

SAMPLE PERFORMANCE AGREEMENT

between

SAN FRANCISCO BAY AREA WATER EMERGENCY TRANSPORTATION AUTHORITY

and

MUSICAL PERFORMERS

This Agreement is made and entered into as of **(Effective Date)**, by and between the San Francisco Bay Area Water Emergency Transportation Authority (SF Bay Ferry) and **Tides & Tunes Performers (Performer)**. For purposes of this Agreement, SF Bay Ferry and Performer may be referred to individually as a "Party" or together, as "Parties."

RECITALS

WHEREAS, SF Bay Ferry requires musical performance services during regular ferry transit service on **(Performance Date)** on an SF Bay Ferry passenger vessel, and

WHEREAS, the Performer desires to provide such services.

NOW THEREFORE, THE PARTIES AGREE AS FOLLOWS:

1. **SCOPE OF SERVICES**

The scope of the Performer's services will consist of musical performances, instruments and sound amplification equipment, lasting approximately four hour(s), (collectively referred to as the Services or Performance). While on SF Bay Ferry property, in particular on-board a ferry vessel, Performer must obey all operational and safety instructions from SF Bay Ferry and crews on-board ferries.

2. **TERM**

The performance(s) under this Agreement will take place on **(Performance Date)** unless the Agreement is terminated sooner pursuant to Section 8. SF Bay Ferry may direct additional performances on different or additional dates.

3. **COMPENSATION**

The Performer agrees to perform the services set forth in Section 2 for the total all-inclusive fixed contract price of \$500. This Total Contract Price includes all labor, materials, taxes, overhead, travel expenses, profit, and other costs and expenses incurred by the Performer. SF Bay Ferry will pay the Performer in accordance with Section 5.

4. **MANNER OF PAYMENT**

The Performer must submit an invoice to SF Bay Ferry as soon as possible but no later than 30 days after the Performance Date. The invoice must include the contract number and must include the full name, phone number, and email of the person to contact with invoice questions.

The PDF invoice should be emailed to the SF Bay Ferry Project Manager, Alexis Matsui at alexis.matsui@sfbayferry.com with cc to payables@watertransit.org. No hard copy invoices are required if SF Bay Ferry acknowledges receipt of the email invoice.

SF Bay Ferry will endeavor to pay an approved invoice within thirty (30) days of their receipt. If SF Bay Ferry objects to an invoice submitted by Performer, SF Bay Ferry will so advise the Performer in writing giving reasons for its objection. If any invoice submitted by the Performer is disputed by SF Bay Ferry, only that portion so disputed may be withheld from payment.

5. NOTICES

All communications relating to the Services will be exchanged between SF Bay Ferry's [Project Manager] for this Project, Alexis Matsui at alexis.matsui@sfbayferry.com and the Performer.

All other notices and communications regarding interpretation of the terms of this Agreement and changes thereto will be given to the other Party in writing and may be given by personal delivery to a representative of the parties, by emailing as follows, or by overnight mailing or courier service the same, addressed as follows:

If to SF Bay Ferry: San Francisco Bay Area Water Emergency Transportation Authority
Attn: Alexis Matsui
375 Beale St., Suite 310
San Francisco, CA 941105
Email: Alexis.matsui@sfbayferry.com

If to the Performer:

Attention: _____
Email: _____

The addresses to which notice may be given may be changed from time to time by notice emailed or mailed as described above. Notice will be deemed given on the day after that on which it is emailed, delivered in person, or deposited with a courier.

6. RESPONSIBILITY; INDEMNIFICATION; WAIVER OF LIABILITY

- a. Neither the Performer, nor any other person acting for or on the Performer's behalf will hold SF Bay Ferry, its Directors, officers, employees, agents, representatives, and any other person engaged in work connected with SF Bay Ferry property (SF Bay Ferry Indemnitees) responsible for any injury to a person or to property, damages, or death (whether such injuries, damages or death are known or unknown, or foreseen or unforeseen) that the Performer may suffer by reason of, or in connection with, the Performer's presence on SF Bay Ferry property or the performances under this Agreement.
- b. The Performer and any other person acting for or on the Performer's behalf, hereby fully and completely waive and release the SF Bay Ferry Indemnitees from any and all liability, regardless of the fault or negligence, in whole or in part, of SF Bay Ferry Indemnitees. The Performer waives any and all claims, demands and lawsuits they may have against SF Bay Ferry Indemnitees, whether known or unknown, or foreseen or unforeseen.

