

## MEMORANDUM

**TO:** Cindy Hoye  
**FROM:** Monica Smiley  
**DATE:** March 31, 2010  
**RE:** Special Procurement –Production Services – Stage Set-up, Lighting & Sound

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This Special Procurement request is being submitted requesting the professional services of Mid-America Sound Corporation.

This contract is valued in excess of Fifty Thousand Dollars (\$50,000.00) annually and, by our procurement rules, requires Commission action.

Our Entertainment/Events Manager, Michelle Leavell, has identified an opportunity for the Indiana State Fair Commission (ISFC) to save money, continue on in a very good working relationship and avoid interruption of quality service as it relates to Production Services which includes stage set-up, lighting, sound and experienced technicians.

### **Background:**

For twenty-plus (20+) years the ISFC has partnered with Mid-America Sound Corporation in making the Hoosier Lottery Grandstand stage, free stage, Main Street stage, Livestock Nursery and other as-needed-venues accommodating to artists and pleasurable to ISFC guests. Equipment needs vary vastly by performers.

While operating in good faith and based on the long-term working relationship, a few years ago, Mid-America purchased a 10-Tower Thomas Load Bearing Roof (82' x 64' x 44') with the ISFC's production needs in mind. The Bearing Roof is a hard to find item that would be shipped from the east or west coast. Not only has Mid-America proven their desire to work with the ISFC but has also developed a strong and professional relationship with many national entertainment agencies as well.

The owner of Mid-America, Kerry Darrencamp, asserts that when his business was very small and seeking to establish itself, the ISFC was good enough to utilize his services. Because of the ISFC's continued willingness to work with him, he has always provided lower than normal pricing for Production Services. In addition, Mr. Darrencamp states he will limit any expense increases incurred during the annual State Fair to a maximum of 2% per year.

### **Support Information:**

Mid-America is an Indiana business with a desire to keep its working relationship with the ISFC. Attached, please find an example of Mid-America expenses as researched by Michelle. Also attached is a letter of support from another of our partners, Live-360, which has the expertise and knowledge of working with many national production companies.

**Summary:**

In research on this matter, Michelle has concluded that there is a cost savings for the ISFC in utilizing Mid-America Sound Corporation. In addition, making a change in this particular area of service could seriously impair the performance of the Presentation & Development Team and could seriously impair the quality of each show's production. Extensive time would have to be expended by ISFC staff in training, educating and supervising a new production team. Mid-America is familiar with the Fairgrounds, the venue sites as well as the promotion companies involved in each annual Fair. Their professionalism, expertise, experience and ability to operate independently without direct supervision, provides the ISFC and particularly the Presentation & Development Team the assurance that all the service needs of the artists will be satisfied. Mid America has contributed to the success of the ISFC in show production.

Mid-America is a nationally recognized organization with a renowned reputation. Research shows that if the ISFC was to seek bids for this service locally, in-state and out-of-state, responding businesses would seek equipment and assistance from Mid-America to help fulfill our needs of the ISFC.

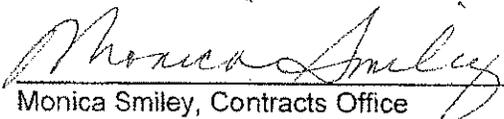
**80 IAC 1-5-9 Special Procurement provides:**

The Executive Director may make, or authorize the procurement department to make, special procurements when:

“(2) when there exists a unique opportunity to obtain supplies/services at a substantial savings to the commission; and

“(7) when procurement of the required supplies/services under another section of this rule would seriously impair the function of the using department

Respectfully,

  
\_\_\_\_\_  
Monica Smiley, Contracts Office

3.31.10  
\_\_\_\_\_  
Date

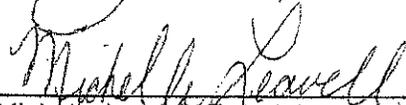
Approved by:

  
\_\_\_\_\_  
Cynthia C. Hoye, Executive Director

4/12/10  
\_\_\_\_\_  
Date

  
\_\_\_\_\_  
Margaret Davidson, Presentation & Development  
Department Director

4/10/10  
\_\_\_\_\_  
Date

  
\_\_\_\_\_  
Michelle Leavell, Entertainment/Events Manager

3/31/10  
\_\_\_\_\_  
Date

memo

p 317.843.8000 f 317.706.0871



To: **Michelle Leavell**  
From: **Eric Milby**  
Cc: **Annie O'Toole**

Re: **Mid America Sound Corp**  
Date: **3/22/10**

Urgent     For review     Please comment     Please reply     Please recycle

Dear Michelle,

It is my opinion having 22 years of production experience in and around the state of Indiana that Mid-America Sound Corp is the only vendor in the state that can provide what is needed for the Indiana State Fair Grandstand shows.

