

Kristy -
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-Yvonne

PROFESSIONAL SERVICES AGREEMENT
WITH KCPR 91.3 STEREO, CAL POLY RADIO
TO PROVIDE BROADCASTING SERVICES

This agreement, made this 17th, day of July, 1990, by and between the CITY OF SAN LUIS OBISPO, California (hereinafter referred to as "City"), and ASSOCIATED STUDENTS, INC. on behalf of KCPR 91.3 FM STEREO, CAL POLY RADIO, (hereinafter referred to as "Contractor").

WITNESSETH

WHEREAS, the City desires to broadcast to the public the biweekly City Council meetings as an integral part of it's Public Information Program; and

WHEREAS, City desires to engage Contractor to provide broadcast services by reason of its qualifications and experience for performing such services, and Contractor has offered to provide the required services on the terms and in the manner set forth herein.

NOW, THEREFORE, in consideration of their mutual covenants, the parties hereto agree as follows:

1. PROGRAM COORDINATION

- a. City. The City Clerk's designated representative, Kim Condon, shall be the Program Manager for all purposes under this agreement. She shall supervise the progress and execution of this agreement.
- b. Contractor. Contractor shall assign a single Program Manager to have overall responsibility for the progress and execution of this agreement for Contractor. Yvonne Moore is hereby designated as the Program Manager for Contractor. Should circumstances or conditions subsequent to the execution of this agreement require a substitute Program Manager for any reason, the Program Manager designee shall be subject to the prior written acceptance and approval by City Program Manager.

2. DUTIES OF CONTRACTOR

- a. Services to be furnished. Under general direction of the Program Manager, Contractor shall provide all specified service as set forth in Exhibit "1", attached hereto and incorporated herein by this reference.
- b. Laws to be observed. Contractor shall:

- (1) Procure all permits and licenses, pay all charges and fees, and give all notices which may be necessary and incidental to the due and lawful prosecution of the services to be performed by Contractor under this agreement;
- (2) Keep itself fully informed of all existing and proposed federal, state and local laws, ordinances, regulations, orders, and decrees which may affect those engaged or employed under this agreement, any materials used in Contractor's performance under this agreement, or the conduct of services under this agreement;
- (3) At all times observe and comply with, and cause all of its employees to observe and comply with all of said laws, ordinances, regulations, orders, and decrees mentioned above.
- (4) Immediately report to the City's Program Manager in writing any discrepancy or inconsistency it discovers in said laws, ordinances, regulations, orders, and decrees mentioned above in relation to any plans, drawings, specifications, or provisions of this agreement.

C. Qualifications of Contractor. Contractor represents that it is qualified to furnish the services described under this agreement.

3. DUTIES OF CITY

City agrees to cooperate with Contractor in its performance of that work described in Exhibit "1", attached hereto and incorporated by this reference and shall in consideration of services received provide the following:

- a. Adequate space in which to conduct services during broadcast of meetings.
- b. Assume all costs incurred from use of telephone in connection with service.
- c. Advance notice of any changes in the Council's schedule.
- d. Agenda information to assist the Contractor with determining newsworthy items.

4. COMPENSATION

Contractor will bill City and be compensated in accordance with Exhibit "1" attached hereto and incorporated by this reference, as currently exists or as may be amended.

5. CONTRACT TIME PERIOD

Program is for the period July 17, 1990 to July 17, 1991. Contractor shall perform services as is designated in Exhibit "1".

6. TEMPORARY SUSPENSION

The City Program Manager shall have the authority to suspend this agreement wholly or in part, for such period as deemed necessary due to unfavorable conditions or to the failure on the part of the Contractor to perform any provision of this agreement. Contractor will be paid the compensation due and payable to the date of temporary suspension. The City will provide Contractor with a written statement outlining reasons or conditions of suspension.

7. TERMINATION

a. Right to terminate. The City retains the right to terminate this agreement for any reason by notifying Contractor in writing sixty (60) days prior to termination and by paying the compensation due and payable to the date of termination; provided, however, if this agreement is terminated for fault of Contractor, City shall be obligated to compensate Contractor only for that portion of contractor services which are of benefit to City.

