

2024 SERVICE AGREEMENT

Between

Resort Municipality of Whistler & XXX

For

2024 Whistler Summer Concert Series - Producer

THIS AGREEMENT (the “**Agreement**”) is dated and effective on the X day of Month, 2024

BETWEEN: **RESORT MUNICIPALITY OF WHISTLER**, a municipal corporation continued pursuant to the *Resort Municipality of Whistler Act*, R.S.B.C. 1996, c. 407 and having its office at 4325 Blackcomb Way, Whistler, BC, Canada V8E 0X5 (“**RMOW**”)

AND: **XXX** having an office at [address] (“**XXX**”)

WHEREAS

- A.** The RMOW has developed and manages the *Festivals, Events & Animation* (“**FE&A**”) program as a significant annual initiative designed to attract visitors to Whistler and to enhance and enrich the visitor and resident experience through the development, production, integration, and promotion of a wide range of programming for an equally wide range of target groups, an important component of which is live, outdoor concerts in Whistler Olympic Plaza (“**WOPL**”); and
- B.** Funding for FE&A is provided by the Province of British Columbia (“**BC**”) through the Municipal and Regional District Tax (“**MRDT**”) – aka Hotel Tax – which is applied to short-term tourist accommodation; and
- C.** XXX has proven expertise in programming and producing live outdoor concerts; and
- D.** On Month x, 2023 and pursuant to RMOW Request for Proposal RFP# RMOW-2023-WSCS (the “**RFP**”), XXX submitted a proposal to act as Producer of the 2024 *Whistler Summer Concert Series* (“**WSCS**”), which involves up to XX live, outdoor show dates from XX through XX; and
- E.** Subsequent to a rigorous assessment of all proposals in response to the RFP, RMOW wishes to retain XXX to provide or cause to be provided services related to the programming, administration, performer services, and technical & production services (together, the “**Services**”) for WSCS 2024 subject to the terms of this Agreement; and
- F.** Subsequent to assessing the Proposal for the Services, the RMOW wishes to invest up to \$XXX in the Services subject to the terms of this Agreement and for which the Proposal is an integral part of this Agreement; and
- G.** RMOW wishes to retain XXX to provide or cause to be provided the Services to enhance and enrich the visitor and resident experience, generate incremental room nights, and generate incremental positive media coverage for Whistler; and further

- H. RMOW, may, pursuant to section 8(2) of the Community Charter, provide any service that Council considers necessary or desirable, and may do this directly or through another public authority or another person or organization.

Therefore, in consideration of the terms of this Agreement (and for other good and valuable consideration, the receipt and sufficiency of which consideration is hereby acknowledged), RMOW and XXX agree as follows:

1. TERM

This Agreement is effective on Month X, 2024 and will continue in effect until Month X, 2024 (the “Term”) unless this Agreement is sooner terminated in accordance with the terms of this Agreement.

2. RMOW RESPONSIBILITIES AND OBLIGATIONS

RMOW agrees to:

- a) Pay up to \$XXX (XXX) to XXX for the Services related to WSCS 2024 (the “Fee”).
- b) Pay the Fee as follows:
 - i. Up to \$XXX (XXX) within the first available RMOW *Payment Run* following execution of this agreement for actual costs incurred related to the Services in accordance with the following process:
 1. XXX will submit a list of anticipated expenses that will be included in the Services
 2. Expenses will be based on budget allocations as submitted in proposal XXX RFP# RMOW-2023-WSCS
 3. RMOW will review the list of anticipated expenses and confirm which expenses are eligible to be included in the Services
 4. RMOW will pay the fee after receipt of invoices provided by XXX as per Section 3. b) i. e. and 3. b) i. f.
 5. XXX invoices will be followed by documented confirmation of costs incurred related to the Services per Section 4. a); e.g. supplier invoices; performer deposit invoices
 6. XXX will receive payment by electronic direct deposit
 7. RMOW will review XXX invoices within two (2) business days of receipt
 8. If RMOW has no questions regarding a XXX invoice, RMOW will approve and begin processing payment within three (3) business days of receipt
 - ii. Up to \$XXX (XXX) subsequent to receiving the 2nd deposit invoice on Month X, 2024
 - iii. Up to \$XXX (XXX) final payment upon delivery of the final reporting in accordance with Section 4
- c) Provide oversight and approval of all major aspects of WSCS 2024 including but not limited to establishing goals, approving programming, approving sponsors, and approving budget allocations.
- d) Design, produce and install collateral to create in-resort awareness of WSCS 2024, and work with Tourism Whistler and other resort stakeholders to create awareness of WSCS 2024 outside Whistler.
- e) Assist XXX with the integration of WSCS 2024 programming and production into the day-to-day operation of the resort community.