- No other vendor in the state has a V-Dosc PA. It's the most recognized Sound System on the market. We've never had a complaint or any issues with the sound system from any touring act.
- No other Indiana vendor can provide a roof / trussing system that will fit the Grand Stand stage like the one Mid America provides. I believe this system was purchased with the ISF shows in mind. There might only be a few other vendors in the US that could provide what MAS does.

For another vendor to provided the same or equivalent equipment you would have to go out of state. Which would mean higher cost due to fuel, hotel, trucking and other travel related costs.

I believe the Indiana State Fair is getting a great deal on what is provided during the Indiana State Fair. I have worked with Mid America for over 20 years and have always found them to provide the best equipment for the best price.

Please let me know if you have any questions.

Best regards,

**Eric Milby** | Live-360

Production Manager | Verizon Wireless Account Executive | Empire Fair | Alpharetta, GA | Atlanta  
Production Manager | Indiana State Fair | Grandstand Stage | April 18-22

317-843-8010 direct | **317-431-9590 mobile**

[ericmilby@live-360.com](mailto:ericmilby@live-360.com) | [ericmilby@me.com](mailto:ericmilby@me.com)

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8900 Keystone Crossing, Suite 610  
Indianapolis, Indiana 46240

## Mid-America Expenses

### Actuals

#### 2009

Grandstand	\$139,600
Free Stage	\$ 22,646
Main Street Stage	\$ 8,000
Livestock Nursery	\$ 450

#### 2008

Grandstand	\$128,126
Free Stage	\$ 19,470
Main Street Stage	\$ 5,950
Livestock Nursery	\$ 450

#### 2007

Grandstand	\$118,594
Free Stage	\$ 17,320
Main Street Stage	\$ 5,650
Livestock Nursery	\$ 450

### Averages

Grandstand	\$128,773
Free Stage	\$ 19,812
Main Street Stage	\$ 6,533
Livestock Nursery	\$ 450

### Estimates (Not to Exceeds)

Grandstand	\$150,000
Free Stage	\$ 25,000
Main Street Stage	\$ 8,000
Livestock Nursery	\$ 450

### \* Important Notes:

1. Kerry Darrencamp has agreed that he will limit any expense increase incurred during the Fair to a maximum of 2% per year.
2. Mid America has been doing Fair production for 20+ years.
3. The 10 Tower Thomas Load Bearing Roof (82' x 64' x 44') was bought for us (ISF). If needed, otherwise would have to go to the coast to find a roof like this.
4. Kerry is a hometown guy and we have been with him since he was a small company and have remained with him as the company as grown to the nationally known company it is today. Because of that he has always provided us with better than normal, decent pricing for production because he wants to make sure the Indiana State Fair puts on the best shows production-wise of all the State Fairs.

**1. Contractor Role and Responsibility**

The Contractor shall provide delivery, set-up, tear-down and labor for Production Services including but not limited to items as outlined in **Attachment A**, hereto attached and incorporated. The Offeror must list any subcontractor's name, address and state of incorporation that it proposes to use in providing the required products and services. The subcontractor's responsibilities under the proposal, anticipated dollar amount for subcontract, the subcontractor's form of organization, indication that the subcontractor was registered with the Indiana Secretary of State at least 45 days prior to the issuance date of the bid solicitation, if required, and an indication from the subcontractor of a willingness to carry out these responsibilities are to be included for each subcontractor. This assurance in no way relieves the Offeror of any responsibilities in responding to this bid solicitation or in completing the commitments documented in the proposal. The Offeror must indicate which, if any, subcontractors qualify as a Minority or Women Owned Business under IC 4-13-16.5-1. Subcontractor shall be bond by the same terms and conditions set herein.

**2. Consideration**

Contractor shall be paid the rates/prices as demonstrated in the Attachment.

