OCALA

**CONTRACT # REC/220148**

## AGREEMENT FOR PERFORMANCE SERVICES

THIS AGREEMENT FOR PERFORMANCE SERVICES ("Agreement") is entered into by and between the **CITY OF OCALA**, a Florida municipal corporation ("City"), and **DAVINA SOWERS,** an individual ("Artist").

In consideration for the following covenants, conditions, and promises, City agrees to engage Artist for the Performance described below, and Artist agrees to provide services at such Performance under the following terms and conditions:

1. **PERFORMANCE**. City hereby engages Artist to furnish, and Artist agrees to provide **ONE (1)** show that is approximately **SIXTY (60) MINUTES** in length on **APRIL 22, 2022** beginning at **8:00 P.M.** and ending at **9:00 P.M.** (the "Performance"). City will provide backline instruments for performance of up to **FOUR HUNDRED AND NO/100 DOLLARS ($400).**
   A. The load in, set up and sound check time on the date of the Performance shall be at **3:00 P.M.**
   B. General admission to the Performance shall begin at approximately **7:00 P.M.**
   C. Exact time of scheduled Performance may change at City's discretion.
2. **VENUE.** The Performance shall take place at an outdoor venue at **WEBB FIELD AT THE MARTIN LUTHER KING JR. RECREATION COMPLEX, 1510 NW 4TH ST. OCALA, FL 34475** during the Levitt AMP Ocala Music Series (the "Event"). In the event of rain or other inclement weather, the performance will take place at the adjacent **E.D. CROSKEY CENTER, 1510 NW 4TH STREET, OCALA, FLORIDA 34475**.
3. **COMPENSATION**. Artist shall be paid the total sum of **SIX THOUSAND, FIVE HUNDRED AND NO/100 DOLLARS ($6,500)** for the entire Performance (the "Performance Fee") payable as follows:
   A. Not less than **THIRTY (30) DAYS** prior to the date of the Performance, City shall pay a lump sum equal to **THREE THOUSAND, TWO HUNDRED FIFTY AND NO/100 DOLLARS ($3,250)** by check made payable to **DOTTIE BOOTS, LLC** as a deposit towards the Performance Fee set forth above. This deposit may be fully refundable to City pursuant to the terms set forth in Paragraph 5 below.
   B. City shall remit payment for the remaining balance of the Performance Fee in the amount of, **THREE THOUSAND, TWO HUNDRED FIFTY AND NO/100 DOLLARS ($3,250)** and shall be hand-delivered to Artist immediately following the Performance unless the parties otherwise agree.
4. **PERFORMANCE POLICY AND ARTIST RESPONSIBILITIES**. Artist's Performance must be suitable for family audiences. Artist and its employees and/or agents shall perform and conduct



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themselves in a manner that is consistent with City standards as specified below. Artist's failure to abide by the provisions of this Paragraph shall constitute a material breach of this Agreement at which time City shall have the right to immediately cancel the Performance and dismiss Artist from the Venue, and Artist shall forfeit any remaining compensation due under Paragraph 3 above:

A. **Smoking and Prohibited Substances**: The use of alcohol, illegal drugs, or other controlled substances by Artist, its employees and/or agents during the Performance is strictly prohibited. Artist shall not perform while under the influence of alcoholic beverages, illegal drugs, or other controlled substances. Venue is a non-smoking facility, and no smoking is permitted within the provided hospitality space or within thirty (30) feet of egress doorways. All smoking must take place in outdoor designated areas.

B. **Prohibited Conduct**: Artist's Performance must be suitable for family audiences and Artist, its employees, and/or agents agree to conduct themselves in a professional and courteous manner in compliance with City standards at all times during the performance of their duties under this Agreement. Examples of behavior, dress, and/or language considered to be inconsistent with City standards include, but is not limited to, that which:
   (i) demeans and/or exploits persons on the basis of gender, race, or other grounds;
   (ii) references alcohol, drugs, obscene acts, or other explicit subjects;
   (iii) contains political references, religious proselytizing, discriminatory, or sexually explicit language or images.