- f) Work with XXX and Tourism Whistler towards a programming announcement target date of Month X, 2024

3. XXX RESPONSIBILITIES AND OBLIGATIONS

XXX agrees to:

a) Program WSCS

- i. Provide RMOW with recommendations for talent including MC(s) for live music performances in WOPL on # dates as follows:
1. Day of week, Month X
 2. Day of week, Month X
 3. Day of week, Month X
 4. Day of Week, Month X
 5. Day of Week, Month X
 6. Day of Week, Month X
 7. Day of Week, Month X
 8. Day of Week, Month X
 9. Day of Week, Month X
 10. Day of Week, Month X
 11. Day of Week, Month X
 12. Day of Week, Month X
 13. Day of Week, Month X

Assume shows will:

- Include a DJ opener at 6:30pm
- Run between 90 and 150 minutes (whether one act or more than one act)
- Conclude no later than 10:00pm including encore

b) Administration

- i. Upon RMOW approval of talent including MC(s):
- a. Negotiate, draft, and execute all contracts
 - b. Execute all financial transactions related to WSCS (including SOCAN fees)
 - c. Sub-contract and compensate personnel and services as may be required to deliver WSCS
 - Ensure all personnel retained by the XXX are registered with WorkSafeBC
 - Ensure that all personnel are qualified and, if required, certified to perform their duties; e.g. rigging
 - d. Ensure all performers have comprehensive general liability insurance (naming RMOW and Whistler Village Land Co Ltd as additional insured) in an amount no less than \$2,000,000 for any one occurrence
 - e. XXX will submit invoices to RMOW Accounts Payable ap@whistler.ca copying Bob Andrea bandrea@whistler.ca and indicating **Program 1426, Account 5200, Task 549029**, and **Attention: Bob Andrea** directly on the invoice.
 - f. XXX will submit invoices as follows:
 - 50% on execution of the agreement
 - 40% on Month X, 2024
 - 10% upon reconciliation and final report in accordance with Section 4
- ii. Collaborate with RMOW as may be required to ensure the success of WSCS 2024

c) Performer Services

- i. Manage and pay for the performer experience in Whistler for all WSCS performers and MC(s) including:
 - a. Travel planning including transportation, accommodation, arrival for all fourteen show dates identified in Section 3. a) i.
 - b. Performance set-up, rehearsal, timely payment of performance fees, strike, and departure for all fourteen show dates identified in Section 3. a) i.
 - c. Green Room services including décor, food, beverages, special occasion licenses, towels, etc. for all fourteen show dates identified in Section 3. a) i.
 - d. RMOW will provide Green Room space and furniture at no cost to XXX

d) Technical and Production Services

- i. Arrange and pay for all equipment and services – stage, lighting, audio, backline, and all other equipment that may be required – that is incremental to the in-house equipment for all nine show dates identified in Section 3. a) i.
- ii. Install house lighting and audio as may be required for WSCS
- iii. Front-of-House set-up, removal, and on-site storage

e) Programming Announcement Target Date: Per Section 2. f)

4. REPORTING REQUIREMENTS

On or before Month X, 2024 XXX will provide RMOW with:

- a) A reconciliation of the actual expenses incurred for the provision of the Services.
 - i. XXX acknowledges that if the cost of the Services is less than the Fee, the difference between the actual cost of the Services and the Fee will not be owed to XXX
 - ii. XXX further acknowledges that all costs in excess of the Fee are the responsibility of XXX
- b) A summary and review of WSCS 2024 including audience size estimates and lessons learned regarding the Services.

