

MEMORANDUM OF UNDERSTANDING

This Memorandum of Understanding made this XXth day of XXX, 2023.

BETWEEN

THE CORPORATION OF THE TOWN OF WHITBY

(the “**Town**”)

- and -

**ONTARIO MUSICIANS CO-OPERATIVE INC.
o/a CANADIAN MUSICIANS CO-OPERATIVE**

(the “**OMCI**”)

WHEREAS the Town is a municipal corporation subject to the provisions of the Municipal Act, 2011, as amended;

AND WHEREAS OMCI is a not-for-profit arts service organization dedicated to assisting new generation and other independent artists build sustainable careers intersecting the music industry in the 21st Century;

AND WHEREAS the Town and OMCI entered into a Memorandum of Understanding dated June 20, 2021 (the “**Second MOU**”) as approved by way of Council Resolution #311-21 on November 29, 2021;

AND WHEREAS the Town and OMCI wish to continue to collaborate to create meaningful opportunities for musician and cultural opportunities in the Whitby community by entering into a new three-year Memorandum of Understanding (“**MOU**”) setting out the various roles and responsibilities for managing and maintaining a Community Performance Program within the Town of Whitby;

AND WHEREAS this MOU was approved by way of Council Resolution #3XX-23 on XXX XX, 2023;

NOW THEREFORE in consideration of the mutual covenants and agreements contained herein, and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the parties agree to the following terms and conditions:

1. PURPOSE

- 1.01 The purpose of this MOU is to establish the roles and responsibilities between the Town and OMCI with respect to a three-year Community Performance Program in designated Performance Zones within the Town of Whitby.

2. DEFINITIONS

- 2.01 “**OMCI**” means the Ontario Musicians Co-operative Inc. operating as Canadian Musicians Co-operative and includes its directors, employees, and members.
- 2.02 “**Performer**” means an individual or group who is a member of OMCI, who provides entertainment in the public realm or space for a voluntary gratuity from audience members. Such entertainment includes playing an instrument, singing, or other form of creative musical amplified performance as agreed to by the Town.
- 2.03 “**Performance Zones**” includes three dedicated zones - Port Whitby, Downtown Whitby, and Downtown Brooklin – and each zone includes dedicated areas that can be used by a Performer, as set out on Schedule “A” attached hereto.
- 2.04 “**Community Performance Program**” means the three-year program in partnership with OMCI to create opportunities to showcase OMCI’s Performer’s in dedicated Performance Zones throughout the Town of Whitby to support the directions and goals of the Town’s Culture Plan.
- 2.05 “**Town**” means The Corporation of the Town of Whitby and includes members of Council, directors, officers, employees, and agents.

3. TERM

- 3.01 This MOU shall be effective for three years commencing January 1, 2023 and shall expire on January 1, 2026 (the “Term”), unless terminated earlier in accordance with this MOU.

4. RESCISSION OF FIRST MOU

- 4.01 This MOU shall rescind and be in full replacement of the Second MOU entered into by the Town and OMCI.

5. THE TOWN'S ROLES AND RESPONSIBILITIES

- 5.01 The Town's liaison for the Term of the MOU will be the Culture and Tourism Coordinator. Any correspondence regarding the program, including issues or concerns are to be addressed to the Culture and Tourism Coordinator who will advise the Manager Creative Communities when necessary.
- 5.02 The Town has provided OMCI with the use of custom A-frames in Season 1 (2021) and will cover the costs to print A-frame sign inserts and individual performer labels (up to a maximum of \$1,500 each season). The Town has final approval rights of the A-frames sign designs and messaging. These signs will be used during a performance within the dedicated Performance Zones to promote the Community Performance Program.
- 5.03 The Town will contribute \$250 towards any online Professional Development workshop that they wish to co-sponsor and make available to all residents of the Town.
- 5.04 The Town will contribute funding (up to a maximum of \$1,000 each season) to OMCI to obtain t-shirts for Performers and administrative staff assisting with performances during the Term of the MOU. The t-shirt shall be worn during a performance, unless the Performer has made a request to wear their own brand, and as agreed to by the Town and OMCI.
- 5.05 The Town will assist with sourcing out a location for OMCI's training program for their Performers. If a space is provided that is owned by the Town of Whitby, this would be through an in-kind donation for use of that space.
- 5.06 The Town will contribute funding (up to a maximum of \$250 each season) to OMCI to obtain the ID badges for Performers and administrative staff to wear at performances in public during the Term of the MOU. The ID badge will be visible to the public and available for inspection by Town staff.
- 5.07 The Town will assist with connecting OMCI to other Town of Whitby local organizations and stakeholders to provide opportunities for performers to play at other events / activities within the community.

