WHEATON PARK DISTRICT PERFORMANCE AGREEMENT

THIS ENTERTAINMENT AGREEMENT (this "*Agreement*") by and between Wheaton Park District (hereinafter referred to as the "*Buyer*") and American English (the "*Band*") is made this 23rd day of February, 2023 ("*Effective Date*"). Buyer and Band are hereinafter sometimes individually referred to as a "Party" and collectively as "Parties."

WHEREAS, Buyer desires to hire Band, as an independent contractor, to provide the entertainment generally described below (the *"Performance"*) at Memorial Park in Wheaton, IL;

WHEREAS, Band desires to provide such Performance pursuant to the terms listed below;

NOW, THEREFORE, in consideration of the foregoing and the mutual promises hereinafter set forth, and for other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the Parties agree as follows:

1. **Date and Time of Performance**. The date of the Performance shall be Friday, June 23, 2023, and the time of the Performance shall be 8 – 9:30P. The Performance will have a duration of approximately 1.5 hours.

2. **Performance Description.** The entertainment to be provided by Band is generally described as family friendly Beatles Tribute Band. Additional details regarding the Performance are listed on Appendix A.

3. **Agreement to Perform**. Band agrees to provide the Performance in accordance with the terms of this Agreement and any addendums or riders hereto.

4. **Price of Performance**. Buyer agrees to pay Band for the Performance, an aggregate sum of Four Thousand Three Hundred Dollars ($4,300.00) with a deposit check of One Thousand Dollars ($1,000.00) due 30 days before the Performance date and the remainder by check immediately following the Performance.

5. **Suitability.** The Band agrees not to perform music that would generally be considered offensive, vulgar, obscene, or inappropriate for an all-ages audience. The Band and any of its entertainers shall at all times conduct themselves professionally, courteously, and appropriately at this all-age venue.

6. **Equipment.** Band is responsible for properly setting up and removing its equipment. Buyer is not responsible for Band's personal property and shall not be liable for any damages, lost or stolen property. All cords, cables, equipment, etc. must be properly and safely positioned so as not to create any hazards, tripping or otherwise, for patrons or staff.

7. **Adherence to Sound Restrictions.**

a. Band must strictly adhere to a maximum decibel level of 80 at the Sound tent located in Memorial Park (208 W. Union Ave.). All sound must cease at 9:30P per our local sound ordinance with the City of Wheaton.

	Decibel Level	Recorded Measurement Locations
7A to 9:30P	80 dB(A)	- Hale & Seminary, within park fence (east side) - Hale & Union, within park fence (northeast corner) - Wheaton & Union, within park fence (northwest corner) - Wheaton & Karlskoga, within park fence (southwest corner)

8. **Marketing.** Performances must be marketed and listed on Band's website, social media, and/or any email marketing that lists upcoming performances. It is the responsibility of the Band to submit timely to the Buyer promotional pictures, logo, approved video or sound bites for the purpose of advertising, as well as quickly review and approve any and all media requests from the Buyer for the purpose of promoting the event, its activities, and any associated ticket sales.

9. **Cancellation of Performance by Band.** In the event that Band or Band member is unable to perform its obligations under this Agreement due to proven sickness, accident, or any other legitimate condition beyond Band's control, Band shall make every effort to find a suitable replacement to perform in Band or Band member's place (a "Replacement Act") at no additional fee to the Buyer. Approval for any Replacement Act shall be subject to Buyer's approval. Band shall provide Buyer with as much advance notice as reasonably practicable under the circumstances regarding the potential need to cancel the Performance. If Band is no longer able to perform a refund of any deposit(s) paid by the Buyer is due back to the Buyer within seven (7) business days.

10. **Cancellation of Performance by Buyer.** In the event the performance is cancelled by the Buyer due to riot, epidemic, inclement weather or other acts of God, an incident that renders the venue unsafe for occupancy or use such as a loss of utilities or physical damage to the venue, a local or national security threat, or any other legitimate occurrence beyond Buyer's control, the Band hereby agrees to reschedule the Performance to another mutually agreed upon date. In the event that Performance is rescheduled, the full amount of payment due to the Band under this Agreement shall be paid upon Band's completion of Performance on rescheduled date. If a rescheduled Performance date cannot be mutually agreed upon by the parties, 25% of the agreed upon price of Performance will be paid to the Band within twenty (20) business days.