C. **Sound and Lighting**: Artist agrees to use the sound and lighting services and personnel provided by the City for the audio and lighting reinforcement of the Performance. Artist agrees that all decisions regarding sound and lighting shall be made solely by City and/or City 's production team and will abide by them accordingly

D. **Stage Access**: Artist acknowledges that stage entry is permitted to Artist, and personnel in capacity for performance and setup. The City will limit stage access to city staff, production staff, and approved community partners and/or sponsors. The public is not permitted on stage before, during, or after the performance

E. **Pyrotechnics**: Artist shall not be permitted to have or use any type of electronic or pyrotechnic display that in any way creates a hazardous condition for the audience

F. **Copyrights and Licenses**: Artist shall be responsible for obtaining any and all necessary licenses or authorizations related to the provision of its services under this agreement including, but not limited to any ASCAP, BMI, or SESAC license required for the playing of music subject to copyright and shall ensure that any and all license payments required to



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be made by Artist are made promptly and directly to the licensing or authorizing organization.

5. **NON-PERFORMANCE.** If Artist is unable to provide the Performance due to illness or accident to the Artist or because of a Force Majeure event up to the scheduled performance date, then City shall have no obligation to pay the Performance Fee. If the City did not cancel the event at least **THREE (3)** days prior to its scheduled date, and/or if Artist is present at the venue at the designated date and time for the performance and is willing and able to perform but the Event is cancelled by the City on the day of the event, then Artist shall be paid the full Performance Fee.
6. **EXCLUSIVE PERFORMANCE.** Artist agrees not to accept any other engagement of any sort or kind within a radius of **FIFTY (50)** miles of the Venue (as identified in Section 2 above) for the time period beginning from the date of issuance of this Agreement to **THIRTY (30) DAYS** prior to the date of the Performance (as identified in Section 1 above).
7. **SALE OF MERCHANDISE.** City may permit Artist to sell merchandise at the Venue on the date of the Performance. City expressly reserves the right to withhold approval for merchandise sales by Artist. If approval for merchandise sales is granted by City, Artist may retain **ONE HUNDRED PERCENT (100%)** of Artist's gross merchandise sales. Artist shall provide City access to Artist's merchandise inventory and sales records.
6. **HOSPITALITY.** City will make hotel arrangements to provide Artist with **SIX (6)** hotel rooms for **ONE (1) NIGHT**. City will provide **ONE (1)** meal for the artist during the night of performance. Artist will secure their own travel and transportation to and from venue.
7. **FORCE MAJEURE.** The term "Force Majeure" shall include delays, damages, or failure in the performance of any obligation under this Agreement if such delay, damage, or failure is due to causes beyond the party's control including, without limitation: fire, flood, strikes and labor disputes, pandemic, local or statewide states of emergency, acts of war, acts of nature, terrorism, civil unrest, acts or delays in acting of the government of the United States or the several states, judicial orders, decrees or restrictions or any other like reason which is beyond the control of the respective party.
8. **TERMINATION FOR NON-FUNDING**. In the event that budgeted funds to finance this Agreement are reduced, terminated, or otherwise become unavailable, City may terminate this Agreement upon written notice to Artist without penalty or expense to City. City shall be the final authority as to the availability of budgeted funds.
9. **INSURANCE*.** Artist shall obtain general liability insurance issued by a company authorized to do business in the State of Florida and with an A.M. Best Company rating of at least B+, as will provide coverage for claims for damages for bodily injury, including accidental death, as well as



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for claims for property damage. The amount of such insurance shall be not less than $200,000 for injury to one person arising out of a single incident and $400,000 for injuries to more than one person arising out of a single incident, and $200,000 for property damage with a reasonable deductible. Upon request by City, Artist shall provide City with certificates of insurance which shall list "City of Ocala, a Florida municipal corporation," as an Additional Insured. These insurance requirements do not relieve or limit the liability of Artist. Should Artist desire insurance protecting its personal property from casualty or damage while on the Venue, it will purchase such insurance, it being expressly understood that City is not obligated to purchase any insurance. The insurance required of Artist, or any other insurance of Artist shall be considered primary, and any insurance or self-insurance of City shall be considered excess, as may be applicable, to claims against City which may arise.

