



**NEVADA COMMISSION for the RECONSTRUCTION of the V&T RAILWAY
("V&T Railway Commission")
Agenda Report**

Date Submitted: 09/21/22

Meeting Date Requested: 09/27/22

Time Requested: 5 Minutes

To: NEVADA COMMISSION for the RECONSTRUCTION of the V&T RAILWAY Commissioners

From: Allyson Bolton

Subject Title: Discussion and possible action regarding a proposed revenue agreement, with Storytime Photography, to provide photos with Santa for customers who visit the Eastgate Depot during Polar Express.

Staff Summary: *Revenue agreement to provide photos with Santa for customers who visit the Eastgate Depot during Polar Express, by Storytime Photography.*

Type of Action Requested:

(___) Resolution

(___) Ordinance

(_xx_) Formal Action/Motion

(___) Other (Specify) Presentation Only

Recommended Board Action: *I move to approve the revenue agreement with Storytime Photography.*

Applicable Statute, Code, Policy, Rule or Regulation: n/a

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Fiscal Impact: Increase THE POLAR EXPRESS revenue

Explanation of Impact:

Funding Source:

Supporting Material/Attachments: 20220927_Item 10_StoryTime

Prepared By: Allyson Bolton, Atypical Consulting and Events

PHOTOGRAPHY REVENUE AGREEMENT

This Photography Revenue Agreement ("Agreement") is made by and between the Nevada Commission for the Reconstruction of the V&T Railway ("Commission"), a body corporate and politic, and Storytime Event Photography ("Storytime"), individually referred to as "Party" and collectively referred to as the "Parties."

RECITALS:

WHEREAS, the Commission organizes a yearly holiday-themed event, named "THE POLAR EXPRESS Train Ride" ("Event"); and

WHEREAS, in 2022, the Event will take place between 4:00 p.m. and 10 p.m. the following days:
November: 17 (dress rehearsal), 18, 19, 20, 25, 26, 27, 30; and
December: 1, 2, 3, 4, 7, 8, 9, 10, 11, 14, 15, 16, 17, 18, 20, 21, 22, & 23; and

WHEREAS, Storytime is a private photography company based in Carson City, Nevada.

WHEREAS, Storytime is willing and able to perform the services described herein.

NOW THEREFORE, in consideration of the mutual promises and conditions contained in this Agreement and for other good and valuable consideration, the Parties do agree as follows:

TERMS:

1. DUTIES AND RESPONSIBILITIES OF THE PARTIES.
 - 1.1 Storytime will offer Event customers for purchase printed photographs and/or digital media of the customer and, if applicable, the customer's group, taken during the Event, at the end of the train ride.
 - 1.2 The purchase price for the photographs and digital media is as follows:
 - a. two 4x6 prints and keepsake folio - \$25
 - b. two 5x7 prints and keepsake folio - \$40
 - c. additional 4x6 print - \$10/each
 - d. additional 5x7 print - \$12/each
 - e. memory stick with 6-8 images - \$48
 - f. additional keepsake folders - \$7/each
 - 1.3 Storytime will pay the Commission 30% of the gross proceeds from the sale of the prints and digital media at the Event site, which will satisfy any and all fees that Storytime owes the Commission. Storytime will remit the payment no later than 30 days from December 23, 2023.
 - 1.4 At its discretion and upon availability, Storytime will participate in planning meetings and site visits to assist in coordination of photography functions and post-Event meetings.
 - 1.5 Storytime will refund any fees received for unused services, in the event that Storytime experiences equipment failure or is unable to perform photographic functions for the Event.

