

7  
12

## MISSOULA COUNTY PROFESSIONAL SERVICES AGREEMENT

This Agreement is entered into by and between Missoula County, hereinafter referred to as "the County", and Rob Quist and the Mission Mountain Wood Band, hereinafter referred to as "Contractor", identified as follows:

Organization Name: the Mission Mountain Wood Band  
Organization Type: Musical Entertainment  
Principal Contact: Rob Quist  
Mailing Address: P O Box 1711, Kalispell, MT 59903  
Telephone Number: 406-257-8605 / 406-253-8605  
E-mail Address of Principal Contact: rob@robquist.com  
Tax ID Number: #

Pages: 7

201104060 B: 874 P: 1075  
03/07/2011 09:25:49 AM County Contract  
Vickie M Zeier, Missoula County Clerk & Recorder



1. Purpose

The County desires to enter into an event production agreement per exhibit A with Contractor for services desired, in return for the compensation stated. To this end, the parties mutually agree as follows.

2. Relationship of the Parties

Missoula County is a political subdivision of the State of Montana. Contractor is a Montana corporation.

This Agreement is not intended to constitute or create a joint venture, partnership or formal business organization of any kind whatsoever among and between the parties, and their respective rights and obligations will be only those expressly set forth herein. Neither party will have any authority to bind the other except to the extent authorized herein.

Each party will furnish to the other such cooperation and assistance as may be reasonably required and specified hereunder. However, at all times, each party shall remain an independent contractor with respect to the other. Employees and agents of each party will not be deemed to be employees or agents of the other party. Contractor will perform or provide its services free from the supervision, direction or control of the County.

The Contractor is required to comply with the provisions of the Montana Worker's Compensation Act and shall provide proof of compliance as provided in Paragraph 9.

3. Required Work or Product

The Contractor shall provide the specific services, tasks, or work products shown on the attached Exhibit A, which lists the scope of services relating to this Agreement. By this reference, Exhibit A is made a part of the Agreement.

4. Performance Schedule and County Assistance

Contractor shall commence performance of services identified in Exhibit A of this Agreement on the 13<sup>th</sup> day of August, 2011 and shall complete performance of this Agreement by the 13<sup>th</sup> day of August, 2011.

The County may, by written change order, request changes within the general scope of this Agreement in the schedule, specifications, or quantity of work to be performed hereunder, and Contractor shall be entitled to a reasonable period of time to perform or provide said changes. Additional fees will be charged to the County for such changes as set out in Appendix "A".

County's Responsibilities - The County shall be responsible for assisting with the performance of this Agreement by doing or providing the following:

- a. Provide the contractor with twenty (20) VIP Passes and Ten (10) grandstand seat tickets for the night show on August 13, 2011.
- b. Provide assistance with load-in beginning at 4:00 PM on August 13, 2011, including help loading and unloading equipment.
- c. Provide a stage area as follows:
  - a. Minimum size = 12'X32'
  - b. Stage covering: sun shade, canopy, roof, or tarp.
- d. Green room near stage with chairs, clothes hangers, toilet facility
- e. Merchandising area to include: one (1) 8' or 10' table with four chairs in an area that is well lit and easily accessible by the audience
- f. Provide by sound check time:
  - a. A hot meal for each of the five (5) tour members
  - b. A snack tray including assorted meats, cheeses, breads, veggies, and fruits
  - c. Two dozen (24) bottles of water
  - d. Two dozen (24) assorted bottles of Coke products
- g. Provide hotel accommodations of four (4) rooms for the night of August 13, 2011.

5. Place where service will be rendered

Contractor will perform most services in accordance with this Agreement at the Missoula County Fairgrounds as a stage show event at the Western Montana Fair. In addition, Contractor will perform services via the telephone, electronic mail, or at such other places as necessary to perform these services in accordance with this Agreement.

6. Compensation for Services

For the satisfactory completion of services to be performed under Exhibit A, the County will pay Contractor a sum not to exceed \$12,500 (twelve thousand and five hundred dollars). Any modifications must be approved by the County Commissioners through the change order process and will be compensated according to the fee schedule contained on Appendix A. Invoices must be submitted to the Principal Contact for the County identified in Paragraph 10 of this Agreement with complete supporting documentation.

7. Other Payments

All other payments or reimbursements, other than those made to compensate for completion of services, shall not exceed \$00 (No dollars). Requests for payment must be submitted to the Principal Contact for the County, as identified in Paragraph 11, with complete supporting documentation.

