warm Springs Preserve. This all-day event will have multiple bands, as well many opportunities to support local food and beverage vendors, and a silent auction to benefit Warm Springs Preserve. We anticipate 1000 people in attendance. Staff would like to continue this successful event for the community and visitors. Staff worked with Tolar Powell Entertainment, LLC to contract with Powell Brothers Productions for June 21,2022. Powell Brothers Productions will play music that will fit well within the theme of the Summer Solstice Celebration.

Financial Impact

The performance will be funded from the Events budget.

Attachment:

Contract #22087

INDEPENDENT CONTRACTOR AGREEMENT #22087 WITH POWELL BROTHERS PRODUCTIONS

This Performance Agreement ("Agreement") is made by and between the City of Ketchum, Idaho, an Idaho municipal corporation, organized and existing under the laws of the state of Idaho ("City"), and Powell Brothers Productions ("Artist").

RECITALS

Whereas, the City of Ketchum desires to promote business by enhancing the visitor and resident experience in the Ketchum/Sun Valley area with the Summer Solstice Celebration event. Accordingly, the City has determined that Summer Solstice Celebration serves a public purpose and is a benefit to its citizens; and

Whereas, the City desires to contract with an artist unique to this town to celebrate the Summer Solstice Celebration.

NOW, THEREFORE, on the basis of the foregoing recitals, and upon motion duly passed by the Ketchum City Council, and for the consideration set forth herein, the parties agree as follows:

AGREEMENT

Artist Company agrees to provide performance services pursuant to the terms and conditions of this Agreement.

1. SCOPE OF WORK:

Date of Engagement: One Show
All Ages
Tuesday, June 21, 2022
6p.m.
One (1) two hour set (120 minutes)

Venue: Warm Springs Preserve
Ketchum, ID

Announcement Date: May 15, 2022

City will provide and pay for stage and sound.

Contacts: Production
Eryn Alvey
Events Manager
City of Ketchum
P.O. Box 2315
Ketchum, Idaho 83340
208-727-5077
éalvey@ketchumidaho.org

2. COMPENSATION AND PAYMENT TERMS:

Five thousand, Five hundred and NO/100ths Dollars (\$5,500) is guaranteed to Artist (Flat Guarantee).

Artist will be paid in full, rain or shine.

Payment shall be paid-in-full to Powell Brothers Productions and presented to Artist upon completion of performance on June 21, 2022.

3. RIGHT OF CONTROL: The City agrees that it will have no right to control or direct the details, manner, or means by which Artist accomplishes the results of the services performed hereunder.

4. INDEPENDENT CONTRACTOR RELATIONSHIP: Artist Company is not an employee, servant, agent, partner, or joint venture of the City. This Agreement shall not be construed to create any employer-employee relationship between the City and Artist Company.

5. FEDERAL, STATE, AND LOCAL PAYROLL TAXES: Neither federal, state, or local income taxes nor payroll taxes of any kind shall be withheld and paid by the City on behalf of Artist Company or the employees of Artist Company, including Artist. Artist Company shall not be treated as an employee with respect to the services performed hereunder for federal or state tax purposes. Artist Company understands that Artist Company is solely responsible to pay, according to law, Artist Company's income tax. Artist Company further understands that Artist Company may be liable for self-employment (Social Security) tax to be paid by Artist Company according to law.

6. LICENSES AND LAW: Artist Company represents that it possesses the requisite skill, knowledge, and experience necessary, as well as all licenses required, if any, to perform the services under this Agreement. Artist Company further agrees to comply with all applicable laws, ordinances, and codes of federal, state, and local governments in the performance of the services hereunder.

7. FRINGE BENEFITS: Because Artist is engaged in its own independently established business, Artist Company is not eligible for and shall not participate in any employee pension, health, or other fringe benefit plans of the City.

8. WORKER'S COMPENSATION: Artist shall maintain in full force and effect worker's compensation and employer's liability insurance for Artist Company and any agents, employees, and staff that Artist Company may employ, and provide proof to the City of such coverage or that such worker 's compensation insurance is not required under the circumstances.

9. TERM OF AGREEMENT: This Agreement shall commence as of the effective date specified in this Agreement and shall remain in effect until the fulfillment of the requirement in this Agreement, unless terminated by either party as set forth in this Agreement.

10. ENTIRE AGREEMENT: This Agreement, along with any and all exhibits and appendix attached hereto and incorporated herein by reference, contains the entire agreement of the parties and supersedes any and all other agreements or understandings, oral or written, whether previous to the execution hereof or contemporaneous herewith.