- 5.08 The Town will assist with marketing OMCI's local events and performances through the Town's website and social media channels or other communication means, space permitting.
- 5.09 The Town agrees to issue permits for the Performance Zones starting May 1 through to Thanksgiving Monday for live performances within blocks of time during the following days:
- a) Tuesdays 12 p.m. – 8 p.m.;
 - b) Fridays 12 p.m. to 8 p.m.;
 - c) Saturdays 12 p.m. to 8 p.m.; and,
 - d) Sundays 12 p.m. to 6 p.m.
- 5.10 Performances will be subject to any provincial, regional or local municipal restrictions. At the discretion of the Performer, the Town agrees to a 'slow close' whereby the Performer, acting reasonably, is able to slowly wind down their performance beyond the scheduled times noted above should the audience be engaged and enjoying the performance.

6. OMCI'S ROLES AND RESPONSIBILITIES

- 6.01 OMCI's liaison for the Term of the MOU will be the Regional Development Officer. Any correspondence regarding the program, including issues or concerns are to be addressed to the Regional Development Officer who will advise the Managing Director when necessary.
- 6.02 OMCI shall, in consultation with the Town, be responsible for the design of the A-frame signage which shall include listing the Performer's name, program partners (i.e. OMCI and Town of Whitby) and displaying the Performer's QR code or other means for tipping. OMCI shall be responsible for the administration, distribution and storage of the A-frame signage.
- 6.03 OMCI shall be responsible for designing, sourcing and distributing the t-shirts for performers and administrative staff assisting with performances.
- 6.04 OMCI will provide and distribute identification badges to each Performer.

- 6.05 OMCI shall ensure that Community Performance Program Performers only sell merchandise at each performance related to the Performer's brand (i.e. CDs) and agree to no other selling of merchandise unrelated to the Performer.
- 6.06 OMCI will market the Community Performance Program in partnership with the Town through OMCI's website and social media channels or other communication means.
- 6.07 OMCI shall ensure the Performers are set up only within the dedicated Performance Zones and ensure that accessible paths of travel are maintained at all times while performing.
- 6.08 OMCI acknowledges that the Performance Zones are under the exclusive control of the Town and OMCI shall have no claim against the Town as a result of any change to the hours of the operation, hours of availability of the Performance Zones, cancellations due to inclement weather, or for times where there is maintenance on all or parts of the Performance Zones.
- 6.09 OMCI acknowledges that Town events are family friendly and, as such, will ensure all listed Performers agree to refrain from using bad language or gestures during their performance. The list could be subject to change at last minute due to illness or other unplanned events.
- 6.10 OMCI and its Performers must comply with Federal, Provincial and Municipal By-laws, and will adhere to the Town's Public Code of Conduct. Smoking and/or the consumption of alcohol, cannabis, and illegal substances is prohibited in and around the Performance Zones at all times, including prior to, during and following any performance.
- 6.11 OMCI and its Performers shall comply with all applicable Provincial Orders, Provincial and Regional Public Health directives and guidelines, and any Town policies with respect to COVID-19 in effect at the time of any performance offered during the Term of this Agreement.
- 6.12 OMCI shall provide the Town will a final summary report after the close of each season to ensure the program remains successful and provides opportunities for improvements if necessary.

7. INSURANCE

- 7.01 OMCI shall provide and maintain during the term of this MOU Commercial General Liability insurance acceptable to the Town and subject to limits of not less than \$2,000,000.00 inclusive per occurrence for bodily injury, property damage, personal injury, contractual liability, owner's and contractor's protective coverage, contingent employer's liability, cross liability and severability of interest clause, products and completed operations and non-owned automobile liability.
- 7.02 Such insurance shall be in the name of OMCI and shall name The Corporation of the Town of Whitby as an additional insured thereunder. Such insurance shall contain an endorsement to provide the Town with thirty (30) days written notice of cancellation.
- 7.03 Evidence of insurance to be completed on the Town's Certificate of Insurance form, attached hereto as Schedule "B", prior to the execution of the MOU and during the term of the MOU, as requested. If requested by the Town, certified copies of the above referenced policy must be provided.

