RESOLUTION NUMBER 04-065

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF KETCHUM, IDAHO, AUTHORIZING THE MAYOR TO EXECUTE A CONTRACT FOR SERVICES AGREEMENT WITH THE "BLACKJACK KETCHUM SHOOT-OUT GANG" FOR PERFORMANCES DURING THE WAGON DAYS CELEBRATION.

WHEREAS, the City of Ketchum, as part of the Wagon Days celebration, wishes to enter into a contract for services with independent contractor, "Blackjack Ketchum Shoot-Out Gang," for three separate performances for a fee of $1,200; and,

WHEREAS, "Blackjack Ketchum Shoot-Out Gang" has agreed to perform on September 3, 2004 at 7:00 p.m., September 4, 2004 at 12:15 p.m. and 7:00 p.m. on Main Street in Ketchum, Idaho; and,

WHEREAS, the performers have agreed that they will carry and show proof of their own insurance prior to the first performance.

NOW, THEREFORE, BE IT RESOLVED by the Mayor and the City Council of the City of Ketchum, Idaho that the City Council hereby authorizes and instructs the Mayor of said City to execute a Contract for Services Agreement with the "Blackjack Ketchum Shoot-Out Gang" for performances during the Wagon Days celebration.

PASSED by the City Council, and APPROVED by the Mayor this 16th day of August, 2004.

CITY OF KETCHUM, IDAHO

EDWARD SIMON, Mayor

ATTEST:

Sandra E. Cady, CMC
City Clerk/Treasurer

ORIGINAL
CLERK OF THE DISTRICT COURT
KETCHUM, BLAINE COUNTY, IDAHO

INDEPENDENT CONTRACTOR SERVICES AGREEMENT

This Independent Contractor Services Agreement (hereinafter referred to as the "Agreement") is made and entered into this 16 day of August, 2004, by and between the CITY OF KETCHUM, Idaho, a municipal corporation (hereinafter referred to as the "City") and "BLACKJACK KETCHUM SHOOT-OUT GANG," (hereinafter referred to as "Contractor").

RECITALS

A. The City of Ketchum is a municipal corporation duly organized and existing under the laws of the State of Idaho.

B. Pursuant to Idaho Code §50-301, the City is empowered to enter into contracts as may be deemed necessary to promote the welfare of the City and its residents.

C. It is deemed in the best interest of the City to acquire, by contract, certain services to be performed by the Contractor.

D. The City finds that the performances by the Contractor will enhance the visitor and residence experience during the Wagon Days celebration.

NOW, THEREFORE, on the basis of the foregoing recitals, and upon motion unanimously passed by the Ketchum City Council, the parties agree as follows:

1. Payment by the City. The City shall pay Contractor the sum of $1,200 (ONE THOUSAND TWO HUNDRED DOLLARS) in two equal installments. The first installment of $600 (SIX HUNDRED DOLLARS) shall be paid prior to the first performance by Contractor. The second installment of $600 (SIX HUNDRED DOLLARS) shall be paid after the third and final performance by the Contractor.

2. Services To Be Provided By Contractor. Contractor agrees to provide three separate performances on Main Street in Ketchum, Idaho:

First performance: Friday, September 3, 2004 at 7:00 p.m.

Second performance: Saturday, September 4, 2004 at 12:15 p.m.

Third performance: Saturday, September 4, 2004 at 7:00 p.m.

3. Non-assignment. This Agreement may not be assigned by or transferred by Contractor, in whole or in part, without the prior written consent of the City.

4. Default. In the event the Contractor shall fail for any reason to provide the services as set forth in this Agreement, this Agreement shall automatically terminate.

5. **Independent Contractor Status**. The parties acknowledge and agree that the Contractor shall provide his/her services in the status of independent contractor, and not as an employee of the City. The Contractor and its agents, employees, and volunteers shall not accrue leave, retirement, insurance, bonding, or any other benefit afforded to employees of the City. The sole interest and responsibility of the City under this Agreement is to assure itself that the services covered by this Agreement shall be performed and rendered by the Contractor in a competent, efficient and satisfactory manner.

