

RESOLUTION NO. 088, SERIES 2018

A RESOLUTION PURSUANT TO THE CAPITAL AND OPERATING BUDGET ORDINANCES, APPROVING THE APPROPRIATION TO FUND THE FOLLOWING NONCOMPETITIVELY NEGOTIATED PROFESSIONAL SERVICE CONTRACT – (LOUISVILLE FEDERATION OF MUSICIANS LOCAL NUMBER 11-637 - \$30,000.00).

Sponsored By: President David James

BE IT RESOLVED BY THE LEGISLATIVE COUNCIL OF THE LOUISVILLE/JEFFERSON COUNTY METRO GOVERNMENT (THE COUNCIL) AS FOLLOWS:

SECTION I: The following appropriation for the listed contract is hereby approved:

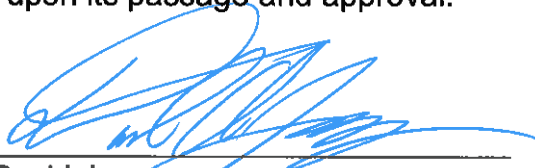
METRO COUNCIL

\$30,000.00 for a noncompetitively negotiated Professional Service Contract with Louisville Federation of Musicians Local Number 11-637 for professional services regarding musical performances from July 1, 2018 through June 30, 2019.

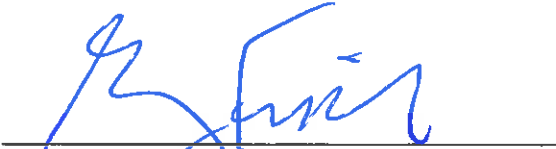
SECTION II: This Resolution shall take effect upon its passage and approval.



H. Stephen Ott
Metro Council Clerk



David James
President of the Council



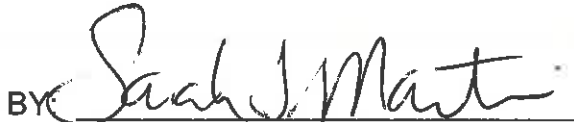
Greg Fischer
Mayor

6/29/18

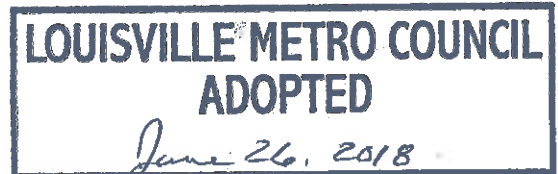
Approval Date

APPROVED AS TO FORM AND LEGALITY:

Michael J. O'Connell
Jefferson County Attorney



BY





LOUISVILLE METRO COUNCIL
CLERK'S OFFICE

H. STEPHEN OTT
CLERK OF THE COUNCIL

June 18, 2018

Office of Management and Budget (OMB)
Louisville Metro Government
611 W. Jefferson Street
Louisville, KY 40202

RE: No Bid Contract

To Whom It May Concern:

The Louisville Federation of Musicians, Local 11-637 is the only contractor in the area that provides music services at this level and cost. They have provided these services to all 26 Metro Council districts for several years.

Please contact my office if you need additional information or have any questions.

Sincerely,

A handwritten signature in blue ink, appearing to read "H. Stephen Ott".

H. Stephen Ott
Clerk of the Louisville Metro Council



**Office of Management and Budget
Division of Purchasing
Non-Competitive Contract Request Form**

Department	Metro Council	Department Contact	H. Stephen Ott
Contact Email	stephen.ott@louisvilleky.gov	Contact Phone	574-3085

Contract Type: check one	New	Amendment		
		Additional Funds	Time Extension	Scope
Professional Service	✓			
Sole Source (goods/services)				
	Start	End		
Requested Contract Dates (MM/DD/YYYY)	07/01/2018	06/30/2019		

VENDOR INFORMATION

Vendor Legal Name	Louisville Federation of Musicians Local Number 11-637				
DBA					
Point of Contact	Lisa Weaver	Email	musunion@louisvillemusicians.org		
Street	1436 Bardstown Rd.				
Suite/Floor/Apt		Phone			
City	Louisville	State	KY	Zip Code	40204-1411
Federal Tax ID#		SSN# (If sole proprietor)			
Louisville Revenue Commission Account #					
Human Relations Commission Certified Vendors	Certified Minority Owned Business	Certified Woman Owned business	Disabled Owned business		
Select if applicable					

