

ATTACHMENT "C"

Mass Gather Permit Application for Vintage Market Days Nov. 19-21, 2021

Performance Agreement

THIS AGREEMENT for the personal services of performing artists on the engagement described below between the undersigned, Dallas-McKinney Vintage Market Days, as purchaser of performance services ("Purchaser") and the under-signed artist or ensemble and/or its agent ("Artist") is made this 11th day of August, 2021.

A. BASIC TERMS:

1. Name of Artist: The Bodarks  
Address: 7470 Creekmere Drive  
City: Frisco State: TX Zip: 75035  
Telephone: \_\_\_\_\_ Fax: \_\_\_\_\_  
E-mail address: \_\_\_\_\_
2. Place of Engagement: Myers Park & Event Center, McKinney, TX
3. Date(s) of Services: Nov. 20, 2021
4. Number of sets and duration: 1 (9:30 to 1:00)

B. PAYMENT OF ARTISTIC FEES:

1. Compensation Agreed Upon: \$800.00
2. Amount of Deposit: \_\_\_\_\_ Date Due: \_\_\_\_\_
3. Time of Payment: Fees will be paid by Purchaser's check to be presented to Artist after performance on Nov. 20, 2021.
4. Artist requests it check be made payable to: \_\_\_\_\_
5. Artist's Social Security Number or Employer Identification Number: \_\_\_\_\_ Attached W-9 must be completed and returned in order for payment to be processed.
6. The Purchaser's Contractual Provisions are attached and incorporated herein. Purchaser requires that a representative of the Artist sign and return the attached provisions, which are an integral element of this Agreement.

Artist \_\_\_\_\_

By: \_\_\_\_\_ Title \_\_\_\_\_

Purchaser \_\_\_\_\_

By: \_\_\_\_\_ Title: \_\_\_\_\_

INDEPENDENT CONTRACTOR AGREEMENT FOR PERFORMANCE OF LIVE MUSIC  
AT VINTAGE MARKET DAYS EVENT

Purchaser and Artist or its Agent agree that the following provisions are incorporated into the contract to which it is attached made a part thereof, said contracted being signed and dated 8/11/2021. The parties agreed that the terms of this attachment prevail over the terms of any other document relating to and a part of the contract in which this attachment is incorporated.

1. **PAYMENT AND COMPENSATION.** Purchaser will make payment by check to Artist immediately after completion of the performance(s), unless otherwise previously agreed in writing by Artist and Purchaser. Payment of performance fee cannot be made until a copy of Artist's W-9 and Social Security number or federal identification number (FEIN) is provided to Purchaser.
2. **ARTIST'S RIGHTS TO TERMINATE.** If Artist is entitled to deposit payment as provided above, and the deposit has not been paid within the time specified, Artist shall have the right to terminate this agreement without any further obligation n/a \_\_\_\_\_ days' notice.
3. **CANCELLATION.** Artist reserves the right to cancel this Agreement without obligation upon notice to Purchaser thirty (30) days in advance of the Performance date. In the event of Artist's cancellation, the deposit payment (if any) shall be returned promptly.
4. **FORCE MAJEURE.** Neither Artist nor Purchaser shall be liable for failure to appear or perform its obligations under this agreement in the event that such failure is caused by or due to the acts or regulations of public authorities, labor difficulties, civil tumult, inclement weather, strike, epidemic, interruption or delay of transportation service, or any other legitimate cause beyond the control of Artist and Purchaser.
5. **SICKNESS AND ACCIDENTS.** Artist's agreement to perform is subject to proven detention by sickness or accident. In the event of such non-performance, the deposit payment (if any) advanced to the Artist shall be returned promptly.
6. **PROMOTION AND PRODUCTION.** Purchaser shall be responsible for all matters pertaining to the promotion and production of the scheduled engagement, including but not limited to venue rentals, security, and advertising. If Purchaser decides to promote Artist as a part of the Vintage Market Days event, Purchaser will use its best efforts to obtain calendar listings, feature articles, interviews of Artist, review of the performance and Artist's recordings in all local prints, radio, and television media. Purchaser shall forward all copies of clippings, reviews, and posters to Artist. Artist agrees that Purchaser may use Artist's name, pictures, photographs, recording, and other likenesses in connection with advertising and publicizing the engagement(s) hereunder, but such use shall not be without prior approval of Artist.
7. **VIDEO AND AUDIO TAPING.** Artist and/or his designees shall have the right to record the performance and to use the recordings as Artist sees fit. Purchaser shall have no interest or rights of any kind whatsoever in or to any such recordings of Artist's performance during this engagement.

