

Agenda Item No.: CA-c

Meeting Date: February 27, 2023

Subject: Consideration of Resolution No 23-13, a Resolution approving an Agreement with MH Short & Associates LLC and the City of Dacono for Dacono Music & Spirits Festival Sponsorship Development Services.

Presenter: Jennifer Krieger, AICP, Community Development Director

Background: Sponsorship for the Dacono Music and Spirits Festival is critical to the event planning. For the last several years, overall sponsorship dollars have leveled off. Historically, the City has followed a traditional sponsorship program with various sponsor levels in exchange for their name and logo on promotional items like the festival t-shirt, banner, poster, and some media print.

Sponsorship development should also follow as the Festival continues to grow in popularity, size, and regional appeal. Chris “K” Kresge, the long-time annual festival producer, recommended MH Short & Associates to fulfill this unique task.

Michael Short brings more than two decades of experience in event marketing specializing in the creation and execution of marketing campaigns and corporate sponsorship strategies for local governments. His previous experience with Summerfest in Milwaukee, Wisconsin, and the Downtown Ft. Collins Business Association is particularly noteworthy.

The scope of work builds upon the sponsorship relationships established by the City. The proposal includes the following:

- A flat fee of \$3500.
- A 25% commission on new cash sponsorships and any incremental cash increases from existing 2022 sponsorships.
- A 30% commission is paid on in-kind sponsorships on expenses that reduce an existing line item in the event budget, such as portable toilets.

MH Short & Associates is uniquely qualified to provide sponsorship development and strategies and is exempt from the Competitive Bidding Guidelines in the City’s adopted Purchasing Policies and Procedures.

Staff Recommendation: Staff recommends approval of Resolution No 23-13.

RESOLUTION NO. 23-13

A RESOLUTION APPROVING A PROFESSIONAL SERVICES AGREEMENT WITH MH SHORT AND ASSOCIATES LLC FOR DACONO MUSIC & SPIRITS FESTIVAL SPONSORSHIP DEVELOPMENT SERVICES

BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF DACONO, COLORADO:

Section 1. The Professional Services Agreement (“Agreement”) by and between the City of Dacono and MH Short and Associates LLC is hereby approved in essentially the same form as the copy of such Agreement accompanying this resolution.

Section 2. The Council finds that MH Short and Associates is uniquely qualified to provide sponsorship development services and is exempt from the Competitive Bidding Guidelines in the City’s adopted Purchasing Policies and Procedures. The Council also finds that MH Short and Associates meets all of the Purchasing Award Factors in the City’s adopted Purchasing Policies and Procedures.

Section 3. The Mayor is hereby authorized to execute the Agreement. The City Council further authorizes the Mayor to negotiate and approve on behalf of the City such revisions to the Agreement as the Mayor and City Attorney’s Office determines are necessary or desirable for the protection of the City, so long as the essential terms and conditions of the Agreement are not altered.

INTRODUCED, READ, and ADOPTED this 27th day of February 2023.

CITY OF DACONO, COLORADO

Adam Morehead, Mayor

ATTEST:

Valerie Taylor, City Clerk

**PROFESSIONAL SERVICES AGREEMENT
BY AND BETWEEN THE CITY OF DACONO
AND MH SHORT & ASSOCIATES LLC
FOR DACONO MUSIC AND SPIRITS FESTIVAL
SPONSORSHIP DEVELOPMENT SERVICES**

1.0 PARTIES

This PROFESSIONAL SERVICES AGREEMENT (this "Agreement") is made and entered into this ____ day of _____, 2023 (the "Effective Date"), by and between the **City of Dacono**, a Colorado home rule municipal corporation, hereinafter referred to as the "City", and **MH Short & Associates LLC**, a Colorado Limited Liability Company, hereinafter referred to as the "Contractor".

2.0 RECITALS AND PURPOSE

- 2.1 The City desires to engage the Contractor for the purpose of providing Dacono Music & Spirits Festival sponsorship development services as further set forth in the Contractor's Scope of Services.
- 2.2 The Contractor represents that it has the special expertise, qualifications and background necessary to complete the Services.

3.0 SCOPE OF SERVICES

The Contractor agrees to provide the City with the specific professional services and to perform the specific tasks, duties and responsibilities set forth in Scope of Services attached hereto as Exhibit "A" and incorporated herein by reference (the "Services"). Contractor shall furnish all tools, labor and supplies in such quantities and of the proper quality as are necessary to professionally and timely perform the Services. Contractor acknowledges that this Agreement does not grant any exclusive privilege or right to supply Services to the City.