FINANCIAL INFORMATION

Not to Exceed Contract Amount	\$30,000		(including reimbursement expenses, if applicable)		
Fund Source: General Fund					
Federal Grant	Federal Granting Agency				
Other	Describe:				
Account Code String #					
Payment Rate	per hour		per day		per service
	per month		Other	see attached CMP Scale	
Payment Frequency	Monthly		Upon Completion / Delivery		
	Quarterly	✓	Other	per event	



**Office of Management and Budget
Division of Purchasing
Non-Competitive Contract Request Form**

CONTRACT SCOPE and PURPOSE (Attach additional documentation if necessary)

Amendments: Describe the circumstances under which a time extension or scope change is needed.

New: Be specific about the work to be performed / product to be purchased including but not limited to: scope of work; description of service; work product created; why the service / product is necessary; and benefit to Louisville Metro Government.

The Louisville Federation of Musicians Local Number 11-637 provides local union musicians and bands for use by the Louisville Metro Council offices for events in their particular districts. Compensation is reimbursed by the terms of the attached CMP Scale not to exceed \$30,000.

JUSTIFICATION FOR NON-COMPETITIVE GOOD/SERVICE (Attach additional documentation if necessary)

Provide justification including but not limited to: a description of the unique features that prohibit competition; research conducted to verify the vendor as the only known source (sole source); why the service (PSC) is not feasible to be provided by LMG staff or expertise does not exist; known compatibility, proprietary and/or timing issues.

The Louisville Federation of Musicians, Local 11-637 is the only contractor in the area that provides music services at this level and cost. They have provided these services to all 26 Metro Council districts for several years.

AUTHORIZATIONS: Per KRS 45A.380, I have determined that competition is not feasible for the above described good / service and there is a single source within a reasonable geographical area of the good / service to be procured; or the resulting contract is for the services of a licensed professional, technician, artist, or other non-licensed professional service.

Department Director _____

David James
Signature

David James, Council President

Printed Name

Date 6-21-2018

Purchasing Director _____

Joel Neaveill
Signature

Joel Neaveill

Date 6/25/18

AGREEMENT

THIS PROFESSIONAL SERVICE CONTRACT, made and entered into by and between the **LOUISVILLE/JEFFERSON COUNTY METRO GOVERNMENT**, by and through its **METRO COUNCIL** herein referred to as "**METRO GOVERNMENT**", and **LOUISVILLE FEDERATION OF MUSICIANS LOCAL NUMBER 11-637**, a Kentucky corporation, with offices located at 1436 Bardstown Road, Louisville, Kentucky 40204, herein referred to as "**CONSULTANT**",

WITNESSETH:

WHEREAS, the Metro Government is in need of certain professional services with respect to musical performances; and

WHEREAS, the Consultant has been determined by the Metro Government to have the necessary experience, expertise and qualifications to provide those services,

NOW, THEREFORE, it is agreed by and between the parties hereto as follows:

I. SCOPE OF PROFESSIONAL SERVICES

A. Consultant shall, at the request of the Metro Government, provide services under the terms of this professional Agreement. The Consultant's work product may be reviewed from time to time by the Metro Government for purposes of determining that the services provided are within the scope of this Agreement.

B. Consultant, while performing the services rendered pursuant to this Agreement, may incidental thereto utilize agents or employees of such Consultant. However, such use must be documented in the monthly invoice submitted for those services rendered. All musical services provided under this Agreement shall be administered by the Consultant. All agents, employees or musical ensembles utilized by

the Consultant in the execution of this Agreement shall be members in good standing of Consultant.

C. If from time to time Consultant needs to utilize the records or personnel of the Metro Government relative to performing the services required of this Agreement, then Consultant shall notify the proper agent of the Metro Government of this need and arrangements may be made for that contingency. However, at no time shall the Metro Government make available its resources without the full consent and understandings of both parties.

D. The services of Consultant shall include but not be limited to the following:
To provide musical performances and musical ensembles.

II. FEES AND COMPENSATION

A. Consultant shall be reimbursed for professional services rendered according to the terms of Attachment A attached hereto and fully incorporated herein. Total compensation payable to Consultant for services rendered pursuant to this agreement shall not exceed **THIRTY THOUSAND DOLLARS (\$30,000.00)**.