- c. Where applicable, the Performer represents and warrants that the Performer owns the copyright in or has a license to perform any musical and/or other artistic composition performed during the Performance. The Performer will indemnify and hold SF Bay Ferry Indemnitees harmless from and against any liabilities arising out of (i) a breach of such warranties, or (ii) any allegation that materials or services performed by Performer infringe or violate any copyright, trademark, patent, trade secret, or any other intellectual-property or proprietary right of any third party.
- d. The Performer further agrees to indemnify, and hold SF Bay Ferry Indemnitees harmless from:
 - i. Any and all claims and judgments for damages to which SF Bay Ferry Indemnitees may be subjected, arising from the services under this Agreement; and
 - ii. Any and all costs and expenses that SF Bay Ferry Indemnitees may or any other person acting for or on Performer's behalf, or the presence upon SF Bay Ferry property of materials or equipment that the Performer owns or uses in connection with the services stated above.
- e. The Performer acknowledges and has read, understands and fully waives the provisions of California Civil Code Section 1542, which states: "A general release does not extend to claims that the creditor or releasing party does not know or suspect to exist in his or her favor at the time of executing the release and that, if known by him or her, would have materially affected his or her settlement with the debtor or released party."
- f. The Performer understands and acknowledges that the significance of this waiver of California Civil Code Section 1542 is that even if the Performer should suffer injury or damages arising from Performer's presence on SF Bay Ferry property, they will not be able to make any claim for those injuries or damages.
- g. This indemnity survives expiration or termination of this Agreement.

7. PERFORMER'S STATUS

Neither the Performer nor any party contracting with the Performer are deemed to be an agent or employee of SF Bay Ferry. The Performer is and will be an Independent Contractor, and the legal relationship of any person performing services for the Performer will be one solely between that person and the Performer.

8. TERMINATION

SF Bay Ferry has the right to cancel any scheduled performance(s) and terminate this Agreement at any time for cause or for convenience (including but not limited to for non-appropriation of funds) by giving written notice to the Performer. Upon receipt of such notice, the Performer must not commit itself to any further expenditure of time or resources. If the Agreement is terminated for any reason SF Bay Ferry will not have any further obligation to Performer, including the obligation to make any payments under this Agreement, whether for time already spent or for any actual or anticipated lost profits.

9. PUBLICITY

The Performer may not refer to SF Bay Ferry, or use any logos, images or photographs of SF Bay Ferry for any commercial purpose, including, but not limited to, advertising,

promotion or public relations, without SF Bay Ferry's prior written consent. Such written consent will not be required for the inclusion of SF Bay Ferry's name on a customer list.

10. **ATTORNEYS' FEES**

If any legal proceeding should be instituted by either of the parties to enforce the terms of this Agreement or to determine the rights of the parties under this Agreement, the prevailing party in said proceeding will recover, in addition to all court costs, reasonable legal fees.

11. **WAIVER**

Any waiver of any breach or covenant of this Agreement must be in a writing executed by a duly authorized representative of the party waiving the breach. A waiver by any of the parties of a breach or covenant of this Agreement does not waive any succeeding breach or any other covenant unless specifically and explicitly stated in such waiver.

12. **SEVERABILITY**

If any provision of this Agreement is deemed invalid or unenforceable, that provision may be reformed and/or construed consistently with applicable law as nearly as possible to reflect the original intentions of this Agreement, and in any event, the remaining provisions of this Agreement will remain in full force and effect.

13. **NO THIRD PARTY BENEFICIARIES**

This Agreement is not for the benefit of any person or entity other than the parties.

14. **COMPLIANCE WITH LAWS, PRACTICES AND POLICIES**

Performer must at all times comply with all applicable local, state, federal laws, ordinances, statutes, and regulations (including without limitation any applicable health and safety standards) in effect at the time Services under this Agreement are performed. Performer, when present at SF Bay Ferry's facilities, will observe and obey (and compel its officers, employees, guests, and those doing business with it, to observe and obey) all generally applicable policies, practices, and procedures of SF Bay Ferry.

15. **APPLICABLE LAW**

This Agreement, its interpretation and all work performed under it will be governed by the laws of the State of California.

16. **BINDING ON SUCCESSORS**

All of the terms, provisions and conditions of this Agreement are binding upon and inure to the benefit of the parties and their respective successors, assigns and legal representatives.

17. **COUNTERPARTS**

This Agreement may be executed in one or more counterparts, each of which will be deemed an original. All counterparts will be construed together and will constitute one agreement.

18. **ENTIRE AGREEMENT; MODIFICATION**

This Agreement, including any attachments, constitutes the entire Agreement between the parties with respect to the subject matter hereof and may not be amended except by a written amendment executed by authorized representatives of both parties. In the event of a conflict between the terms and conditions of this Agreement and the attachments, the terms of this Agreement will prevail.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement by their duly authorized officers.

PERFORMER:

SF Bay Ferry:

NAME

SAN FRANCISCO BAY AREA WATER
EMERGENCY TRANSPORTATION
AUTHORITY

By: _____

By: _____

Date: _____

Date: _____

Name: _____

Name: Seamus Murphy

Title: _____

Title: Executive Director

Approved as to form:

By: _____

Date: _____

Name: _____

Title: _____

Legal Counsel to SF Bay Ferry