11. GENERAL ADMINISTRATION AND MANAGEMENT: The Mayor and the City Administrator or his/her designee shall be the City's representative and shall oversee and approve all services to be performed, coordinate all communications, review and approve all invoices, and carry out any and all tasks as may be required under this Agreement.

12. AMENDMENTS: This Agreement may be amended only in writing upon mutual agreement of both the City and Artist Company.

13. ASSIGNMENT: It is expressly agreed and understood by the parties hereto that Artist Company shall not have the right to assign, transfer, hypothecate, or sell any of its rights under this Agreement except upon the prior express written consent of the City.

14. NOTICES: Any and all notices required to be given by either of the parties hereto, unless otherwise stated in this Agreement, shall be in writing and be deemed communicated when mailed in the United States mail, certified, return receipt requested, addressed as follows:

TO CITY: City Administrator
 City of Ketchum
 P.O. Box 2315
 Ketchum, ID 83340

TO ARTIST COMPANY: Powell Brothers Productions
 450 Browders Loop West
 New Waverly, Texas 77358

15. DISCRIMINATION PROHIBITED: In performing the services required herein, Artist Company agrees not to discriminate against any person on the basis of race, color, religion, sex, national origin or ancestry, age, or handicap. Violation of this section shall constitute a material breach of this Agreement and deemed grounds for cancellation, termination, or suspension of the Agreement by the City, in whole or in part.

16. STANDARD OF SERVICE: Artist Company shall provide services as described in this Agreement. These services will be performed in accordance with generally accepted professional practices for the scope of this project. Artist Company makes no other warranty either expressed or implied.

17. INDEMNIFICATION: Artist Company agrees to indemnify, defend, and hold harmless the City and its officers, agents, employees and City Council from and against all claims, losses, actions, or judgments for damages or injury to persons or property arising out of or resulting from the negligent performances or activities of Artist Company, Artist Company's agents, employees, or representatives under this Agreement.

18. INSURANCE: Artist Company agrees to obtain and keep in force during its acts under this Agreement a professional liability insurance policy with coverage limits over \$1,000,000.00 per occurrence. Certificate of proof of insurance will be provided to the City. Artist Company shall provide proof of coverage as set forth above to the City before commencing its performance as herein provided and shall require insurer to notify the City ten (10) days prior to cancellation of said policy. Deliver certificates of insurance and endorsements required by this Article to:

City of Ketchum
Attn: City Administrator
PO Box 2315
Ketchum, ID 83340

19. NONWAIVER: Failure of either party to exercise any of the rights under this Agreement or breach thereof shall not be deemed to be a waiver of such right or a waiver of any subsequent breach.

20. APPLICABLE LAW: Any dispute under this Agreement or related to this Agreement shall be decided in accordance with the laws of the state of Idaho.

21. SEVERABILITY: If any part of this Agreement is held unenforceable, the remaining portions of the Agreement

will nevertheless remain in full force and effect.

22. ATTORNEY FEES: Should any litigation be commenced between the parties hereto concerning this Agreement, the prevailing party shall be entitled, in addition to any other relief as may be granted, to costs and reasonable attorney fees as determined by a court of competent jurisdiction. This provision shall be deemed to be a separate contract between the parties and shall survive any default, termination, or forfeiture of this Agreement.

23. EFFECTIVE DATE: The effective date of this Agreement shall be the day this Agreement is signed by the City.

24. DISPUTES: In the event that a dispute arises between the City and Artist Company regarding application or interpretation of any provision of this Agreement, the aggrieved party shall promptly notify the other party to this Agreement of the dispute within ten (10) days after such dispute arises. If the parties shall have failed to resolve the dispute within thirty (30) days after delivery of such notice, the parties agree to first endeavor to settle the dispute in an amicable manner by non-binding mediation before resorting to litigation. Should the parties be unable to resolve the dispute to their mutual satisfaction within thirty (30) days after such completion of mediation, each party shall have the right to pursue any rights or remedies it may have at law or in equity.

25. SUCCESSORS IN INTEREST: The provisions of this Agreement shall be binding upon and shall inure to the benefit of the parties hereby and their respective successors and assigns.

IN WITNESS WHEREOF, THE CITY and ARTIST COMPANY have executed this Agreement as of the effective date specified above.

CITY OF KETCHUM
P.O. BOX 2315
KETCHUM, IDAHO 83340

Powell Brothers Productions
450 Browders Loop West.
New Waverly, TEXAS 77358

Neil Bradshaw, Mayor

Signature

Date

Print Name

Date

ATTEST:

TARA FENWICK
City Clerk

Date