4.0 COMPENSATION

- 4.1 The City shall pay the Contractor for Services under this Agreement a total not to exceed the amounts set forth in Exhibit "A" attached hereto and incorporated herein by this reference. For Services compensated at hourly or per unit rates, or on a per-task basis, such rates or costs per task shall not exceed the amounts set forth in Exhibit A. The City shall not pay mileage and other reimbursable expenses (such as meals, parking, travel expenses, necessary memberships, etc.), unless such expenses are (1) clearly set forth in the Scope of Services, and (2) necessary for performance of the Services ("Pre-Approved Expenses"). The foregoing amounts of compensation shall be inclusive of all costs of whatsoever nature associated with the Contractor's efforts, including but not limited to salaries, benefits, overhead, administration, profits, expenses, and outside Contractor fees. The Scope of Services and payment therefor shall only be changed by a properly authorized amendment to this Agreement. No City employee has the authority to bind the City with regard to any payment for any Services which exceeds the amount payable under the terms of this Agreement.
- 4.2 The Contractor shall submit monthly an invoice to the City for Services rendered and a detailed expense report for Pre-Approved Expenses incurred during the previous month.

The invoice shall document the Services provided during the preceding month, identifying by work category and subcategory the work and tasks performed and such other information as may be required by the City. The Contractor shall provide such additional backup documentation as may be required by the City. The City shall pay the invoice within thirty (30) days of receipt unless the Services or the documentation therefor are unsatisfactory. Payments made after thirty (30) days may be assessed an interest charge of one percent (1%) per month unless the delay in payment resulted from unsatisfactory work or documentation therefor.

5.0 PROJECT REPRESENTATION

- 5.1 The City designates _____ as the responsible City staff to provide direction to the Contractor during the conduct of the Services. The Contractor shall comply with the directions given by _____ and such person's designees.
- 5.2 The Contractor designates _____ as its project manager and as the principal in charge who shall be providing the Services under this Agreement. Should any of the representatives be replaced, particularly _____, and such replacement require the City or the Contractor to undertake additional reevaluations, coordination, orientations, etc., the Contractor shall be fully responsible for all such additional costs and services.

6.0 TERM

- 6.1 The term of this Agreement shall be from the Effective Date to _____, 20____, unless sooner terminated pursuant to Section 13, below. The Contractor's Services under this Agreement shall commence on _____, 20____, and Contractor shall proceed with diligence and promptness so that the Services are completed in a timely fashion consistent with the City's requirements.
- 6.2 Nothing in this Agreement is intended or shall be deemed or construed as creating any multiple-fiscal year direct or indirect debt or financial obligation on the part of the City within the meaning of Colorado Constitution Article X, Section 20 or any other constitutional or statutory provision. All financial obligations of the City under this Agreement are subject to annual budgeting and appropriation by the Dacono City Council, in its sole discretion. Notwithstanding anything in this Agreement to the contrary, in the event of non-appropriation, this Agreement shall terminate effective December 31 of the then-current fiscal year.

7.0 INSURANCE

- 7.1 The Contractor agrees to procure and maintain, at its own cost, the policies of insurance set forth in Subsections 7.1.1 through 7.1.4. The Contractor shall not be relieved of any liability, claims, demands, or other obligations assumed pursuant to this Agreement by reason of its failure to procure or maintain insurance, or by reason of its failure to procure or maintain insurance in sufficient amounts, durations, or types. The coverages required below shall be procured and maintained with forms and insurers acceptable to the City. All coverages shall be continuously maintained from the date of commencement of Services hereunder. The required coverages are:

- 7.1.1 Workers' Compensation insurance as required by the Labor Code of the State of Colorado and Employers Liability Insurance. Evidence of qualified self-insured status may be substituted.
- 7.1.2 General Liability insurance with minimum combined single limits of \$1,000,000 each occurrence and \$2,000,000 aggregate. The policy shall include the City of Dacono, its officers and its employees, as additional insureds, with primary coverage as respects the City of Dacono, its officers and its employees, and shall contain a severability of interests provision.
- 7.1.3 Comprehensive Automobile Liability insurance with minimum combined single limits for bodily injury and property damage of not less than \$1,000,000 per person in any one occurrence and \$1,000,000 for two or more persons in any one occurrence, and auto property damage insurance of at least \$50,000 per occurrence, with respect to each of Contractor's owned, hired or non-owned vehicles assigned to or used in performance of the Services. If the Contractor has no owned automobiles, the requirements of this paragraph shall be met by each officer or employee of the Contractor providing services to the City of Dacono under this contract.
- 7.1.4 Professional Liability insurance with minimum limits of ONE MILLION DOLLARS (\$1,000,000) each occurrence and ONE MILLION DOLLARS (\$1,000,000).
- 7.2 The Contractor's general liability insurance and automobile liability and physical damage insurance shall be endorsed to include the City, and its elected and appointed officers and employees, as additional insureds, unless the City in its sole discretion waives such requirement. Every policy required above shall be primary insurance, and any insurance carried by the City, its officers, or its employees, shall be excess and not contributory insurance to that provided by the Contractor. Such policies shall contain a severability of interests provision. The Contractor shall be solely responsible for any deductible losses under each of the policies required above.
- 7.3 Certificates of insurance shall be provided by the Contractor as evidence that policies providing the required coverages, conditions, and minimum limits are in full force and effect, and shall be subject to review and approval by the City. No required coverage shall be cancelled, terminated or materially changed until at least 30 days prior written notice has been given to the City. The City reserves the right to request and receive a certified copy of any policy and any endorsement thereto.
- 7.4 Failure on the part of the Contractor to procure or maintain policies providing the required coverages, conditions, and minimum limits shall constitute a material breach of contract upon which the City may immediately terminate this Agreement, or at its discretion may procure or renew any such policy or any extended reporting period thereto and may pay any and all premiums in connection therewith, and all monies so paid by the City shall be repaid by Contractor to the City upon demand, or the City may offset the cost of the premiums against any monies due to Contractor from the City.
- 7.5 The parties understand and agree that the City is relying on, and does not waive or intend to waive by any provision of this contract, the monetary limitations or any other rights, immunities, and protections provided by the Colorado Governmental Immunity Act, § 24-10-101 et seq., C.R.S., as from time to time amended, or otherwise available to the City, its officers, or its employees.

8.0 INDEMNIFICATION

To the fullest extent permitted by law, the Contractor agrees to indemnify and hold harmless the City, and its elected and appointed officers and its employees, from and against all liability, claims, and demands, on account of any injury, loss, or damage, which arise out of or are connected with the Services hereunder, if such injury, loss, or damage is caused by the negligent act, omission, or other fault of the Contractor or any subcontractor of the Contractor, or any officer, employee, or agent of the Contractor or any subcontractor, or any other person for whom Contractor is responsible. The Contractor shall investigate, handle, respond to, and provide defense for and defend against any such liability, claims, and demands. The Contractor shall further bear all other costs and expenses incurred by the City or Contractor and related to any such liability, claims and demands, including but not limited to court costs, expert witness fees and attorneys' fees if the court determines that these incurred costs and expenses are related to such negligent acts, errors, and omissions or other fault of the Contractor. The City shall be entitled to its costs and attorneys' fees incurred in any action to enforce the provisions of this Section 8.0. The Contractor's indemnification obligation shall not be construed to extend to any injury, loss, or damage which is caused by the act, omission, or other fault of the City.

9.0 QUALITY OF WORK

Contractor's Services shall be performed in accordance with the highest professional workmanship and service standards in the field to the satisfaction of the City.

10.0 INDEPENDENT CONTRACTOR

It is the expressed intent of the parties that the Contractor is an independent contractor and not the agent, employee or servant of the City, and that:

- 10.1. **CONTRACTOR SHALL SATISFY ALL TAX AND OTHER GOVERNMENTALLY IMPOSED RESPONSIBILITIES INCLUDING, BUT NOT LIMITED TO, PAYMENT OF STATE, FEDERAL AND SOCIAL SECURITY TAXES, UNEMPLOYMENT TAXES, WORKERS' COMPENSATION AND SELF-EMPLOYMENT TAXES. NO STATE, FEDERAL OR LOCAL TAXES OF ANY KIND SHALL BE WITHHELD OR PAID BY THE CITY.**
- 10.2. **CONTRACTOR IS NOT ENTITLED TO WORKERS' COMPENSATION BENEFITS EXCEPT AS MAY BE PROVIDED BY THE INDEPENDENT CONTRACTOR NOR TO UNEMPLOYMENT INSURANCE BENEFITS UNLESS UNEMPLOYMENT COMPENSATION COVERAGE IS PROVIDED BY THE INDEPENDENT CONTRACTOR OR SOME ENTITY OTHER THAN THE CITY.**
- 10.3. Contractor does not have the authority to act for the City, or to bind the City in any respect whatsoever, or to incur any debts or liabilities in the name of or on behalf of the City.
- 10.4. Contractor has and retains control of and supervision over the performance of Contractor's obligations hereunder and control over any persons employed by Contractor for performing the Services hereunder.
- 10.5. The City will not provide training or instruction to Contractor or any of its employees regarding the performance of the Services hereunder.

