

SERVICES AGREEMENT

This Services Agreement ("Agreement") is made and entered into and effective on this ___ day of May, 2021 ("Effective Date") by and between the City of Powell, Ohio ("Powell"), an Ohio Municipal Corporation, with offices located at 47 Hall Street, Powell, OH 43065 and Marquee Arts & Entertainment LLC ("Service Provider"), with an office and principal place of business located at _____.

Recitals

WHEREAS, Powell desires to engage Service Provider to perform the services as more fully described below (the "Services"); and

WHEREAS, Services Provider desires to perform the Services and desires to be so engaged.

NOW, THEREFORE, in consideration of the foregoing and of the covenants and agreements herein contained, the parties, intending to be legally bound, agree as follows:

Provisions

I. Performance of the Services. Services Provider shall:

A. Pursue sponsorship opportunities for the City and actively engage potential sponsors. In such pursuit, Service Provider shall make its best efforts to maximize venue assets and research market opportunities. When planning and implementing media buys, and coordinating press, partnerships and promotions, each individual engagement, Service Provide shall any and all reasonable efforts to maximize sales using its resources and experience.

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B. Be responsible for all required booking of entertainers, including, but not limited to reviewing and negotiating agreements or contracts, and overseeing any and all logistical requirements for the books and performances.

Deleted: <#>Working iHeart media into our sponsors and community to maximize our dollars.¶

Deleted: <#>Booking/ Contracts/ Overseeing Artist, Riders.

C. Be responsible for overseeing and coordinating production of events, including, but not limited to, coordinating sound and audio, and any specific needs the entertainer(s), performer(s), or group(s) request.

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D. Be responsible for implementing a social media strategy that focuses on customer service, ease of access to event information, with focus on brand standards, encouraging brand growth, and customer engagement. All social media content must be approved, in writing, by Powell in advance of any posting.

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E. Give prompt notice to Powell should the Service Provider observe or otherwise become aware of any fault or deficit in the project or any nonconformance with the Agreement.

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<#>Overseeing entire series and year of events.¶

F. Remit to Powell after the termination of this Agreement, all files and documents pertaining to the project that have been obtained or produced including, but not limited to, permits, licenses, applications, codes, drawings, site plans,

photographs and similar materials. Service Provider shall be entitled to retain copies for Services Provider's files.

II. Obligations of Powell. Powell shall:

- A. Assist the Service Provider by placing at its disposal all available information pertinent to the Services for the projects.
- B. Use its best efforts to secure release of other data applicable to the projects held by others.
- C. Make all necessary provisions to enter upon public and private property as required to perform the Services.
- D. Give prompt notice to the Service Provider should Powell observe or otherwise become aware of any fault or deficit in the project or any nonconformance with the Agreement.

III. Term and Termination. The Agreement shall commence upon execution and shall terminate on _____, 2022. Powell may terminate this Agreement at any time by giving Service Provider thirty (30) days advance written notice. In the event this Agreement is terminated by Powell prior to its natural expiration, Service Provider shall be paid the amounts for work actually performed in accordance with this Agreement to the date of this early termination.

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IV. Payment.

Powell shall pay to Service Provider a \$25,000 retainer fee for 2022 Season (the "2022 Retainer"), due within a reasonable time after full execution of this Agreement. Powell shall also pay an additional \$25,000 retainer to be paid on or before January 1, 2022, for the second calendar year of services (the "2022 Retainer"). The 2022 Retainer shall be paid back to Powell by Service Provider in full through sponsorship; Service Provide shall pay back to Powell an amount equal to the 2022 Retainer by [date]. After Service Provider pays to Powell the 2022 Retainer, Powell and Service Provider shall share in the sponsorship funds equally 50% / 50% for all sponsorship funds for calendar year 2022 and calendar year 2023.

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Service Provider shall be compensated \$3,000.00 per month ("Payment"), for the Services. Powell shall pay the Payment to Service Provider within 30 days of receiving al invoice for each respective month.

