

**PROFESSIONAL SERVICES AGREEMENT for
MUSICAL TALENT FOR CONCERTS ON BROADWAY**

This **PROFESSIONAL SERVICES AGREEMENT for MUSICAL TALENT FOR CONCERTS ON BROADWAY** (“Agreement”) is made this ___ day of _____, 2021 (“Effective Date”), by and between the City of Meridian, a municipal corporation organized under the laws of the State of Idaho (“City”) and Tom Phelps, doing business as Kings of Swing, an assumed business name certified under the laws of the State of Idaho, whose address is 10790 W. Hickory Drive, Boise, Idaho (“Promoter”).

WHEREAS, the City desires that the plaza at Meridian City Hall serve as a place where members of the community can gather to enjoy downtown Meridian and to take part in the arts, and to that end, the Meridian Arts Commission is presenting Concerts on Broadway, a series of concerts to be held in the Meridian City Hall plaza (“Event”); and

WHEREAS, the Parties mutually desire to present, as part of Concerts on Broadway, the music of Kings of Swing, a seventeen-piece band specializing in the performance of swing and big band music;

NOW, THEREFORE, for good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged and agreed, and in consideration of the mutual promises and covenants herein contained, the Parties agree as follows:

I. SCOPE OF SERVICES.

- A. Performance.** Tom Phelps and the Kings of Swing shall perform for the public approximately fifteen (15) swing and/or big band songs, from 7:00 p.m. to at least 8:30 p.m., on Saturday, August 28, 2021, in the plaza at Meridian City Hall, at 33 E. Broadway, Meridian, Idaho, with one fifteen-minute break during this time. In case of inclement weather, the venue may be moved to an indoor location to be determined and agreed upon separately by the Parties.
- B. Sound system; set up and sound checks.** City shall provide, set up, and operate any and all sound systems and equipment necessary to electronically amplify music and spoken announcements. City shall set up sound systems and/or related equipment by 5:00 p.m. on August 28, 2021, and Kings of Swing may rehearse and/or perform sound checks at that time. All set-up, rehearsal, and/or sound checks shall be completed by 6:30 p.m.
- C. Risers.** If Promoter elects to use risers to elevate the musicians, Promoter shall provide and set up such risers, and shall utilize such materials necessary to protect City facilities from any and all damage therefrom.

II. COMPENSATION.

- A. Total amount.** City shall make total payment to Promoter for services rendered pursuant to this Agreement in the amount of two thousand dollars (\$2,000.00). This payment shall constitute full compensation from City to Promoter and/or to the members of Kings of Swing for any and all services, costs, and expenses related to services performed under this Agreement. Promoter and/or the respective members of Kings of Swing shall be responsible for payment of any and all taxes due and owing for payment received under this Agreement.

- B. Cancellation.** City may, in City's sole discretion, cancel the Event and/or Kings of Swing's performance, for any reason, including, but not limited to, upon the order or advice of a governmental agency related to COVID-19 or other public health hazard. If City cancels the Event and/or Kings of Swing's performance:
- 1. On or prior to 5:00 p.m. on August 21, 2021:** This Agreement shall be void, and neither Promoter nor Kings of Swing shall be entitled to payment or any other benefit hereunder.
 - 2. Between 5:01 p.m. on August 21, 2021, and 1:00 p.m. on August 28, 2021:** So long as Kings of Swing is present and prepared to provide services set forth in this Agreement at the time, date, and place, and in accordance with the terms set forth herein, City shall pay Promoter in the amount set forth herein, even if the Event or any component thereof is cancelled due to unforeseen events not caused by Promoter, Kings of Swing, or the members thereof.
- C. Method of payment.** Following the August 28, 2021 performance, Promoter shall provide City with an invoice for the amount of two thousand dollars (\$2,000.00) for services provided, which City shall pay within thirty (30) days of receipt thereof. Payment of all taxes and other assessments on such sums shall be the sole responsibility of Promoter.