***Exceptions and exemptions to these insurance requirements may be allowed at the discretion of the City's HR/Risk Director on a case-by-case basis and evidenced by a separate waiver attached to this Agreement and incorporated herein.**

10. **INDEMNITY**. Artist shall indemnify City and its elected officials, employees and volunteers against, and hold City and its elected officials, employees and volunteers harmless from, all damages, claims, losses, costs, and expenses, including attorneys' fees, which City or its elected officials, employees or volunteers may sustain, or which may be asserted against City or its elected officials, employees or volunteers, arising out of the use of the venue by Artist or the use of any music, materials, devices, or processes that are patented, trademarked, franchised or subject to copyright.
11. **ATTORNEYS' FEES.** If any civil action, arbitration or other legal proceeding is brought for the enforcement of this Agreement, or because of an alleged dispute, breach, default or misrepresentation in connection with any provision of this Agreement, the successful or prevailing party shall be entitled to recover reasonable attorneys' fees, sales and use taxes, court costs and all expenses even if not taxable as court costs (including, without limitation, all such fees, taxes, costs and expenses incident to arbitration, appellate, bankruptcy and post-judgment proceedings), incurred in that civil action, arbitration or legal proceeding, in addition to any other relief to which such party or parties may be entitled. Attorneys' fees shall include, without limitation, paralegal fees, investigative fees, administrative costs, sales and use taxes and all other charges billed by the attorney to the prevailing party.
12. **JURY WAIVER**. IN ANY CIVIL ACTION, COUNTERCLAIM, OR PROCEEDING, WHETHER AT LAW OR IN EQUITY, WHICH ARISES OUT OF, CONCERNS, OR RELATES TO THIS AGREEMENT, ANY AND ALL TRANSACTIONS CONTEMPLATED HEREUNDER, THE PERFORMANCE HEREOF, OR THE RELATIONSHIP CREATED



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HEREBY, WHETHER SOUNDING IN CONTRACT, TORT, STRICT LIABILITY, OR OTHERWISE, TRIAL SHALL BE TO A COURT OF COMPETENT JURISDICTION AND NOT TO A JURY. EACH PARTY HEREBY IRREVOCABLY WAIVES ANY RIGHT IT MAY HAVE TO A TRIAL BY JURY. NEITHER PARTY HAS MADE OR RELIED UPON ANY ORAL REPRESENTATIONS TO OR BY ANY OTHER PARTY REGARDING THE ENFORCEABILITY OF THIS PROVISION. EACH PARTY HAS READ AND UNDERSTANDS THE EFFECT OF THIS JURY WAIVER PROVISION.

13. **PUBLIC RECORDS.** The Artist shall comply with all applicable provisions of the Florida Public Records Act, Chapter 119, Florida Statutes. Specifically, the Artist shall:
    A. Keep and maintain public records required by the public agency to perform the service.
    B. Upon request from the public agency's custodian of public records, provide the public agency with a copy of the requested records or allow the records to be inspected or copied within a reasonable time at a cost that does not exceed the cost provided in this chapter or as otherwise provided by law.
    C. Ensure that public records that are exempt or confidential and exempt from public records disclosure requirements are not disclosed except as authorized by law for the duration of the contract term and following completion of the contract if the Artist does not transfer the records to the public agency.
    D. Upon completion of the contract, transfer, at no cost, to the public agency all public records in possession of the Artist or keep and maintain public records required by the public agency to perform the service. If the Artist transfers all public records to the public agency upon completion of the contract, the Artist shall destroy any duplicate public records that are exempt or confidential and exempt from public records disclosure requirements. If the Artist keeps and maintains public records upon completion of the contract, the Artist shall meet all applicable requirements for retaining public records. All records stored electronically must be provided to the public agency, upon request from the public agency's custodian of public records, in a format that is compatible with the information technology systems of the public agency.

