

**Resolution No. 22-09**

**RESOLUTION OF SOUTH OGDEN CITY APPROVING AND AUTHORIZING ENTERING INTO AN AGREEMENT WITH VERTICAL HORIZON FOR THE PROVISION OF SERVICES INCIDENTAL TO THE CITY'S ANNUAL SOUTH OGDEN DAYS CELEBRATION; AUTHORIZING THE CITY MANAGER TO SIGN THE NECESSARY DOCUMENTS ON BEHALF OF THE CITY TO GIVE EFFECT TO THE INTENT HEREOF; AND, PROVIDING FOR AN EFFECTIVE DATE.**

**SECTION I - RECITALS**

**WHEREAS**, the City Council finds that the City of South Ogden ("City") is a municipal corporation duly organized and existing under the laws of the State of Utah; and,

**WHEREAS**, the City Council finds that in conformance with Utah Code ("UC")§ 10-3-7179 the governing body of the city may exercise all administrative powers by resolution including, but not limited to regulating the use and operation of municipal property and programs; and,

**WHEREAS**, the City Council finds there is an ongoing need for implementing techniques, tools, services and abilities to support the city's Annual South Ogden Days celebration; and,

**WHEREAS**, the City Council finds that the City now desires to further those ends by contracting with Vertical Horizon to provide such services; and,

**WHEREAS**, the City Council finds that the public convenience and necessity requires the actions herein contemplated,

**NOW, THEREFORE, BE IT RESOLVED BY THE GOVERNING BODY OF SOUTH OGDEN AS FOLLOWS:**

**SECTION II - CONTRACT AUTHORIZED**

That The Vertical Horizon Agreement, Attached Hereto As **Attachment "A"** and by This Reference Fully Incorporated Herein, Is Hereby Approved and Adopted; and That the City Manager Is Authorized More Fully Negotiate Any Remaining Details under the Agreement On Behalf Of the City and Then to Sign, and the City Recorder Authorized to Attest, Any And All Documents Necessary At This Time, Or Subsequently, To Effect This Authorization And Approval.

**SECTION III - PRIOR ORDINANCES AND RESOLUTIONS**

The body and substance of all prior Resolutions, with their specific provisions, where not otherwise in conflict with this Resolution, are reaffirmed and readopted.

**SECTION IV - REPEALER OF CONFLICTING ENACTMENTS**

All orders, and Resolutions regarding the changes enacted and adopted which have heretofore been adopted by the City, or parts thereof, which conflict with any of this Resolution, are, for such conflict, repealed, except this repeal shall not be construed to revive any act, order or resolution, or part thereof, heretofore repealed.

**SECTION V - SAVINGS CLAUSE**

If any provision of this Resolution shall be held or deemed to be or shall be invalid, inoperative or unenforceable for any reason, such reason shall not have the effect of rendering any other provision or provisions invalid, inoperative or unenforceable to any extent whatever, this Resolution being deemed to be the separate independent and severable act of the City Council of South Ogden City.

**SECTION VI - DATE OF EFFECT**

This Resolution shall be effective on the 5<sup>th</sup> day of April 2022, and after publication or posting as required by law.

**PASSED AND ADOPTED BY THE CITY COUNCIL OF SOUTH OGDEN CITY, STATE OF UTAH, on this 5<sup>th</sup> day of April 2022.**

**SOUTH OGDEN CITY**

\_\_\_\_\_  
Russell L. Porter  
Mayor

**ATTEST:**

\_\_\_\_\_  
Leesa Kapetanov, CMC  
City Recorder

# **ATTACHMENT "A"**

## **Resolution No. 22-09**

Resolution Of South Ogden City Approving And Authorizing Entering Into An Agreement With Vertical Horizon For The Provision Of Services Incidental To The City's Annual South Ogden Days Celebration; Authorizing The City Manager To Sign The Necessary Documents On Behalf Of The City To Give Effect To The Intent Hereof; And, Providing For An Effective Date.