**3. Period of Performance/Term of Contract**

This agreement shall be for a period of two (2) years. It shall commence upon signature execution and shall terminate on December 31, 2012.

**4. Access to Records**

The Contractor and its subcontractors, if any, shall maintain all books, documents, papers, accounting records, and other evidence pertaining to all costs incurred under this Contract. They shall make such materials available at their respective offices at all reasonable times during this Contract, and for three (3) years from the date of final payment under this Contract, for inspection by the Commission or its authorized designees. Copies shall be furnished at no cost to the Commission or the Indiana State Fair Commission if requested.

**5. Assignment; Successors**

The Contractor binds its successors and assignees to all the terms and conditions of this Contract. The Contractor shall not assign or subcontract the whole or any part of this Contract without the Commission's prior written consent. The Contractor may assign its right to receive payments to such third parties as the Contractor may desire without the prior written consent of the Commission, provided that the Contractor gives written notice (including evidence of such assignment) to the Commission thirty (30) days in advance of any payment so assigned. The assignment shall cover all unpaid amounts under this Contract and shall not be made to more than one party.

**6. Audits**

The Contractor acknowledges that it may be required to submit to an audit of funds paid through this Contract. Any such audit shall be conducted in accordance with IC 5-11-1, et. seq. and audit guidelines specified by the State.

**7. Authority to Bind Contractor**

The signatory for the Contractor represents that he/she has been duly authorized to execute this Contract on behalf of the Contractor and has obtained all necessary or applicable approvals to make this Contract fully binding upon the Contractor when his/her signature is affixed, and accepted by the Commission.

**8. Changes in Work**

The Contractor shall not commence any additional work or change the scope of the work until authorized in writing by the Commission. Contractor shall make no claim for additional compensation in the absence of a prior written approval and amendment executed by all signatories hereto. This Contract may only be amended, supplemented or modified by a written document executed in the same manner as this Contract.

**9. Compliance with Laws**

A. The Contractor shall comply with all applicable federal, state and local laws, rules, regulations and ordinances, and all provisions required thereby to be included herein are hereby incorporated by reference. The enactment or modification of any applicable state or federal statute or the promulgation of rules or regulations thereunder after execution of this Contract shall be reviewed by the State and the Contractor to determine whether the provisions of this Contract require formal modification.

B. The Contractor and its agents shall abide by all ethical requirements that apply to persons who have a business relationship with the State as set forth in IC § 4-2-6 *et seq.*, IC § 4-2-7, *et seq.*, the regulations promulgated thereunder, and Executive Order 04-08, dated April 27, 2004. If the Contractor is not familiar with these ethical requirements, the Contractor should refer any questions to the Indiana State Ethics Commission, or visit the Indiana State Ethics Commission website at <http://www.in.gov/ethics/>. If the Contractor or its agents violate any applicable ethical standards, the State may, in its sole discretion, terminate this Contract immediately upon notice to the Contractor. In addition, the Contractor may be subject to penalties under IC §§ 4-2-6, 4-2-7, 35-44-1-3, and under any other applicable laws.

C. The Contractor certifies by entering into this Contract that neither it nor its principal(s) is presently in arrears in payment of taxes, permit fees or other statutory, regulatory or judicially required payments to the State. The Contractor agrees that any payments currently due to the State may be withheld from payments due to the Contractor. Additionally, further work or payments may be withheld, delayed, or denied and/or this Contract suspended until the Contractor is current in its payments and has submitted proof of such payment to the Commission.

D. The Contractor warrants that it has no current, pending or outstanding criminal, civil, or enforcement actions initiated by the State, and agrees that it will immediately notify the State of any such actions. During the term of such actions, the Contractor agrees that the Commission may delay, withhold, or deny work under any supplement, amendment, change order or other contractual device issued pursuant to this Contract.

E. If a valid dispute exists as to the Contractor's liability or guilt in any action initiated by the State or its agencies, and the Commission decides to delay, withhold, or deny work to the Contractor, the Contractor may request that it be allowed to continue, or receive work, without delay. The Contractor must submit, in writing, a request for review to the Indiana Department of Administration (IDOA) following the procedures for disputes outlined herein. A determination by IDOA shall be binding on the parties. Any payments that the Commission may delay, withhold, deny, or apply under this section shall not be subject to penalty or interest, except as permitted by IC § 5-17-5.

