

**NON-EXCLUSIVE
ENTERTAINMENT SERVICES AGREEMENT BETWEEN
TEMECULA COMMUNITY SERVICES DISTRICT AND**

TIMMY D' PRODUCTIONS, INC.

ENTERTAINMENT AND TECHNICAL SERVICES

THIS AGREEMENT is made and effective as of **June 27, 2023**, between the **Temecula Community Services District**, a community services district (hereinafter referred to as "City"), and **Timmy D' Productions, Inc.**, a **Corporation** (hereinafter referred to as "Entertainer"). In consideration of the mutual covenants and conditions set forth herein, the parties agree as follows:

1. TERM

This Agreement shall commence on **July 1, 2023**, and shall remain and continue in effect until tasks described herein are completed, but in no event later than **July 30, 2028**, unless sooner terminated pursuant to the provisions of this Agreement.

2. SERVICES

Entertainer shall perform the services and tasks described and set forth in Exhibit A, attached hereto and incorporated herein as though set forth in full. Entertainer shall complete the tasks according to the schedule of performance which is also set forth in Exhibit A.

3. PERFORMANCE

Entertainer shall faithfully and competently exercise the ordinary skill and competence of members of their profession. Entertainer shall employ all generally accepted standards and practices utilized by persons engaged in providing similar services as are required of Entertainer hereunder in meeting its obligations under this Agreement.

4. LOCATION AND REALIABILITY OF PERFORMANCE

The date, time, and location of Entertainers performance shall be determined at the time of City's request for "Event Price Quote/Agreement". All entertainment shall be provided within City limits. Time and reliability are of the essence in this Agreement.

5. PAYMENT

a. The City agrees to pay Entertainer monthly, in accordance with the payment rates and terms and the schedule of payment as set forth in Exhibit B, Payment Rates and Schedule, attached hereto and incorporated herein by this reference as though set forth in full, based upon actual time spent on the above tasks. Any terms in Exhibit B, other than the payment rates and schedule of payment, are null and void. This amount shall not exceed **Four Hundred Fifty Thousand and No Cents (\$450,000) for the total term of this agreement** unless additional payment is approved as provided in this Agreement.

b. Entertainer will submit invoices for actual services performed. Payment shall be made within thirty (30) days of receipt of each invoice as to all non-disputed fees. If the

City disputes any of Entertainer's fees, it shall give written notice to Entertainer within thirty (30) days of receipt of an invoice of any disputed fees set forth on the invoice. For all reimbursements authorized by this Agreement, Entertainer shall provide receipts on all reimbursable expenses in excess of fifty dollars (\$50) in such form as approved by the Director of Finance.

6. NON-EXCLUSIVE AGREEMENT

Entertainer understands this is a non-exclusive Agreement between the City and Entertainer and no guarantee of work or cost as outlined in Sections 2 and 5 is given or implied.

7. EQUIPMENT/MATERIALS

Entertainer(s) shall provide their own sound equipment and any other special equipment and materials that are required for the performance, unless other arrangements are made in writing and approved with the City prior to the performance. Sound equipment shall be adequate for the size of the anticipated audience and location of the performance. The City reserves the right to inspect all equipment and/or materials being used for any performance.

8. USE OF COPYRIGHTED MATERIAL

The Entertainer shall be fully responsible for paying any legally required royalties of fees for the use by the Entertainer of copyrighted material and shall comply at all times with all applicable copyright laws.

9. ASSIGNMENT

The Entertainer shall not assign the performance of this Agreement, nor any part thereof, nor any monies due hereunder, without prior written consent of the City. Upon termination of this Agreement, Entertainers sole compensation shall be payment for actual services performed up to, and including, the date of termination or as may be otherwise agreed to in writing between the City and Entertainer.

10. SUSPENSION, TERMINATION, OR CANCELLATION OF PERFORMANCE AND AGREEMENT WIITHOUT CAUSE

a. A performance may be cancelled, terminated, or suspended at any time, with or without cause, at the sole discretion of the General Manager or his delegate without default or breach of this Agreement by the City. The City may also at any time, for any reason, with or without cause suspend or terminate this Agreement, or any portion hereof, by serving upon the Entertainer at least ten (10) days prior written notice. Upon receipt of said notice, the Entertainer shall immediately cease all work under this Agreement, unless the notice provides otherwise. If the City suspends or terminates this Agreement, or a portion of this Agreement, such suspension or termination shall not make void or invalidate the remainder of this Agreement.

b. In the event this Agreement is terminated pursuant to this Section, the City shall pay to Entertainer the actual value of the work performed up to the time of termination, provided that the work performed is of value to the City. Upon termination of the Agreement pursuant to this Section, the Entertainer will submit an invoice to the City, pursuant to Section entitled "**PAYMENT**" herein.

