

**2022 ENTERTAINMENT AGREEMENT
BETWEEN PACIFIC COUNTY FAIR
AND BRIAN LEDBETTER**

THIS AGREEMENT is made by and between Brian Ledbetter, Illusionist, ("ENTERTAINER") and PACIFIC COUNTY, a political subdivision of the State of Washington, hereinafter referred to as "COUNTY", operator of the annual Pacific County Fair, hereinafter referred to as "FAIR".

THIS AGREEMENT provides for the ENTERTAINER to perform one musical performance on:

Show date: August 24, 25 & 26th

Location: Pacific County Fair, Main stage and tent stage, and free roaming

IT IS AGREED that the ENTERTAINER will arrive thirty (30) minutes prior to the start of the show and will coordinate with the FAIR to use their sound/lighting technician.

IT IS FURTHER AGREED that the FAIR will pay entertainer **\$2400.00** at the conclusion of ENTERTAINER'S scheduled performance: Performance times to be confirmed with the fair manager no later than August 10th, 2022.

IT IS HEREBY FURTHER AGREED the FAIR will provide the following:

- One hotel room, double occupancy Tuesday-Thursday, August 23-25th, check out Friday morning, not to exceed \$450 including taxes.
- Water/soda for stage performances.

IT IS HEREBY EVEN FURTHER AGREED that the ENTERTAINER agrees to the following conditions:

1. INDEMNIFICATION/HOLD HARMLESS

A. Indemnification by Entertainer. To the fullest extent permitted by law, the ENTERTAINER agrees to indemnify, defend and hold the COUNTY and its departments, elected and appointed officials, employees, agents and volunteers, harmless from and against any and all claims, damages, losses and expenses, including but not limited to court costs, attorney's fees and alternative dispute resolution costs, for any personal injury, for any bodily injury, sickness, disease or death and for any damage to or destruction of any property, including the loss of use resulting therefrom. The indemnity includes but is not limited to: 1) liability arising in whole or in part by any action or omission, negligent or otherwise, of the ENTERTAINER, its employees, agents or volunteers or ENTERTAINER's subcontractors and their employees, agents or volunteers; or 2) liability directly or indirectly arising out of, resulting from, or in connection with performance of this Contract; or 3) liability based upon the ENTERTAINER'S or its subcontractors' use of, presence upon or proximity to the property of the COUNTY. This indemnification obligation of the ENTERTAINER shall not apply in the limited circumstance where the claim, damage, loss or expense is caused by the sole negligence of the COUNTY. This indemnification obligation of the ENTERTAINER shall not be limited in any way by the Washington State Industrial Insurance Action RCW Title 51, or by application of any other workmen's compensation act, disability benefit act or other employee benefit act, and the ENTERTAINER hereby expressly waives any immunity afforded by such acts. The foregoing indemnification obligations of the ENTERTAINER are a material inducement to COUNTY to enter into the Contract, are reflected in the ENTERTAINER's compensation, and have been mutually negotiated by the parties.

B. Participation County – No Waiver. The COUNTY reserves the right, but not the obligation, to participate in the defense of any claim, damages, losses or expenses and such

participation shall not constitute a waiver of ENTERTAINER's indemnity obligations under the Contract.

- C. Survival of Entertainer's Indemnity Obligations.** The ENTERTAINER agrees all ENTERTAINER's indemnity obligations shall survive the completion, expiration or termination of this Contract.

2. INSURANCE

Without limiting the ENTERTAINER'S indemnification of COUNTY, and prior to commencement of this Contract, ENTERTAINER shall obtain, provide and maintain during the term of this Contract, policies or insurance of the type and amounts described below and in a form satisfactory to the COUNTY.

- 1. General Liability Insurance.** ENTERTAINER shall maintain commercial general liability insurance with coverage at least as broad as Insurance Services Office form CG 00 01, in an amount not less than \$500,000 per occurrence, \$1,000,000 general aggregate, for bodily injury, personal injury, and property damage, including without limitation, blanket contractual liability.
- 2. Waiver of Subrogation.** All insurance coverage maintained or procured pursuant to this Contract shall be endorsed to waive subrogation against COUNTY, its elected or appointed officers, agents, officials, employees and volunteers or shall specifically allow ENTERTAINER or others providing insurance evidence in compliance with these specifications to waive their right of recovery prior to a loss. ENTERTAINER hereby waives its own right of recovery against COUNTY, and shall require similar written express waivers and insurance clauses from each of its subcontractors.

The ENTERTAINER shall provide the COUNTY with properly executed certificate of insurance and provide a policy endorsement naming the COUNTY as an additional insured. ENTERTAINER agrees that its liability insurance shall be primary and non-contributory to the COUNTY's and that ENTERTAINER's liability insurance policy shall so state.

3. ATTORNEY'S FEES/COST OF SUIT AND VENUE

If either party files suit to enforce this Contract, parties agree that the prevailing party in any such action shall be entitled to collection costs, reasonable attorney's fees, and costs of suit.

- A. Disputes.** Differences between the ENTERTAINER and the COUNTY, arising under and by virtue of this Contract, shall be brought to the attention of the COUNTY at the earliest possible time in order that such matters may be settled or other appropriate action promptly taken. Any dispute relating to the quality or acceptability of performance and/or compensation due ENTERTAINER shall be decided by the COUNTY'S Contract representative or designee. All rulings, orders, instructions and decisions of the COUNTY'S contract representative shall be final and conclusive, subject to their right to seek judicial relief pursuant to **Choice of Law, Jurisdiction and Venue.**
- B. Choice of Law, Jurisdiction and Venue.** This Contract has been and shall be construed as having been made and delivered within the State of Washington and it is agreed by each party hereto that this Contract shall be governed by the laws of the State of Washington, both as to its interpretation and performance.