05 Apr 22



Contract #: 130613  
 Issue Date: 3/10/2022  
 Agent: Victoria Gordon

Agreement made this date, Thursday, March 10, 2022 by and between Vertical Horizon, Inc (hereinafter referred to as Artist) and Midtown Entertainment and Talent, LLC (hereinafter referred to as Purchaser). It is understood and mutually agreed that the Purchaser engages the Artist to perform the following engagement upon all the terms and conditions hereinafter set forth:

**ARTIST:** Vertical Horizon  
**BILLING:** 100% Headline  
**EVENT TITLE:** South Ogden Days  
**DATE(S):** Saturday, June 18, 2022  
**VENUE:** South Ogden City Celebration  
**ADDRESS:** Friendship Park E 5500 S 650 E  
 South Ogden, UT 84405  
**CAPACITY:** 2,000  
**AGES:** All Ages

TICKETS: (USD)	<u>Tier</u>	<u>Quantity</u>	<u>Comps/Kills</u>	<u>Ticket Price</u>	<u>Total</u>
	Free	2,000	--	--	--
	<b>Totals</b>	2,000	0		

Gross Potential \$0.00  
 Net Potential \$0.00

**DEAL:** \$20,000.00 Flat Guarantee PLUS Purchaser to Provide and Pay a \$1,000.00 buyout for hotels and for local ground transportation and backline per rider.

**ADD'L PROVISIONS:** MEET AND GREET: 50 attendees, before the performance

RADIUS: Artist agrees not to appear or announce within a 100 mile radius 90 days prior to the performance.

SHOW: This is family show, and the buyer respectfully requests and the artists agree to avoid foul language from the stage. Buyer also requests and artists agree to a reasonable Sound Pressure Level, peaks of 102 dBC at FOH.

STAGE: Stage is completely covered. In the event of wind or rain, event will remain on same stage. There will be no alternate stage provided.

MERCHANDISE: 90/10 Media; 80/20 Other Artist Sells; 75/25 Buyer Sells

**WLKOUT PTNTL:** \$20,000.00

**ANNOUNCE DATE:** To Be Determined      **ON SALE DATE:** N/A

**MERCH:** 80/20% Soft Goods; 90/10% CD'S/DVD'S; 80/20% Soft Goods; 90/10% CD'S/DVD'S. Artist sells

**SCHEDULE:** Load In      Per Advance      Vertical Horizon      8:45 pm, 75 minutes  
 Sound Check      Per Advance  
 Doors      TBD  
 Show      TBD

**CONTRACT DUE:** Wednesday, May 18, 2022

**PAYMENTS:** \$10,000.00 USD deposit payable by Wire Transfer/ACH/Cashier's Check to APA, due no later than Wednesday, May 18, 2022

Account #: 478 000 2013 / Swift #: BOFCUS33MPK / ABA #: 122 000 496  
 Account Name: Agency for the Performing Arts, Inc  
 Bank Address for Wire Transfers Only: Union Bank of California / 9460 Wilshire Blvd Beverly Hills, CA 90212 Do not send checks to this address.

Please include Artist and performance date on the payment memo.

**CONTACTS:** Burke Burkhardt (Production)  
 Chris Acton (Talent Buyer) PH: 801-592-4775 Email: cma@midtowntalent.com

Signatures on Page 2

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Failure to present the engagement shall not relieve the Purchaser of the obligation to pay the guarantee in full.

It is expressly understood by the Purchaser(s) and the Artist who are party to this contract that neither APA, Inc. nor its officers nor its employees are parties to this contract in any capacity and that neither APA, Inc. nor its officers nor its employees are liable for the performance breach of any provisions contained herein. Should any Rider, Addendum and/or Expense sheet be annexed to this Agreement it/they shall also constitute as part of this agreement and shall be signed by all parties to this contract. This contract and its attachments may be executed and exchanged electronically or by fax.

IN WITNESS WHEREOF, the parties have executed this Agreement on the date first above written.

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**BY: X** \_\_\_\_\_  
SIGNATURE OF PRESENTER  
Matt Dixon, City Manager  
South Ogden City  
3950 Adams Ave.  
South Ogden UT 84403  
Phone: 801-622-2709

**BY: X** \_\_\_\_\_  
SIGNATURE OF ARTIST REPRESENTATIVE  
Vertical Horizon, Inc. c/o Matt Scannell

**ATTEST:**  
**BY: X** \_\_\_\_\_  
Leesa Kapetanov, City Recorder

STANDARD TERMS AND CONDITIONS

**PRODUCTION CONTROLS:** Artist shall have sole and exclusive creative control over the production, presentation and performance of Artist's engagement hereunder and any changes thereto. Purchaser agrees to comply promptly with the directions of Artist or Artist's representative concerning stage settings for Artist's engagement hereunder.