8. INSPECTION

Contractor shall furnish City with every reasonable opportunity for City to ascertain that the services of Contractor are being performed in accordance with the requirements and intentions of this agreement. All work done shall be subject to the City Program Manager's inspection and approval. The inspection of such work shall not relieve Contractor of any of its obligations to fulfill its agreement as prescribed.

9. INDEPENDENT JUDGMENT

Failure of City to agree with Contractor's independent findings, conclusions, or recommendations, if the same are called for under this agreement, on the basis of differences in matters of judgment shall not be construed as a failure on the part of Contractor to meet the requirements of this agreement.

10. ASSIGNMENT: SUBCONTRACTORS: EMPLOYEES

This agreement is for the performance of professional broadcasting services of the Contractor and is not assignable by the Contractor without prior consent of the City in writing.

11. NOTICE

All notices hereunder shall be given in writing and mailed, postage prepaid, by Certified Mail, addressed as follows:

To City:

Pamela Voges, City Clerk
City of San Luis Obispo
P.O. Box 8100
San Luis Obispo, CA 93403-8100

To Contractor:

KCPR Radio Station
Cal Poly Campus
San Luis Obispo, CA 93407
Atten: Yvonne Moore

12. INTEREST OF CONTRACTOR

Contractor covenants that it presently has no interest, and shall not acquire any interest, direct or indirect, financial or otherwise, which would conflict in any manner or degree with the performance of the services hereunder. Contractor further covenants that, in the performance of this agreement, no subcontractor or person having such an interest shall be employed. Contractor certifies that no one who has or will have any financial interest under this agreement is an officer or employee of the City. It is expressly agreed that, in the performance of the services hereunder, Contractor shall at all times be deemed an independent contractor and not an agent or employee of City.

13. INDEMNITY

Contractor hereby agrees to indemnify and save harmless City, its officers, agents, and employees from:

- A. Any and all claims and demands which may be made against City, its officers, agents or employees by reason of any injury to or death of any person or corporation caused by any negligent act or omission of Contractor under this agreement or of Contractor's employees or agents;
- B. Any and all damage to or destruction of the property of City, its officers, agents, or employees, occupied or used by or in the care, custody, or control of Contractor, or in proximity to the site of Contractor's work, caused by any negligent act or omission of Contractor under this agreement or of Contractor's employees or agents;

- C. Any and all claims and demands which may be made against City, its officers, agents, or employees by reason of any injury to or death of or damage suffered or sustained by any employee or agent of Contractor under this agreement, however caused, excepting, however, any such claims and demands which are the result of the negligence or willful misconduct of City, its officers, agents, or employees;
- D. Any and all claims and demands which may be made against City, its officers, agents, or employees by reason of any infringement or alleged infringement of any patent rights or claims caused by the use of any apparatus, appliance, or materials furnished by Contractor under this agreement; and
- E. Any and all penalties imposed or damages sought on account of the violation of any law or regulation or of any term or condition of any permit, when said violation of any law or regulation or of any term or condition of any permit is due to negligence on the part of the Contractor.

Contractor, at its own costs, expense, and risk, shall defend any and all suits, actions, or other legal proceedings that may be brought against or for employees on any such claim or demand of such third persons, or to enforce any such penalty, and pay and satisfy any judgment or decree that may be rendered against City, its officers, agents, or employees in any such suit, action or other legal proceeding, when same were due to negligence of the Contractor.

14. WORKERS COMPENSATION

Contractor certifies that it is aware of the provisions of the Labor Code of the State of California, which require every employer to be insured against liability for workers compensation or to undertake self-insurance in accordance with the provisions of that code, and it certifies that it will comply with such provisions before commencing the performance of the work of this agreement.

15. INSURANCE

At the request of the City, Contractor shall provide proof of comprehensive general liability insurance (\$500,000) and automobile insurance.

16. AGREEMENT BINDING

The terms, covenants, and conditions of this agreement shall apply to, and shall bind, the heirs, successors, executors, administrators, assigns, and subcontractors of both parties.