5. RENEWAL

- a) RMOW, in its sole and absolute discretion, reserves the right to renew this Agreement for 2025 and will notify XXX on or before Month X, 2024 about whether or not this Agreement will be renewed for 2025.
- b) If RMOW elects to renew this Agreement for 2025, RMOW reserves the right to modify this Agreement to reflect the goals, strategies, schedules, and budgets for WSCS 2025.

6. TERMINATION

Either party may terminate this Agreement upon ninety (90) days' written notice to the other party in the event of a material breach of the Agreement by, in the case of RMOW, XXX and in the case of XXX, RMOW, which is not remedied within thirty (30) days of the breaching party being provided written notice of such breach.

On termination, the responsibilities and obligations in Section 2 and Section 3 will immediately terminate. Nothing in this Section 6 shall be construed as limiting all rights and remedies available to such party at law or in equity and/or a restriction on either party from continuing to use their own names and trademarks separate and apart from those of the other party.

7. INDEMNITY

XXX hereby indemnifies and holds harmless RMOW and its elected officials, officers, employees, agents and volunteers from and against all losses, damages, costs, expenses (including legal fees) (“**Damages**”) incurred or suffered by RMOW (or its representatives) arising from any actions, suits and any other proceedings by third parties arising from any breach of any covenant, term or provision contained herein by XXX or from any activity occurring at or on RMOW property arising from or relating to WSCS 2024, other than Damages caused by the gross negligence or wilful misconduct of RMOW.

For greater certainty, RMOW will not be liable for any claims arising from any activity, losses, damages, costs, expenses (including legal fees) incurred or suffered by XXX (or its respective representatives) arising from any actions, suits and any other proceedings occurring in Whistler excluding any actions, suits and any other proceedings by third parties caused by RMOW.

8. LIABILITY

- a) Notwithstanding anything to the contrary contained in this Agreement and under no circumstances will XXX or its affiliates, directors, officers, employees, volunteers or agents be liable to RMOW or will RMOW or its respective elected officials, directors, officers, employees, volunteers and agents be liable to XXX under any circumstances for any special, consequential, incidental, exemplary or indirect damages, even if they have been advised of the possibility of such loss, including without limitation, loss of business revenue or earnings, lost data, lost profits, or a failure to realize savings arising from or related to this Agreement. These limitations, exclusions and disclaimers will apply whether an action, claim or demand arises from a breach of warranty or condition, breach of contract, negligence, strict liability or any other kind of civil liability connected with this Agreement. The parties acknowledge that the foregoing does not limit any claim for direct damages against either party.
- b) XXX acknowledges that XXX will be prime contractor as that term is used in the Workers Compensation Act (BC), provided, however, that XXX will not be responsible for any employees of RMOW.

9. INSURANCE

- a) XXX shall carry a general commercial liability (“**GCL**”) insurance policy naming the Resort Municipality of Whistler and Whistler Village Land Company as additional insured in an amount no less than Three Million Dollars (\$3,000,000) per each occurrence and Five Million Dollars (\$5,000,000) in the aggregate. XXX shall submit proof of GCL insurance upon full execution of this Agreement.
- b) RMOW shall obtain and maintain throughout the term of this Agreement a: (i) GCL insurance with minimum coverage of Three Million Dollars (\$3,000,000) per each occurrence and Five Million Dollars (\$5,000,000) in the aggregate; (ii) Workers Compensation insurance to the extent required by law, statute or other regulation for all persons employed by RMOW.
- c) RMOW and will provide XXX with a certificate of insurance evidencing the coverage outlined above naming XXX as an additional insured (excluding any Employer’s insurance). All policies will provide

that the insurer(s) shall give XXX advance written notice of any termination, alteration, or change therein. Upon any cancellation and/or material adverse amendment of any insurance policy, and prior to the effective date thereof, RMOW will deliver evidence of replacement insurance to XXX.

10. NOTICE

Any requests, notices, directions, demands, approvals or waivers which may be or are required to be given under this Agreement must be in writing and be delivered either by mail or by e-mail as follows:

To RMOW: Resort Municipality of Whistler
4325 Blackcomb Way
Whistler BC V0N 1B4
Attention: Bob Andrea
Email address: bandrea@whistler.ca

Or to such other address as RMOW furnishes to XXX in writing in accordance with this Section.