F. The Contractor warrants that the Contractor and its subcontractors, if any, shall obtain and maintain all required permits, licenses, registrations, and approvals, and shall comply with all health, safety, and environmental statutes, rules, or regulations in the performance of work activities for the Commission. Failure to do so may be deemed a material breach of this Contract and grounds for immediate termination and denial of further work with the Commission.

G. The Contractor affirms that, if it is an entity described in IC Title 23, it is properly registered and owes no outstanding reports to the Indiana Secretary of State.

H. As required by IC 5-22-3-7:

(1) the Contractor and any principals of the Contractor certify that (A) the Contractor, except for de minimis and nonsystematic violations, has not violated the terms of (i) IC 24-4.7 [Telephone Solicitation Of Consumers], (ii) IC 24-5-12 [Telephone Solicitations] , or (iii) IC 24-5-14 [Regulation of Automatic Dialing Machines] in the previous three hundred sixty-five (365) days, even if IC 24-4.7 is preempted by federal law; and (B) the Contractor will not violate the terms of IC 24-4.7 for the duration of the Contract, even if IC 24-4.7 is preempted by federal law.

(2) The Contractor and any principals of the Contractor certify that an affiliate or principal of the Contractor and any agent acting on behalf of the Contractor or on behalf of an affiliate or principal of the Contractor (A) except for de minimis and nonsystematic violations, has not violated the terms of IC 24-4.7 in the previous three hundred sixty-five (365) days, even if IC 24-4.7 is preempted by federal law; and (B) will not violate the terms of IC 24-4.7 for the duration of the Contract, even if IC 24-4.7 is preempted by federal law.

I. Unless specifically exempted, Contractor hereby certifies that it does not employ or contract with an unauthorized alien, pursuant to IC 5-22-1.7.

#### **10. Condition of Payment**

All services provided by the Contractor under this Contract must be performed to the Commission's reasonable satisfaction, as determined at the discretion of the undersigned Commission representative and in accordance with all applicable federal, state, local laws, ordinances, rules and regulations. The Commission shall not be required to pay for work found to be unsatisfactory, inconsistent with this Contract or performed in violation of and federal, state or local statute, ordinance, rule or regulation.

#### **11. Disputes**

A. Should any disputes arise with respect to this Contract, the Contractor and the Commission agree to act immediately to resolve such disputes. Time is of the essence in the resolution of disputes.

B. The Contractor agrees that, the existence of a dispute notwithstanding, it will continue without delay to carry out all of its responsibilities under this Contract that are not affected by the dispute. Should the Contractor fail to continue to perform its responsibilities regarding all non-disputed work, without delay, any additional costs incurred by the Commission or the Contractor as a result of such failure to proceed shall be borne by the Contractor.

C. If a party to the contract is not satisfied with the progress toward resolving a dispute, the party must notify in writing the other party of this dissatisfaction. Upon written notice, the parties have ten (10) working days, unless the parties mutually agree to extend this period, following the notification to resolve the dispute. If the dispute is not resolved within ten (10) working days, a dissatisfied party will submit the dispute in writing according to the following procedure:

1. The parties agree to resolve such matters through submission in writing of their dispute to the Commissioner of the Indiana Department of Administration. The Commissioner shall reduce a decision to writing and mail or otherwise furnish a copy thereof to the Contractor and the Commission within ten (10) working days after presentation of such dispute for action. The presentation may include a period of negotiations, clarifications, and mediation sessions and will not terminate until the Commissioner or one of the parties concludes that the presentation period is over. The Commissioner's decision shall be final and conclusive unless either party mails or otherwise furnishes to the Commissioner, within ten (10) working days after receipt of the Commissioner's decision, a written appeal. Within ten (10) working days of receipt by the Commissioner of a written request for appeal, the decision may be reconsidered. If no reconsideration is provided within ten (10) working days, the parties may mutually agree to submit the dispute to arbitration or mediation for a determination. If a party is not satisfied with the Commissioner's ultimate decision, the dissatisfied party, may submit the dispute to an Indiana court of competent jurisdiction.

2. The Commission may withhold payments on disputed items pending resolution of the dispute. The unintentional nonpayment by the Commission to the Contractor of one or more invoices not in dispute in accordance with the terms of this Contract will not be cause for Contractor to terminate this Contract, and the Contractor may bring suit to collect these amounts without following the disputes procedure contained herein.