8. TERMINATION

- 8.01 The Town may terminate this MOU for any reason upon sixty (60) days prior written notice to OMCI. Either party may terminate the MOU where a party has breached the terms of the MOU and has failed to cure such breach within thirty (3) days notice of such breach.

9. REVIEW AND AMENDMENTS

9.01 There may be additional services or new issues that come forward for consideration between the Town and OMCI or the needs of the parties may change. In such circumstance, the party shall make written requests for amendments to the MOU to the Manager of Creative Communities and such request(s) will be reviewed and any amendments shall be agreed to in writing by both parties.

10. INDEMNIFICATION

10.01 Each party, together with its members of Council, directors, officers, employees and agents shall not be liable for any injury or damage including death, property, loss, or damage sustained by the other party, together with its members of Council, directors, officers, employees, agents, contractors, subcontractors, volunteers or any other third party that is in any way attributable to anything done or omitted to be done by the other party in the performance of this MOU.

10.02 Each party shall at all times defend, indemnify and save harmless the other party, together with its members of Council, directors, officers, appointees, employees and agents from and against any and all claims, demands, losses, damages, actions, costs or expenses (including but not limited to legal fees, disbursements and taxes on a solicitor-client basis), suits or other proceedings by whomsoever made, sustained, brought or prosecuted in any way attributable to the negligence or wilful misconduct of the other party, its members of Council, directors, officers, employees, agents, contractors, subcontractors, volunteers in connection with this MOU.

10.03 This indemnity shall survive the termination or expiration of this MOU.

11. NOTICE AND REPRESENTATIVES OF THE PARTIES

11.01 Any notice or communications given under this MOU shall be in writing and any such notice shall be served by mail, personal delivery, or e-mail at the following addresses:

In the case of notice to the Town:

Manager Creative Communities
575 Rossland Road East
Whitby ON L1N 2M8
culture@whitby.ca

In the case of notice to OMCI:

Ontario Musicians Co-operative Inc.
Managing Director
P.O. Box 22054 RPO Big Bay Point
Barrie ON L4N 0Z5
managingdirector@canadianmusicians.coop

or to such other address as either party may, from time to time, specify in writing to the other party pursuant to this section.

11.02 Receipt of such notice, whichever is applicable, shall be deemed on:

- a) the date of actual delivery of such hand delivered document;
- b) the business day following the date of email transmission; or,
- c) five (5) days following the date of mailing.

12. DISPUTE RESOLUTION

12.01 In the event of a dispute arising from the interpretation or operation of this MOU, it will be referred to the parties' representatives identified in section 11 to resolve the matter amicably.

13. GENERAL

13.01 The parties will cooperate and communicate openly with each other on any matter relating to the administration of this MOU and will meet as required.

13.02 This MOU constitutes the entire agreement between the parties pertaining to the subject matter hereof and supersedes all prior agreements, understandings, negotiations and discussions, whether oral or written, of the parties, and shall not be modified or amended except by written agreement between the parties.

- 13.03 The provisions of this MOU are severable, and if any one or more provision is determined to be illegal, indefinite, invalid or otherwise unenforceable, in whole or in part, the remaining provisions of this MOU and any partially unenforceable provisions to the extent enforceable shall continue in full force and effect and shall be binding and enforceable.
- 13.04 This MOU shall be governed by the laws and regulations of the Province of Ontario and the federal laws of Canada, as applicable.

14. AUTHORITY

14.01 Each party stipulates that it has full authority to enter into and perform this MOU, and the person signing this MOU on behalf of the named party is properly authorized to sign it, and each party further acknowledges that it has read this MOU, understands it and agrees to be bound by it.

15. COUNTERPARTS

15.01 This MOU may be executed in two or more counterparts, each of which together shall be deemed an original, but all of which together shall constitute one and the same instrument. If the signature is delivered by fax transmission or by email delivery of a scanned data file (Adobe PDF or otherwise), such signature shall create a valid and binding obligation on the party executing the MOU with the same force and effect as if the fax or scanned data file (Adobe PDF or otherwise) were an original thereof.

