

**AGREEMENT FOR PROFESSIONAL SERVICES
BY AND BETWEEN THE CITY OF SOUTH BEND, INDIANA
AND VIBES MUSIC FESTIVAL, INC.**

THIS AGREEMENT is made effective the 2nd day of March, 2024 by and between the City of South Bend, Indiana (the "City"), a municipal corporation organized and operating under the laws of the State of Indiana, acting by and through its Department of Venues Parks & Arts ("VPA"), pursuant to the authority granted to the VPA's Executive Director under Resolution No. 0006-2020 by its Board of Park Commissioners ("Board"), and Vibes Music Festival, Incorporated ("VMF"), a 501(c)(3) public charity with its principal place of business located at 408 West Western Avenue Apt 2104, South Bend, IN 46601, (the "Provider"), and each a "Party" and together the "Parties".

WHEREAS, VPA's mission to inspire a more livable South Bend for all and is made possible through supporting similarly mission-minded organizations; and

WHEREAS, VMF exists to 1.) create a supportive, empowering, and collaborative environment for all underrepresented creatives, local non-profits, and business owners through festivals and social/networking events and 2.) provide an accessible, safe, and welcoming environment for the local community; and

WHEREAS, VMF desires to utilize space at Howard Park to host the Vibes Music Festival 2024 at Howard Park and to collaborate with VPA on various promotional, social, networking, and small business development events throughout the year.

NOW THEREFORE, for and in consideration of the mutual covenants and promises contained herein, the City and Provider hereby agree as follows:

Section 1. Duties of the Provider. The Provider shall provide the Services which are more particularly described at Exhibit "A" attached hereto and incorporated herein. If any conflict between this Agreement and Exhibit A exists, the terms of this Agreement shall control. The Provider certifies that it has sufficient experience and expertise to complete the Services and will shall execute its responsibilities by following and applying at all times the highest professional and technical guidelines and standards. Nothing in this Agreement shall preclude the Provider from performing work for other entities or individuals. However, the Provider agrees not to engage in any activity that is detrimental to the City's business interests or interferes with the Provider's provision of the Services. The Provider understands and agrees that it shall not commence any additional work or change the scope of the Services provided unless authorized in writing by the City. No claim for additional compensation shall be made by Provider in the absence of prior written approval of the Parties.

Section 2. Consideration. In exchange for the Provider's performance of the Services, and subject to the terms and conditions of this Agreement, the City will pay the Provider a total sum not to exceed Twenty-Five Thousand Dollars (\$25,000.00) (the "Contract Amount"). The City will pay the Contract Amount in installments upon invoicing by the Provider (each a

"Contract Installment"), as set forth in Exhibit A. The City will not be required to pay any Contract Installment if the City is not reasonably satisfied with the Provider's performance under this Agreement or any material default or material breach of this Agreement by the Provider exists, as the City may determine in its sole discretion within the duty of reasonableness, good faith, or fair dealing. The sum of all Contract Installments will not exceed the Contract Amount, and the Provider will not incur or seek reimbursement for any expenses in excess of the Contract Amount.

Section 3. Term and Renewal Option. This Agreement shall be effective from one (1) year following the Effective Date. Upon successful completion of this Agreement, the Parties may mutually agree to a renewal of this Agreement, with a scope of work mutually agreed upon in writing and an additional Contract Amount.

Section 4. Assignment; Successors. The Provider may assign or subcontract the whole or any part of this Agreement to any other person or entity without the prior written consent of the City. Provider shall ensure that any assignee or subcontractor will comply with the terms hereof, and Provider shall be responsible for such compliance.

Section 5. Relationship/Independent Contractor. Both Parties, in the performance of this Agreement, shall act in an individual capacity and not as agents, employees, partners, joint venturers or associates of one another. The employee(s) or agent(s) of one Party shall not be deemed or construed to be the employee(s) or agent(s) of the other Party for any purpose whatsoever. Neither Party will assume liability for any injury (including death) to any person(s), or damage to any property, arising out of the acts or omissions of the agents, employees or subcontractors of the other Party.

Provider is solely responsible for compliance with federal, state and local laws and regulations relating to taxes and social security payments that may be required to be made in connection with the compensation provided under this Agreement. The City, however, may file informational returns with the United States Internal Revenue Service or similar state agency regarding payment made to Provider in accordance with this Agreement under conditions imposed by federal, state or local laws applicable to such payment. The City shall provide IRS Form 1099, if applicable.

Section 6. Confidentiality. The Provider acknowledges that information which the City regards as confidential or proprietary in nature (the "Information"), may come to the knowledge of the Provider during the Provider's performance of services. The Provider shall treat the Information as strictly confidential and agrees that the Provider will not, at any time or in any manner, either directly or indirectly, (i) use, or allowed to be used, any Information for the Provider's own benefit or the benefit of any director, official, employee, or agent or any third party, or (ii) divulge, disclose, or communicate in any manner any Information to any third party without the written consent of the City. The Provider shall be responsible for maintaining the confidentiality of any Information in its possession, including taking appropriate measures to secure said Information against such uses and dissemination and to inform any person to which he allows to access such information of its confidentiality. Notwithstanding anything to the contrary contained in this Agreement, the Parties will adhere to their respective obligations under the Indiana Access to Public Records Act, and nothing herein will be construed to relieve either Party

of such obligations. The confidentiality provisions of this Agreement remain in full force and effect after, and survive the termination of, the Term of this Agreement.