- 10.6. Neither the Contractor nor any of its officers or employees will receive benefits of any type from the City.
- 10.7. Contractor represents that it is engaged in providing similar services to other clients and/or the general public and is not required to work exclusively for the City.
- 10.8. All Services are to be performed solely at the risk of Contractor and Contractor shall take all precautions necessary for the proper and sole performance thereof.
- 10.9. Contractor will not combine its business operations in any way with the City's business operations and each party shall maintain their operations as separate and distinct.

11.0 ASSIGNMENT

Contractor shall not assign or delegate this Agreement or any portion thereof, or any monies due to or become due hereunder without the City's prior written consent.

12.0 DEFAULT

Each and every term and condition hereof shall be deemed to be a material element of this Agreement. In the event either party should fail or refuse to perform according to the terms of this Agreement, such party may be declared in default.

13.0 TERMINATION

- 13.1 This Agreement may be terminated by either party for material breach or default of this Agreement by the other party not caused by any action or omission of the other party by giving the other party written notice at least thirty (30) days in advance of the termination date. Termination pursuant to this subsection shall not prevent either party from exercising any other legal remedies which may be available to it.
- 13.2 In addition to the foregoing, this Agreement may be terminated by the City for its convenience and without cause of any nature by giving written notice at least fifteen (15) days in advance of the termination date. In the event of such termination, the Contractor will be paid for the reasonable value of the Services rendered to the date of termination, not to exceed a pro-rated daily rate, for the Services rendered to the date of termination, and upon such payment, all obligations of the City to the Contractor under this Agreement will cease. Termination pursuant to this Subsection shall not prevent either party from exercising any other legal remedies which may be available to it.

14.0 INSPECTION AND AUDIT

The City and its duly authorized representatives shall have access to any books, documents, papers, and records of the Contractor that are related to this Agreement for the purpose of making audits, examinations, excerpts, and transcriptions.

15.0 DOCUMENTS

All computer input and output, analyses, plans, documents photographic images, tests, maps, surveys, electronic files and written material of any kind generated in the performance of this

Agreement or developed for the City in performance of the Services are and shall remain the sole and exclusive property of the City. All such materials shall be promptly provided to the City upon request therefor and at the time of termination of this Agreement, without further charge or expense to the City and in hardcopy or an electronic format acceptable to the City, or both, as the City shall determine. Contractor shall not provide copies of any such material to any other party without the prior written consent of the City. Contractor shall not use or disclose confidential information of the City for purposes unrelated to performance of this Agreement without the City's written consent.

16.0 ENFORCEMENT

- 16.1 In the event that suit is brought upon this Agreement to enforce its terms, the parties shall each bear and be responsible for their own attorneys' fees and court costs.
- 16.2 This Agreement shall be deemed entered into in Weld County, Colorado, and shall be governed by and interpreted under the laws of the State of Colorado. Any action arising out of, in connection with, or relating to this Agreement shall be filed in the courts of Weld County or the federal district court for the District of Colorado, and in no other court. Contractor hereby waives its right to challenge the personal jurisdiction of the courts of Weld County and the federal district court for the District of Colorado over it. Colorado law shall apply to the construction and enforcement of this Agreement.

17.0 COMPLIANCE WITH LAWS

Contractor shall be solely responsible for compliance with all applicable federal, state, and local laws, including the ordinances, resolutions, rules, and regulations of the City; for payment of all applicable taxes; and obtaining and keeping in force all applicable permits and approvals.

18.0 INTEGRATION AND AMENDMENT

This Agreement represents the entire Agreement between the parties and there are no oral or collateral agreements or understandings. This Agreement may be amended only by an instrument in writing signed by the parties.

19.0 NOTICES

All notices required or permitted under this Agreement shall be in writing and shall be given by hand delivery, by United States first class mail, postage prepaid, registered or certified, return receipt requested, by national overnight carrier, or by email transmission, addressed to the party for whom it is intended at the following address:

If to the City:

City of Dacono
Attn: Valerie Taylor
512 Cherry Avenue
Dacono, CO 80514
e-mail: vtaylor@cityofdacono.com

If to the Contractor:

Michael Short
1520 Remington Street
Ft. Collins, CO 80524
mike@mhshort.com
970-372-8800

Except for notices by email transmission, any notice required or permitted under this Agreement shall be effective when received as indicated on the delivery receipt, if by hand delivery or overnight carrier; on the United States mail return receipt, if by United States mail. Notices by email transmission shall be effective on transmission, so long as no message of error or non-receipt is received by the party giving notice. Either party may by similar notice given, change the address to which future notices or other communications shall be sent.