V. Relationship of the Parties. The parties acknowledge and agree that Service Provider is an independent contractor and is not an agent or employee of Powell. Nothing in this Agreement shall be construed to create a relationship between Service Provider and Powell of a partnership, association, or joint venture. Further, the parties acknowledge that Service Provider is paid a fee, retainer or other payment as per Section IV of this Agreement; is not eligible for workers' compensation or unemployment compensation;

is not eligible for employee fringe benefits such as vacation or sick leave; does not appear on Powell's payroll; is required to provide his or her own supplies and equipment; and is not controlled or supervised by Powell personnel as to the manner of work.

VI. Indemnification.

- A. Professional Liability. Relative to any and all claims, losses, damages, liability and cost, the Service Provider agrees to indemnify and hold Powell, its officers, officials, and employees harmless from and against any and all suits, actions or claims for property losses, damages or personal injury arising from the negligent acts, errors or omissions by the Service Provider or its employees.
- B. Non-Professional Liability (General Liability). To the fullest extent permitted by law, the Service Provider shall indemnify, defend and hold Powell, its officers, officials, employees or any combination thereof, harmless from and against claims, damages, losses and expenses, including but not limited to attorneys' fees, arising out of the acts or omissions of the Service Provider, provided that such claim, damage, loss or expenses is attributable to bodily injury, sickness, disease or death, or to injury to or destruction of property (other than the work itself) including loss of use resulting therefrom, but only to the extent caused by the negligent acts or omissions of the Service Provider, any subconsultant(s) of the Service Provider, its agents, or anyone directly or indirectly employed by them or anyone for whose acts they may be liable. Such obligations shall not be construed to negate, abridge, or reduce other rights or obligations of indemnity which would otherwise exist as to a party or person described in this paragraph.

VII. Insurance.

- A. The Service Provider shall secure and maintain, at its own expense, errors and omissions insurance in an amount not less than Five Hundred Thousand Dollars (\$500,000.00) per claim/annual aggregate to protect himself from any claim arising out of the performance of professional services and caused by negligent acts, omissions or negligent acts for which the Service Provider may be legally negligent. The Service Provider shall maintain said coverage for the entire contract period and for a minimum of one year after completion of the work under the contract.
- B. In addition to errors and omissions insurance, the Service Provider shall also secure and maintain, at his/her own expense, insurance for protection from claims under Worker's Compensation acts, claims for damages because of bodily injury including personal injury, sickness or disease or death of any and all employees or of any person other than such employees, and from claims or damages because of injury to or destruction of property including loss of use resulting therefrom, and any other insurance prescribed by laws, rules, regulations, ordinances, codes or orders.
- C. The Service Provider shall secure and maintain, at its own expense, General Liability insurance in an amount not less than Five Hundred Thousand Dollars (\$500,000.00) per occurrence.

- D. Powell shall be held harmless for any damage to the Service Provider's property and/or equipment during the course of performance under the Contract.
- E. The above referenced insurance shall be maintained in full force and effect during the life of this Agreement and for one year beyond, where specified. Certificates showing that the Service Provider is carrying the above referenced insurance in at least the above specified minimum amounts shall be furnished to, and approved by, Powell prior to the start of work on the project and before Powell is obligated to make any payments to the Service Provider for the work performed under the provision of this contract. All such Certificates, with the exception of those for Worker's Compensation and Errors & Omissions coverage, shall clearly reflect that the City of Powell is an "Additional Insured".

VIII. Employee Documentation

- A. Service Provider guarantees that the individuals employed by the Service working on this project are authorized to work in the United States. The Service Provider will upon demand provide Powell with appropriate documentation (Form 1-9) for any Service Provider employee performing services for Powell.
- B. The Service Provider agrees to indemnify Powell in accordance with Section VI of the Agreement for any issue arising out of the Service Provider's hiring or retention of any individual who is not authorized to work in the United States.