**ARTIST'S COMPENSATION:** If payment to Artist is based in whole or in part on receipts from Artist's engagement hereunder, Purchaser shall first apply any and all receipts derived from Artist's engagement toward the payments required to be made by Purchaser hereunder. Purchaser agrees to provide Artist or Artist's representative with a certified statement of the gross receipts of Artist's engagement within two (2) hours following Artist's engagement. Artist may have a representative present at the box office who shall have access to Purchaser's box office records relating to Artist's engagement. Artist's compensation shall be paid to Artist without any deductions for taxes, fees, levies or union dues whatsoever, all of which shall be the sole responsibility of Purchaser.

**BALANCE OF GUARANTEE:** The balance of the Guarantee shall be paid to Artist via bank wire no later than the scheduled engagement date if Purchaser fails to present the engagement.

**OVERAGES:** All overage monies owed to Artist shall be paid to Artist immediately following Artist's performance by cash or cashier's check only.  
**ROYALTIES:** Purchaser will be responsible for the payment of all music royalties in connection with Artist's engagement hereunder.

**WORK PERMITS AND VISAS:** Purchaser shall be solely responsible for procuring and paying for, at no cost to Artist, all work permits and visas required for the engagement. Failure to procure such work permits and visas or provide necessary documentation to obtain them will be deemed a material breach of this Agreement, and Artist (i) will be relieved of any further obligations Artist may have pursuant to this Agreement; (ii) shall have the right to retain all monies previously paid by Purchaser; and (iii) shall be entitled to exercise all rights and remedies otherwise available to Artist at law, in equity or otherwise as if Artist has fully performed all obligations under this Agreement. Artist agrees to provide all personal information reasonably required in order to enable Purchaser to procure such work permits and visas.

**CONFIDENTIALITY:** Purchaser understands and agrees that no information regarding show grosses or attendance will be reported to any third party without the express prior written permission of Artist or Artist's representative. Exception: Purchaser must report attendance to Weber County RAMP in accordance with grant funding agreement. Failure to comply will be treated as a material breach of this Agreement, and Artist reserves all rights and remedies available to Artist at law, in equity or otherwise. Under no circumstance is Purchaser to announce or advertise the engagement without the prior written approval of Artist or Artist's representative.

**ARTIST'S RIGHT TO PAYMENT OF GUARANTEE IN ADVANCE:** If: (a) Purchaser fails to pay when due any amounts owed Artist hereunder when due; or (b) Purchaser fails to perform any material obligations hereunder, or (c) Artist has good faith reason to believe the Engagement may be cancelled, then Artist shall have the right to request full payment of the Guarantee in advance of the engagement date(s) and Purchaser agrees to remit full payment of the Guarantee to Artist via bank wire promptly upon request.

**BILLING:** Artist's engagement hereunder shall receive billing in such order, form, size and prominence as directed by Artist or Artist's representative in all advertising and publicity issued by or under the control of Purchaser, including, but not limited to, displays, newspapers, radio and television ads, posters and house boards.

**USE OF ARTIST'S NAME AND IMAGE:** Purchaser may only use Artist's name and pre-approved voice, photograph, likeness, image or other identification of Artist in connection with Purchaser's advertisements and publicity for Artist's engagement hereunder. Purchaser may not use Artist's name, voice, photograph, likeness, image or other identification of Artist as a direct or implied endorsement of any product or service. There shall be no corporate or product or service name or logo included in any such advertising or publicity without the prior written approval of Artist or Artist's representative obtained in each instance. Notwithstanding the foregoing, the placement, form, content, appearance and all other aspects of Purchaser's use of Artist's name, voice, photograph, likeness, image or other identification of Artist shall at all times be subject to the prior written approval of Artist or Artist's representative.

**MERCHANDISING:** Artist shall have the exclusive right to sell merchandise in connection with Artist's engagement hereunder, including but not limited to, soft goods (e.g. T-shirts), souvenir programs, photographs, posters, stickers and CDs, on the premises or otherwise, and Purchaser shall have no right to share in the proceeds from the sale of such merchandise.