11. **Best Efforts.** In the event of potential inclement weather in the area on Performance date, the Band and Buyer [and their officials] agree to make every effort to ensure that the Performance occurs. The Band understands that changes in weather may result in an adjustment of performance times (forward or back) and/or shorter set lengths in order to accommodate any unforeseen weather-related circumstances.

12. **Designated Representatives**. The Buyer hereby designates Margie Wilhelmi as the Buyer's representative ("Buyer Representative") for all matters for the Buyer under this Agreement and with respect to the administration of this Agreement. The Buyer's Representative shall be available to the Band at all reasonable times for consultation with the Band. The Band shall confirm to the Buyer in writing any decision made by the Buyer's Representative. The Band hereby designates Eric Suszynski as the Band's Representative ("Band Representative") for all matters for the Band under this Agreement and with respect to the Services to be performed by the Band for the Buyer. The Band Representative shall be available to the Buyer at all reasonable times for consultation with the Buyer Representative. The Buyer may conclusively rely on the decisions made by the Band Representative, including those which modify this Agreement. Either Party may change its Representative under this Agreement by giving notice to the other Party as provided hereunder.

13. **Indemnification.** Each party (the "Indemnitor") agrees to indemnify and hold harmless the other party (the "Indemnitee") from and against any and all costs, losses, demands, claims or expenses (including court costs and reasonable attorneys' fees) whatsoever brought by a third party against, or incurred by, the Indemnitee arising from: a) the negligence, intentional or willful misconduct of the Indemnitor; b) Indemnitor's performance or failure to perform pursuant to this Agreement; or c) any claim arising out of, or in connection with, any service or obligations hereunder provided by the Indemnitor in connection with the Performance. In no event shall either party be liable to the other party for any indirect, special, or consequential damages (including, without limitation, damages for loss of profits or expected savings or other economic losses) arising out of or in connection with this Agreement or its subject matter, regardless of whether such party knows or should know of the possibility of such damages. The foregoing exclusions and limitations shall apply to all claims and actions of any kind, whether based on contract, tort (including, but not limited to, negligence), or any other grounds, regardless of the form of action.

14. **Indemnity for Copyright Infringement.** The Band represents and warrants that it is knowledgeable about the copyright laws of the United States as applicable to the Performance and that the Band shall not perform any copyrighted materials of others during the Performance without full compliance with such applicable copyright laws. In the event that the Band breaches his representation, warranty and covenant, Band hereby agrees to INDEMNIFY AND HOLD HARMLESS Buyer and its employees, guests, agents and assigns from and against any and all liability, loss, damages, claims and expenses (including attorney's fees) arising out of such breach.

15. **Assignment.** Neither party may assign, directly or indirectly, by operation of law, change of control or otherwise, this Agreement or any rights or obligations hereunder, without the prior written consent of the other party, which shall not be unreasonably withheld. Any attempt to assign this Agreement in contravention of this Section 14 shall be void and of no force and effect.

16. **No Liability**. The Buyer shall not be responsible or liable for any injury, damages, loss or costs sustained or incurred by any person including, without limitation the Band's employees, volunteers or agents, or for any damage to, destruction, theft or misappropriation of any property, relating to the Band's services outlined in this Agreement. The Buyer shall not be liable for acts or omissions of the Band or any of the Band's employees, volunteers or agents or other persons purporting to act at the direction or request, on behalf, or with the implied or actual consent of the Band.

17. **Independent Contractor.** The relationship between the Buyer and the Band is that of an independent contractor. The Band shall supply all personnel, equipment, materials and supplies at its own expense, except as specifically set forth herein. The Band shall not be deemed to be, nor shall it represent itself as, employees, partners or joint venturers of the Buyer.