B. Unless otherwise agreed to in writing by the Metro Government, services shall be rendered and payment therefor shall be made at monthly intervals throughout the duration of this Agreement. Payment shall only be made pursuant to a detailed invoice presented monthly, which invoice shall indicate a descriptive daily accounting of the hours expended in service under the contract and the particular nature of such service. Copies of invoices or receipts for third party charges must be included with the Consultant's invoice when payment is requested. In the event payment is made in lump sum at the end of the service period, Consultant's final invoice shall indicate a descriptive daily accounting of hours expended as described heretofore.

C. The Metro Government shall not reimburse out of pocket expenses under this Agreement.

D. Consultant, to the extent that it provides the same or related services to other parties agrees to pro-rate its billings to the Metro Government which are of benefit to the other parties and to provide documentation to all parties to verify the pro-ration of such billings. In no event will the Metro Government pay bills which are considered to be double billing (i.e. billing two different parties for the same work).

III. DURATION

A. This is a professional service contract which shall begin July 1, 2018 and shall continue through and including June 30, 2019.

B. This Agreement may be terminated by submitting thirty (30) days' written notice to the non-terminating party of such intent to terminate. This Agreement may also be terminated by any party, without notice to the non-terminating party, because of fraud, misappropriation, embezzlement or malfeasance or a party's failure to perform the duties required under this Agreement. A waiver by either party of a breach of this Agreement shall not operate or be construed as a waiver of any subsequent breach.

C. In the event of termination, payment for services complete up to and including date of termination shall be based upon work completed at the rates identified in this Agreement. In the event that, during the term of this Agreement, the Metro Council fails to appropriate funds for the payment of the Metro Government's obligations under this Agreement, the Metro Government's rights and obligations herein shall terminate on the last day for which an appropriation has been made. The Metro Government shall deliver notice to Consultant of any such non-appropriation not later than 30 days after the Metro Government has knowledge that the appropriation has not been made.

IV. EMPLOYER/EMPLOYEE RELATIONSHIP

It is expressly understood that no employer/employee relationship is created by this Agreement nor does it cause Consultant to be an officer or official of the Metro Government. By executing this Agreement, the parties hereto certify that its performance will not constitute or establish a violation of any statutory or common law principle pertaining to conflict of interest, nor will it cause unlawful benefit or gain to be derived by either party.

V. RECORDS-AUDIT

Consultant shall maintain during the course of the work, and retain not less than five years from the date of final payment on the contract, complete and accurate records of all of Consultant's costs which are chargeable to the Metro Government under this Agreement; and the Metro Government shall have the right, at any reasonable time, to inspect and audit those records by authorized representatives of its own or of any public accounting firm selected by it. The records to be thus maintained and retained by Consultant shall include (without limitation): (a) payroll records accounting for total time distribution of Consultant's employees working full or part time on the work (to permit tracing to payrolls and related tax returns), as well as canceled payroll checks, or signed receipts for payroll payments in cash; (b) invoices for purchases receiving and issuing documents, and all the other unit inventory records for Consultant's stores stock or capital items; and (c) paid invoices and canceled checks for materials purchased and for subcontractors' and any other third parties' charges.

VI. INSURANCE REQUIREMENTS

Insurance coverage shall be required of Consultant in accordance with Schedule B attached hereto.

VII. HOLD HARMLESS AND INDEMNIFICATION CLAUSE

The Consultant shall indemnify, hold harmless, and defend the Louisville/Jefferson County Metro Government, its elected and appointed officials, employees, agents and successors in interest from all claims, damages, losses and expenses including attorneys' fees, arising out of or resulting, directly or indirectly, from the Consultant's (or Consultant's Subcontractors, if any) performance or breach of the contract provided that such claim, damage, loss, or expense is: (1) attributable to personal injury, bodily injury, sickness, death, or to injury to or destruction of property, including the loss of use resulting therefrom, or breach of contract, and (2) not caused by the negligent act or omission or willful misconduct of the Louisville/Jefferson County Metro Government or its elected and appointed officials and employees acting within the scope of their employment. This Hold Harmless and Indemnification Clause shall in no way be limited by any financial responsibility or insurance requirements and shall survive the termination of this Contract.

VIII. REPORTING OF INCOME

The compensation payable under this Agreement may be subject to federal, state and local taxation. Regulations of the Internal Revenue Service require the Metro Government to report all amounts in excess of \$600.00 paid to non-corporate contractors. Consultant agrees to furnish the Metro Government with its taxpayer identification number (TIN) prior to the effective date of this Agreement. Consultant further agrees to provide such other information to the Metro Government as may be required by the IRS or the State Department of Revenue.