IX. Taxes.

- A. Service Provider has the following identification number for income tax purposes:
_____.
- B. Service Provider is subject to and responsible for all applicable federal, state, and local taxes.
- C. Powell represents that it is a tax-exempt entity and evidence of this tax-exempt status shall be provided to Service Provider upon written request. Service Provider hereby further agrees to withhold all municipal income taxes due or payable under the Codified Ordinances of Powell, Ohio, for wages, salaries and commissions paid to its employees and further agrees that any of its subcontractors shall be required to agree to withhold any such municipal income taxes due under such chapter for Services performed under this Agreement.
- D. The Service Provider shall receive Internal Revenue Service form 1099 from Powell for income tax reporting purposes.

- X. Assignment.** Neither party may assign this Agreement without obtaining express, written consent from the other party prior to assignment.

XI. Entire Agreement / Amendment. This Agreement constitutes the entire understanding of the parties hereto with respect to the subject matter hereof and supersedes all prior negotiations, discussions, undertakings and agreements between the parties. This Agreement may be amended or modified only by a writing executed by the duly authorized officers of the parties hereto. It is understood and agreed that this Agreement may not be changed, modified, or altered except by an instrument, in writing, signed by both parties in accordance with the laws of the State of Ohio.

XII. Discrimination.

- A. No discrimination for reason of race, color, national origin, religion, sex, genetic information, pregnancy, age, ancestry, military status, sexual orientation, gender identity, marital status, veteran's status, or disability shall be permitted or authorized by Powell and/or Service Provider in connection with the Services.
- B. Nothing in this Agreement shall require the commission of any act contrary to any law or any rules or regulations of any union, guild, or similar body having jurisdiction over the Services of Service Provider.

XIII. Governing Law/Venue. Any controversy or claim, whether based upon contract, statute, tort, fraud, misrepresentation or other legal theory, related directly or indirectly to this Agreement, whether between the parties, or of any of the parties' employees, agents or affiliated businesses, will be resolved under the laws of the State of Ohio, in any court of competent jurisdiction in Delaware County, Ohio.

XIV. Severability. If any provision of this Agreement is held invalid or unenforceable, such provision shall be deemed deleted from this Agreement and shall be replaced by a valid, mutually agreeable and enforceable provision which so far as possible achieves the same objectives as the severed provision was intended to achieve, and the remaining provisions of this Agreement shall continue in full force and effect.

XV. Paragraph Headings. Paragraph headings are inserted in this Agreement for convenience only and are not to be used in interpreting this Agreement.

BY SIGNING THIS AGREEMENT, YOU HEREBY ACKNOWLEDGE THAT YOU HAVE BEEN INFORMED THAT THE CITY OF POWELL, OHIO HAS CLASSIFIED YOU AS AN INDEPENDENT CONTRACTOR AND THAT YOU HAVE BEEN ADVISED THAT CONTRIBUTIONS TO OPERS WILL NOT BE MADE ON YOUR BEHALF FOR THESE SERVICES.

FURTHER, BY SIGNING THIS AGREEMENT, YOU HEREBY ACKNOWLEDGE THAT THE CITY OF POWELL, OHIO HAS IN NO WAY LIMITED OR RESTRICTED YOUR RIGHT TO PROVIDE THE AGREED-TO SERVICES TO THE GENERAL PUBLIC AND THAT YOU REGULARLY PROVIDE SUCH SERVICES TO THE GENERAL PUBLIC.

IN WITNESS WHEREOF, the parties have executed this Agreement as of the ____ day of June, 2021.

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CITY OF POWELL, OHIO

BY: _____
Andrew White, City Manager

Marquee Arts & Entertainment LLC

BY: _____
ITS: _____

Approved as to Form:

Law Director

CERTIFICATION OF FUNDS

I hereby certify that the funds required to meet the City's obligation, payment, or expenditure under this Agreement have been lawfully appropriated or authorized for such purpose and are free from any obligation now outstanding.

Director of Finance

Date