



PERFORMER AGREEMENT

This Performer Agreement ("**Agreement**") is effective as of the date of the Mayor's signature below and is between the City of Everett, a Washington municipal corporation (the "**City**"), and the Artist identified in the Basic Provisions below ("**Artist**"). This Agreement includes the Basic Provisions and the General Provisions (Attachment A).

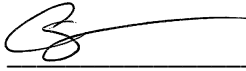
| BASIC PROVISIONS | | |
|----------------------|--|--------------|
| Artist | Kristi O'Donnell | |
| | PO Box 261 Greenbank, WA 98253 | |
| | kristiowhidbey@gmail.com | 360-969-3275 |
| | | |
| City Project Manager | Elizabeth Koenig | |
| | City of Everett -- Library 2702 Hoyt Ave. | |
| | Everett, WA 98201 | |
| | ekoenig@everettwa.gov | |
| Compensation Amount | \$500.00 | |

| BASIC PROVISIONS: PERFORMANCE INFORMATION | | |
|---|---|------------|
| LOCATION | DATE | TIME |
| Everett Public Library – Evergreen Branch 9512 Evergreen Way, Everett WA 98204 | Dec 5, 2023 | 5-7 p.m. |
| Enter location Enter additional location info, if necessary | Enter date | Enter time |
| Brief Description of Performance | A musical concert by Café Impromptu on Dec 5, 2023 at the Evergreen Branch Meeting Room from 5-7 p.m. with a brief break. | |

IN WITNESS WHEREOF, the City and Artist have executed this Agreement.

**CITY OF EVERETT
WASHINGTON**

KRISTI O'DONNELL


By: 
Cassie Franklin, Mayor

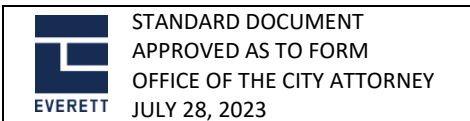
Signature: Kristi O'Donnell

11/16/2023

Date

ATTEST


Office of the City Clerk



ATTACHMENT A

GENERAL PROVISIONS TO PERFORMER AGREEMENT

1. **Engagement of Artist.** Artist agrees to perform in a competent and professional manner the performance at the times, dates and locations listed in the Basic Provisions ("***Performance***"). The performance information in the Basic Provisions may be amended by Artist and the City Project Manager or designee by mutual agreement in writing.

2. **Work for Hire.** The City and Artist agree that Artist shall create no works pursuant to this Agreement, except for the Performance itself. Works created by Artist that are not solely for the Performance shall not be works for hire and all rights thereto belong to Artist.

3. **Publicity and Other Rights.**

A. The City may make visual (including without limitation still pictures), sound and any other recording of the Performance in any media presently existing or that may exist in the future. The City may not broadcast, re-broadcast, or use any such recording without Artist's prior written agreement, except that the City may broadcast, re-broadcast or use still pictures in accordance with Section 3B.

B. Artist expressly agrees that the City may broadcast, re-broadcast, or use still pictures containing Artist's likeness in any way, provided that the use is to publicize Artist, the Performance, the City or City programs. The City hereby grants Artist a non-transferrable and non-exclusive license to use any still pictures of the Performance to publicize Artist. The City has no obligation, however, to make such still pictures and if the City makes such pictures, then Artist shall pay a reasonable and appropriate charge for prints of such pictures. If the City takes such pictures, the City shall own all rights in them, including the negatives, except as otherwise provided by this Agreement.

4. **Artist's Representations and Warranties.** Artist expressly represents and warrants that:

A. The Performance shall not infringe on another's copyright, or rights in trade or service marks. Artist agrees to defend and indemnify City from any and all claims and damages arising out of Artist's Performance of copyrighted works;

B. Artist is capable and experienced in performing the Performance in a professional manner;

C. Artist has made all necessary arrangements and paid all necessary fees to the appropriate unions and guilds to which it belongs for the Performance and for any technicians or supporting personnel Artist provides;

D. The Performance will be suitable for an audience of all ages and will not be obscene or vulgar;

E. Artist is either the author and copyright holder of all works Artist performs or Artist is duly licensed to perform such works (e.g., licenses obtained by Artist from ASCAP, BMI, SESAC, or other licensing agency);

F. Unless otherwise provided in the Basic Provisions, Artist has either already arranged for sufficient personnel and equipment for the Performance, or believes in good faith that it will timely obtain sufficient personnel and equipment for the Performance, and knows of no reason why sufficient personnel or equipment would not be available. By way of example only, union sanctions have not been levied, pending, or threatened that would prevent the Performance; and

G. Artist (including all performers and support personnel) shall be at the location of the Performance at least sixty (60) minutes before the scheduled start of the Performance and shall make its presence known to the City's on-site coordinator.

5. **Compensation.** Artist shall be paid as follows:

A. The City shall pay Artist only for completed Performance and for services actually rendered which are described herein. Such payment shall be full compensation for Performance

performed or services rendered, including, but not limited to, all labor, materials, supplies, equipment, and incidentals necessary to complete the Performance.

B. In the event of termination, compensation will be paid in accordance with Section 6 of this Agreement.

C. If Artist fails or refuses to accept direction or carry out the reasonable directions of the City in performance of its work, the City may, in addition to any other remedy, withhold from any payment otherwise due an amount that the City in good faith believes is equal to the cost to the City of remedying any damage caused by Artist's conduct, including, but not limited to, costs of refunding tickets and procuring covering acts or Performers.

D. Total compensation, including all services and expenses, shall not exceed the Maximum Compensation Amount in the Basic Provisions.