17. WAIVERS

The waiver by either party of any breach or violation of any term, covenant, or condition of this agreement or of any provision, ordinance, or law shall not be deemed to be a waiver of any subsequent breach or violation of the same or of any other term, covenant, condition, ordinance, or law. The subsequent acceptance by either party of any fee or other money which may become due hereunder shall not be deemed to be a waiver of any preceding breach or violation by the other party of any term, covenant, or condition of this agreement or of any applicable law or ordinance.

18. COSTS AND ATTORNEY'S FEES

The prevailing party in any action between the parties to this agreement brought to enforce the terms of this agreement or arising out of this agreement or arising out of this agreement may recover its reasonable costs and attorney's fees expended in connection with such an action from the other party.

19. DISCRIMINATION

No discrimination shall be made in the employment of persons under this agreement because of the race, color, national origin, ancestry, religion or sex of such person. If Contractor is found in violation of the nondiscrimination provisions of the State of California Fair Employment Practices Act or similar provisions of federal law or executive order in the performance of this agreement, it shall thereby be found in material breach of this agreement. Thereupon, City shall have the power to cancel or suspend this agreement, in whole or in part, or to deduct from the amount payable to Contractor the sum of Twenty-five Dollars (\$25) for each person for each calendar day during which such person was discriminated against, as damages for said breach of contract or both. Only a finding of the State of California Fair Employment Practices Commission or the equivalent federal agency or officer shall constitute evidence of a violation of contract under this paragraph.

If Contractor is found in violation of the nondiscrimination provisions of this agreement or the applicable affirmative action guidelines pertaining to this agreement, Contractor shall be found in material breach of the agreement. Thereupon, City shall have the power to cancel or suspend this agreement, in whole or in part, or to deduct from the amount payable to Contractor the sum of Two Hundred Fifty Dollars (\$250) for each calendar day during which Contractor is found to have been in such noncompliance as damages for said breach of contract, or both.

20. AGREEMENT CONTAINS ALL UNDERSTANDINGS

This document represents the entire and integrated agreement between City and Contractor and supersedes all prior negotiations, representations, or agreements, either written or oral. This document may be amended only by written instrument, signed by both City and Contractor. All provisions of this agreement are expressly made conditions. This agreement shall be governed by the laws of the State of California.

IN WITNESS WHEREOF, City and Contractor have executed this agreement on the day and year first above written.

KCPR 91.3 FM STEREO

By Wonne Moore
General Manager

By Rye Alamy
Executive Director

CITY OF SAN LUIS OBISPO

By John Dunn
John Dunn, City Administrative Officer

Approved as to form:

By Jeffrey Jorgensen
City Attorney

DH\kcpr

EXHIBIT "1"

- 1) The Contractor will broadcast the City Council meetings on the first and third Tuesdays of each month for twelve consecutive months beginning July 17, 1990. No fewer than twenty-six meetings will be broadcast during this period. The Contractor will broadcast the meetings between the hours of 7:00 pm and 12:00 midnight. Upon reasonable notice, the Contractor will broadcast the meetings beyond 12:00 midnight in order to complete items of interest to the City's citizens.
- 2) The Contractor will receive \$240 for each City Council meeting that is broadcast. The City will be billed for broadcast services by the Contractor on a semi-annual basis. These billings will occur on September 1, 1990 and February 1, 1991. For the term of this contract, total billings will not exceed \$6,240 unless the City requests additional broadcast services and the Contractor agrees to provide the additional services. Should the City request additional broadcast services beyond the 26 meetings provided for in this contract, the Contractor will receive \$250 per meeting.
- 3) The Contractor will not be responsible for broadcasting meetings when the University is not in session. The Contractor will, however, advise the City's Project Manager of the University's holiday schedule as soon as it is available so that the Contractor and the City's Project Manager can agree on a broadcast schedule for the term of the contract.
- 4) If the Contractor is unable to broadcast a Regular City Council meeting(s) due to academic hiatus or pre-emption, the Contractor will substitute the broadcast of an adjourned City Council meeting(s) as requested no less than 10 days prior to the meeting by the City Program Manager. If the Contractor is unable to broadcast on a substituted date, the payment of \$240 will be forfeited and deducted from the semi-annual billing for each meeting not broadcast.