III. VENUE

- A. Plaza.** City shall provide for the performance the outdoor plaza on the east side of Meridian City Hall, 33 E. Broadway, Meridian, Idaho ("venue"), which is an outdoor, open, public venue. Promoter shall be solely responsible for any and all measures necessary to protect equipment, instruments, and Kings of Swing members from damage due to weather and other conditions that do or may exist.
- B. Public venue.** Promoter acknowledges that the venue is a public place and that all members of the public shall be invited to attend. To this end, the members of Kings of Swing shall perform such material and in such a manner as shall be appropriate for all ages, values, and sensibilities. Kings of Swing's performance and attire shall not include language, attire, and/or behavior that is profane, sexual, violent, or discriminatory.
- C. City policy applies.** Promoter and Kings of Swing shall comply with all City policies and codes applicable to use of City property and facilities, including, but not limited to, policies of the Meridian Parks and Recreation Department, and any requirements of the City Building Maintenance Technician, which requirements shall be reasonable and for the purpose of protecting City facilities and property.
- D. Photography and recording.** City shall be authorized to photograph, record, video tape, reproduce, transmit, or disseminate, in or from the plaza, the performance solely for educational and public information purposes. City shall not be responsible for the actions of persons who are not under its employment or control.
- E. Merchandising.** Promoter and/or Kings of Swing shall be authorized to sell albums and/or merchandising material at the performance, and may retain the proceeds of such sales. City requests that twenty percent (20%) of any proceeds from merchandise sold at the Event be voluntarily donated to the Meridian Arts Commission. Promoter and Kings of Swing shall be responsible for paying all sales and other taxes due and owing on the proceeds from merchandise sold.

IV. TERMS AND CONDITIONS

- A. Time of the essence.** Promoter acknowledges that services provided under this Agreement shall be performed in a timely manner. The Parties acknowledge and agree that time is strictly of the essence with respect to this Agreement, and that the failure to timely perform any of the obligations hereunder shall constitute a breach of, and a default under, this Agreement by the party so failing to perform.
- B. Promotion of Event.** City shall promote the performance in community promotional materials and avenues, including the City newsletter, City website, Meridian Parks & Recreation Department Activity Guide, and local media and event calendars. Promoter may undertake additional promotional activities at his own expense and effort, subject only to the limitations set forth herein. City hereby conveys to Promoter permission to use City's name in all forms and media and in all manners, without violation of City's respective rights of privacy or any other rights City may possess in connection with its role in the production of Concerts on Broadway, except that City's logo may not be used in any manner whatsoever without the express, written consent of the Mayor's Chief of Staff. To the extent practicable, Promoter shall be given the opportunity to review, for purposes of accuracy, and approve all promotional materials in advance of their publication, broadcast or dissemination. The band shall be listed as "Kings of Swing" in all promotional materials that are created by City or within the City's control.
- C. Subcontracting or assignment of obligations.** Promoter shall not subcontract or assign any of the obligations of Kings of Swing under this Agreement related to or that may relate to the band's talent or expertise. Promoter may subcontract or assign obligations that do not require the band's artistic talent or expertise, including, but not limited to, such obligations as transport and set-up of special equipment and/or instruments. Any subcontractor or assignee shall be bound by all the terms and conditions of this Agreement.
- D. Non-waiver of breach.** A waiver of any breach or default of any provision of this Agreement shall not be construed as a waiver of a breach of the same or any other provision hereof.
- E. Indemnification.** Promoter shall, and hereby does, indemnify, save, and hold harmless the City and any and all of its employees, agents, volunteers, and/or elected officials from any and all losses, claims, and judgments for damages or injury to persons or property, and from any and all losses and expenses caused or incurred by Promoter and/or Kings of Swing, their assistants, servants, agents, employees, guests, and/or business invitees, in connection with this Agreement or activities related thereto. Promoter and each member of Kings of Swing acknowledge that provision of the services described hereunder presents risks, some of which are unknown, and do agree to assume all such known or unknown risks.
- F. Waiver.** Except as to rights held under the terms of this Agreement, Promoter and each member of Kings of Swing shall, and hereby do, waive any and all claims and recourse against City, including the right of contribution for loss and damage to persons or property arising from, growing out of, or in any way connected with or incident the performance of this Agreement, whether such loss or damage may be attributable to known or unknown conditions, except for liability arising out of concurrent or sole negligence of City or its officers, agents or employees.
- G. Relationship of Parties.** Promoter and each member of Kings of Swing is an independent contractor and is not an employee, agent, joint venturer, or partner of City. Nothing in this Agreement shall be