IX. GOVERNING LAW

This Agreement shall be governed by and construed in accordance with the laws of the State of Kentucky. In the event of any proceedings regarding this

Agreement, the Parties agree that the venue shall be the state courts of Kentucky or the U.S. District Court for the Western District of Kentucky, Louisville Division. All parties expressly consent to personal jurisdiction and venue in such Court for the limited and sole purpose of proceedings relating to this Agreement or any rights or obligations arising thereunder. Service of process may be accomplished by following the procedures prescribed by law.

X. AUTHORITY

The Consultant, by execution of this Agreement, does hereby warrant and represent that he is qualified to do business in the State of Kentucky, has full right, power and authority to enter into this Agreement.

XI. CONFLICTS OF INTEREST

Pursuant to KRS 45A.455:

(1) It shall be a breach of ethical standards for any employee with procurement authority to participate directly in any proceeding or application; request for ruling or other determination; claim or controversy; or other particular matter pertaining to any contract, or subcontract, and any solicitation or proposal therefor, in which to his knowledge:

(a) He, or any member of his immediate family has a financial interest therein; or

(b) A business or organization in which he or any member of his immediate family has a financial interest as an officer, director, trustee, partner, or employee, is a party; or

(c) Any other person, business, or organization with whom he or any member of his immediate family is negotiating or has an arrangement concerning prospective

employment is a party. Direct or indirect participation shall include but not be limited to involvement through decision, approval, disapproval, recommendation, preparation of any part of a purchase request, influencing the content of any specification or purchase standard, rendering of advice, investigation, auditing, or in any other advisory capacity.

(2) It shall be a breach of ethical standards for any person to offer, give, or agree to give any employee or former employee, or for any employee or former employee to solicit, demand, accept, or agree to accept from another person, a gratuity or an offer of employment, in connection with any decision, approval, disapproval, recommendation, preparation of any part of a purchase request, influencing the content of any specification or purchase standard, rendering of advice, investigation, auditing, or in any other advisory capacity in any proceeding or application, request for ruling or other determination, claim or controversy, or other particular matter, pertaining to any contract or subcontract and any solicitation or proposal therefor.

(3) It is a breach of ethical standards for any payment, gratuity, or offer of employment to be made by or on behalf of a subcontractor under a contract to the prime contractor or higher tier subcontractor or any person associated therewith, as an inducement for the award of a subcontract or order.

(4) The prohibition against conflicts of interest and gratuities and kickbacks shall be conspicuously set forth in every local public agency written contract and solicitation therefor.

(5) It shall be a breach of ethical standards for any public employee or former employee knowingly to use confidential information for his actual or anticipated personal gain, or the actual or anticipated personal gain of any other person.

XII. ENTIRE AGREEMENT

This Agreement constitutes the entire agreement and understanding of the parties with respect to the subject matter set forth herein and this Agreement supersedes any and all prior and contemporaneous oral or written agreements or understandings between the parties relative thereto. No representation, promise, inducement, or statement of intention has been made by the parties that is not embodied in this Agreement. This Agreement cannot be amended, modified, or supplemented in any respect except by a subsequent written agreement duly executed by all of the parties hereto.

XIII. OCCUPATIONAL HEALTH AND SAFETY

Consultant agrees to comply with all statutes, rules, and regulations governing safe and healthful working conditions, including the Occupational Health and Safety Act of 1970, 29 U.S.C. 650 *et. seq.*, as amended, and KRS Chapter 338. Consultant also agrees to notify the Metro Government in writing immediately upon detection of any unsafe and/or unhealthful working conditions detected at any Metro-owned property where Consultant performs work under this Agreement. Consultant agrees to indemnify, defend and hold the Metro Government harmless from all penalties, fines or other expenses arising out of the alleged violation of said laws.

XIV. SUCCESSORS

This Agreement shall be binding upon and inure to the benefit of the parties hereto and their respective heirs, successors and assigns.

XV. SEVERABILITY

If any court of competent jurisdiction holds any provision of this Agreement unenforceable, such provision shall be modified to the extent required to make it enforceable, consistent with the spirit and intent of this Agreement. If such a provision

cannot be so modified, the provision shall be deemed separable from the remaining provisions of this Agreement and shall not affect any other provision hereunder.