## **12. Drug-Free Workplace Certification**

The Contractor hereby covenants and agrees to make a good faith effort to provide and maintain a drug-free workplace. The Contractor will give written notice to the Commission within ten (10) days after receiving actual notice that the Contractor or an employee of the Contractor in the State of Indiana has been convicted of a criminal drug violation occurring in the workplace. False certification or violation of this certification may result in sanctions including, but not limited to, suspension of contract payments, termination of this Contract and/or debarment of contracting opportunities with the Commission for up to three (3) years.

In addition to the provisions of the above paragraphs, if the total contract amount set forth in this Contract is in excess of \$25,000.00, the Contractor hereby further agrees that this Contract is expressly subject to the terms, conditions, and representations of the following certification:

This certification is required by Executive Order No. 90-5, April 12, 1990, issued by the Governor of Indiana. No award of a contract shall be made, and no contract, purchase order or agreement, the total amount of which exceeds \$25,000.00, shall be valid, unless and until this certification has been fully executed by the Contractor and made a part of the contract or agreement as part of the contract documents.

The Contractor certifies and agrees that it will provide a drug-free workplace by:

- A. Publishing and providing to all of its employees a statement notifying them that the unlawful manufacture, distribution, dispensing, possession or use of a controlled substance is prohibited in the Contractor's workplace, and specifying the actions that will be taken against employees for violations of such prohibition;
- B. Establishing a drug-free awareness program to inform its employees of (1) the dangers of drug abuse in the workplace; (2) the Contractor's policy of maintaining a drug-free workplace; (3) any available drug counseling, rehabilitation and employee assistance programs; and (4) the penalties that may be imposed upon an employee for drug abuse violations occurring in the workplace;
- C. Notifying all employees in the statement required by subparagraph (A) above that as a condition of continued employment, the employee will (1) abide by the terms of the statement; and (2) notify the Contractor of any criminal drug statute conviction for a violation occurring in the workplace no later than five (5) days after such conviction;
- D. Notifying the Commission in writing within ten (10) days after receiving notice from an employee under subdivision (C)(2) above, or otherwise receiving actual notice of such conviction;
- E. Within thirty (30) days after receiving notice under subdivision (C)(2) above of a conviction, imposing the following sanctions or remedial measures on any employee who is convicted of drug abuse violations occurring in the workplace: (1) taking appropriate personnel action against the employee, up to and including termination; or (2) requiring such employee to satisfactorily participate in a drug abuse assistance or rehabilitation program approved for such purposes by a federal, state or local health, law enforcement, or other appropriate agency; and
- F. Making a good faith effort to maintain a drug-free workplace through the implementation of subparagraphs (A) through (E) above.

**13. Employment Option**

If the Commission determines that it would be in the Commission's best interest to hire an employee of the Contractor, the Contractor will release the selected employee from any non-compete agreements that may be in effect. This release will be at no cost to the Commission or the employee.

**14. Force Majeure**

In the event that either party is unable to perform any of its obligations under this Contract or to enjoy any of its benefits because of natural disaster or decrees of governmental bodies not the fault of the affected party (hereinafter referred to as a "Force Majeure Event"), the party who has been so affected shall immediately give notice to the other party and shall do everything possible to resume performance. Upon receipt of such notice, all obligations under this Contract shall be immediately suspended. If the period of nonperformance exceeds thirty (30) days from the receipt of notice of the Force Majeure Event, the party whose ability to perform has not been so affected may, by giving written notice, terminate this Contract.

**15. Funding Cancellation**

When the Director of the State Budget Agency makes a written determination that funds are not appropriated or otherwise available to support continuation of performance of this Contract, this Contract shall be canceled. A determination by the Director of SBA that funds are not appropriated or otherwise available to support continuation of performance shall be final and conclusive.

**16. Governing Laws**

This Contract shall be construed in accordance with and governed by the laws of the State of Indiana and suit, if any, must be brought in the State of Indiana.

**17. Indemnification**

The Contractor agrees to indemnify, defend, and hold harmless the Commission, its agents, officials, and employees from all claims and suits including court costs, attorney's fees, and other expenses caused by any act or omission of the Contractor and/or its subcontractors, if any, in the performance of this Contract. The Commission shall **not** provide such indemnification to the Contractor.