- 1.6 Storytime will provide for the Event a photographer, digital assistants, a Santa Claus actor, a cashier, and all the materials and equipment, including cameras, flash gear, stand and tripods, printers, PCs, supplies for the printers, keepsake folios, digital memory sticks, floor covering and decorations in the picture taking area.
- 1.7 The Commission will provide Storytime the site, tents/building with adequate space (approximately 20'x30'), heat, lighting, power, crowd assistants, and a high-quality approved backdrop.
- 1.8 The Commission shall not willfully and knowingly allow other professional photographers to provide printed photographs and digital media to Event customers and shall not provide, install or construct any other photo opportunity areas at or around the Event.
- 1.9 The Commission will allow a post on the Event's website and the display of a poster in the depo ticket office behind the ticket agent, with the message that photographs with Santa are available for sale during the Event.
2. **FORCE MAJEURE.** Neither Party shall be deemed to be in violation of this Agreement if it is prevented from performing any of its obligations hereunder due to strikes, failure of public transportation, civil or military authority, act of public enemy, accidents, fires, explosions, or acts of God, including, without limitation, earthquakes, floods, winds, or storms. In such an event the intervening cause must not be through the fault of the Party asserting such an excuse, and the excused Party is obligated to promptly perform in accordance with the terms of this Agreement after the intervening cause ceases.
3. **INDEMNIFICATION.** To the fullest extent permitted by law, including but not limited to the provisions of NRS Chapter 41, each Party shall indemnify, hold harmless and defend, not excluding the others right to participate, the other from and against all liability, claims, actions, damages, losses, and expenses, including but not limited to reasonable attorney's fees and costs, arising out of any alleged negligent or willful acts or omissions of the Party, its officers, employees or agents. Such obligation shall not be construed to negate, abridge or otherwise reduce any other right or obligation of indemnity which would otherwise exist as to any Party or person described herein. This indemnification obligation is conditioned upon receipt of written notice by the indemnifying Party within thirty (30) days of the indemnified Party's notice of an actual or pending claim or cause of action. The indemnifying Party shall not be liable to hold harmless any attorney's fees or costs incurred by the indemnified Party if the indemnified Party elects to participate in any litigation or arbitration with legal counsel of its own choice.
4. **INSURANCE.** All Parties must carry their own policies of insurance and pay all applicable taxes and fees.
5. **BREACH.** Failure of either Party to perform any obligation of this Agreement shall be deemed a breach. Except as otherwise provided for by law or this Agreement, the rights and remedies of the Parties shall not be exclusive and are in addition to any other rights, remedies provided by law or equity, including but not limited to actual damages incurred, and reasonable attorney's fees and costs incurred by the prevailing Party. The Parties agree that, in the event a lawsuit is filed and a Party is awarded attorney's fees by the court, for any reason, the amount of recoverable attorney's fees shall not exceed the rate of \$125 per hour.
6. **WAIVER OF BREACH.** Failure to declare a breach or the actual waiver of any particular breach of this Agreement or its material or nonmaterial terms by either Party shall not operate

as a waiver by such Party of any of its rights or remedies as to any other breach. No waiver of any right or remedy shall be effective unless in writing.

7. SEVERABILITY. If any provision contained in this Agreement is held to be unenforceable by a court of law or equity, this Agreement shall be construed as if such provision did not exist and the nonenforceability of such provision shall not be held to render any other provision or provisions of this Agreement unenforceable.
8. ENTIRE AGREEMENT; MODIFICATION. This Agreement constitutes the entire agreement of the Parties and is the complete and exclusive statement of the promises, representations, negotiations, discussions, and other agreements that may have been made in connection with the subject matter hereof. Unless otherwise expressly authorized by the terms of this Agreement, no modification or amendment to this Agreement is binding upon the Parties unless the same is in writing and signed by the Parties and approved by each Parties' respective counsel.
9. GOVERNING LAW AND JURISDICTION. The laws of the State of Nevada apply in interpreting and construing this Agreement. The Parties consent to the jurisdiction of, and agree that disputes will be resolved by, the courts of the First Judicial District Court of the State of Nevada in Carson City.
10. NO THIRD-PARTY BENEFICIARY. Nothing contained in this Agreement is intended to convey any rights or to create a contractual relationship with any third-party or to otherwise allow a third-party to assert a cause of action against either Storytime or the Commission arising from, or related to, this Agreement.
11. OWNERSHIP OF PROPERTY. This Agreement does not contemplate a transfer of any real or personal property or ownership interest between the Parties. Any and all real and personal property presently owned by either Party will remain owned by that Party upon completion or termination of this Agreement.
12. RECORDS. Each Party agrees to keep and maintain, under generally accepted accounting principles, full, true and complete records and documents pertaining to this Agreement and will present, at any reasonable time, such information for inspection, examination, review, audit and copying at any office where such records and documentation is maintained.
13. SUCCESSORS; ASSIGNMENT. This Agreement shall bind the heirs, executors, administrators, successors, and assigns of the respective Parties. No Party may assign, transfer or delegate any rights, obligations, or duties under this Agreement without the prior written consent of the other Party.
14. AUTHORITY TO SIGN. The Parties represent and warrant that the person executing this Agreement on behalf of each respective Party has full power and authority to enter into this Agreement and that the Parties are authorized by law to perform the services set forth herein.
15. COUNTERPARTS. This Agreement may be executed in counterparts, each of which shall be deemed to be an original but all of which, taken together, shall constitute one and the same Agreement.

(The remainder of this page is blank. The signature page follows.)

IN WITNESS THEREOF, THE PARTIES HAVE ENTERED INTO THIS AGREEMENT ON THE DATE AND YEAR WRITTEN BELOW:

NEVADA COMMISSION FOR THE RECONSTRUCTION OF THE V&T RAILWAY:

BY: _____ Date
David Peterson, Chair

STORYTIME PHOTOGRAPHY:

BY: _____ Date
Laura Main