XVI. COUNTERPARTS

This Agreement may be executed in counterparts, in which case each executed counterpart shall be deemed an original and all executed counterparts shall constitute one and the same instrument.

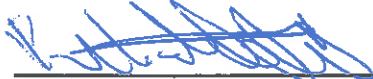
XVII. CALCULATION OF TIME Unless otherwise indicated, when the performance or doing of any act, duty, matter, or payment is required hereunder and a period of time or duration for the fulfillment of doing thereof is prescribed and is fixed herein, the time shall be computed so as to exclude the first and include the last day of the prescribed or fixed period of time. For example, if on January 1, Consultant is directed to take action within ten (10) calendar days, the action must be completed no later than midnight, January 11.

XVIII. CAPTIONS The captions and headings of this Agreement are for convenience and reference purposes only and shall not affect in any way the meaning and interpretation of any provisions of this Agreement.

XIX. VIOLATIONS OF AND COMPLIANCE WITH KENTUCKY LAWS The Consultant shall reveal any final determination of a violation by the Consultant or subcontractor within the previous five (5) year period pursuant to KRS Chapters 136, 139, 141, 337, 338, 341 and 342 that apply to the Consultant or subcontractor. The Consultant shall be in continuous compliance with the provisions of KRS Chapters 136, 139, 141, 337, 338, 341 and 342 that apply to the Consultant or subcontractor for the duration of the contract.

WITNESS the agreement of the parties hereto by their signatures affixed hereon.

APPROVED AS TO FORM AND LEGALITY:



MICHAEL J. O'CONNELL
JEFFERSON COUNTY ATTORNEY

Date: 6/26/18

LOUISVILLE/JEFFERSON COUNTY METRO GOVERNMENT



GREG FISCHER, MAYOR

Date: 6/29/18

METRO COUNCIL



DAVID JAMES, PRESIDENT

Date: _____



H. STEPHEN OTT, CLERK OF THE COUNCIL

Date: 6/28/2018

LOUISVILLE FEDERATION OF MUSICIANS LOCAL NUMBER 11-637

By: Ray Weaver

Title: Pres/Sec - Treas.

Date: 6.25.18

Taxpayer Identification No. (TIN): 

Louisville/Jefferson County Revenue Commission Account No.: _____

ATTACHMENT A

SCHEDULE B

I. INSURANCE REQUIREMENTS

Prior to commencing work, Consultant shall obtain at its own cost and expense the following types of insurance through insurance companies licensed in the State of Kentucky. Insurance written by non-admitted carriers will also be considered acceptable, in accordance with Kentucky Insurance Law (KRS 304.10-040). Workers' Compensation written through qualified group self-insurance programs in accordance with Kentucky Revised Statutes (KRS 342.350) will also be acceptable. **The Consultant shall not commence work under this Contract until all insurance required under the Contract Document has been obtained and until copies of policies or certificates thereof are submitted to and approved by the Louisville/Jefferson County Metro Government's Risk Management Division.** The Consultant shall not allow any sub-contractor to commence work until the insurance required of such sub-contractor has been obtained and copies of Certificates of Insurance retained by Consultant evidencing proof of coverages.

Without limiting Consultant's indemnification requirements, it is agreed that Consultant shall maintain in force at all times during the performance of this agreement the following policy or policies of insurance covering its operations, and require sub-contractor, if sub-contracting is authorized, to procure and maintain these same policies until final acceptance of the work by the Louisville/Jefferson County Metro Government. The Louisville/Jefferson County Metro Government may require Consultant to supply proof of sub-contractor's insurance via Certificates of Insurance, or at Louisville/Jefferson County Metro Government's option, actual copies of policies.

A. The following clause shall be added to the Consultant's (and approved sub-contractor) Commercial General Liability Policies:

1. "The Louisville/Jefferson County Metro Government, its elected and appointed officials, employees, agents and successors are added as an "Additional Insured" as respects operations of the Named Insured performed relative to the contract."

