**RESOLUTION NUMBER 05-070**

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF KETCHUM, IDAHO, AUTHORIZING THE MAYOR TO EXECUTE A CONTRACT FOR SERVICES WITH JUKEBOX PARTY EXPRESS, INC. FOR CARNIVAL TYPE ENTERTAINMENT FOR CHILDREN DURING THE WAGON DAYS CELEBRATION.

WHEREAS, Idaho Code Section 50-301 empowers the City to contract and be contracted with; and

WHEREAS, the City of Ketchum, as part of the Wagon Days celebration, wishes to enter into a contract for services with Jukebox Party Express, Inc., for carnival type entertainment for children for a fee of $3,700; and,

WHEREAS, Jukebox Party Express, Inc. has agreed to provide such carnival type entertainment for children on September 3, 2005.

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 with Jukebox Party Express, Inc. for carnival type entertainment for children during the Wagon Days celebration.

PASSED by the City Council, and APPROVED by the Mayor this 15th day of August 2005.

CITY OF KETCHUM, IDAHO

EDWARD SIMON, Mayor

ATTEST:

Sandra E. Cady, CMC
Treasurer/Clerk

APPROVED AS TO FORM AND CONTENT:

Benjamin W. Worst,
City Attorney

# INDEPENDENT CONTRACTOR AGREEMENT

(Ketchum/Jukebox Party Express, Inc.)

THIS INDEPENDENT CONTRACTOR AGREEMENT is made and entered into this 15th day of August, 2005, by and between the CITY OF KETCHUM, IDAHO, an Idaho municipal corporation ("Ketchum"), JUKEBOX PARTY EXPRESS, INC. ("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.

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 $3,700 (THREE THOUSAND SEVEN HUNDRED DOLLARS) in one installment.

2) Services To Be Provided By Contractor. Contractor shall provide, including without limitation, all equipment, labor, and materials necessary to plan, coordinate, and provide carnival type entertainment for children during Wagon Days.

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.

4) Independent Contractor Status. The parties acknowledge and agree that Contractor, his directors, officers, shareholders, agents, employees and volunteers, and all individuals taking part in or supporting the entertainment 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) Release and Indemnification. Contractor, on behalf of himself and his directors, officers, shareholders, agents, employees and volunteers, and all individuals taking part in or supporting the entertainment 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 directors, officers, shareholders, agents, employees and volunteers, and all individuals taking part in or supporting the entertainment described in Paragraph 2 above.

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 directors, officers, shareholders, and agents, employees and volunteers and all individuals taking part in or supporting the entertainment 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 Ketchum is required to retain an attorney to enforce its rights hereunder, the Contractor shall pay to Ketchum all reasonable costs and attorney fees, whether or not litigation is commenced and including reasonable costs and attorney fees on appeal. Contractor hereby waives all rights to attorney fees.

(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:

Sandra Cady, CMC
Ketchum City Clerk/Treasurer

CITY OF KETCHUM

By:
Ed Simon, Mayor

By:
Robin Walker, President,
Jukebox Party Express, Inc.

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

Benjamin W. Worst, City Attorney