Other payments shall be made at the times, in the amounts, for the purposes, and to the following parties:

8. Prevailing Wages

For public works and construction contracts in which the total cost of the contract is \$25,000 or more involving public funds, Contractor agrees to pay prevailing wages as established by the Montana Commissioner of Labor for all work performed under this Agreement. Information concerning the current prevailing wages may be obtained from the Montana Department of Labor and Industry. Payroll records capable of certification must be maintained by Contractor for at least three years after completion of work under the Agreement. Contractor must post a copy of the prevailing wage rates applicable to the project.

9. Insurance and Workers' Compensation

Contractor will be required to maintain general liability insurance in the amount of one million dollars (\$1,000,000) per occurrence and two million (\$2,000,000) in the aggregate. Contractor will be required to provide professional liability insurance.

In accordance with §§ 39-71-120, 39-71-401 and 39-71-405 MCA, Contractor agrees to provide workers' compensation insurance for its employees while performing work under this Agreement. Contractor shall provide proof of compliance in the form of workers' compensation insurance or documentation of corporate officer status and maintain such insurance or corporate officer status for the duration of the contract.

Contractor shall purchase and maintain occurrence coverage with combined single limits for bodily injury, personal injury and property damage of \$500,000 per occurrence and \$1,000,000 aggregate per year to cover such claims as may be caused by any act, omission, or negligence of Contractor and its employees, agents, representatives, assigns or subcontractors.

All insurance policies required must be from an insurance carrier licensed to do business in the State of Montana. Contractor agrees to furnish proof of required insurance to the County prior to commencing work under Agreement. County must be listed as an additional insured on the general liability insurance certificate for this Agreement unless otherwise specified by the County.

10. Records

Contractor shall maintain sufficient records incident to the performance of this Agreement to enable the County to document the performance of the Agreement. Contractor shall allow access to those records by the County and the County Auditor, any independent auditor employed by the County and to representatives of the state or federal government. Records shall be retained for at least three years after completion of the Agreement.

11. Principal Contact for the County

The County official with whom the Contractor must communicate regarding this Agreement and who shall have the authority to accept completion of performance and to submit requests for payment to the County Auditor and Commissioners is:

Name: Stephen G. Earle  
Title: Fairgrounds Director  
Address: 1101 South Avenue West  
Telephone Number: 406-544-2220  
Email Address: searle@co.missoula.mt.us

12. Ownership and Publication of Materials

All reports, information, data, and other materials prepared by Contractor pursuant to this Agreement are the property of the County, which has the exclusive and unrestricted authority to release, publish, or otherwise use, in whole or in part, information relating thereto. No material produced in whole or in part under this Agreement may be copyrighted or patented in the United States or in any other country without the prior written approval of the County.

13. Public Access to Information

Contractor acknowledges that the County is a local government unit and its records are public and subject to disclosure under Montana law. Certain information may be protected from disclosure. Protected information includes information concerning an individual privacy interest, legitimate trade secrets and other constitutionally protected proprietary information and certain information relating to individual or public safety. The parties agree to confer prior to disclosure of information relating to this Agreement and its performance which may include protected information.

14. Termination

This Agreement may be terminated at any time by either party by mutual written and signed consent of both parties.

This Agreement may not be terminated by either party unilaterally or by giving notice of termination in writing at least \_\_ days prior to the date of the intended termination.

If the Agreement is terminated prior to completion, County shall be responsible for paying Contractor for completed and accepted work and billed to the County as provided in Paragraphs 6 and 7 within thirty (30) days of termination.

15. Failure to Perform

Upon any material default or substantial failure to perform this Agreement by either party, the other party shall be entitled to the following remedy:

a) Stop performing or accepting performance of the contracted work until the matter is resolved;

b) Within three (3) days of discovery of the defect or failure to perform, mail a written description of the defect or failure to the other party, and:

1) If the defect or failure to perform can be cured, demand specific remedial action within a reasonable time certain; or

2) If the defect or failure to perform cannot be cured, specify any alternative performance which would be acceptable in lieu of the required performance and a time within which the alternative performance would be required; or

3) If the defect or failure to perform cannot be cured and no reasonable alternative performance is acceptable, notify the other party of the termination of the Agreement as of a date certain and state therein whether an action for breach of Agreement will be brought.