8. MUSIC LICENSE:

\_\_\_\_\_ **No** Music License Purchased (check if no event music license is provided by purchaser) If checked skip to paragraph **8.A**

  x   **Yes** Music License Purchased (check if event music license is provided by purchaser/venue) If checked skip to paragraph **8.B**

8. A: MUSIC, INTELLECTUAL PROPERTY AND LICENSING. Artist shall be solely responsible for the licensing of all music, content, displays or background music that it plays in accordance with this Agreement. Purchaser **does not** hold licenses from ASCAP, BMI or SESAC for Artist's performance. Therefore, Artist represents and warrants that it will play only music or content that is not subject to the copyright of a third-party, including but not limited to those covered by ASCAP, BMI or SESAC or music that is not in the public domain. Artist agrees to defend, indemnify and hold Purchaser harmless against any claims of infringement related in any way to Artist's performance.

8. B: EVENT MUSIC LICENSE. In the event that the Purchaser has chosen to purchase an event music license for the specific event ("Event License"), which shall be at the sole option of the Purchaser with no regard to any third-party, Artist may upon written consent (as set forth below) from Purchaser utilize the license provided that the Artist shall be solely responsible for complying with the Event License and ensuring that all music, content, displays, or background music that it plays is in accordance with the Event License. Artist agrees to defend, indemnify and hold Purchaser harmless against any claims of infringement related in any way to Artist's performance. This paragraph is supplemental to paragraph 14 below and the obligations are only modified to the extent that an Event License has been purchased for the specific event.

\_\_\_\_\_ (initial) An Event Music License **HAS** been purchased from (check each Music License purchased for the specific event):   X   ASCAP   X   BMI \_\_\_\_\_ SEASAC and consent is hereby given to Artist to utilize the Event Music License subject to the terms and conditions of this agreement.

9. PYROTECHNIC DEVICE. No pyrotechnic devices shall be used without the prior express written consent of both Artist and Purchaser. Any such device shall be subject to applicable fire laws and shall be administered by a person with professional experience in pyrotechnics. Purchaser shall be responsible for obtaining all applicable permits.
10. INDEPENDENT CONTRACTORS. Artists acknowledges that it is an independent contractor and not an employee of the Purchaser and shall be responsible for all taxes. Purchaser shall control the times and division of the performance, and Artist shall control the manner, means, and details of such performance.
11. INSURANCE. Purchaser shall obtain and maintain, at its own expense, adequate general liability insurance coverage for the event and such coverage shall not extend to all activities related to Artist's engagement and performance, including time of set up and take down. Artist shall be responsible for obtaining proper liability and/or property insurance as needed and Artist is responsible for claims arising from Artist's grossly negligent, willful, intentional acts, or infringement claims arising from the Artist's performance. Artist shall be responsible for playing only materials that it properly owns the copyright or content within the public domain not subject to copyright infringement or licensing fees. Artist shall defend, indemnify and hold Purchaser

harmless for any claims made by any third-party arising from claims against artist whether solely or jointly caused by Artist and not covered by applicable insurance.

12. NO PERSONAL LIABILITY OF PURCHASER'S REPRESENTATIVES OR AGENTS. Any representative of Purchaser executing this contract as Purchaser or an agent thereof shall not be held personally liable for the payment of any costs or fees related to this contract. Artist understands and acknowledges that this Agreement is made solely with the Purchaser and not the individual signing this Agreement.
13. ASSIGNMENT, ENTIRETY OF AGREEMENT, GOVERNING, JURISDICTION, AND MEDIATION. This agreement cannot be assigned or transferred without the written consent of artist. This agreement constitutes the entire agreement between the parties. No modification shall be enforceable except in writing and signed by the parties hereto. This agreement shall be governed by the laws of the state of Oklahoma. In the event any dispute arising under this agreement results in litigation, arbitration, or mediation, such action or proceeding shall be brought within the state or federal courts of Oklahoma.
14. SEVERABILITY. If any provision of this Agreement or the application thereof is held invalid, the invalidity shall not affect other provisions or applications of this Agreement which can be given effect without the invalid provisions or application, and to this end the provisions of this Agreement are declared to be severable.
15. REPRESENTATIVE'S AUTHORITY TO CONTRACT. By signing this document, the representative and/or agent of the Artist hereby represent that such person is duly authorized and the Artist agrees to be bound by the provisions of this Agreement. It is expressly understood and agreed that in acting hereunder solely in the capacity of representative or agent of Artist, said person is not a party to this contract and shall not be liable or responsible in any way for the omissions of Artist, nor for any failure by Artists to adequately perform or comply with any term or condition hereof.

Artist \_\_\_\_\_

Purchaser \_\_\_\_\_