6. **Hold Harmless Agreement**. Any contractual obligation entered into or assumed by the Contractor, or any liability incurred by reason of personal injury and/or property damage in connection with or arising out of the Contractor's obligations pursuant to this Agreement shall be the **sole responsibility** of the Contractor, and the Contractor covenants and agrees to indemnify and hold the City harmless from any and all claims and causes of action arising out of the Contractor's activities and obligations as set forth hereinabove, including, but not limited to, personal injury, property damage, and employee complaints.

7. **Insurance.** The Contractor shall obtain and maintain at all times during the term of this Agreement a policy of comprehensive general and contractual liability insurance providing for prudent limits, but in no event shall such insurance have limits of less than $1,000,000.00 for personal injury or death to any number of persons, for any single occurrence. The Contractor shall provide the City with proof of insurance prior to their first performance.

8. **Miscellaneous Provisions.**

(a) Paragraph Headings. The headings in this Agreement are inserted for convenience and identification only and are in no way intended to describe, interpret, define or limit the scope, extent or intent of this Agreement or any of the provisions of the Agreement.

(b) Provision Severable. Every provision of this Agreement is intended to be severable. If any term or provision hereof is illegal or invalid for any reason whatsoever, such illegality or invalidity shall not affect the validity of the remainder of the Agreement.

(c) Rights and Remedies are Cumulative. The rights and remedies provided by this Agreement are cumulative and the use of any one right or remedy by any party shall not preclude nor waive its rights to use any or all other remedies. Any rights provided to the parties under this Agreement are given in addition to any other rights the parties may have by law, statute, ordinance or otherwise.

(d) Successor and Assigns. This Agreement and the terms and provisions hereof shall inure to the benefit of and be binding upon the heirs, personal representatives, successors and assigns of the parties hereto.

(e) Entire Agreement. This Agreement contains the entire agreement between the parties respecting the matters herein set forth and supersedes all prior agreements between the parties hereto respecting such matters.

(f) Governing Law. This Agreement shall be construed in accordance with the laws of the State of Idaho.

(g) Preparation of Agreement. No presumption shall exist in favor of or against any party to this Agreement as a result of the drafting and preparation of the document.

(h) No Waiver. No waiver of any breach by either party of the terms of this Agreement shall be deemed a waiver of any subsequent breach of the Agreement.

(i) Amendment. No amendment of this Agreement shall be effective unless the amendment is in writing, signed by each of the parties.

IN WITNESS WHEREOF, the parties have signed this Agreement the day and year first above written.

CITY OF KETCHUM, IDAHO

By: _____
EDWARD SIMON, Mayor

ATTEST:

Sandra E. Cady, CMC
City Clerk/Treasurer

CONTRACTOR:
BLACKJACK KETCHUM SHOOT-OUT GANG

By: _____
PATI QUEEN, TREASURER

Kelly M. Hewlett, Secretary

INDEPENDENT CONTRACTOR AGREEMENT

(Ketchum/Blackjack Ketchum Shootout Gang)

THIS INDEPENDENT CONTRACTOR AGREEMENT is made and entered into this 19th day of August, 2004, by and between the CITY OF KETCHUM, IDAHO, an Idaho municipal corporation ("Ketchum"), and WALT COCHRAN, an individual dba the "Blackjack Ketchum Shootout Gang" ("Contractor"), referred to herein at times collectively as the "Parties" and individually as a "Party".

RECITALS

WHEREAS, Ketchum is a municipal corporation duly organized and existing under the laws of the State of Idaho; and

WHEREAS, pursuant to law including, without limitation, Idaho Code §50-301, Ketchum is empowered to enter into contracts as may be deemed necessary to promote the welfare of Ketchum and its residents; and

WHEREAS, it is deemed in the best interest of Ketchum to acquire by contract certain services to be performed by Contractor; and

WHEREAS, Ketchum finds that the Wagon Days celebration, of which Contractor's services are a major attraction, promotes tourism thereby generating substantial revenue for both Ketchum and its business community. Additionally, Ketchum finds that Contractor's services lend the place a little sorely needed culture and provide a rich historical link to Ketchum's chaotic birth in an era of drunken violence and frontier justice.

