

AGENDA ITEM
May 5, 2015

Subject: Tourism

Department: Administration

The Bushwhacker Committee is making a formal request to partner with the Tourism Ad-hoc for the entertainment cost of the 2015 Bushwhacker Days. The main event entertainment for the Gospel event will be David Phelps. They would like for the Council to approve the amount of \$10,000 for the payment of the contract.

BILL NO. 2015-022

ORDINANCE NO. 8045

A SPECIAL ORDINANCE OF THE CITY OF NEVADA, MISSOURI, BUDGETING FUNDS FOR THE PROMOTION OF TOURISM THROUGH THE BUSHWHACKER COMMITTEE FOR BUSHWHACKER CELEBRATION 2015 GOSPEL EVENT AND APPROVING AN AGREEMENT WITH THE BUSHWHACKER COMMITTEE THEREFORE.

BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF NEVADA, MISSOURI THAT:

Section 1. The agreement termed "Memorandum of Understanding" between the City of Nevada, Missouri and its Bushwhacker Committee, attached hereto as Exhibit "A" and incorporated herein by reference is approved as an obligation of this municipality.

Section 2. The sum of \$10,000 from the City's Tourism Fund is hereby budgeted for dedication to and payment on said agreement to the extent needed for the entertainment contract finally approved.

PASSED, APPROVED and ADOPTED by the City Council of the City of Nevada, Missouri, this 19th day of May, 2015.

CITY OF NEVADA, MISSOURI

(SEAL)

By: _____
Brian L. Leonard, Mayor

Attest:

Bev Baker, City Clerk

David Phelps Concerts, Inc.
521 Shadycrest Lane
Franklin, TN 37064

CONTRACT

Tel: (931) 987-2424
Fax: (931) 987-2421

Agreement made Tuesday, March 03, 2015 between **David Phelps Concerts, Inc.** (hereinafter referred to as DPC) furnishing the services of David Phelps (hereinafter referred to as ARTIST) and **Bushwhacker Days Festival** (hereinafter referred to as PURCHASER). It is mutually agreed upon as follows: The PURCHASER engages DPC, and DPC agrees to furnish the entertainment presentation described hereinafter, upon all the terms and conditions herein and forth, including those on the attached documents entitled **Additional Terms and Conditions, Performance Rider, Technical Rider**. PURCHASER agrees to provide and pay for all terms and conditions contained in riders attached.

DATE: June 10, 2015	Travel: Purchaser provides local transportation
Time of show: 7:00 PM	Lodging: Purchaser provides 2 hotel rooms.
Agreed Involvement: One Solo Concert Performance	Catering: Purchaser provides 3 catered meals for 10 people (lunch, preshow, post show).
Venue: <u>Bushwhacker Days Festival (Outdoors)</u> <u>Historic Nevada County Square</u> <u>Nevada, MO 64772</u>	Ticketing: N/A
Hall Size: Outdoor Festival	Ticket On Sale Date: N/A
General Admission: N/A	Ticket Sales Phone: N/A
General Price: N/A	Promo Kit: N/A
Artist Circle: N/A	Radio: per rider.
Artist Circle Price: N/A	Advertising begins: N/A
Day of Show: N/A	Production: Purchaser to provide speaker system. DPC provides production
Gross Potential: N/A	Equipment/Labor: Purchaser will provide, in accordance with the attached Technical Rider.
Ticket Retailer: N/A	Volunteers: Purchaser provides 14 volunteers for load in and load out on day of concert
Contract Signer: Frank Arnold/Cheryl Rogers	Product Sales: per rider
Mailing Add: Nevada/Vernon Co. Chamber of Commerce Attn: Bushwhacker Days Steering Committee 225 West Austin Ste 200 Nevada, MO 64772	World Vision: No
Contact: Cheryl Rogers	ARTIST shall receive 100% Headline Billing (in all formats of advertising) Ex: "DAVID PHELPS featuring special guest..."
Work: 417-667-4139	<i>For Office Use Only:</i>
Cell: 417-667-9556	Rider Type: Buyer to provide Production
Fax: ?	
Home: ?	
Email:	

Terms: 15,000.00 Honorarium (No Split)
Deposit: A \$3,000.00 deposit is due with returned contract no more than ten (10) business days from receipt of contract by Purchaser. (Deposit and promo kit fee are Non Refundable)
Balance Due: \$12,000.00 by certified check or money order upon DPC arrival day of show, and any split, as agreed, paid at settlement by cash or check immediately following the intermission.
Merch Fee: N/A

All payments shall be paid to DPC by PURCHASER in US funds as follows (regardless of when PURCHASER collects monies):

1. Deposit in the form of a CHECK, CASHIER'S CHECK or MONEY ORDER made payable to *David Phelps Concerts, Inc.* shall be returned with the contract and received by DPC no later than ten business days from receipt of the contract
2. The balance of the honorarium due DPC must be presented to the road manager upon arrival in the form of certified check or cashier's check or money order, (no personal or company checks), made payable to *David Phelps Concerts, Inc.*
3. The balance of overages of the percentage of the net or gross (as agreed upon contractually) must be paid at settlement via CASH or CHECK immediately following intermission. If paying by check, it is the PURCHASER'S responsibility to ensure that all authorized personnel are present to sign the check on the night of show.

