

RESOLUTION NO. R-18-38

A RESOLUTION AUTHORIZING ACCEPTANCE OF A PROPOSAL FROM OMNI ENTERTAINMENT TO PROVIDE PERFORMANCE ARTISTS FOR THE 2018 SOUNDS ON THE SQUARE FRIDAY AND SATURDAY NIGHT CONCERT SERIES AND FESTIVALS AT LINDEN SQUARE STAGE BEGINNING JUNE 8, 2018, THROUGH OCTOBER 13, 2018, FOR AN AMOUNT NOT TO EXCEED \$39,300.00 AND AUTHORIZING THE CITY MANAGER TO EXECUTE THE OMNI VENUE BOOKING AGREEMENT.

WHEREAS, Omni Entertainment has been deemed qualified to provide performance artists for the 2018 Sounds on the Square Friday and Saturday Night Concert Series and festivals at Linden Square Stage, and the proposal from Omni Entertainment is recommended for acceptance.

NOW, THEREFORE, BE IT RESOLVED BY THE COUNCIL OF THE CITY OF GLADSTONE, MISSOURI AS FOLLOWS:

THAT, the City Manager of the City of Gladstone, Missouri, be and is hereby authorized to accept the proposal from Omni Entertainment to provide performance artists for the 2018 Sounds on the Square Friday and Saturday Night Concert Series and Festivals at Linden Square Stage for an amount not to exceed \$39,300.00.

FURTHER, THAT, funds for such purpose are authorized from the General Fund.

INTRODUCED, READ, PASSED, AND ADOPTED BY THE COUNCIL OF THE CITY OF GLADSTONE, MISSOURI THIS 14th DAY OF MAY 2018.



Mayor Bill Garnos

Attest:



Ruth E. Bocchino, City Clerk



Request for Council Action

RES # R-18-38

BILL # City Clerk Only

ORD # City Clerk Only

Date: 5/3/2018

Department: Parks & Recreation

Meeting Date Requested: 5/14/2018

Public Hearing: Yes Date: [Click here to enter a date.](#)

Subject: Linden Square Entertainment Contract

Background: Attached please find a resolution authorizing the acceptance of a proposal from Omni Entertainment to provide performance artists for the 2018 Sounds on the Square Friday and Saturday Night Concert Series and Festivals at Linden Square Stage beginning June 8, 2018, through October 13, 2018, for an amount not to exceed \$39,300.00 to be paid from the General Fund. This is the proposed entertainment contract that was covered at the March 12th City Council Study Session.

Budget Discussion: Funds are budgeted in the amount of \$ 39,300 from the General Fund. Ongoing costs are estimated to be \$ annually. Previous years' funding was \$34,650

Public/Board/Staff Input: Additional funds not originally included in last year's contract is for the fiesta on the square and whiskey festival bands.

Provide Original Contracts, Leases, Agreements, etc. to: City Clerk and Vendor

Justin Merkey
Department Director/Administrator

PC
City Attorney

SW
City Manager

VENUE BOOKING AGREEMENT

THIS AGREEMENT made on the 6 day of JUNE, 2018 between OMNI Entertainment, LLC, a Missouri Limited Liability Company, located at 1615 NE 100 Court, Kansas City, Missouri 64155 (hereinafter referred to as "Agent") and the City of Gladstone, Missouri, a political subdivision in the State of Missouri, located at 7010 N Holmes, Gladstone, Missouri 64118 (hereinafter referred to as "Purchaser").

AGENT AND PURCHASER hereby agree as follows:

Scope of Agreement

Agent is able to engage artists who provide entertainment and/or music at public venues. Purchaser has established a public venue for entertainment at the Amphitheatre at Linden Square and wishes to contract with the Agent to provide musical and entertainment acts on the dates and times and for the pricing listed on the attached Schedule 1.