Section 7. Indemnification. The Provider hereby agrees to defend, indemnify, and hold harmless the City, its officials, members, 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 pertaining to this Agreement that arise out of the negligence or intentional acts of the City, its officials, members, employees, and agents. The obligations of the Parties under this Section shall survive the termination of this Agreement.

Section 8. Funding Cancellation and Payments. In accordance with I.C. 6-1.1-18-4, payments by the City are subject to annual appropriation by its fiscal body. When the City makes a written determination that funds are not appropriated or otherwise available to support continued performance of this Agreement, this Agreement shall be cancelled. A determination by the City that funds are not appropriated or otherwise available to support continuation of the performance shall be final and conclusive.

Section 9. Termination. This Agreement may be terminated, in whole or in part, by either Party whenever, for any reason, the either Party determines that such termination is in its best interest. Termination shall be affected by delivery to the Provider, or the Executive Director, as the case may be, of written notice at least thirty (30) days prior to the termination effective date, specifying the extent to which performance of services will or must cease. The Provider shall be compensated for satisfactory performance prior to the notice date of termination but in no case shall total payment made to Provider exceed the original consideration set forth in the Agreement. 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 date on which Services are required to cease pursuant to any Notice of Termination.

Section 10. Counterparts. This Agreement may be executed in counterparts, all of which shall be deemed originals.

Section 11. Governing Law; Jurisdiction; Compliance with Laws. This Agreement shall be construed and interpreted according to the laws of the State of Indiana without regard to conflicts of laws statutes. Any dispute arising under the terms of this Agreement shall be filed in any court of competent jurisdiction in St. Joseph County, Indiana. The Provider agrees to comply with, and shall cause any subcontractor hereunder to comply with, all applicable federal, state and local laws, rules, regulations and ordinances, and all provisions required thereby are hereby incorporated herein by reference. Provider shall comply with federal, state and local law in its hiring and employment practices and policies for any activity covered by this Agreement. Further, the City shall not be required to pay for Services that are inconsistent with or in violation of this Agreement nor for any Services performed in violation of federal, state or local statute, ordinance, rule or regulation.

Section 12. Non-Collusion and Acceptance. The undersigned attests, subject to the

penalties for perjury, that it is the Provider, that it has not, nor has any assignee or subcontractor, directly or indirectly, to the best of its knowledge after due inquiry, entered into or offered to enter into any combination, collusion or agreement to receive or pay, and that neither he nor any assignee or subcontractor hereunder has received or paid, any sum of money or other consideration for the execution of this Agreement other than that which appears upon the fact of this Agreement.

Section 13. E-Verify. The Provider affirms under the penalties of perjury that it does not knowingly employ any person not legally entitled to work in the United States. The Provider shall enroll in and verify the work eligibility status of all its newly hired employees, if any, through the E-Verify program as defined in IC 22-5-1.7-3. The Provider shall not knowingly employ or contract with any person who is not legally entitled to work in the United States. The Provider shall not retain an employee or contract with a person that the Provider subsequently learns is not legally entitled to work in the United States.

The Provider is not required to participate in the E-Verify program should the E-Verify program cease to exist. Additionally, the Provider is not required to participate if the Provider is self-employed and does not employ any employees.

The City may terminate for default if the Provider fails to cure a breach of this provision no later than thirty (30) days after being notified by the City.

Section 14. Minority and Women's Enterprise Diversity Development. Persons, partnerships, corporations, associations, or joint venturers awarded a contract by the City of South Bend through its agencies, boards, or commissions shall not discriminate against any employee or applicant for employment in the performance of a City contract with respect to hire, tenure, terms, conditions, or privileges of employment, or any matter directly or indirectly related to employment because of race, sex, religion, color, national origin, ancestry, age, or disability that does not affect that person's ability to perform the work.

Section 15. Non-Discrimination. The City of South Bend is committed to ensuring equality of opportunity and does not exclude, deny the benefit of, or otherwise subject any person to discrimination in any City program, service or activity on the basis of race, color, national origin, sex, age or disability. The Provider agrees to comply with and to act consistently with this policy in the performance of the Provider's duties.

Section 16. 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 any assignee or subcontractor has been convicted of a criminal drug violation occurring in the workplace.

Section 17. Severability. In the event any portion of this Agreement shall be held illegal, void, or ineffective, the remaining portions hereof shall remain in full force and effect. If any of the terms or conditions of this Agreement are in conflict with any applicable statute or rule of law, then such terms and conditions shall be deemed inoperative to the extent that they may conflict therewith and shall be deemed to be modified to conform to such law.