**IF THE ARTIST HAS QUESTIONS REGARDING THE APPLICATION OF CHAPTER 119, FLORIDA STATUTES, TO THE ARTIST'S DUTY TO PROVIDE PUBLIC RECORDS RELATING TO THIS CONTRACT, CONTACT THE CUSTODIAN OF PUBLIC RECORDS AT: CITY OF OCALA, OFFICE OF THE CITY**



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**CLERK; 352-629-8266; E-mail: clerk@ocalafl.org; City Hall, 110 SE Watula Avenue, Ocala, FL 34471.**

14. **ASSIGNMENT.** This Agreement shall not be assigned by Artist without the prior written consent of City.

15. **REFERENCE TO PARTIES.** Each reference herein to the parties shall be deemed to include their successors, assigns, heirs, administrators, and legal representatives, all whom shall be bound by the provisions hereof.

16. **WAIVER.** The failure or delay of any party at any time to require performance by another party of any provision of this Agreement, even if known, shall not affect the right of such party to require performance of that provision or to exercise any right, power or remedy hereunder. Any waiver by any party of any breach of any provision of this Agreement should not be construed as a waiver of any continuing or succeeding breach of such provision, a waiver of the provision itself, or a waiver of any right, power or remedy under this Agreement. No notice to or demand on any party in any circumstance shall, of itself, entitle such party to any other or further notice or demand in similar or other circumstances.

17. **GOVERNING LAW.** This Agreement is and shall be deemed to be a contract entered into and made pursuant to the laws of the State of Florida and shall in all respects be governed, construed, applied and enforced in accordance with the laws of the State of Florida.

18. **RIGHTS OF THIRD PARTIES.** Nothing in this Agreement, whether express or implied, is intended to confer any rights or remedies under or by reason of this Agreement on any persons other than the parties hereto and their respective legal representatives, successors and permitted assigns. Nothing in this Agreement is intended to relieve or discharge the obligation or liability of any third persons to any party to this Agreement, nor shall any provision give any third persons any right of subrogation or action over or against any party to this Agreement.

19. **AMENDMENT.** No amendment to this Agreement shall be effective except those agreed to in writing and signed by both of the parties to this Agreement.

20. **ELECTRONIC SIGNATURE(S).** Artist, if and by offering an electronic signature in any form whatsoever, will accept and agree to be bound by said electronic signature to all terms and conditions of this Agreement. Further, a duplicate or copy of the Agreement that contains a duplicated or non-original signature will be treated the same as an original, signed copy of this original Agreement for all purposes.

21. **LEGAL AUTHORITY.** Each person signing this Agreement on behalf of either party individually warrants that he or she has full legal power to execute this Agreement on behalf of the party



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for whom he or she is signing, and to bind and obligate such party with respect to all provisions contained in this Agreement.

22. **ENTIRE AGREEMENT.** This Agreement and the attached Riders, if any, contains all agreements between the Parties. There are no other representations, warranties, promises, agreements or understandings, oral, written or implied, among the Parties, except to the extent reference is made thereto in this Agreement. In the event of a conflict between the terms of this Agreement and the terms of any attached Riders, the terms of this Agreement shall control.

**IN WITNESS WHEREOF,** the parties have executed this Agreement on 04 / 13 / 2022.

**ATTEST:**

Angel B. Jacobs

Angel B. Jacobs
City Clerk

**CITY OF OCALA**

Ken Whitehead

Ken Whitehead
Assistant City Manager

**Approved as to form and legality:**

/s/ Robert W. Batsel, Jr.