11. DEFAULT OF ENTERTAINER

a. The Entertainer's failure to comply with the provisions of this Agreement shall constitute a default. In the event that Entertainer is in default for cause under the terms of this Agreement, City shall have no obligation or duty to continue compensating Entertainer for any work performed after the date of default and can terminate this Agreement immediately by written notice to the Entertainer. If such failure by the Entertainer to make progress in the performance of work hereunder arises out of causes beyond the Entertainer's control, and without fault or negligence of the Entertainer, it shall not be considered a default.

b. If the General Manager or his delegate determines that the Entertainer is in default in the performance of any of the terms or conditions of this Agreement, it shall serve the Entertainer with written notice of the default. The Entertainer shall have ten (10) days after service upon it of said notice in which to cure the default by rendering a satisfactory performance. In the event that the Entertainer fails to cure its default within such period of time, the City shall have the right, notwithstanding any other provision of this Agreement, to terminate this Agreement without further notice and without prejudice to any other remedy to which it may be entitled at law, in equity or under this Agreement.

12. INDEMNIFICATION

The Entertainer agrees to defend, indemnify, protect and hold harmless the City of Temecula, Temecula Community Services District, and/or the Successor Agency to the Temecula Redevelopment Agency, its officers, officials, employees and volunteers from and against any and all claims, demands, losses, defense costs or expenses, including attorney fees and expert witness fees, or liability of any kind or nature which the City of Temecula, Temecula Community Services District, and/or the Successor Agency to the Temecula Redevelopment Agency, its officers, agents, employees or volunteers may sustain or incur or which may be imposed upon them for injury to or death of persons, or damage to property arising out of Entertainer's negligent or wrongful acts or omissions arising out of or in any way related to the performance or non-performance of this Agreement, excepting only liability arising out of the negligence of the City of Temecula, Temecula Community Services District, and/or the Successor Agency to the Temecula Redevelopment Agency.

13. INSURANCE REQUIREMENTS

Entertainer shall procure and maintain for the duration of the contract insurance against claims for injuries to persons or damages to property, which may arise from or in connection with the performance of the work hereunder by the Entertainer, its agents, representatives, or employees.

a. Minimum Scope of Insurance. Coverage shall be at least as broad as:

1) Insurance Services Office Commercial General Liability form No. CG 00 01 11 85 or 88.

2) Insurance Services Office Business Auto Coverage form CA 00 01 06 92 covering Automobile Liability, code 1 (any auto). If the Entertainer owns no automobiles, a non-owned auto endorsement to the General Liability policy described above is acceptable.

3) Worker's Compensation insurance as required by the State of California and Employer's Liability Insurance. If the Entertainer has no employees while performing under this Agreement, worker's compensation insurance is not required, but Entertainer shall execute a declaration that it has no employees.

4) Professional Liability Insurance shall be written on a policy form providing professional liability for the Entertainer's profession.

b. Minimum Limits of Insurance. Entertainer shall maintain limits no less than:

1) General Liability: One million (\$1,000,000) per occurrence for bodily injury, personal injury and property damage. If Commercial General Liability Insurance or other form with a general aggregate limit is used, either the general aggregate limit shall apply separately to this project/location or the general aggregate limit shall be twice the required occurrence limit.

2) Automobile Liability: One million (\$1,000,000) per accident for bodily injury and property damage.

3) Worker's Compensation as required by the State of California; Employer's Liability: One million dollars (\$1,000,000) per accident for bodily injury or disease.

c. Deductibles and Self-Insured Retentions. Any deductibles or self-insured retentions shall not exceed Twenty Five Thousand Dollars and No Cents (\$25,000).

d. Other Insurance Provisions. The general liability and automobile liability policies are to contain, or be endorsed to contain, the following provisions:

1) The Entertainer's insurance shall apply separately to each insured against whom claim is made or suit is brought, except with respect to the limits of the insurer's liability.

2) Each insurance policy required by this agreement shall be endorsed to state: should the policy be canceled before the expiration date the issuing insurer will endeavor to mail thirty (30) days' prior written notice to the City.

3) If insurance coverage is canceled or, reduced in coverage or in limits the Entertainer shall within two (2) business days of notice from insurer phone, fax, and/or notify the City via certified mail, return receipt requested of the changes to or cancellation of the policy.

e. Acceptability of Insurers. Insurance is to be placed with insurers with a current A.M. Best rating of A-:VII or better, unless otherwise acceptable to the City. Self insurance shall not be considered to comply with these insurance requirements.

f. Verification of Coverage. Entertainer shall furnish the City with original endorsements effecting coverage required by this clause. The endorsements are to be signed by a person authorized by that insurer to bind coverage on its behalf. The endorsements are to be on forms provided by the City. All endorsements are to be received and approved by the City before work commences. As an alternative to the City's forms, the Entertainer's insurer may provide complete, certified copies of all required insurance policies, including endorsements affecting the coverage required by these specifications.