**NO REPRODUCTION PERMITTED:** Purchaser will not and will not permit or authorize others (including, but not limited to, venue employees, representatives and contractors) to record, broadcast, photograph or otherwise reproduce in any manner the audio or visual performance by Artist or any part thereof. Exception: Purchaser must provide photographs to Weber County RAMP in accordance with grant funding agreement.

**STAGE SEATS:** It is understood and agreed that no stage seats are to be sold or used without the prior written consent of Artist or Artist's representative.

**PROMOTION:** Purchaser shall not announce, advertise, promote or sell tickets to Artist's engagement until written authorization has been obtained from Artist or Artist's representative. Purchaser agrees to promote the engagement to the best of Purchaser's ability by print, radio, and website and otherwise. There shall be no promotion or co-promotion with any radio station without the prior written approval of Artist or Artist's representative. Purchaser shall not commit Artist to any interviews, promotional appearances, meet and greets or other promotional activities without the prior written consent of Artist or Artist's representative.

**TICKETS:** This is a free event provided by the purchaser. No tickets will be sold or offered.

**INDEMNIFICATION:** Purchaser shall defend, indemnify and hold harmless Artist, and any and all employees of Artist and any and all representatives of Artist from and against any and all costs, claims, expenses (including attorneys' fees and court costs), liabilities, damages, losses or judgments arising out of or in connection with, any claim, action or demand sustained as an indirect or direct result of, Artist's engagement hereunder.

**INSURANCE:** Purchaser shall add Artist and Artist's employees as additional insureds to a commercial general liability insurance policy with limits of liability of Five Million Dollars (\$5,000,000) for each occurrence in the event of death or bodily injury arising from the negligence of Purchaser as

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promoter and operator of the Venue. In addition, Artist and Artist's employees shall be covered by Purchaser's worker's compensation insurance. Purchaser shall provide evidence of the required insurance coverage prior to Artist's engagement hereunder.

**PURCHASER'S DEFAULT/CANCELLATION:** If, on or before the date of Artist's engagement, Purchaser fails or refuses to perform any contractual obligations relating to Artist's engagement herein and/or any contractual obligation with any other performer, or if the financial status of Purchaser has been impaired, or in the opinion of Artist or Artist's representative, is unsatisfactory, Artist shall have the right to demand payment of the full Guarantee. If Purchaser fails or refuses to make such payment, then such failure shall be deemed a material breach of this Agreement, and Artist shall have the right, without prejudice to any other rights or remedies, to: (i) immediately terminate this Agreement and cancel Artist's engagement hereunder; (ii) retain all amounts previously paid to Artist by Purchaser; (iii) receive the full Guarantee (or balance thereof) and all out of pocket expenses incurred by Artist in connection with Artist's engagement. For the avoidance of doubt, Purchaser shall remain responsible for all transportation, accommodations and expense reimbursements for Artist and Artist's entourage pursuant to this Agreement.

Notwithstanding the foregoing, and for the avoidance of doubt, if Purchaser cancels the Engagement directly or indirectly due to COVID-19 (or similar pandemic), then Artist's obligations hereunder will be fully excused and Purchaser shall nevertheless pay Artist an amount equal to the full Guarantee plus all other payments and compensation due hereunder, if any.

**FORCE MAJEURE:** If, as the result of a Force Majeure Event (as defined below), Artist is unable to, or is prevented from, performing the engagement or any portion thereof, Artist's obligations hereunder will be fully excused, there shall be no claims of any kind for damages or expenses of any kind by Purchaser, and Purchaser shall bear its own costs and expenses in connection with this Agreement. Notwithstanding the foregoing: (i) Purchaser shall be obligated and liable to Artist for such proportionate amount of the payments provided for herein as may be due hereunder for any performance(s) which Artist may have rendered up to the time of the inability to perform by reason of such Force Majeure Event; and (ii) in the event of such non-performance as a result of a Force Majeure Event, if Artist is ready, willing and able to perform (but for the occurrence of such Force Majeure Event), Purchaser shall nevertheless pay Artist an amount equal to the full Guarantee plus all other payments and compensation due hereunder. For clarification, in the event of cancellation due to any Force Majeure Event, and whether or not Artist is ready, willing and able to perform, Purchaser shall remain responsible for all transportation, accommodations, expense reimbursements and any other payments or compensation due Artist and Artist's crew and entourage pursuant to the terms of this Agreement.