20.0 EQUAL OPPORTUNITY EMPLOYER

20.1 Contractor will not discriminate against any employee or applicant for employment because of age 40 and over, race, sex, color, religion, national origin, disability, genetic information, sexual orientation, veteran status, or any other applicable status protected by state or local law. Contractor will take affirmative action to ensure that applicants are employed and that employees are treated during employment without regard to any status set forth in the preceding sentence. Such action shall include but not be limited to the following: employment, upgrading, demotion or transfer, recruitment or recruitment advertising, layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. Contractor agrees to post in conspicuous places, available to employees and applicants for employment, notice to be provided by an agency of the federal government, setting forth the provisions of the Equal Opportunity Laws.

20.2 Contractor shall be in compliance with the applicable provisions of the American with Disabilities Act as enacted and from time to time amended and any other applicable federal, state, or local laws and regulations. A signed, written certificate stating compliance with the Americans with Disabilities Act may be requested at any time during the life of this Agreement or any renewal thereof.

21.0 NO THIRD PARTY BENEFICIARIES

It is expressly understood and agreed that enforcement of the terms and conditions of this Agreement, and all rights of action relating to such enforcement, shall be strictly reserved to City and Contractor, and nothing contained in this Agreement shall give or allow any such claim or right of action by any other third party on such Agreement. It is the express intention of the parties that any person other than City or Contractor receiving services or benefits under this Agreement shall be deemed to be an incidental beneficiary only.

22.0 SUBCONTRACTORS

Contractor may utilize subcontractors identified in its qualifications submittal to assist with non-specialized works as necessary to complete projects. Contractor will submit any proposed subcontractor and the description of its services to the City for approval. The City will not work directly with subcontractors.

23.0 AUTHORITY TO BIND

Each of the persons signing below on behalf of any party hereby represents and warrants that such person is signing with full and complete authority to bind the party on whose behalf of whom such person is signing, to each and every term of this Agreement.

In witness whereof, the parties have executed this Agreement to be effective as of the day and year first above written.

CITY OF DACONO

By: _____
Mayor

Attest: _____
City Clerk

CONTRACTOR:

By: _____
Title: _____

Exhibit A – Scope of Services

[See Following Page(s)]

MH SHORT & ASSOCIATES

PROPOSAL FOR SERVICES

Sponsorship Development Services for CITY OF DACONO (CITY)	Due Date
1) Review & assess CITY's leverageable marketing assets	March 15
a. Electronic Media	
b. Digital media	
c. Print media	
d. Collateral	
e. Onsite	
i. Signage	
ii. Seating	
f. VIP accommodations	
g. Sponsorship levels/Billing rights (i.e. "Presenting"; "Official", et al)	
2) Recommend & assist as required in developing and/or enhancing Media Partnerships	March 15
3) Develop overview of current CITY's sponsorships	March 15
a. \$\$ Valuations (cash & in-kind)	
b. Use of CITY's marketing assets	
c. Evaluate activation strategies used for existing Sponsors	
4) Recommend revisions & additions to current Sponsor categories	March 15
5) Build priority hitlist of potential CITY's Sponsors	March 15
a. By category & company/organization	
6) Consult on revisions to CITY's sponsorship sales materials	
7) Recommend sponsorship revenue goals for next two years	March 15
8) Actively sell sponsorships for Dacono Music & Spirits Festival for 2023-24	On-going
9) Consult CITY's staff to ensure satisfactory fulfillment of Sponsor deliverables	On-going
10) Oversee production of year-end wrapup reports for each Sponsor	On-going

MH SHORT & ASSOCIATES

Page 2

In return for the above services, CITY would agree to the following terms:

MH Short & Associates, LLC (MHS) to receive:

- One-time fee of \$3,500 for services as described above
 - Payment terms as follows:
 - \$1750 within 10 business days of signing of our agreement
 - \$1750 by June 15 based upon completion of above deliverables
- 25% Commission on:
 - All new cash sponsorships for contracted term of Sponsor agreements
 - Any incremental cash increases in existing (2022) sponsorships
 - Commission payments to be made within 15 business days of CITY receiving payment from Sponsor
- 30% Commission on in-kind sponsorships as agreed to by CITY on expenses that reduce an existing line item in event budget(s)
- CITY to provide a mutually agreed upon budget for production and/or resources for sponsorship sales materials, Sponsor wrap-ups and Sponsor fulfillment expenses.
- Initial contract term shall be from date contract is signed through December 31, 2023.
 - MHS shall have option to extend on a yearly basis for 2024 and then again for 2025 based upon the achieving of certain mutually agreed upon annual sponsorship revenue targets being achieved each year.