14. INDEPENDENT CONTRACTOR

a. Entertainer is and shall at all times remain as to the City a wholly independent contractor. The personnel performing the services under this Agreement on behalf of Entertainer shall at all times be under Entertainer's exclusive direction and control. Neither City nor any of its officers, employees, agents, or volunteers shall have control over the conduct of Entertainer or any of Entertainer's officers, employees, or agents except as set forth in this Agreement. Entertainer shall not at any time or in any manner represent that it or any of its officers, employees or agents are in any manner officers, employees or agents of the City.

Entertainer shall not incur or have the power to incur any debt, obligation or liability whatever against City, or bind City in any manner.

b. No employee benefits shall be available to Entertainer in connection with the performance of this Agreement. Except for the fees paid to Entertainer as provided in the Agreement, City shall not pay salaries, wages, or other compensation to Entertainer for performing services hereunder for City. City shall not be liable for compensation or indemnification to Entertainer for injury or sickness arising out of performing services hereunder.

15. LEGAL RESPONSIBILITIES

The Entertainer shall keep itself informed of all local, State and Federal ordinances, laws and regulations which in any manner affect those employed by it or in any way affect the performance of its service pursuant to this Agreement. The Entertainer shall at all times observe and comply with all such ordinances, laws and regulations. The City, and its officers and employees, shall not be liable at law or in equity occasioned by failure of the Entertainer to comply with this section.

16. RELEASE OF INFORMATION

a. All information gained by Entertainer in performance of this Agreement shall be considered confidential and shall not be released by Entertainer without City's prior written authorization. Entertainer, its officers, employees, agents or subcontractors, shall not without written authorization from the General Manager or unless requested by the City Attorney, voluntarily provide declarations, letters of support, testimony at depositions, response to interrogatories or other information concerning the work performed under this Agreement or relating to any project or property located within the City. Response to a subpoena or court order shall not be considered "voluntary" provided Entertainer gives City notice of such court order or subpoena.

b. Entertainer shall promptly notify City should Entertainer, its officers, employees, agents or subcontractors be served with any summons, complaint, subpoena, notice of deposition, request for documents, interrogatories, request for admissions or other discovery request, court order or subpoena from any party regarding this Agreement and the work performed there under or with respect to any project or property located within the City. City retains the right, but has no obligation, to represent Entertainer and/or be present at any deposition, hearing or similar proceeding. Entertainer agrees to cooperate fully with City and to provide City with the opportunity to review any response to discovery requests provided by Entertainer. However, City's right to review any such response does not imply or mean the right by City to control, direct, or rewrite said response.

17. NOTICES

Any notices which either party may desire to give to the other party under this Agreement must be in writing and may be given either by (i) personal service, (ii) delivery by a reputable document delivery service, such as but not limited to, Federal Express, that provides a receipt showing date and time of delivery, or (iii) mailing in the United States Mail, certified mail, postage prepaid, return receipt requested, addressed to the address of the party as set forth below or at any other address as that party may later designate by Notice. Notice shall be effective upon delivery to the addresses specified below or on the third business day following deposit with the document delivery service or United States Mail as provided above.

Mailing Address: City of Temecula
Attn: General Manager
41000 Main Street
Temecula, CA 92590

To Consultant: **Timmy D' Productions, Inc**
Attn: Timothy Daniels
40345 Calle Torcida
Temecula, CA 92591

18. LICENSES

At all times during the term of this Agreement, Entertainer shall have in full force and effect, all licenses required of it by law for the performance of the services described in this Agreement.

19. GOVERNING LAW

The City and Entertainer understand and agree that the laws of the State of California shall govern the rights, obligations, duties and liabilities of the parties to this Agreement and also govern the interpretation of this Agreement. Any litigation concerning this Agreement shall take place in the municipal, superior, or federal district court with geographic jurisdiction over the City of Temecula. In the event such litigation is filed by one party against the other to enforce its rights under this Agreement, the prevailing party, as determined by the Court's judgment, shall be entitled to reasonable attorney fees and litigation expenses for the relief granted.

20. PROHIBITED INTEREST

No officer, or employee of the City of Temecula that has participated in the development of this agreement or its approval shall have any financial interest, direct or indirect, in this Agreement, the proceeds thereof, the Entertainer, or Entertainer's sub-contractors for this project, during his/her tenure or for one year thereafter. The Entertainer hereby warrants and represents to the City that no officer or employee of the City of Temecula that has participated in the development of this agreement or its approval has any interest, whether contractual, non-contractual, financial or otherwise, in this transaction, the proceeds thereof, or in the business of the Entertainer or Entertainer's sub-contractors on this project. Entertainer further agrees to notify the City in the event any such interest is discovered whether or not such interest is prohibited by law or this Agreement.

