

## AGREEMENT FOR PROFESSIONAL SERVICES

This Agreement For Professional Services (this “Agreement”) is entered into on January 21, 2020 (the “Effective Date”), by and between the City of South Bend, acting by and through its Board of Park Commissioners (the “City”), and Sound Management and Radio Stations WNDV-FM, WY-FM, WYET-FM, dba as Artistic Radio, 3371 Cleveland Road, Suite 300, South Bend, Indiana 46601 (the “Provider”) (each a “Party” and collectively the “Parties”).

For and in consideration of the mutual covenants and promises contained herein, the Parties agree as follows:

1. Services. The Provider will provide to the City the professional services (the “Services”) set forth in the Provider’s proposal attached hereto as Exhibit A (the “Proposal”), which Proposal is incorporated herein. In the event of any conflict between the terms of this Agreement and the terms of the Proposal, the terms of this Agreement will prevail. The Provider will execute its obligations under this Agreement in accordance with the prevailing professional standard of care for projects of similar design and complexity.

2. Compensation. In exchange for the Provider’s satisfactory performance of the Services, and subject to the terms and conditions of this Agreement, the City will pay the Provider a Program Fee not to exceed six thousand dollars (\$6,000) (the “Contract Amount”) in accordance with the project budget stated in the Proposal. The City will pay the Contract Amount upon invoicing by the Provider as set forth in the Proposal. The City will not be required to pay any if the City is not satisfied with the Provider’s performance under this Agreement or any default or breach of this Agreement by the Provider exists, as the City may determine in its sole discretion. The sum of all payments by the City shall not exceed the Contract Amount, and the Provider will not incur or seek reimbursement for any expenses in excess of the Contract Amount.

3. Term; Termination. Unless earlier terminated in accordance with its terms, this Agreement will commence on the Effective Date and end upon the Provider’s satisfaction of all its obligations hereunder and the City’s final payment therefor. Notwithstanding the foregoing, effective immediately upon delivery of a written termination notice to the Provider, the City may terminate this Agreement, in whole or in part, for any reason, if the City determines that such termination is in the best interest of the City. In addition, in accordance with Ind. Code 6-1.1-18-4, payments are subject to annual appropriation by the City. If the City makes a written determination that funds are not appropriated or are otherwise unavailable to support the continuation of this Agreement, it shall be cancelled. A determination by the City that funds are not appropriated or are otherwise unavailable to support the continuation of performance shall be final and conclusive. The City will not be required to pay any Contract Installment or be otherwise liable for any cost associated with the Provider’s performance of any Services after the effective date of termination.

4. Remedies for Breach of Contract. Failure to complete the Services in accordance with this Agreement will be considered a material breach. In the event of such breach, the City may suspend all payments to the Provider and may pursue any and all remedies available at law or in equity. The Provider shall repay to the City any portion of the Contract Amount expended

for matters not within the scope of the Services.

5. Point of Contact. The City employee identified in Section 9 below will serve as the City's principal point of contact for purposes of this Agreement.

6. Relationship. The Provider shall at all times be an independent contractor for the performance of the Services rather than an employee of the City, and no act or omission to act by the Provider shall in any way bind or obligate the City. This Agreement is strictly for the benefit of the Parties and not for any third party or person. This Agreement was negotiated by the Parties at arm's length and each of the parties hereto has reviewed the Agreement after the opportunity to consult with independent legal counsel. Neither party shall maintain that the language in the Agreement shall be construed against any signatory hereto. The City and the Provider hereby renounce the existence of any form of agency relationship, joint venture, or partnership between the Provider and the City and agree that nothing contained herein or in any document executed in connection herewith shall be construed as creating any such relationship between the City and the Provider.

7. Indemnification of City. The Provider hereby agrees to defend, indemnify, and hold harmless the City, its officials, employees, and agents from any and all claims of any nature which arise from the performance by the Provider under this Agreement and from all costs and attorney fees in connection therewith, excepting for claims arising out of the negligence of the City, its officials, directors, employees, and agents. The obligations of the Provider under this section shall survive the termination of this Agreement.

8. Assignment. The Provider shall not assign or subcontract the whole or any part of this Agreement or its obligations hereunder without the prior written consent of the City.

9. Notices. Any notice required or permitted to be delivered hereunder shall be deemed to be delivered, whether or not actually received, when deposited in the United States Postal Service, postage prepaid, registered or certified mail, return receipt requested, addressed to the City or the Provider, as the case may be, at the address set forth below.