IN WITNESS WHEREOF, the undersigned has hereunto set its hand and seal through its officers duly authorized in that regard.

Dated at _____ this _____ day of _____, 2023.

**ONTARIO MUSICIANS CO-OPERATIVE INC. o/a
CANADIAN MUSICIANS CO-OPERATIVE**

Valerie Hathaway-Warner, Managing Director

I have the authority to bind the corporation.

Dated at Whitby this _____ day of _____, 2023.

THE CORPORATION OF THE TOWN OF WHITBY

Matthew Gaskell, Chief Administrative Officer

Fuwing Wong, Commissioner of Financial
Services/Treasurer


We have the authority to bind the corporation.

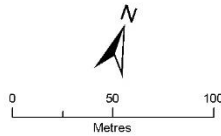
Schedule A – Performance Zones



Port Whitby

Legend

 Community Engaged Performance Zones



Date: October 2021
NACS 107M Zone 17N

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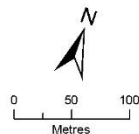
Schedule A – Performance Zones



Downtown Whitby

Legend

 Community Engaged Performance Zones



Date: October 2021
 NAC03 LPTM Zone 17N

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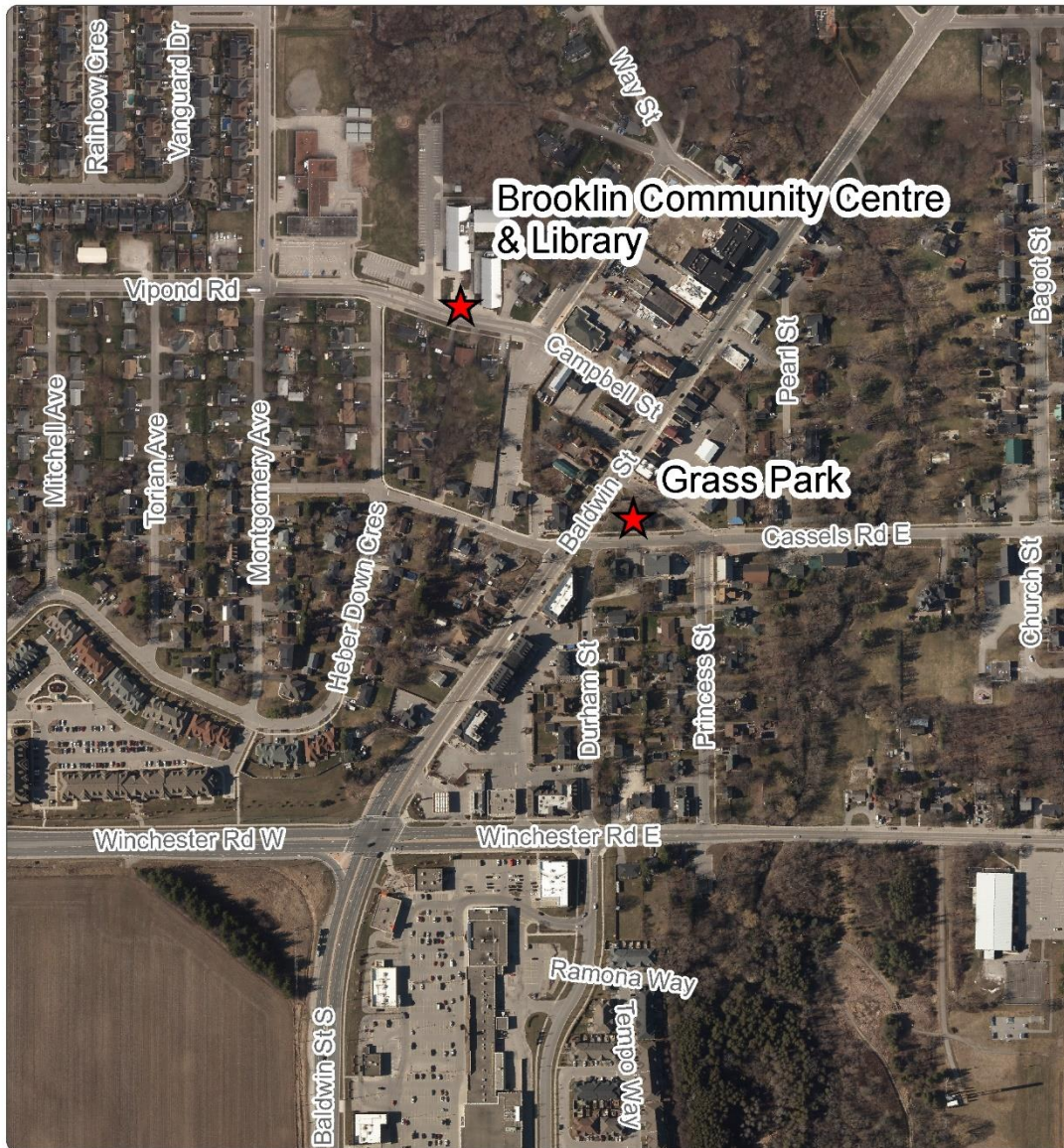
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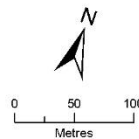
Schedule A – Performance Zones