A "Force Majeure Event" shall mean, but shall not be limited to, any one or more of the following acts which makes any performance by Artist contemplated by this Agreement impossible, infeasible or unsafe: acts of God; epidemic, pandemic, acts of public enemy; acts or threats of terrorism; insurrections; riots or other forms of civil disorder; embargoes; labor disputes (including, without limitation, strikes, lockouts or boycotts); fires; explosions; floods; shortages of power or other essential services; failure of technical facilities; failure or delay of transportation; death, disability, illness, injury or other inability to perform by Artist, any of Artist's musicians, other performers, crew, representatives or advisors, any of Artist's family members, any of Purchaser's key personnel, or any other person personally known to Artist whose death, disability, illness or injury adversely impacts Artist's ability to perform in connection with the engagement; or other similar or dissimilar causes beyond the control of Artist which make any performance(s) contemplated by this Agreement impossible, infeasible or unsafe. For the avoidance of doubt, poor ticket sales shall not be deemed a Force Majeure Event.

For the avoidance of doubt, if within two (2) weeks prior to the Engagement, any governmental authority having jurisdiction over Artist and/or the Venue, issues any legislation, directive, or advice that relates directly or indirectly to COVID-19 (or similar pandemic), which either (a) materially and adversely impacts the Engagement, including, but not limited to, reducing Venue capacity in connection with the Engagement, (b) prevents the Engagement from occurring in accordance with the terms set forth in this Agreement, or (c) prohibits Artist from traveling in connection with the Engagement, then Artist's obligations hereunder will be fully excused and Purchaser shall nevertheless pay Artist an amount equal to the full Guarantee plus any other payments and compensation due hereunder, if any.

**INCLEMENT WEATHER:** Notwithstanding anything to the contrary contained herein, inclement weather shall not be deemed a Force Majeure Event, and Purchaser shall remain liable for payment to Artist of the full Guarantee plus all other compensation due hereunder if Artist's engagement is rendered impossible, infeasible or unsafe by such weather conditions. For clarification, Purchaser shall remain responsible for all other terms and conditions of this Agreement, including, without limitation, accommodations, transportation and expense reimbursements for Artist and Artist's crew and entourage.

**LIMITATION OF LIABILITY:** In no event shall Artist (nor any of Artist's agents, representatives, principals, employees, officers, directors and affiliates) be liable to Purchaser for any indirect, incidental, consequential, special, punitive, exemplary or any similar damages, including, without limitation, lost profits, loss of revenues or income, cost of capital or loss of business reputation or opportunity, as to any matter relating to, or arising out of, Artist's engagement hereunder or the transactions contemplated by this Agreement, whether in contract, tort or otherwise.

**NOTHING CONTRARY TO LAW:** Nothing herein contained shall require the commission of any act contrary to law or contrary to the restrictions of any guild or union having jurisdiction over Artist's engagement hereunder. In the event of any conflict between any provision of this Agreement and any such law or restriction, such law or restriction shall prevail and this Agreement shall be curtailed, modified, or limited only to the extent necessary to eliminate such conflict.

**ENTIRE AGREEMENT:** These Standard Terms and Conditions are hereby incorporated into the Agreement and any addendum(s) thereto. In the event of any conflict between these Standard Terms and Conditions and the Artist's rider provided by Artist or Artist's representative attached hereto (if any), Artist's rider shall control. This Agreement shall constitute the entire agreement between the parties hereto concerning the subject matter hereof and may not be modified except by an instrument in writing signed by both parties. This Agreement shall be construed in accordance with the laws of the State of California, and the state and federal courts located in Los Angeles County in the State of California shall have exclusive jurisdiction over any matters pertaining hereto.

This Agreement may be executed in two or more counterparts, each of which shall be deemed an original and all of which taken together shall constitute one and the same instrument. Delivery of an executed copy of this Agreement by facsimile or electronic delivery shall be deemed a valid and binding original.

\_\_\_\_\_ Initial