interpreted or construed as creating or establishing the relationship of employer and employee between Promoter or any member of Kings of Swing and City or any official, agent, or employee of City. Promoter and Kings of Swing shall retain the right to perform services for others during the term of this Agreement.

- H. Compliance with law.** Throughout the course of this Agreement, Promoter and each member of Kings of Swing shall comply with any and all applicable federal, state, and local laws.
- I. Non-Discrimination.** Throughout the course of this Agreement, neither Promoter nor any member of Kings of Swing shall discriminate against any person as to race, creed, religion, sex, age, national origin, sexual orientation or any physical, mental, or sensory handicap.
- J. Entire Agreement.** This Agreement constitutes the entire understanding between the Parties. This Agreement supersedes any and all statements, promises, or inducements made by either party, or agents of either party, whether oral or written, whether previous to the execution hereof or contemporaneous herewith. The terms of this Agreement may not be enlarged, modified or altered except upon written agreement signed by both parties hereto.
- K. Costs and attorneys' fees.** If either party brings any action or proceedings to enforce, protect or establish any right or remedy under the terms and conditions of this Agreement, the prevailing party shall be entitled to recover reasonable costs and attorneys' fees, as determined by a court of competent jurisdiction, in addition to any other relief awarded.
- L. Agreement governed by Idaho law.** The laws of the State of Idaho shall govern the validity, interpretation, performance and enforcement of this Agreement. Venue shall be in the courts of Ada County, Idaho.
- M. Cumulative rights and remedies.** All rights and remedies herein enumerated shall be cumulative and none shall exclude any other right or remedy allowed by law. Likewise, the exercise of any remedy provided for herein or allowed by law shall not be to the exclusion of any other remedy.
- N. Severability.** If any provision of this Agreement is found by a court of competent jurisdiction to be illegal, invalid, or unenforceable, the remainder of this Agreement shall not be affected.
- O. Successors and assigns.** All of the terms, provisions, covenants and conditions of this Agreement shall inure to the benefit of, and shall be binding upon, each party and their successors, assigns, legal representatives, heirs, executors, and administrators.
- P. Notice.** Any and all notice required to be provided by either of the Parties hereto, unless otherwise stated in this Agreement, shall be in writing and shall be deemed communicated upon mailing by United States Mail, addressed as follows:

City:
City Clerk
City of Meridian
33 E. Broadway Avenue
Meridian, Idaho 83642

Kings of Swing:
Tom Phelps
10790 W. Hickory Drive
Boise, Idaho 83713

Either party may change its address for the purpose of this section by giving written notice of such change in the manner herein provided.

Q. Warranty of authority. The undersigned expressly warrants that, to the extent set forth herein, he is duly authorized to act as the representative and agent of Kings of Swing and each and every member thereof. The undersigned further warrants that he is authorized to bind Kings of Swing and its members to the obligations set forth herein, and to accept the liabilities as established herein on behalf of Kings of Swing and its members.

R. City Council approval required. The validity of this Agreement shall be expressly conditioned upon City Council action approving the Agreement. Execution of this Agreement by the persons referenced below prior to such ratification or approval shall not be construed as proof of validity in the absence of Meridian City Council approval.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement on the Effective Date first written above.

PROMOTER:



Tom Phelps, Director
Kings of Swing

CITY OF MERIDIAN:

BY: _____
Robert E. Simison, Mayor

Attest: _____
Chris Johnson, City Clerk