Downtown Brooklin

Legend

Community Engaged Performance Zones



Date: October 2021
 NAD83 UTM Zone 17N

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SCHEDULE "B" - CERTIFICATE OF INSURANCE



Certificate of Insurance

**Proof of liability insurance will be accepted on this form only (no amendments)
This form must be completed and signed by your insurer or insurance broker
Insurance company must be licensed to operate in Canada**

This is to certify that the Named Insured, hereon is insured as described below

Named Insured	Address of the Named Insured
Operations of the insured for which this certificate is issued:	

Automobile Liability Insurance (minimum limit to be evidenced - \$2,000,000 unless otherwise required)

Insuring Company	Policy Numbers	Amount of Coverage	Effective Date DD/M/YR	Expiry Date DD/M/YR
	Primary			
	Excess			

The above policy(ies) must cover all vehicles owned in whole or in part and licensed in the name of the insured including all vehicles leased on a long term basis for which the insured is required by contract to provide bodily injury and property damage insurance.

Commercial General Liability Insurance (minimum limit to be evidenced - \$2,000,000 unless otherwise required)

Insuring Company	Policy Numbers	Amount of Coverage	Effective Date DD/M/YR	Expiry Date DD/M/YR
	CGL	Per Claim/Annual Aggregate		
	Excess Liability (if applicable)	Per Claim/Annual Aggregate		

Provisions of Amendments or Endorsements of Listed Policy(ies)

Professional Liability – Claims Made Basis - Yes No

Insuring Company	Policy Numbers	Amount of Coverage	Effective Date DD/M/YR	Expiry Date DD/M/YR
	Professional Liability	Per Claim/Annual Aggregate		
	Excess Professional Liability (if applicable)	Per Claim/Annual Aggregate		

- Is the limit inclusive of indemnity and claims expenses – Yes No

- If the policy is on a claims made basis have there been any claims notices given for this policy term Yes No

Commercial General Liability Insurance is written on an occurrence basis and is extended to include Premises Liability, Products/Completed Operations, Cross Liability and Severability of Interests Clause, Personal Injury Liability, Contractual Liability, Property Damage, Non-Owned Automobile Liability, Owner's and Contractor's Protective Coverage, and Contingent Employers Liability.

With respect to the Commercial General Liability Insurance excluding non owned auto coverage, The Corporation of the Town of Whitby, is added as Additional Insured but only with respect to liability arising out of the operations of the Named Insured.

Other Additional Insureds as per contractual conditions are as follows: (Note if Applicable)
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The policy(ies) identified above shall apply as primary insurance and not excess to any other insurance available to The Corporation of the Town of Whitby.

These policies shall not be cancelled or changed so as to reduce the coverage as outlined on this certificate without thirty (30) days, prior written notice by registered mail by the Insurer(s) to the Corporation of the Town of Whitby, Corporate Services Department, Purchasing Section, 575 Rossland Road East, Whitby, Ontario L1N 2M8.

I certify that the insurance is in effect as stated in this certificate and that I have authorization to issue this certificate for and on behalf of the insurer(s).

Date: DD/M/YR	Broker/Insurer's Name, Address, Telephone, Fax and E-Mail:	Signature and Stamp of Certifying Official:
		Print Name

Revision Date: October 10, 2019