B. The insurance to be procured and maintained and **minimum** Limits of Liability shall be as follows, unless different limits are specified by addendum to the contract (and such minimum limits shall not limit access to the full amount of insurance available (whether through primary, excess or umbrella policies) on Contractor's or subcontractors policy(ies), if that/those policy(ies) provide for Limits above the minimum):

1. **COMMERCIAL GENERAL LIABILITY**, via the **Occurrence Form**, primary, noncontributory, with a **\$1,000,000** Combined Single Limit for any one Occurrence and **\$2,000,000** aggregate for Bodily Injury, Personal Injury, Property Damage, and Products/Completed Operations including:

- a. Premises - Operations Coverage
- b. Products and Completed Operations
- c. Contractual Liability
- d. Broad Form Property Damage
- e. Independent Contractors Protective Liability
- f. Personal Injury

2. **WORKERS' COMPENSATION** insuring the employers' obligations under Kentucky Revised Statutes Chapter 342 at Statutory Limits, and **EMPLOYERS' LIABILITY - \$100,000 Each Accident/\$500,000 Disease - Policy Limit/\$100,000 Disease - Each Employee.**

II. ACCEPTABILITY OF INSURERS

Insurance is to be placed with Insurance Companies with an A. M. Best Rating of no less than "A- VI", unless proper financial information relating to the Company is submitted to and approved by Metro's Risk Management Division.

III. MISCELLANEOUS

- A. The Consultant shall procure and maintain insurance policies as described herein and for which Metro Government shall be furnished Certificates of Insurance upon the execution of the Contract. The Certificates shall include provisions stating that the policies may not be The Certificates shall include the name and address of the person executing the Certificate of Insurance as well as the person's signature. If policies expire before the completion of the Contract, renewal Certificates of Insurance shall be furnished to Metro Government at least fifteen (15) days prior to the expiration of any policy(s).
- B. **Upon execution of the contract and upon expiration of the insurance coverages, the Certificate of Insurance as required above shall be furnished to:**

Louisville/Jefferson County Metro Government
Office of Management and Budget
Risk Management Division
611 West Jefferson Street
Louisville, KY 40202
- D. **CANCELLATION OR MATERIAL CHANGE OF COVERAGE: Consultant shall notify Metro Government's Risk Management Division of any policy cancellation within two (2) business days of its receipt of same. Upon any material change (changes that reduce/restrict limit or terms and conditions to your insurance coverage) in coverage as required above, Consultant shall notify Metro Government's Risk Management Division within two business days. If Consultant fails to notify Metro as required by this Agreement, Consultant agrees that such failure shall be a breach of this Agreement. Metro Government reserves the right to require the insurance policy(s) required above to be specifically endorsed to provide notice of cancellation and/or material change of coverage in accordance with policy provisions. When requested by the Metro Government, a copy of the policy endorsement shall be provided to Metro Government's Risk Management Division.**
- E. Approval of the insurance by Metro Government shall not in any way relieve or decrease the liability of the Consultant hereunder. It is expressly understood that Metro Government does not in any way represent that the specified Limits of Liability or coverage or policy forms are sufficient or adequate to protect the interest or liabilities of the Consultant.

NEW WORK DUES AMOUNTS
(Casual Engagement Scale)
as of January 1, 2017

No. of Musicians	No. of Hours	Scale	Work Dues @2.5%
1	2	113.00	2.83
1	3	129.00	3.23
1	4	145.00	3.63
2	2	188.00	4.71
2	3	214.00	5.35
2	4	240.00	6.00
3	2	263.00	6.58
3	3	299.00	7.48
3	4	335.00	8.38
4	2	338.00	8.45
4	3	384.00	9.62
4	4	430.00	10.77
5	2	413.00	10.35
5	3	469.00	11.75
5	4	525.00	13.15
6	2	488.00	12.23
6	3	554.00	13.88
6	4	620.00	15.53
7	2	563.00	14.11
7	3	639.00	16.01
7	4	715.00	17.91
8	2	638.00	15.99
8	3	724.00	18.14
8	4	810.00	20.29
9	2	713.00	17.87
10	2	788.00	19.75
10	3	894.00	22.40
10	4	1000.00	25.05
11	2	863.00	21.63
12	2	938.00	23.51
13	2	1013.00	25.39
14	2	1088.00	27.27
15	2	1163.00	29.15
16	2	1238.00	31.08
18	2	1388.00	34.79

Sideman scale: 2 Hrs \$75.00 3 Hrs \$85.00 4 Hrs \$95.00
Sideman work dues: 2 Hrs = \$1.88 3 Hrs = \$2.13 4 Hrs = \$2.38

NOTE: Jobs worked on Oaks Day, Derby Day and New Year's Eve should have all figures calculated at 150% of Scale and work dues figures adjusted accordingly.