Robert W. Batsel, Jr.
City Attorney

**ARTIST:**

By: Davina Sowers

Dottie Boots LLC

Printed Name of Signatory

Owner

Title of Signatory



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**VENDOR'S ACKNOWLEDGEMENT AND AGREEMENT**
**IN EXCHANGE FOR WAIVER OF INSURANCE REQUIREMENTS**

THIS ACKNOWLEDGEMENT AND AGREEMENT is made by:

Dottie Boots LLC

VENDOR NAME

3336 32nd Ave So, Minneapolis, MN 55406

VENDOR STREET ADDRESS, CITY, STATE, ZIP CODE

VENDOR acknowledges and understands that prior to commencement of an Agreement with the City of Ocala (the "City") and until completion of all obligations under said agreement, all vendors desiring to provide services to the City or to hold special events on City property are required to procure and maintain, for the life of said Agreement, the following types and limitations of liability insurance:

- **Commercial General Liability Insurance** identifying the City, a political subdivision of the State of Florida, and its officials, employees, and volunteers as additional insureds with an endorsement equal or broader to CG 20 26 04 13 from and against all claims, demands, causes of action, expenses, costs, or liability for injury to or death of persons or damage to or loss of property arising out of or in any manner connected with the Vendor's services or event in the amounts of not less than ONE MILLION DOLLARS ($1,000,000.00) PER OCCURRENCE and TWO MILLION DOLLARS ($2,000,000.00) general aggregate.

VENDOR acknowledges and understands that **unless** CITY provides a written waiver of the insurance requirements, the failure of VENDOR to obtain and maintain the required insurance shall constitute a breach of contract.

By signing below, VENDOR intends for this document to serve as its written request for waiver of the foregoing insurance requirements for the following special event to occur on 04/22/2022 (IDENTIFY DATE HERE): EVENT DESCRIPTION:

Levitt AMP Ocala Music Series

In exchange for and acceptance of CITY's waiver of the foregoing insurance requirements, VENDOR, including its successors and assigns, does hereby covenant and agree to indemnify, hold harmless, and defend the City of Ocala and its elected officials, employees, and volunteers from and against any and all claims, actions, liability, loss, damage, injury, death, or expense of any and every kind which may accrue or be suffered by any person, partnership, or other entity of any kind, in whole or in part from the intentional or negligent acts or omissions of VENDOR or its employees, agents, subcontractors, successors, or assigns. In the event that any suit or action is brought against CITY, its elected officials, employees, or volunteers for any of the claims described herein, VENDOR, its successors and assigns shall defend the suit or action at VENDOR'S sole cost and expense and shall fully satisfy any judgment that is rendered against CITY, its elected officials, employees, or volunteers, or any combination thereof.



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IN WITNESS WHEREOF, the VENDOR sets its hand this 22 day of February, 2022.

Davina Sowers /s/ Robert W. Batsel, Jr.

VENDOR SIGNATURE

Davina Sowers

VENDOR PRINTED NAME

**TO BE COMPLETED BY CITY AFTER EXECUTION BY VENDOR:**

☐ WAIVER GRANTED BY RISK MANAGEMENT REPRESENTATIVE:
_____ (Date)

☐ WAIVER REQUEST DENIED BY RISK MANAGEMENT REPRESENTATIVE
_____ (Date)



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**From:** Christopher Watt
**To:** Jennifer Normoyle; Richard Dennis
**Cc:** Laura M. Walker; RPBusiness
**Subject:** RE: Insurance Waiver Req_Davina and the Vagabonds
**Date:** Tuesday, February 22, 2022 4:28:38 PM
**Attachments:** image002.png
image003.png
image004.png

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approved

Christopher J. Watt, Esq., SHRM-SCP
Director, Human Resources & Risk Management
City of Ocala
110 SE Watula Avenue
Ocala, FL 34471
352-401-3994
Cwatt@ocalafl.org

**From:** Jennifer Normoyle <jnormoyle@Ocalafl.org>
**Sent:** Tuesday, February 22, 2022 3:26 PM
**To:** Richard Dennis <rdennis@Ocalafl.org>; Christopher Watt <CWatt@Ocalafl.org>
**Cc:** Laura M. Walker <LWalker@Ocalafl.org>; RPBusiness <RPBusiness@Ocalafl.org>
**Subject:** RE: Insurance Waiver Req_Davina and the Vagabonds

Forgot Waiver – it is attached for below request.