18. **No Third-Party Beneficiary.** This Agreement is entered into solely for the benefit of the contracting parties, and nothing in this Agreement is intended, either expressly or impliedly, to provide any right or benefit of any kind whatsoever to any person and/or entity who is not a party to this Agreement or to acknowledge, establish or impose any legal duty to any third party.

19. **Dispute Resolution.** In the event of any dispute arising out of this Agreement or the relationship of the parties, the parties shall use good faith efforts to resolve their differences amicably. In the event they are unsuccessful, the parties agree not to commence litigation until attempting to resolve their dispute through mediation. Either party may initiate the mediation process with thirty (30) days prior written notice to the other party. The dispute shall be submitted to

mediation in Wheaton, Illinois. Costs of mediation shall be borne equally by the parties. Mediation of the dispute shall be completed within fifteen (15) days of commencement, unless the parties extend the time by mutual agreement or unless the mediator declares the parties to be at an impasse. Any statements made by any person during the mediation are not admissible in any subsequent litigation proceeding. Nothing shall preclude the Parties from pursuing litigation as addressed in Paragraph 21, should the use of mediation not adequately resolve the dispute.

20. **Governing Law and Venue**. This Agreement shall be governed by the laws of the State Illinois without regard to conflict of laws principles that may require the application of the laws of any other jurisdiction. With respect to any suit arising out of or in connection with this Agreement that is not resolved under Section 20 of this Agreement, each party consents and submits to the exclusive jurisdiction of competent state and federal courts in the State of Illinois for any litigation or dispute arising under this Agreement and to the venue of such litigation or dispute in the city or county in which Buyer is located.

21. **No Waiver**. Waiver of any terms of this agreement shall not be valid unless it is in writing and signed by all Parties. The failure of either Party to enforce the provisions of this Agreement, or require performance by the other Party of any of the provisions, shall not be construed as a waiver of such provisions or affect the right of that Party to thereafter enforce the provisions of this Agreement. Waiver of any breach of this Agreement shall not be held to be a waiver of any other or subsequent breach of the Agreement.

22. **No Waiver of Tort Immunity**. Nothing contained in this Agreement shall be construed or deemed to diminish or constitute a waiver or relinquishment by the Buyer of the rights, privileges, defenses and immunities available or afforded to it under the Illinois Local Governmental and Governmental Employee's Tort Immunity Act or under other State statutes affording similar protections.

23. **Notice.** Any notice shall be in writing and shall be effective (i) when personally delivered or transmitted via electronic mail with receipt confirmed; (ii) the next business day following deposit with a reputable courier service for overnight delivery; or (iii) five (5) business days following deposit in the United States mail, postage prepaid, registered or certified. All notices shall be forwarded to the address of each party listed in Appendix A of this Agreement.

24. **Entire Agreement**. This Agreement shall constitute the entire agreement of the parties as of the Effective Date. There are no agreements, understandings, representations or warranties between the parties other than those set forth in this Agreement. Should any section, or portion thereof, of this Agreement be held invalid by reason of any law, statute or regulation existing now or in the future in any jurisdiction by any court of competent authority or by a legally enforceable directive of any governmental body, such section or portion thereof shall be validly reformed so as to approximate the intent of the parties as nearly as possible and, if unenforceable, shall be deemed divisible and deleted with respect to such jurisdiction; and this Agreement shall not otherwise be affected. No amendment or modification shall be made to this Agreement unless it is in writing and signed by both Parties.

25. **Headings.** The heading of each paragraph of this Agreement are for convenience and reference purposes only and in no way define, limit or describe the scope or intent of said paragraphs or of this Agreement nor in any way affect this Agreement.

26. **Counterparts.** This Agreement may be simultaneously executed in two (2) or more counterparts, each of which shall be considered an original instrument. Each counterpart will be considered a valid and binding original. Once signed, any reproduction of this Agreement made by reliable means (e.g., photocopy, facsimile) is considered an original

27. The Buyer reserves the right to cancel this agreement immediately due to Band's material breach of this Agreement, or for any reason other than a material breach of this Agreement upon 7 days' notice provided to the Band.