4) Where appropriate, obtain completion of the performance of the remaining balance of the Agreement with the original party.

c) If the defect or failure to perform is not corrected or alternative performance completed within the time certain specified, the party alleging breach may initiate an action in the District Court of the Fourth Judicial District, Missoula County. If an action is brought, the prevailing party shall be entitled to attorney's fees as well as other costs of suit.

16. Income Tax Designation

In the event that the Internal Revenue Services should determine that Contractor is, according to IRS guidelines, an employee subject to withholding and social security contributions, Contractor shall acknowledge, as Contractor acknowledges herein, that all payments to Contractor are gross payments and Contractor is responsible for all income taxes and social security payments thereon.

17. Indemnification

Contractor shall defend, indemnify and hold harmless the County, its employees and agents, from all claims, liabilities, causes of action or judgments, including costs and attorney fees, asserted by or awarded to third parties as a result of any negligent action or omission or willful misconduct of Contractor, its employees or agents.

County shall defend, indemnify and hold harmless Contractor, its employees and agents, from all claims, liabilities, demands, causes of action or judgments, including costs and attorney fees, asserted by or awarded to third parties as a result of any negligent action or omission or willful misconduct of the County, its employees or agents.

18. Entire Agreement, Modifications and Non-Assignment

This Agreement contains the entire Agreement between the parties. All preliminary negotiations and Agreements are merged herein. This Agreement cannot be changed or modified in any manner except by a written Agreement signed by both parties.

No obligation or right hereunder may be assigned, transferred, subcontracted or otherwise given to or imposed on any other party in the absence of a written Agreement signed by both parties.

19. Compliance with Laws

Contractor agrees to comply with all federal, state and local laws, rules and regulations.

20. Place of Performance and Venue

Contractor and County agree that performance of this Agreement is in Missoula County, Montana. In the event of litigation concerning it, venue is in the 4<sup>th</sup> Judicial District, in and for the County of Missoula, State of Montana. This Agreement will be construed under and governed by the laws of the State of Montana.

21. Severability

If any part of this Agreement is hereafter held to be void, illegal or unenforceable, the validity of the remaining portion or provisions will not be affected hereby.

DATED this 21<sup>st</sup> day of February, 2011.

Contractor:

Rob Quist M2WB  
Rob Quist

BOARD OF COUNTY COMMISSIONERS  
Missoula County, Montana

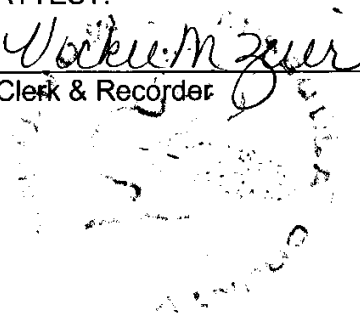
Jean Custiss  
Chair

Brittany  
Commissioner

Michele Landquist  
Commissioner

ATTEST:

Wendy M. Zuer  
Clerk & Recorder



## Exhibit A – Missoula County Professional Services Agreement

### Project: Headline Stage Show for 2011 Western Montana Fair (WMF) August 13, 2011

Referenced to and made a part of the Professional Services Agreement between Missoula County and The Mission Mountain Wood Band dated February 14, 2011.

Under the terms of the Professional Services Agreement, The Mission Mountain Wood Band (contractor) will provide to the Western Montana Fair (WMF) the following services or tasks or work products:

- Contractor agrees to provide one (1) performance, a minimum of ninety (90) minutes in duration, at the county's venue (WMF) on August 13, 2011 at a time of the county's designation.
- Contractor agrees to provide the county and WMF access to electronic sound bites, website information, interviews, and band profile and photos for promotional purposes.
- Contractor agrees to attend a meet and greet autograph session on August 13, 2011 prior to the start of the show.
- Contractor agrees to allow WMF to advertise this event as the release party for the band's new "Reboot" CD and issue press releases and promotional information jointly with the band's promotion of the CD.
- Contractor agrees to provide any and all products, personnel and equipment necessary for this performance not specifically stated in this agreement as being provided by the county and to complete this performance in a manner satisfactory to the county.
- Contractor agrees to pay the county twenty percent (20%) commission on all merchandise sold as swag by the contractor at the Western Montana Fair in conjunction with this contract.

#### Fee Schedule:

	Cost to County	Payment Schedule
Base fee for event	\$12,500	
Total	\$12,500	\$12,500 paid upon completion of performance (8/13/11)
<b>County agrees to pay Contractor</b>	<b>\$12,500</b>	