Compensation

Purchaser shall pay to Agent the amount stated on Schedule 1 for each act. The amount stated on Schedule 1 is the total amount of compensation paid to Agent by Purchaser. Agent shall provide Purchaser with an Invoice for payment on the last business day of each month beginning on the 30th day of June, 2018 and ending on the 30th day of October, 2018. Purchaser shall pay each Invoice within ten (10) days after receipt of such Invoice.

Agent agrees to pay each act on the terms and conditions agreed to between them. Purchaser is not responsible to pay any money directly to any of the acts for any performance expenses or amenities while at the performance venue.

All payments to Agent shall be made by certified check, wire transfer, money order or any other manner agreed to from time to time by the parties. If payment is not made on the last business day of the month then any unpaid sums will collect interest at the rate of 1.5% per month until paid.

The Performance

Purchaser has identified Justin Merkeyas the contact person for any questions performing acts may have about the venue. It will be the responsibility of each performing act to: 1. Be familiar with the amphitheater stage, 2. Be familiar with the sound system available at the venue, 3. To notify the Purchaser's Contact Person about any sound or stage equipment being set up by the act, 4. To be ready to begin the performance at the time stated on the attached Schedule 1, 5. Provide any desired Security, 6. Know the location of the venue, 7. Take breaks no longer than 15 minutes for every hour of performance

time, 8. Not drink alcoholic beverages or ingest any illegal drugs before or during the performance, and 9. Locate at the venue an on-site supervisor for the Purchaser.

The Purchaser shall at all times have complete supervision, direction, and control over the services of each performing act during the engagement and expressly reserves the right to control the manner, means, and details of the performance.

Cancellation

Agent shall be responsible to notify the Purchaser of any cancellation by any act promptly upon Agent receiving notice of information about said cancellation. Agent will use its best efforts to find a replacement act. Any replacement act must be approved by the Purchaser. If the performance fee of the replacement act is more than the cancelled act, then the Purchaser must also approve the higher rate. Purchaser is under no contractual duty to accept any replacement act.

Except for Force Majeure as described below Purchaser must provide at least five (5) days' notice to Agent in order to cancel a performance without penalty. If Purchaser cancels with less than five (5) days' notice but at least five (5) hours prior to the performance time then Purchaser shall pay one-half ($\frac{1}{2}$) of the scheduled performance fee. If Purchaser cancels a performance less than five (5) hours before the performance time then the act shall be paid in full.

Force Majeure

The ability to execute this Agreement by either party is subject to Acts of God, including but not limited to flooding, tornados, earthquakes, fires, etc. as well as any government, strikes, civil disorders, terrorism, or other emergencies. Should a performance be cancelled through Force Majeure no performance fee will be paid.

Right to Substitute

In the event Agent is not able to fill a scheduled performance, Purchaser may secure a replacement at its discretion. If the Purchaser secures a replacement, the Agent shall not be due any compensation under this Agreement.

Termination of Performance

Purchaser reserves the right to terminate any performance without penalty or payment if during the performance or performance breaks, the Purchaser has good reason to believe the performer has/is violating City Ordinance or State Statutes.

Merchandising

Performers are permitted to sell merchandise at a location chosen by the Purchaser for one (1) hour before the performance until the end of the performance. Merchandise may

consist of sound recordings, logo gear, logo clothing, and trinkets. Purchaser reserves the right to prohibit the sale of any merchandise it deems to be offensive, vulgar, or indecent.

Indemnity

Agent agrees to indemnify and hold harmless Purchaser, and its agents, officials, officers, employees, and elected and appointed officials, against all claims for injuries, death, loss or damage to persons or property, including attorney's fees and costs, caused by a Performer and any negligent or intentional act of any Performer(s) while performing at Purchaser's venue.

Insurance

Agent will obtain such Commercial General Liability policies of insurance as are necessary to provide coverage of all performers under the foregoing indemnification requirement in the sum of Two Million, Five Hundred and Forty-five Thousand, Sixty-two Dollars and no/100 (\$2,545,062.00) for all claims arising out of a single occurrence and shall not exceed Three Hundred Eighty-One Thousand, Seven Hundred Fifty-Nine Dollars and no/100 (\$381,759.00) for any one person in a single accident or occurrence. Agent shall provide Purchaser a Certificate naming Purchaser as an additional insured under the foregoing policies.