NOW, THEREFORE, on the basis of the foregoing Recitals, and upon Resolution duly adopted by the Ketchum City Council, the parties agree as follows:

1) Payment by Ketchum. Ketchum shall pay Contractor the sum of $1,200 (ONE THOUSAND TWO HUNDRED DOLLARS) in two equal installments. The first installment of $600 (SIX HUNDRED DOLLARS) shall be paid upon mutual execution of this Agreement. The second installment of $600 (SIX HUNDRED DOLLARS) shall be paid on or before September 15, 2004.

2) Services To Be Provided By Contractor. Contractor shall provide all skills, knowledge, choreography, costumes, equipment, labor and materials necessary to

plan, coordinate and perform three (3) wild-west pageants on Main Street in Ketchum, Idaho, at the following times:

Friday, September 3, 2004 at 7:00 p.m.

Saturday, September 4, 2004 at 12:15 p.m.

Saturday, September 4, 2004 at 7:00 p.m.

3) Non-Assignment. The Parties acknowledge that Ketchum elects to enter this Agreement with Contractor due to Contractor's unique knowledge and skills. Accordingly, this Agreement may not be assigned by or transferred by Contractor, in whole or in part, without the prior written consent of Ketchum. Ketchum acknowledges that Contractor shall work with other individuals, actors, participants and volunteers in performing the pageants described in Paragraph 2 above.

4) Independent Contractor Status. The parties acknowledge and agree that Contractor, his partners, joint venturers, agents, employees and volunteers and all individuals supporting or acting in the pageants described in Paragraph 2 above shall provide such services and participate in the status of independent contractors, and not as employees or partners of Ketchum or in any other form of corporation, company, joint venture, or other business entity or form of association with Ketchum. The sole interest and responsibility of Ketchum under this Agreement is to assure itself that the services covered by this Agreement shall be performed and rendered by Contractor in a competent, efficient and satisfactory manner.

5) Mutual Release and Indemnification. Contractor, on behalf of himself and his partners, joint venturers, agents, employees and volunteers and all individuals acting in or supporting the pageants described in Paragraph 2 above, hereby releases, holds harmless and agrees to indemnify Ketchum from and against any and all liability, costs, actions, claims, causes of action, personal damages and property damages including, without limitation, personal injury and death caused by the actions or omissions of Contractor, his partners, joint venturers, agents, employees and volunteers and all individuals acting in or supporting the pageants described in Paragraph 2 above. Ketchum hereby releases, holds harmless and agrees to indemnify Contractor and his partners, joint venturers, agents, employees and volunteers and all individuals acting in or supporting the pageants described in Paragraph 2 above from and against any and all liability, costs, actions, claims, causes of action, personal damages and property damages including, without limitation, personal injury and death, caused by the actions or omissions of Ketchum, its elected officials, agents (other than Contractor) employees or volunteers.

6) Insurance. Contractor shall, at his sole cost and expense, carry as a minimum, commercial event general liability insurance in such forms and with a carrier

acceptable to Ketchum with combined single limits of liability not less than $1,000,000 (ONE MILLION DOLLARS) for bodily injury, including personal injury or death, products liability and property damage caused in whole or in part by the actions or omissions of Contractor, his partners, joint venturers, agents, employees and volunteers and all individuals acting in or supporting the pageants described in Paragraph 2 above. All such insurance policies shall name Ketchum as an additional insured. Contractor shall provide certificates of insurance and an additional insured endorsement to Ketchum prior to performing any of the services contemplated in this Agreement.

7) Miscellaneous Provisions.

(a) Provision Severable. Every provision of this Agreement is intended to be severable. If any term or provision hereof is illegal or invalid for any reason whatsoever, such illegality or invalidity shall not affect the validity of the remainder of the Agreement.