To XXX: XXX
Street
City, BC Postal
Attention:
Email address:

Or to such other address as XXX furnishes to RMOW in writing in accordance with this Section.

Any notice, direction, demand, approval or waiver that is sent by e-mail is to be considered to have been given on the day it is sent if that day is a business day, and if that day is not a business day, it is to be considered to have been given on the next business day after the date it is sent. If a party changes its address it must immediately give notice of its new address to the other party.

11. GENERAL

- a) RMOW hereby acknowledges and agrees that XXX may subcontract some or all of its responsibilities hereunder to a third party, without in any way releasing XXX from its obligations pursuant to this Agreement.
- b) This Agreement will be governed by and interpreted in accordance with the laws of the Province of British Columbia and the federal laws of Canada applicable therein, without giving effect to the principles of conflicts of law thereof. The parties hereby attorn to the jurisdiction of the courts of competent jurisdiction in BC.
- c) Each party will perform its obligations hereunder as an independent party, and nothing contained in this Agreement will be construed to create or imply a joint venture, partnership, principal-agent, or employment relationship between the parties. For the avoidance of doubt, RMOW is not authorized to enter into agreements or other arrangements on behalf of XXX and RMOW shall not hold itself out as having such authority. XXX is not and will not be authorized to enter into agreements or other arrangements on behalf of RMOW, and XXX shall not hold itself out as having such authority. Notwithstanding anything to the contrary contained herein, neither of the parties hereto are acting under this Agreement as a legal representative or advisor to any other party hereto.

- d) If any provision of this Agreement is declared illegal, invalid, void or unenforceable by any judicial or administrative authority, the validity of any other provision and of the entire Agreement will not be affected thereby.
- e) No waiver of any breach or default hereunder will be considered valid unless in writing signed by the party charged with such waiver, and no such waiver will be deemed a waiver of any subsequent breach or default.
- f) For greater certainty, the parties acknowledge and agree that the Fee to be provided by RMOW to XXX in connection with this Agreement constitutes a reasonable estimate of the fair market value of the Services to be provided by XXX. To confirm that the value of the Services provided by XXX to RMOW is equal to or exceeds the Fee provided by RMOW, XXX will provide the information in accordance with Section 4 a).
- g) This Agreement, constitutes the entire agreement between the parties hereto with respect to the subject matter hereof and may not be changed or modified except by an instrument in writing, duly executed by the parties hereto.
- h) Neither RMOW nor XXX will be liable to the other party for any delay or default in performance or compliance with any provisions of this Agreement if such default arises from any cause which such party cannot reasonably foresee or control ("**Force Majeure**"), provided however lack of financial resources is not an event of Force Majeure. The obligations under this Agreement will be suspended to the extent made necessary by such cause, provided that the party which is in delay or default as a result thereof, will give immediate notice to the other of the cause and will perform such obligations in good faith as soon as reasonably practicable.
- i) This Agreement may be executed by the parties and transmitted by fax or other electronic means and if so executed and transmitted this Agreement will be for all purposes as effective as if the parties had delivered an executed original Agreement.
- j) This Agreement may be executed in any number of counterparts, each of which when so executed shall be deemed to be an original and all of which taken together shall constitute one and the same instrument.
- k) Neither this Agreement, nor any of the rights or obligations hereunder, may be assigned by either party without the prior written consent of the other party. For purposes of this Agreement, a change in control of XXX shall be considered an assignment. This Agreement enures to the benefit of and is binding upon the parties and their respective successors and permitted assigns.
- l) Nothing contained or implied in this Agreement shall prejudice or affect the rights and powers of RMOW in its capacity as a municipality in the exercise of its functions under any public or private statutes, bylaws, orders and regulations or in equity, all of which rights, powers as if this Agreement had not been executed and delivered by the parties.
- m) Sections 7, 8, 11 (b) will survive the termination or expiration of this Agreement.

IN WITNESS WHEREOF the parties have agreed to the terms of this Agreement as of the date first above written.

X: _____
Name
Title
RESORT MUNICIPALITY OF WHISTLER

X: _____
Name,
Title
XXX

DATE: _____

DATE: _____

X: _____
Name
Title
RESORT MUNICIPALITY OF WHISTLER

DATE: _____