Publicity/use of Name and Logo

Agent shall not use the Purchaser's name, any service mark, trademarks, acronym or logo of Purchaser without Purchaser's prior written consent.

Withholding Monthly Payment for Damage to Venue

If a Performer damages any of Purchaser's property before, during, or after a performance Purchaser may withhold from Agent's next monthly payment the amount necessary to repair said damage. Purchaser shall provide notice to Agent within 48 hours of the performance of any such damage. If the damage is a covered loss under Agent's insurance policy then Purchaser shall not withhold any monthly payment. Agent agrees to be responsible for paying all deductible amounts under any insurance policy.

Publicity

Agent may provide Purchaser with promotional materials prior to any performance for posting at locations selected by the Purchaser. Purchaser is not required to post such materials. Purchaser may use the likenesses of Performers or promotional material provided by Agent on Purchaser's web site, public access cable channel, or future promotional materials.

Sound or Video Recording

Purchaser and audience members may record performances by sound or video unless Agent notifies the Purchaser otherwise prior to any performance.

Return Engagement

Any return engagement with Purchaser by any performer within one (1) year from the date of Performer's performance at Purchaser's venue will be conducted through Agent.

Choice of Law

All claims and disputes which may arise between Agent and Purchaser regarding the applications or interpretation of any of the terms and conditions of this agreement, including any disputes between the parties as to their respective obligations and responsibilities hereunder, shall be determined using Missouri law and if any court action is instituted the petition for relief shall be filed with the Clay County, Missouri, Circuit Court.

Entire Agreement

This agreement and the attached Schedule(s) constitute the sole, complete, and binding agreement between the parties. Purchaser and its employees assume no responsibility or liability as between the Agent and the Performers. Agent agrees to accept sole responsibility for complying with any rules and regulations of any entertainment unions or guilds of which a performer may be a member.

Notices

All notices, requests, demands or other communications with respect to this agreement, are deemed to have been delivered upon receipt or refusal to accept delivery after being either mailed by United States first-class certified or registered mail, postage prepaid and addressed to:

Agent: OMNI Entertainment
1615 NE 100th Court
Kansas City, Missouri 64155

Purchaser: City of Gladstone
Attn: Justin Merkey
7010 N Holmes
Gladstone, Missouri 64118

Illegal Aliens

Pursuant to Section 285.530(1), RSMo., by its sworn affidavit in substantially the form attached hereto as Schedule 2 and incorporated herein, the Agent hereby affirms its enrollment and participation in a federal work authorization program with respect to the employees working in connection with the professional services. Furthermore, the Agent affirms that it does not knowingly employ any person who is an unauthorized alien in connection with the professional services.

IN WITNESS WHEREOF, the parties have caused this Amendment to be executed as of the above stated date.

Agent:

OMNI ENTERTAINMENT

By: _____

Jeff Tiller

Purchaser:

CITY OF GLADSTONE

By: _____

Scott Wingerson
City Manager

ATTEST:

Ruth E. Bocchino
City Clerk

Approved as to Form:

Chris Williams
City Counselor

2018 Venue Booking Agreement - Schedule 1

Sounds on the Square - Friday Night Concert Series

Date	Start Time	End Time	Band	Fee
6/08/2018	7:00 p.m.	9:30 p.m.	Cherry Bomb	\$1,300.00
6/15/2018	7:00 p.m.	9:30 p.m.	Groove Pilots	\$700.00
6/22/2018	7:00 p.m.	9:30 p.m.	Retroactive	\$3950.00
6/29/2018	7:00 p.m.	9:30 p.m.	Phillip Michaels band	\$800.00
7/13/2018	7:00 p.m.	9:30 p.m.	Cherry Bomb	\$1,300.00
7/20/2018	7:00 p.m.	9:30 p.m.	Switch	\$1,300.00
7/27/2018	7:00 p.m.	9:30 p.m.	Midnight Rodeo	\$1,000.00
8/10/2018	7:00 p.m.	9:30 p.m.	Oasis	\$750.00
8/17/2018	7:00 p.m.	9:30 p.m.	Moats Brothers	\$850.00
8/24/2018	7:00 p.m.	9:30 p.m.	One Night Stand	\$1,800.00
8/31/2018	7:00 p.m.	9:30 p.m.	Scot Peery Band	\$1,100.00
9/7/2018	7:00 p.m.	9:30 p.m.	Cherry Bomb	\$1,300.00
9/14/2018	7:00 p.m.	9:30 p.m.	Women of Rock Tribute	\$1,300.00
9/21/2018	7:00 p.m.	9:30 p.m.	Lyin' Eyes- Eagles Tribute	\$1,300.00
9/28/2018	7:00 p.m.	9:30 p.m.	State Line Drive	\$1,100.00
				\$19,850.00

Sounds on the Square - Saturday Night Concert Series

Date	Start Time	End Time	Band	Fee
6/16/2018	7:00 p.m.	10:30 p.m.	Prince Tribute/Martika Opening Act	\$1,500.00
6/23/2018	12:00 p.m.	10:00 p.m.	Roger Pitts/Victor Penny/Ala Mode/American Slim/The Phantastics	\$3,950.00
7/21/2018	7:00 p.m.	10:30 p.m.	Rattle and Hum- U2 Tribute/Scott Duncan	\$3,950.00
8/18/2018	7:00 p.m.	10:30 p.m.	Elton John/Who Tributes/Sean Mcnown	\$3,900.00
9/15/2018	7:00 p.m.	10:00 p.m.	Kc Latin and Jazz Allstars	\$2,600.00
10/13/2018	4:30 p.m.	9:30 pm.	Steamboat Bandits/Signal Ridge/ Outlaw Jim/include sound	\$3,550.00
				\$19,450.00
2018 Band Total				\$39,300.00

2018 Venue Booking Agreement - Schedule 2

STATE OF Missouri)
) ss.
COUNTY OF Clay)

As used in this Affidavit, the following terms shall have the following meanings:

EMPLOYEE: Any person performing work or service of any kind or character for hire within the State of Missouri.

FEDERAL WORK AUTHORIZATION PROGRAM: Any of the electronic verification of work authorization programs operated by the United States Department of Homeland Security or an equivalent federal work authorization program operated by the United States Department of Homeland Security to verify information of newly hired employees, under the Immigration Reform and Control Act of 1986 (IRCA), P.L. 99-603.

KNOWINGLY: A person acts knowingly or with knowledge, (a) with respect to the person's conduct or to attendant circumstances when the person is aware of the nature of the person's conduct or that those circumstances exist; or (b) with respect to a result of the person's conduct when the person is aware that the person's conduct is practically certain to cause that result.

UNAUTHORIZED ALIEN: An alien who does not have the legal right or authorization under federal law to work in the United States, as defined in 8 U.S.C. 1324a(h)(3).

BEFORE ME, the undersigned authority, personally appeared Jeffrey Tiller, who, being duly sworn, states on his oath or affirmation as follows:

1. My name is JEFF TILLER and I am currently the MPD of OMNI Entertainment, LLC (hereinafter "Agent"), whose business address is 1615 NE 100th, KC MO 64155, and I am authorized to make this Affidavit.
2. I am of sound mind and capable of making this Affidavit and am personally acquainted with the facts stated herein.
3. The Agent is enrolled in and participates in a federal work authorization program with respect to the employees working in connection with the citizen satisfaction survey contracted between Agent and the City of Gladstone, Missouri.
4. The Agent does not knowingly employ any person who is an unauthorized alien in connection with the contracted services set forth above.



Affiant

JEFF TILLER

Printed Name

Subscribed and sworn to before me this 7th day of June, 2018.

Christina Ford
Notary Public



SEAL