(b) Rights and Remedies are Cumulative. The rights and remedies provided by this Agreement are cumulative and the use of any one right or remedy by any party shall not preclude nor waive its rights to use any or all other remedies. Any rights provided to the parties under this Agreement are given in addition to any other rights the parties may have by law, statute, ordinance or otherwise.

(c) Successor and Assigns. This Agreement and the terms and conditions hereof shall inure to the benefit of and be binding upon the heirs, personal representatives, successors and assigns of the parties hereto.

(d) Entire Agreement. This Agreement contains the entire agreement between the parties respecting the matters herein set forth and supersedes all prior agreements between the parties hereto respecting such matters.

(e) Governing Law. This Agreement shall be construed in accordance with the laws and decisions of the State of Idaho.

(f) Time of the Essence. Time is hereby made expressly of the essence in the performance of every covenant, term and condition of this Agreement.

(g) Preparation of Agreement. The parties acknowledge that Benjamin W. Worst, City Attorney for the City of Ketchum, prepared this Agreement. No presumption shall exist in favor of or against any party to this Agreement as a result of such preparation. Mr. Worst represented the City of Ketchum exclusively in the negotiation and preparation of this Agreement. Contractor has had a full and complete opportunity to review this Agreement, consult with the attorneys and

other professionals of his choice, fully understands the terms and conditions contained herein and enters this Agreement voluntarily.

(h) No Waiver. No waiver of any breach by either party of the terms of this Agreement shall be deemed a waiver of any subsequent breach of the Agreement.

(i) Amendment. No amendment of this Agreement shall be effective unless the amendment is in writing, signed by each of the parties.

(j) Attorney Fees. If either party is required to retain an attorney to enforce its rights hereunder, the defaulting party shall pay to the non-defaulting party all reasonable costs and attorney fees, whether or not litigation is commenced and including reasonable costs and attorney fees on appeal.

(k) Counterparts/Fax Copies and Fax Signatures. This Agreement may be executed in any number of counterparts, all such counterparts shall be deemed to constitute one and the same instrument, and each of said counterparts shall be deemed an original hereof. Fax copies of this Agreement and the original and faxed signatures thereon shall have the same force and effect as originals.

IN WITNESS WHEREOF, the parties enter this Agreement as of the day and year first-above written.

ATTEST:

For: Patricia Bennett
Sandra Cadey, Ketchum City Clerk

CITY OF KETCHUM

By: _____
Ed Simon, Mayor

_____
WALT COCHRAN, an individual,
dba the "Blackjack Ketchum Shootout Gang"

Reviewed and approved exclusively for the City of Ketchum as to form and content:

_____
Benjamin W. Worst, City Attorney

other professionals of his choice, fully understands the terms and conditions contained herein and enters this Agreement voluntarily.

(h) No Waiver. No waiver of any breach by either party of the terms of this Agreement shall be deemed a waiver of any subsequent breach of the Agreement.

(i) Amendment. No amendment of this Agreement shall be effective unless the amendment is in writing, signed by each of the parties.

(j) Attorney Fees. If either party is required to retain an attorney to enforce its rights hereunder, the defaulting party shall pay to the non-defaulting party all reasonable costs and attorney fees, whether or not litigation is commenced and including reasonable costs and attorney fees on appeal.

(k) Counterparts/Fax Copies and Fax Signatures. This Agreement may be executed in any number of counterparts, all such counterparts shall be deemed to constitute one and the same instrument, and each of said counterparts shall be deemed an original hereof. Fax copies of this Agreement and the original and faxed signatures thereon shall have the same force and effect as originals.

IN WITNESS WHEREOF, the parties enter this Agreement as of the day and year first-above written.

ATTEST:

For: Sandra Gadsy, Ketchum City Clerk

CITY OF KETCHUM

By: Ed Simon, Mayor

WALT COCHRAN, an individual, dba the "Blackjack Ketchum Shootout Gang"

Reviewed and approved exclusively for the City of Ketchum as to form and content:

Benjamin W. Worst, City Attorney