Provider:

Artistic Radio  
71 Cleveland Road, Ste. 300  
South Bend, IN 46628

Attn: Pam Mason General Manager

City:

City of South Bend  
Venues, Parks & Arts Dept.  
301 S. St. Louis Blvd.  
South Bend, IN 46617

Attn: Eva Ennis,

10. Equal Opportunity; Non-Discrimination; Compliance. The Provider shall comply with all applicable laws and regulations in its hiring and employment practices and policies for any activity covered by this Agreement. The Provider shall comply with all state, federal, and municipal laws, regulations, and standards applicable to its activities pursuant to this Agreement including, but not limited to, the requirements imposed by Ind. Code 22-9-1-10 (non-discrimination), the provisions of Ind. Code 5-22-16.5 (disqualification for dealings with the government of Iran), and the provisions of Ind. Code 22-5-1.7 (requiring E-Verify for new

employees and prohibiting employment of unauthorized aliens). Each of the foregoing provisions is incorporated herein as if set forth in full, and the Provider certifies that it is in compliance with each such provision and shall remain in compliance through the term of this Agreement.

11. Contractor's Affidavit. The Provider agrees, as a condition precedent to the effectiveness of this Agreement, that its authorized representative will execute and submit to the City and any other appropriate bodies an affidavit in the form attached hereto as Exhibit B.

12. Drug-Free Workplace. The Provider hereby agrees to make a good faith effort to provide and maintain a drug-free workplace. The Provider will give written notice to the City within ten (10) days after receiving actual notice that the Provider or an employee of the Provider within the State of Indiana has been convicted of a criminal drug violation occurring in the workplace.

13. Entire Agreement; Amendment; Applicable Law. This Agreement sets forth the entire agreement and understanding between the parties as to the subject matter hereof, and merges and supersedes all prior discussions, agreements, and understanding of any and every nature between them. This Agreement may be amended only by separate writing, signed by authorized representatives of both the Provider and the City. This Agreement will be construed and interpreted according to the laws of the State of Indiana, and any dispute arising out of this Agreement or otherwise concerning the Provider's rendering of the Services will be resolved in the courts located in St. Joseph County, Indiana, unless the Parties mutually agree to a different method of dispute resolution.

14. Severability. All provisions of this Agreement shall be considered as separate terms and conditions, and in the event any one shall be held illegal, invalid or unenforceable, all the other provisions hereof shall remain in full force and effect as if the illegal, invalid, or unenforceable provision were not a part hereof, unless the provision held illegal, invalid or unenforceable is a material provision of this Agreement, in which case the Provider and the City agree to amend this Agreement with replacement provisions containing mutually acceptable terms and conditions.

15. Force Majeure. The Provider shall not be responsible for any failure or delay in the performance of any obligation hereunder, if such failure or delay is due to a cause beyond the Provider's reasonable control, including, but not limited to acts of God, flood, fire, volcano, war, third-party suppliers, labor disputes or governmental acts.

16. Counterparts. This Agreement may be executed in two or more counterparts, which together shall constitute one and the same agreement among the Parties.

[Signature page follows.]

IN WITNESS WHEREOF, the Parties hereto have caused this Agreement for Professional Services to be effective as of the Effective Date stated above.

**SOUND MANAGEMENT, LLC** |

**CITY OF SOUTH BEND, INDIANA  
BOARD OF PARK COMMISSIONERS**

\_\_\_\_\_  
*Signature*

\_\_\_\_\_  
Mark Neal, President

**Pam Mason, General Manager** |  
*Printed Name and Title*

\_\_\_\_\_  
Consuella Hopkins, Vice President

**3371 Cleveland Road, Ste., 300**  
*Street Address*

\_\_\_\_\_  
Aimee Buccellato, Member

\_\_\_\_\_  
*P.O. Box*

**South Bend, IN 46628**  
*City, State Zip*

\_\_\_\_\_  
Dan Farrell, Member

\_\_\_\_\_  
*Telephone*

\_\_\_\_\_  
*Fax*

ATTEST: \_\_\_\_\_  
Eva Ennis, Clerk

**EXHIBIT A**

**Proposal**

[See attached.]

**EXHIBIT B**

**Contractor's Affidavit**

[See attached.]