21. ENTIRE AGREEMENT

This Agreement contains the entire understanding between the parties relating to the obligations of the parties described in this Agreement. All prior or contemporaneous agreements, understandings, representations and statements, oral or written, are merged into this Agreement and shall be of no further force or effect. Each party is entering into this Agreement based solely upon the representations set forth herein and upon each party's own independent investigation of any and all facts such party deems material.

22. AUTHORITY TO EXECUTE THIS AGREEMENT

The person or persons executing this Agreement on behalf of Entertainer warrants and represents that he or she has the authority to execute this Agreement on behalf of the Entertainer and has the authority to bind Entertainer to the performance of its obligations hereunder. The

General Manager is authorized to enter into an amendment on behalf of the City to make the following non-substantive modifications to the agreement: (a) name changes; (b) extension of time; (c) non-monetary changes in scope of work; (d) agreement termination.


IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed the day and year first above written.

TEMECULA COMMUNITY SERVICES DISTRICT

Timmy D. Productions, INC.


(Two Signatures of corporate officers required unless corporate documents authorize only one person to sign the agreement on behalf of the corporation.)

By: _____
James Stewart, TCSD President

By: 
Timothy W. Daniels, President

ATTEST:

By: _____
Randi Johl, Secretary

By: 
Tori M. Daniels, Vice President

APPROVED AS TO FORM:

By: _____
Peter M. Thorson, General Counsel

ENTERTAINER

Timmy D' Productions, Inc.
Attn: Timothy Daniels
40345 Calle Torcida
Temecula, CA 92591
800-477-1880
tori@timmyd.com

City Purchasing Mgr.
Initials and Date:


EXHIBIT A

TASKS TO BE PERFORMED

Entertainer and/or his sub-contractors shall provide performances, on an as needed basis, upon request of the City of Temecula. Entertainer recognizes and agrees that this Agreement is for the purpose of establishing a contractual relationship between the City and the Entertainer for future performances at City events and recreational activities. The procedure for assigning work is set forth as follows:

1. The General Manager or their designee's shall submit to the Entertainer a written or verbal request for performance. The type of performance, location, date, and time shall be described or conveyed to the Entertainer.
2. Within five (5) business days of the date of the written or verbal request for performance, the Entertainer shall respond in writing with an event price quote/Agreement.
3. Upon acceptance of the Entertainers response by the General Manager and/or the Director of Community Services or their designee's, the Entertainer shall proceed to "book" the event. The Entertainers performance or the performance of any sub-contractors of any event shall be pursuant to the terms of this Agreement.
4. Performances throughout the term of the Agreement, may include, but not be limited to the following:
 - a. Temecula Rod Run
 - b. Teen Night Light Egg Hunt
 - c. Easter Egg Hunt
 - d. Temecula Special Games
 - e. 4th of July Extravaganza
 - f. Summer Concert Series
 - g. Moonlight Movies in the Park
 - h. Memorial Day Event
 - i. Pool Parties
 - j. Family Fun Nights
 - k. Human Services Events & Programs
 - l. New Year's Eve Grape Drop
 - m. Art & Street Painting Festival
 - n. Santa's Electric Light Parade
5. Scope of Services
 - a. The Entertainer shall provide professional Disc Jockey/Master of Ceremony (DJ/MC), Entertainment and Technical Services for a variety of special events throughout the year.
 - b. The Entertainer will provide sound, stage and lighting services and inflatable movie screens as necessary.
 - c. Responsible to ensure the availability of complete concert quality sound system(s) and component equipment, as and where required.

- d. Rental, transportation, set-up and tear-down of all sound systems and equipment including lights, stage and movie screens.
- e. Provide sound technician, monitoring services and light technician, as and where required.
- f. Sound monitoring level devices on all stages and equipment for all events and personnel shall respond to the requests of event staff regarding noise levels during performances.
- g. Signature events may require set-up of equipment one day prior to the event including sound checks.
- h. Booking quality, family-friendly bands and managing the stage.
- i. Entertainer employees must present themselves in a professional manner both in appearance and attitude while on-site.
- j. Sound technician should be on-site prior to opening of event and stay throughout the end of the event as designated by City Event Staff.
- k. DJ/MC shall provide professional public speaking, proper use of a microphone, posture, staging, and movements.
- l. Technical aspects include proper introductions, openings and closings, transitions, and presiding over ceremonial aspects of an event.
- m. Clear understanding of current music and trends, appropriate lyrics and what works for a variety of people, ages and backgrounds.

EXHIBIT B

PAYMENT RATES AND SCHEDULE

Exhibit B shall be the Event quote/Agreement as provided by the Entertainer for each individual performance as requested by the City. In any event, the cost of such services, while not guaranteed as per Section 5 of this Agreement, shall not exceed a total of \$450,000 for the total term of this Agreement.