Frank Arnold
Cheryl Rogers
Frank Arnold/ Cheryl Rogers
Bushwhacker Days Committee
Date 3 Mar 2015

Steve Hartley
By Steve Hartley
For David Phelps Concerts, Inc.
Date 13th March 15

By your signature you indicate that you have the proper authority to enter into the full terms of this agreement on behalf of the organization named herein.
ADDITIONAL TERMS AND CONDITIONS CONTINUED ON THE FRONT AND BACK OF THE NEXT PAGE--SIGNATURE REQUIRED

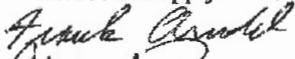
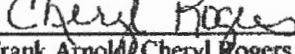
David Phelps Concerts CONTRACT

ADDITIONAL TERMS AND CONDITIONS

1. PURCHASER shall first apply any and all receipts derived from the entertainment presentation to the payments required hereunder. All payments shall be made in full without any deductions whatsoever. PURCHASER will advise DPC, or DPC'S agent promptly upon request of the admissions prices for the entertainment presentation.
2. In the event the payment to DPC shall be based in whole or in part on receipts of the performance(s) hereunder, PURCHASER agrees to deliver to DPC a certified statement of the gross receipts of each performance immediately following such performance. In the further event that the payment of DPC'S share of said performance(s) receipts is based in whole or in part upon expenses related to the engagement, PURCHASER shall verify by paid receipts, cancelled checks or similar documents all such expenses or they shall not be included as an expense of the engagement. DPC shall have the right to have a representative present in the box office at all times and such representative shall have access to box office records of PURCHASER relating to gross receipts of this engagement only.
3. PURCHASER agrees to furnish and pay for at it's own expense (a) on the date and at the time of the performance(s) above-mentioned all that is necessary for the proper presentation of the concert, including without limitation a suitable theatre, hall, or auditorium, well-heated, ventilated, lighted, clean and in good order, and public address system in perfect working condition including microphones in number and quality required by DPC, dressing rooms, all necessary electricians and stage hands, all lights, tickets, house programs, all licenses (including musical performing rights licenses), special police (when required by venue), ushers, ticket sellers, ticket takers, appropriate and sufficient advertising in the principal newspapers, (b) all music royalties in connection with DPC'S use of music, and in addition, the costs of any musicians (including CONTRACTOR) other than those furnished by DPC as part of DPC'S regular company, (c) all amusement taxes, (d) if DPC so requires, all necessary facilities, electricians, stage hands and other personnel for lighting and dress rehearsals, and (e) all other items and personnel (including but not limited to any and all personnel, including musicians, as may be required by any national or local union(s)) required for the proper presentation of the entertainment presentation hereunder, and any rehearsals therefore, except for those items and personnel which DPC herein specifically agrees to furnish. DPC shall have the right to name the local music contractor and to approve the musicians hired locally.
4. In the event of sickness or of accident to ARTIST, or if a performance is prevented, rendered impossible or infeasible by any act or regulation of any public authority or bureau, civil tumult, strike, epidemic, interruption in or delay of transportation services, war conditions or emergencies or any other similar or dissimilar cause beyond the control of DPC, it is understood and agreed that there shall be no claim for damages by PURCHASER and DPC'S obligations as to such performances shall be deemed waived. In the event of such non-performance for any of the reasons stated in this paragraph, if ARTIST is ready, willing and able to perform, PURCHASER shall pay the full compensation hereunder.
5. Unless stipulated to the contrary in writing, PURCHASER agrees that DPC may cancel the engagement hereunder without liability by giving the PURCHASER notice thereof at least thirty (30) days prior to the commencement date of the engagement hereunder. DPC shall also have the right to terminate this agreement without liability in the event PURCHASER fails to sign and return this CONTRACT within (10) ten business days.
6. Inclement weather rendering performance impossible, infeasible, or unsafe shall not be deemed a force majeure event and payment of the agreed upon compensation shall be made notwithstanding. If PURCHASER and DPC disagree as to whether rendition of performance(s) is impossible, not feasible, or unsafe because of inclement weather, DPC'S determination as to performance shall prevail.
7. In the event PURCHASER refuses or neglects to provide any of the items or to perform any of it's obligations herein stated, and/or fails to make any of the payments as provided herein, DPC shall have the right to refuse to perform this contract, shall retain any amounts theretofore paid to DPC by PURCHASER, and PURCHASER shall remain liable to DPC for the agreed price herein set forth. In addition, if, on or before the date of any scheduled performance PURCHASER has failed, neglected, or refused to perform any contract with any other performer of any other engagement, or if the financial standing or credit of PURCHASER has been impaired or is in DPC'S opinion unsatisfactory, DPC shall have the right to demand the payment of the guaranteed compensation forthwith. If PURCHASER fails or refuses to make such payment forthwith, DPC shall have the right to cancel this engagement by notice to PURCHASER to that effect, and to retain any amounts theretofore paid to DPC by PURCHASER and PURCHASER shall remain liable to DPC for the agreed price herein set forth.
8. The entertainment presentation to be furnished by DPC hereunder shall receive billing in such order, form, size and prominence as directed by DPC in all advertising and publicity issued by or under the control of the PURCHASER. ARTIST'S name or likeness may not be used as an endorsement or indication of use of any product or service nor in connection with any corporate sponsorship or tie-up, commercial tie-up or merchandising without DPC'S prior written consent.