6. **Termination of Contract.** City reserves the right to terminate this Agreement at any time by sending written notice of termination to Artist ("**Notice**"). The Notice shall be effective immediately upon its receipt by Artist, even if just before or during a Performance. In the event the Notice is delivered less than 8 days prior to Artist's first scheduled performance, the City shall compensate Artist for one-half of Artist's performance, or one-half of Artist's performances if there are more than one scheduled performance. In the event the Notice is delivered 8 days or more prior to Artist's first scheduled performance, no compensation, including compensation for services or expenses, will be paid. Artist shall not be entitled to any expenses for the cancellation of any Performances scheduled to occur after the day of the delivery of the Notice. The Notice may be delivered by email, mail or in person. If delivery is by email, delivery is presumed upon its being sent. If the Notice is delivered during a Performance, Artist shall immediately end the show in a professional manner and without causing any disruption. The City does not by this section waive, release, or forego any legal remedy for any violation, breach, or non-performance of any of the provision of this Agreement. At its sole option, City may deduct from the final payment due Artist (a) any damages, expenses, or costs arising out of any such violations, breaches, or non-performance and (b) any other back charges or credits.

7. **Cancellation Due to Weather.** At its sole option, City may cancel individual Performances due to inclement weather or emergency. No payment shall be made for such cancelled Performance, except if Notice is delivered the day of or during a Performance, then that individual Performance shall be deemed a completed Performance for the purposes of determining pro rata compensation. If a Performance is cancelled due to inclement weather or emergency and Notice is delivered prior to the day of the Performance, that Performance will not be deemed a completed Performance if this Agreement is later terminated by the City.

8. **Subletting/Assignments of Contracts.** This is a contract for personal services. Artist shall not sublet or assign any of the Performance without the express, prior written consent of the City.

9. **Indemnification.** Except as otherwise provided in this section, Artist hereby agrees to defend and indemnify the City from any and all claims arising out of, in connection with, or incident to any acts, errors, omissions, or conduct by Artist (or its employees, agents, representatives or support personnel) relating to this Agreement, whether such Claims sound in contract, tort, or any other legal theory. Solely and expressly for the purpose of its duties to indemnify and defend the City, Artist specifically waives any immunity it may have under the State Industrial Insurance Law, Title 51 RCW. Artist recognizes that this waiver of immunity under Title 51 RCW was specifically entered into pursuant to the provisions of RCW 4.24.115 and was the subject of mutual negotiation. As used in this paragraph: (1) "City" includes the City's officers, employees, agents, and representatives and (2) "Claims" include, but is not limited to, any and all losses, claims, demands, expenses (including, but not limited to, attorney's fee and litigation expenses), suits, judgments, or damage, irrespective of the type of relief sought or demanded, such as money or injunctive relief, and irrespective of whether the damage alleged is bodily

injury, damage to property, economic loss, general damages, special damages, or punitive damages. This section survives expiration or termination of this Agreement.

10. **Insurance.** Artist shall procure and keep in force during the term of this Agreement, at Artist's own cost and expense, automobile liability insurance on all vehicles used by Artist in the performance of its duties under this Agreement. Proof of insurance shall be provided to the City prior to performing any services hereunder. A statement certifying that no vehicle will be used in fulfilling this Agreement may be substituted for this insurance requirement.

11. **Independent Artist.** Artist is an independent contractor, and not an employee. Artist shall be responsible for all obligations relating to taxes (payroll, sales, use, income, industrial insurance (Workmen's Compensation, etc.), fees, licenses, excises or payments required by any city, federal or state law).

12. **Compliance with Laws.** Artist shall comply with all applicable federal, state and local laws and regulations, including, but not limited to, providing access to auditors to examine all of Artist's records and documents with respect to all matters covered by this Agreement, obtaining a City and State business license, and fulfilling state Department of Revenue and Labor and Industries requirements.

13. **Equal Employment Opportunity.** Artist shall not discriminate against any employee, applicant for employment, independent contractor, or proposed independent contractor, on the basis of race, color, religion, sex, age, disability, marital state, or national origin.

14. **Venue.** Venue for any lawsuit arising out of this Agreement shall be in the Superior Court of Snohomish County, Washington.

15. **Governing Law.** The laws of the State of Washington, without giving effect to principle of conflict of laws, govern all matters arising out of or relating to this Agreement.

16. **Signature/Counterparts.** This Agreement may be signed in counterparts, each of which shall be deemed an original, and all of which, taken together, shall be deemed one and the same document. AdobeSign signatures are fully binding. Any ink, electronic, faxed, scanned, photocopied, or similarly reproduced signature on this Agreement or any amendment hereto will be deemed an original signature and will be fully enforceable as an original signature.












Kristi O'Donnell_11.15.2023_SD

Final Audit Report

2023-11-17

| | |
|-----------------|--|
| Created: | 2023-11-16 |
| By: | Marista Jorve (mjorve@everettwa.gov) |
| Status: | Signed |
| Transaction ID: | CBJCHBCAABAAb903mg36VVm9-oxXNlxbMrsbVwmdzFMN |

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-  Document created by Marista Jorve (mjorve@everettwa.gov)
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-  Document emailed to Meghan Edwards-Bond (MEdwards-Bond@everettwa.gov) for approval
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-  Document approved by Elizabeth Koenig (ekoenig@everettwa.gov)
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-  Signer kristiwhidbey@gmail.com entered name at signing as kristi O'Donnell
2023-11-16 - 9:42:34 PM GMT



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Agreement completed.

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