28. Band must review and agree to the attached Buyer's Venue Provisional Rider and Radius Clause, if applicable.

IN WITNESS WHEREOF, this Agreement is executed on the date first above written.

WHEATON PARK DISTRICT (BUYER)

By_____
Title: Executive Director

BAND:

AMERICAN ENGLISH

By Eric Suszynski
Title: BAND LEADER

Address all correspondence and return signed contracts to:

Margie Wilhelmi, Director of Marketing & Special Events
(630) 510-4984 | mwilhelmi@wheatonparks.org

WHEATON PARK DISTRICT
102 E. Wesley St.
Wheaton, IL 60187

BUYER
Wheaton Park District
Michael J. Benard, Executive Director
102 E. Wesley St., Wheaton, IL 60187
Contact: Margie Wilhelmi
Director of Marketing & Special Events
mwilhelmi@wheatonparks.org
Contact: Carolyn Wilkin
Special Event Manager
cwilkin@wheatonparks.org

BAND
American English
Eric Suszynski
americanenglish1@aol.com

For Internal Use Only:	
W-9 Form Received	☐
COI Required	n/a
VENDOR #	

Address all correspondence and return signed contracts to:

Margie Wilhelmi, Director of Marketing & Special Events
(630) 510-4984 | mwilhelmi@wheatonparks.org

WHEATON PARK DISTRICT
102 E. Wesley St.
Wheaton, IL 60187

WHEATON PARK DISTRICT'S MEMORIAL PARK BANDSHELL

PROVISIONAL RIDER & RADIUS CLAUSE

A) BAND is authorized to sell merchandise at the performance. YES NO

Merchandise proceeds will be maintained _____% by the Band. The Buyer will not provide any labor or staffing to facilitate the sale of merchandise on behalf of the band. Merchandise may be sold no more than 30 minutes prior to a performance and no longer than 30 minutes after a performance.

B) BUYER agrees to provide the Band with up to five (5) parking spots within one block of the venue. Cold bottled water in dressing rooms and on stage upon request. Brand and size of product is at the discretion of the Buyer.

C) BAND agrees to not accept or book any public performances within a fifteen (15) mile radius of Memorial Park (208 W. Union Ave., Wheaton, IL) thirty (30) days prior to and after performance date listed in this contract.

D) BUYER agrees to the attached hospitality request for BAND. YES NO

E) BAND agrees to provide the following Media & Communication Request information timeline and accurately for use in promotional marketing and performance pre-planning.

Media & Communication Request

Band Name as to appear in promotional marketing:

Social Media Page(s) for promotional purposes:
INSTAGRAM _____
FACEBOOK _____
TWITTER _____
YOUTUBE _____

Website to be used for promotional purposes

Approved band bio (limited to 200 words)

Approved Band Logo

Approved Band Image(s) for promotional use

Media Contact Information
NAME _____
COMPANY _____
PHONE _____
EMAIL _____

Sound & Light Coordinator / Tech Contact Information
NAME _____
COMPANY _____
PHONE _____
EMAIL _____

Address all correspondence and return signed contracts to:

Margie Wilhelmi, Director of Marketing & Special Events
(630) 510-4984 | mwilhelmi@wheatonparks.org

WHEATON PARK DISTRICT
102 E. Wesley St.
Wheaton, IL 60187

Appendix A – *Details of Performance*

Name and Address of Performance Venue: Memorial Park, Wheaton, IL

1) Date of Performance: Friday, June 23, 2023
2) Performance Time: 8 – 9:30P
3) Type of Engagement: Family Friendly Evening Concert
4) Show Detail: Beatles Tribute Band
5) Contract Price and Payment: $4,300.00
    a. Deposit: $1,000.00
    b. Deposit Due By: May 23, 2023
    c. Business Check Payable To: American English
    d. Final Payment due at time of performance: $3,300.00
6) Sound System with qualified operator to be supplied by: Buyer
7) Light System with qualified operator to be supplied by: Buyer
8) Additional Provisions:

9) Additional Attached Rider from BAND? YES (NO)

BUYER
Initial _____

BAND
Initial American English
Eric Laszynski

Address all correspondence and return signed contracts to:

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