Any action at law, suit in equity, or judicial proceeding arising out of this Contract shall be instituted and maintained only in any of the courts of competent jurisdiction in Pacific County, Washington.

- C. Severability.** If a court of competent jurisdiction holds any part, term or provision of this Contract to be illegal, or invalid in whole or in part, the validity of the remaining provisions shall not be affected, and the parties' rights and obligations shall be construed and enforced as if the Contract did not contain the particular provision held to be invalid.

If any provision of this Contract is in direct conflict with any statutory provision of the State of Washington, that provision which may conflict shall be deemed inoperative and null and void insofar as it may conflict, and shall be deemed modified to conform to such statutory provision.

Should the COUNTY determine that the severed portions substantially alter this Contract so that the original intent and purpose of the Contract no longer exists, the COUNTY may, in its sole discretion, terminate this Contract.

4. CONTRACT PROVISIONS

Payments due to the ENTERTAINER under this Agreement are expressly conditioned upon the ENTERTAINER's strict compliance with all insurance requirements under this Agreement. Payment to ENTERTAINER shall be suspended in the event of non-compliance. Upon receipt of evidence of full compliance, payments not otherwise subject to withholding or set-off will be released to ENTERTAINER.

5. OWNERSHIP

Any and all data, reports, analyses, documents, photographs, pamphlets, plans, specifications, surveys, films or any other materials created, prepared, produced, constructed, assembled, made, performed or otherwise produced by the ENTERTAINER or the ENTERTAINER's subcontractors or consultants for delivery to the COUNTY under this Agreement shall be the sole and absolute property of the COUNTY. Such property shall constitute "work made for hire" as defined by the U.S. Copyright Act of 1976, 17 U.S.C. § 101, and the ownership of the copyright and any other intellectual property rights in such property shall vest in the COUNTY at the time of its creation. Ownership of the intellectual property includes the right to copyright, patent, and register, and the ability to transfer these rights. Material which the ENTERTAINER uses to perform this Agreement but is not created, prepared, constructed, assembled, made, performed or otherwise produced for or paid for by the COUNTY is owned by the ENTERTAINER and is not "work made for hire" within the terms of this Agreement.

6. PUBLIC RECORDS ACT

This Agreement and all public records associated with this Agreement shall be available from the COUNTY for inspection and copying by the public where required by the Public Records Act, Chapter 42.56 RCW (the "Act"). To the extent that public records then in the custody of the ENTERTAINER are needed for the COUNTY to respond to a request under the Act, as determined by the COUNTY, the ENTERTAINER agrees to make them promptly available to the COUNTY. If the ENTERTAINER considers any portion of any record provided to the COUNTY under this Agreement, whether in electronic or hard copy form, to be protected from disclosure under law, the ENTERTAINER shall clearly identify any specific information that it claims to be confidential or proprietary. If the COUNTY receives a request under the Act to inspect or copy the information so identified by the ENTERTAINER and the COUNTY determines that release of the information is required by the Act or otherwise appropriate, the

COUNTY's sole obligations shall be to notify the ENTERTAINER (a) of the request and (b) of the date that such information will be released to the requester unless the ENTERTAINER obtains a court order to enjoin that disclosure pursuant to RCW 42.56.540. If the ENTERTAINER fails to timely obtain a court order enjoining disclosure, the COUNTY will release the requested information on the date specified.

The COUNTY has, and by this section assumes, no obligation on behalf of the ENTERTAINER to claim any exemption from disclosure under the Act. The COUNTY shall not be liable to the ENTERTAINER for releasing records not clearly identified by the ENTERTAINER as confidential or proprietary. The COUNTY shall not be liable to the ENTERTAINER for any records that the COUNTY releases in compliance with this section or in compliance with an order of a court of competent jurisdiction.

ENTERTAINER agrees to indemnify and, to the greatest extent legally possible, to hold harmless the COUNTY in any action by a third party due to the negligence, recklessness or intentional actions by the ENTERTAINER relating to its performance of this contract. This includes any lawsuit filed by a third party for the COUNTY's allegedly improper release of confidential or proprietary information pursuant to a public records request.

THIS AGREEMENT may be terminated by the FAIR if:

- (a) In the judgment of the FAIR, it is unable to present an agricultural fair on the date(s) specified in this Agreement.
- (b) Abide by all terms of this Agreement and rules of the FAIR. If the ENTERTAINER fails to comply with all terms of this Agreement and rules of the FAIR, the FAIR may cancel this Agreement and payments will be forfeited.

ENTERTAINER agrees that ENTERTAINER will perform services under this Agreement as an independent contractor and not as an agent, employee, or servant of COUNTY. The parties agree that ENTERTAINER is not entitled to any benefits or rights enjoyed by employees of COUNTY. COUNTY specifically has the right to direct and control ENTERTAINER'S own activities in providing services in accordance with the specifications set out in this Agreement. COUNTY shall only have the right to ensure performance. ENTERTAINER agrees that it shall not in any manner represent itself or permit itself to be represented to the public as an agent of the COUNTY.

THIS AGREEMENT may only be modified in writing with the consent of both parties.

Should the need arise during the term of this AGREEMENT for either party to notify the other for a change in address or otherwise, the following contacts shall be used:

For the COUNTY: Pacific County Fair
P O Box 142
Menlo, WA 98561
360-942-3713
bmonohon@co.pacific.wa.us

For ENTERTAINER: Brian Ledbetter
2457 60th Av SE
Mercer Island, WA 98040
magic@ledbettermagic.com
360-333-2941