**18. Independent Contractor**

Both parties hereto, in the performance of this Contract, shall act in an individual capacity and not as agents, employees, partners, joint venturers or associates of one another. The employees or agents of one party shall not be deemed or construed to be the employees or agents of the other party for any purposes whatsoever. Neither party will assume liability for any injury (including death) to any persons, or damage to any property, arising out of the acts or omissions of the agents, employees or subcontractors of the other party.

The Contractor shall be responsible for providing all necessary unemployment and workers' compensation insurance for the Contractor's employees.

**19. Insurance**

A. The Contractor shall secure and keep in force during the term of this Contract, the following insurance coverages, covering the Contractor for any and all claims of any nature which may in any manner arise out of or result from Contractor's performance under this Contract:

1. Commercial general liability, including contractual coverage, and products or completed operations coverage (if applicable), with minimum liability limits of \$700,000 per person and \$1,000,000 per occurrence unless additional coverage is required by the Commission. The Commission is to be named as a additional insured on a primary, non-contributory basis for any liability arising directly or indirectly under or in connection with this Contract.

2. Automobile liability with minimum liability limits of \$700,000 per person and \$1,000,000 per occurrence. The Commission is to be named as an additional insured on a primary, non-contributory basis.

3. The Contractor shall provide proof of such insurance coverage by tendering to the undersigned Commission representative a certificate of insurance prior to the commencement of this Contract and proof of Workers compensation coverage meeting all statutory requirements of IC 22-3-2. In addition, proof of an "all states endorsement" covering claims occurring outside the State is required if any of the services provided under this Contract involve work outside of Indiana.

B. The Contractor's insurance coverage must meet the following additional requirements:

1. The insurer must have a certificate of authority issued by the Indiana Department of Insurance.

2. Any deductible or self-insured retention amount or other similar obligation under the insurance policies shall be the sole obligation of the Contractor.

3. The Commission will be defended, indemnified and held harmless to the full extent of any coverage actually secured by the Contractor in excess of the minimum requirements set forth above. The duty to indemnify the Commission under this Contract shall not be limited by the insurance required in this Contract.

4. The insurance required in this Contract, through a policy or endorsement(s), shall include a provision that the policy and endorsements may not be canceled or modified without thirty (30) days' prior written notice to the undersigned Commission agency.

Failure to provide insurance as required in this Contract may be deemed a material breach of contract entitling the Commission to immediately terminate this Contract. The Contractor shall furnish a certificate of insurance and all endorsements to the Commission before the commencement of this Contract.

**20. Key Person(s)**

A. If both parties have designated that certain individual(s) are essential to the services offered, the parties agree that should such individual(s) leave their employment during the term of this Contract for whatever reason, the Commission shall have the right to terminate this Contract upon thirty (30) days prior written notice.

B. In the event that the Contractor is an individual, that individual shall be considered a key person and, as such, essential to this Contract. Substitution of another for the Contractor shall not be permitted without express written consent of the Commission.

C. Nothing in sections A and B, above shall be construed to prevent the Contractor from using the services of others to perform tasks ancillary to those tasks which directly require the expertise of the key person. Examples of such ancillary tasks include secretarial, clerical, and common labor duties. The Contractor shall, at all times, remain responsible for the performance of all necessary tasks, whether performed by a key person or others.

**21. Licensing Standards**

The Contractor, its employees and subcontractors shall comply with all applicable licensing standards, certification standards, accrediting standards and any other laws, rules or regulations governing services to be provided by the Contractor pursuant to this Contract. The Commission will not pay the Contractor for any services performed when the Contractor, its employees or subcontractors are not in compliance with such applicable standards, laws, rules or regulations. If any license, certification or accreditation expires or is revoked, or any disciplinary action is taken against an applicable license, certification or accreditation, the Contractor shall notify the Commission immediately and the Commission, at its option, may immediately terminate this Contract.

**22. Merger & Modification**

This Contract constitutes the entire agreement between the parties. No understandings, agreements, or representations, oral or written, not specified within this Contract will be valid provisions of this Contract. This Contract may not be modified, supplemented or amended, except by written agreement signed by all necessary parties.