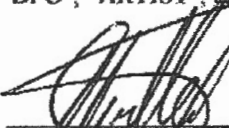
DPC Contract: Additional Terms and Conditions cont...

9. PURCHASER shall not itself, nor shall it permit others to record, broadcast, or televise, use flash photography, or otherwise reproduce the visual and/or audio performances hereunder, or any part thereof, without prior written permission by Management.
10. DPC shall have the exclusive right to sell souvenir programs, ballet books, photographs, records and any and all types of merchandise including, but not limited to, articles of clothing (i.e., T-shirts, hats, etc.) posters, stickers, etc., on the premises of the place (s) of performance without any participation in the proceeds by PURCHASER. I may be subject, however, to concessionaire's requirements, if any.
11. DPC shall have exclusive control over the production, presentation, and performance of the engagement hereunder, including but not limited to, the details, means and methods employed in fulfilling each obligation of DPC hereunder in all respects. DPC shall have the sole right, as DPC may see fit, to designate and change at any time the performing personnel other than the ARTIST(S) specifically named herein.
12. PURCHASER agrees (a) to comply with DPC'S directions as to stage settings for the performance hereunder, (b) that no performers other than those to be furnished by DPC hereunder will appear on or in connection with the engagement hereunder, (c) that no stage seats are to be sold or used without DPC'S prior written consent, and (d) that the entertainment presentation will not be included in a subscription or other typed of series without the written consent of DPC.
13. It is agreed that DPC signs this contract as an independent contractor and not as an employee. This contract shall not, in any way be construed so as to create a partnership, or any kind of joint undertaking or venture between the parties hereto, nor make DPC liable in whole or in part for any obligation that may be incurred by PURCHASER in PURCHASER'S carrying out any of the provisions hereof or otherwise.
14. Nothing in this Contract shall require the commission of any act contrary to law or to any rules or regulations of any union, guild or similar body having jurisdiction over the services and personnel to be furnished by DPC to PURCHASER hereunder. If there is any conflict between any provision of the Contract and any law, rule or regulation, such law, rule or regulation shall prevail and this Contract shall be curtailed, modified, or limited only to the extent necessary to eliminate such conflict. PURCHASER agrees to comply with all regulations and requirements of any union(s) that may have jurisdiction over any of the said materials, facilities and personnel to be furnished by PURCHASER.
15. In the event of any inconsistency between the provisions of this contract and the provisions of any riders, addenda, exhibits or any other attachments hereto, the parties agree that the provisions most favorable to DPC and ARTIST shall control.
16. PURCHASER hereby indemnifies and holds DPC and ARTIST, as well as their respective agents, representatives, principals, employees, officer and directors, harmless from and against any loss, damage, or expense, including reasonable attorney's fees, incurred or suffered by or threatened against DPC or ARTIST or any of the foregoing in connection with or as a result of any claim for personal injury or property damage or otherwise brought by or on behalf of any third party person, firm, or corporation as a result of or in connection with the engagement, which claim does not result from the active negligence of the ARTIST and/or DPC.
17. This Contract (a) cannot be assigned or transferred without the written consent of DPC, (b) contains the sole and complete understanding of the parties hereto and (c) may not be amended, supplemented, varied, or discharged, except by an instrument in writing signed by both parties. The validity, construction and effect of this contract shall be governed by the laws of the State of Tennessee, regardless of the place of performance. **THE PERSON EXECUTING THIS CONTRACT ON PURCHASER'S BEHALF WARRANTS HIS/HER AUTHORITY TO DO SO, AND SUCH A PERSON HEREBY PERSONALLY ASSUMES LIABILITY FOR THE PAYMENT OF SAID PRICE IN FULL.** The terms "DPC", "ARTIST", and "PURCHASER" as used herein shall include and apply to the singular, the plural and to all genders.

Frank Arnold/Cheryl Rogers
Bushwhacker Days Committee

3 Mar 2015
Date 3 Mar 2015



By Steve Hartley

Date 3/13/15

For David Phelps Concerts, Inc.

By your signature you indicate that you have the proper authority to enter into the full terms of this agreement on Behalf of the organization named herein.