- VMF shall be responsible for ultimate setup and teardown of on-site infrastructure provided by VPA.
- Coordinate with VPA on determining written parameters for appropriate music to be played at the Vibes Music Festival

(d) VMF intends to measure its progress towards the aforementioned Agreement goals as follows:

- Diversity and Inclusion Initiative
 - i. To support the Diversity and Inclusion Initiative between VPA and VMF, VMF will target a goal of Vibes Music Festival attendees being of diverse race, age, and gender groups, based upon self-reported data.
 - ii. To support the Diversity and Inclusion Initiative between VPA and VMF, VMF will commit to a target of at least 55% of participating businesses, vendors, and artisans being of diverse race, age, and gender groups, based upon self-reported data.
 - iii. Following the conclusion of the event VPA seeks a recap report that can be shared with leadership.
- Business Development
 - i. To support the Business Development Initiative between VPA and VMF, VMF will commit to a target of 40% of participating vendors and business owners believing they gained exposure at the Vibes Music Festival 2024.
 - ii. To support the Community Impact Initiative between VPA and VMF, VMF will partner with multiple local nonprofit organizations at the Vibes Music Festival to create awareness of positive community initiatives.

(e) PAYMENT TERMS

VPA will not withhold payment as long as terms of this agreement are fulfilled. Payments and invoices will be processed through the standard City of South Bend municipal purchasing guidelines for professional services. VMF to provide VPA with three invoices at the following schedule:

- i. 25% initial payment upon signing of this agreement.
- ii. 50% upon the delivery of a progress report by May 30, 2024.
- iii. 25% thirty (30) days before the date of the event.

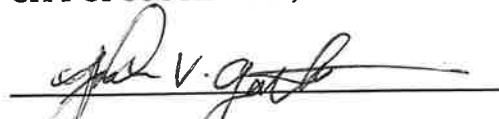
Section 18. No Waiver. No failure or delay on the part of either Party in exercising any right under this Agreement will operate as a waiver of, or impair, any such right. No single or partial exercise of any such right will preclude any other or further exercise thereof or the exercise of any other right. No waiver of any such right will have effect unless given in a written document signed by the Party waiving such right. No waiver of any right will be deemed a waiver of any other right hereunder.

Section 19. Entire Agreement. 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.

IN WITNESS WHEREOF, the Parties hereto, through their duly authorized representatives, have caused this Agreement to be executed as of the day and year first written above. The Parties have read and understand the foregoing terms of this Agreement and do, by their respective signatures, hereby agree to its terms.

VIBES MUSIC FESTIVAL, INC.

CITY OF SOUTH BEND, INDIANA



By: **Dezha Moore**

By: **Jordan Gathers**

Date:

Exhibit A

CONSIDERATION AND CONTRIBUTIONS BY THE PARTIES

(a) Purpose/Consideration:

During the term of this Agreement, VMF and VPA will collaborate on creative/arts focused initiatives throughout the 12-month calendar year tailored to diversify the attendance at VPA events by race, age, and gender. The purpose of this agreement is to contribute to the City of South Bend's & VPA's diversity and inclusion goals. Specifically, this agreement aims to further expand programming and resources to minority communities, fostering a culturally vibrant economy. VPA will also coordinate with VMF to host the Vibes Music Festival set to take place on Saturday, July 13, 2024, at Howard Park.

(b) VPA Contributions & Responsibilities:

- Provide \$25,000.00 in financial support of VMF on the 12-month initiatives.
- Coordinate with VMF regarding recommendations for diversifying event attendance.
- Coordinate with VMF on determining written parameters for appropriate music to be played at the Vibes Music Festival
- Provide access to city locations throughout the duration of this agreement as such spaces are available and work with VMF on cost.
- Donate and deliver on-site infrastructure (fencing, sandbags, secondary stage, wayfinding signage, jumbo games, family games, and standard event electrical components) for the July 12-13th event.
- VPA shall be responsible for joint marketing of event(s) through print and digital mediums, not limited to website and social media accounts.
- VPA shall be responsible for the removal of trash and debris located in the trash receptacles and dumpster located at Howard Park for the July 12-13th event as customary and necessary.

(c) VMF Contributions & Responsibilities:

- Coordinate with VPA regarding recommendations for diversifying event attendance by race, age, and gender. Reports sent to VPA sharing attendance breakdown.
- Overall planning and onsite management of event(s).
- Provide graphical designs for Vibes Music Festival 2024 flyer, banner, and branding kit.
- Secure security detail for event and management during event(s) (VPA to assist in extending preferred vendors and associated fees). Work with VPA Security and Community Initiatives team to provide onsite presence.
- Secure tables, stage, audio, and lighting team for event(s).
- Secure all performers for event(s), not limited to DJs, Hosts, vendors, and artisans.
- Provide on-site staffing/volunteers for setup/teardown of event and vendor management.
- Hire entertainment team to oversee contracted sound team, manage the stage/performers, and assist host.
- Hire marketing team to fulfill all other marketing needs (social media, photography, videography, BTS shots, promo video, recap video, press release, etc.)
- VMF will make reasonable efforts to ensure the event site remains clean and tidy.
- VMF shall be responsible for joint marketing of the event through print and digital mediums.
- VMF shall be responsible for supplying print and digital marketing pieces for use in promotion of event(s).