**23. Nondiscrimination**

This covenant is enacted pursuant to the Indiana Civil Rights Law, specifically including IC 22-9-1-10, and in keeping with the purposes of the Civil Rights Act of 1964, the Age Discrimination in Employment Act, and the Americans with Disabilities Act. Breach of this covenant may be regarded as a material breach of this Contract, but nothing in this covenant shall be construed to imply or establish an employment relationship between the Commission and any applicant or employee of the Contractor or any subcontractor.

Pursuant to the Indiana Civil Rights Law, specifically including IC 22-9-1-10, and in keeping with the purposes of the federal Civil Rights Act of 1964, the Age Discrimination in Employment Act, and the Americans with Disabilities Act, the Contractor covenants that it shall not discriminate against any employee or applicant for employment relating to this Contract with respect to the hire, tenure, terms, conditions or privileges of employment or any matter directly or indirectly related to employment, because of the employee or applicant's: race, color, national origin, religion, sex, age, disability, ancestry, status as a veteran, or any other characteristic protected by federal, state, or local law ("Protected Characteristics"). Furthermore, Contractor certifies compliance with applicable federal laws, regulations, and executive orders prohibiting discrimination based on the Protected Characteristics in the provision of services.

**24. Notice to Parties**

Whenever any notice, statement or other communication is required under this Contract, it shall be sent to the following addresses, unless otherwise specifically advised.

Kerry Darrenkamp  
President  
Mid-America Sound Corporation  
6643 West 400 North  
Greenfield, IN 46140

Michelle Leavell  
Event Services Manager  
1202 E. 38<sup>th</sup> Street  
Indianapolis, IN 46205

**25. Order of Precedence; Incorporation by Reference**

Any inconsistency or ambiguity in this Contract shall be resolved by giving precedence in the following order: (1) This Contract, (2) attachments prepared by the Commission, (3) attachments prepared by the Contractor. All of the foregoing is incorporated fully by reference. All attachments, and all documents referred to in this paragraph are hereby incorporated fully by reference.

**26. Payments**

All payments shall be made in arrears in conformance with State fiscal policies and procedures and, as required by IC 4-13-2-14.8, by electronic funds transfer or check to the financial institution designated by the Contractor in writing unless a specific waiver has been obtained from the Indiana Auditor of State. No payments will be made in advance of receipt of the goods or services that are the subject of this Contract except as permitted by IC 4-13-2-20.

**27. Penalties/Interest/Attorney's Fees**

The Commission will in good faith perform its required obligations hereunder and does not agree to pay any penalties, liquidated damages, interest or attorney's fees, except as permitted by Indiana law, in part, IC 5-17-5, IC 34-54-8, and IC 34-13-1.

Notwithstanding the provisions contained in IC 5-17-5, any liability resulting from the Commission's failure to make prompt payment shall be based solely on the amount of funding originating from the Commission and shall not be based on funding from federal or other sources.

This Contract may be renewed under the same terms and conditions, subject to the approval of the Commissioner of the Department of Administration and the State Budget Director in compliance with IC 5-22-17-4. The term of the renewed contract may not be longer than the term of the original contract.

This Contract may be renewed under the same terms and conditions subject to the approval of the Commissioner of the Department of Administration and the State Budget Director in compliance with IC 5-22-17-4. The term of the renewed contract may not be longer than the term of the original contract.

**28. Renewal Option**

The Commission, at its option, may renew this Contract. The term of the Contract, including any renewals, may not exceed four (4) years. The first renewal option, if executed, would cover the period of date to date the second renewal option, if executed, would cover the period of date to date.

**29. Severability**

The invalidity of any section, subsection, clause or provision of this Contract shall not affect the validity of the remaining sections, subsections, clauses or provisions of this Contract.

**30. Substantial Performance**

This Contract shall be deemed to be substantially performed only when fully performed according to its terms and conditions and any written amendments or supplements.

**31. Taxes**

The Commission is exempt from most state and local taxes and many federal taxes. The Commission will not be responsible for any taxes levied on the Contractor as a result of this Contract.

**32. Termination for Convenience**

This Contract may be terminated, in whole or in part, by the Commission whenever, for any reason, the Commission determines that such termination is in its best interest. Termination of services shall be effected by delivery to the Contractor of a Termination Notice at least thirty (30) days prior to the termination effective date, specifying the extent to which performance of services under such termination becomes effective. The Contractor shall be compensated for services properly rendered prior to the effective date of termination. The Commission will not be liable for services performed after the effective date of termination. The Contractor shall be compensated for services herein provided but in no case shall total payment made to the Contractor exceed the original contract price or shall any price increase be allowed on individual line items if canceled only in part prior to the original termination date.