**From:** Jennifer Normoyle
**Sent:** Tuesday, February 22, 2022 3:25 PM
**To:** Richard Dennis <rdennis@Ocalafl.org>; Christopher Watt <CWatt@Ocalafl.org>
**Cc:** Laura M. Walker <LWalker@Ocalafl.org>; RPBusiness <RPBusiness@Ocalafl.org>
**Subject:** Insurance Waiver Req_Davina and the Vagabonds

Hello,

**Please note – only sending this to additional emails as Richard Dennis is listed as out of office.*

I am requesting a waiver of insurance for Dottie Boots LLC d/b/a Davina and the Vagabonds.

**Vendor Activities/Services:** Musical Performance at Levitt AMP Ocala Music Series

**Date(s) Vendor will be onsite:** Friday, April 22, 2022

**Reason for Waiver:** Waive insurance for a performer

**Is Completed Hold Harmless Agreement Attached:** Yes

Please confirm. Thank you

*Jennifer Normoyle*

Grants and Outreach Manager
City of Ocala Recreation & Parks
Cultural Arts & Sciences Division
Office: (352) 629-8220
Website: www.ocalafl.org/culturalarts

OCALA
Recreation and Parks

The City of Ocala provides fiscally responsible services consistent with the community's current and future expectations.

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HELLOSIGN

# Audit Trail

| | |
|---|---|
| **TITLE** | For Signature: Performance Agreement - Davina and the... |
| **FILE NAME** | FOR SIGNATURES - ... (REC 220148).pdf |
| **DOCUMENT ID** | 62dc02739c93a24d0f487ff7ac820213420c9a8c |
| **AUDIT TRAIL DATE FORMAT** | MM / DD / YYYY |
| **STATUS** | Signed |

## Document History

| | | |
|---|---|---|
| SENT | **03 / 16 / 2022** 14:49:29 UTC-4 | Sent for signature to Robert W. Batsel, Jr. (rbatsel@ocalalaw.com), Ken Whitehead (kwhitehead@ocalafl.org), Angel B. Jacobs (ajacobs@ocalafl.org) and Dottie Boots LLC (dottiemarieboots@gmail.com) from plewis@ocalafl.org IP: 216.255.240.104 |
| VIEWED | **03 / 22 / 2022** 19:49:47 UTC-4 | Viewed by Robert W. Batsel, Jr. (rbatsel@ocalalaw.com) IP: 162.212.250.197 |
| SIGNED | **03 / 22 / 2022** 19:56:39 UTC-4 | Signed by Robert W. Batsel, Jr. (rbatsel@ocalalaw.com) IP: 162.212.250.197 |
| VIEWED | **03 / 22 / 2022** 19:56:52 UTC-4 | Viewed by Ken Whitehead (kwhitehead@ocalafl.org) IP: 40.94.28.185 |
| SIGNED | **03 / 23 / 2022** 08:31:18 UTC-4 | Signed by Ken Whitehead (kwhitehead@ocalafl.org) IP: 216.255.240.104 |

HELLOSIGN

# Audit Trail

| | |
|---|---|
| **TITLE** | For Signature: Performance Agreement - Davina and the... |
| **FILE NAME** | FOR SIGNATURES - ... (REC 220148).pdf |
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| **AUDIT TRAIL DATE FORMAT** | MM / DD / YYYY |
| **STATUS** | Signed |

## Document History

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|---|---|---|
| VIEWED | **03 / 23 / 2022** 13:53:22 UTC-4 | Viewed by Angel B. Jacobs (ajacobs@ocalafl.org) IP: 98.180.26.62 |
| SIGNED | **03 / 23 / 2022** 13:53:34 UTC-4 | Signed by Angel B. Jacobs (ajacobs@ocalafl.org) IP: 98.180.26.62 |
| VIEWED | **04 / 04 / 2022** 16:24:55 UTC-4 | Viewed by Dottie Boots LLC (dottiemarieboots@gmail.com) IP: 75.147.3.61 |
| SIGNED | **04 / 13 / 2022** 11:35:14 UTC-4 | Signed by Dottie Boots LLC (dottiemarieboots@gmail.com) IP: 174.141.201.190 |
| COMPLETED | **04 / 13 / 2022** 11:35:14 UTC-4 | The document has been completed. |