**33. Termination for Default**

A. With the provision of thirty (30) days notice to the Contractor, the Commission may terminate this Contract in whole or in part if the Contractor fails to:

1. Correct or cure any breach of this Contract; the time to correct or cure the breach may be extended beyond thirty (30) days if the Commission determines progress is being made and the extension is agreed to by the parties;
2. Deliver the supplies or perform the services within the time specified in this Contract or any extension;
3. Make progress so as to endanger performance of this Contract; or
4. Perform any of the other provisions of this Contract.

B. If the Commission terminates this Contract in whole or in part, it may acquire, under the terms and in the manner the Commission considers appropriate, supplies or services similar to those terminated, and the Contractor will be liable to the Commission for any excess costs for those supplies or services. However, the Contractor shall continue the work not terminated.

C. The Commission shall pay the contract price for completed supplies delivered and services accepted. The Contractor and the Commission shall agree on the amount of payment for manufacturing materials delivered and accepted and for the protection and preservation of the property. Failure to agree will be a dispute under the Disputes clause. The Commission may withhold from these amounts any sum the Commission determines to be necessary to protect the Commission against loss because of outstanding liens or claims of former lien holders.

D. The rights and remedies of the Commission in this clause are in addition to any other rights and remedies provided by law or equity or under this Contract.

**34. Time of Essence**

The Contractor, by his signature, recognizes and understands that time is of the essence in the performance of all duties and obligations under this contract.

**35. Employment Eligibility Verification**

The Contractor affirms under the penalties of perjury that he/she/it does not knowingly employ an unauthorized alien. The Contractor shall enroll in and verify the work eligibility status of all his/her/its newly hired employees through the E-Verify program as defined in IC 22-5-1.7-3. The Contractor is not required to participate should the E-Verify program cease to exist. Additionally, the Contractor is not required to participate if the Contractor is self-employed and does not employ any employees. The Contractor shall not knowingly employ or contract with an unauthorized alien. The Contractor shall not retain an employee or contract with a person that the Contractor subsequently learns is an unauthorized alien.

The Contractor shall require his/her/its subcontractors, who perform work under this contract, to certify to the Contractor that the subcontractor does not knowingly employ or contract with an unauthorized alien and that the subcontractor has enrolled and is participating in the E-Verify program. The Contractor agrees to maintain this certification throughout the duration of the term of a contract with a subcontractor. The Commission may terminate for default if the Contractor fails to cure a breach of this provision no later than thirty (30) days after being notified.

**36. Waiver of Rights**

No right conferred on either party under this Contract shall be deemed waived, and no breach of this Contract excused, unless such waiver is in writing and signed by the party claimed to have waived such right. Neither the Commission's review, approval or acceptance of, nor payment for, the services required under this Contract shall be construed to operate as a waiver of any rights under this Contract or of any cause of action arising out of the performance of this Contract, and the Contractor shall be and remain liable to the Commission in accordance with applicable law for all damages to the Commission caused by the Contractor's negligent performance of any of the services furnished under this Contract.

**37. Warranty**

Contractor warrants, represents and assures that the schedule of all materials and service requirements for **Production Services** shall be free from defect of material or workmanship and to conform in all respects to the Specifications set forth on **Attachment** and will meet or exceed the presentations contained herein.

**38. Work Standards**

The Contractor shall execute its responsibilities by following and applying at all times the highest professional and technical guidelines and standards. If the Commission becomes dissatisfied with the work product of or the working relationship with those individuals assigned to work on this Contract, the Commission may request in writing the replacement of any or all such individuals, and the Contractor shall grant such request

**39. Non-Collusion and Acceptance**

The undersigned attests, subject to the penalties for perjury, that he/she is the representative, agent, member or officer of the Contractor, that he/she has not, nor has any other member, employee, representative, agent or officer of the Contractor, directly or indirectly, to the best of his/her knowledge, entered into or offered to enter into any combination, collusion or agreement to receive or pay, and that he/she has not received or paid, any sum of money or other consideration for the execution of this Contract other than that which appears upon the face hereof.