



ORDINANCE NO. 2326-24

AN ORDINANCE AUTHORIZING THE EXECUTION
OF AN AGREEMENT – PARTY IN THE PARK – WINNIE COOPER BAND

BE IT ORDAINED by the Mayor and Board of Trustees of the Village of Hawthorn Woods, Illinois, that the Mayor be, and the same is, hereby authorized and directed to execute an agreement with Winnie Cooper Band in substantially the form attached hereto as Exhibit "A," and, by this reference, made a part hereof. The foregoing Ordinance was adopted by a roll call vote as follows:

AYES: Kaiser, McCarty, Ryckles, Bayer, Hurst

NAYS: 0

ABSENT AND NOT VOTING: Paman

APPROVED: 
Domnick DiMaggio, Mayor

ATTEST: 
Donna Lobaito, Village Clerk

ADOPTED: February 26, 2024

APPROVED: February 26, 2024

PERFORMANCE AGREEMENT

This Performance Agreement (the "Agreement") is entered into as February 26, 2024 (the "Effective Date") by and between Village of Hawthorn Woods, a municipal corporation (the "Purchaser"), and Patrick McGovern, "Winnie Cooper" band (the "Performer," and together with the Purchaser, the "Parties").

RECITALS

WHEREAS, the Performer is a musical act

WHEREAS, the Purchaser wishes to engage the Performer as an independent contractor for the purpose of performing at the Purchaser's Event "Hawthorn Woods Party in the Park" (the "Venue") on the terms and conditions set forth below;

WHEREAS, the Performer wishes to perform at the Venue and agrees to do so under the terms and conditions of this Agreement; and

WHEREAS, each Party is duly authorized and capable of entering into this Agreement.

NOW THEREFORE, in consideration of the above recitals and the mutual promises and benefits contained herein, the Parties hereby agree as follows:

1. PURPOSE.

The Purchaser hereby engages the Performer, and the Performer hereby accepts such engagement, to provide the performance and services described in Exhibit A attached hereto and made a part hereof at the Venue (the "Performance").

2. COMPENSATION.

The total compensation for the Performance shall be as set forth in Exhibit A hereto.

3. DATE[S], TIME[S], AND PLACE OF PERFORMANCE.

The date[s], time[s], and place of the Performance shall be as set forth in Exhibit A hereto.

4. RESPONSIBILITIES.

(a) Of the Performer. The Performer agrees to do each of the following:

- (i) Provide the Performance, as detailed in Exhibit A to this Agreement.
- (ii) Devote as much productive time, energy, and ability to the Performance and rehearsal of the Performance as may be necessary.
- (iii) Complete the Performance safely, with professional effort and skill, and using adequate equipment in good working order.

(b) Of the Purchaser. The Purchaser agrees to do each of the following:

- (i) Engage the Performer as an independent contractor to provide the Performance as set forth in Exhibit A to this Agreement.

- (ii) Provide reasonable assistance and cooperation to the Performer to enable the Performer to complete the Performance.
- (iii) Take reasonable steps to secure the safety of the Performer and the Performer's property and personnel.
- (iv) Provide appropriate working conditions for the Performance, including suitable space, power, electricity, sound, and other services, as set forth on Exhibit A attached hereto.
- (v) Comply with any royalty fees, performance fees, or other obligations of any organizations, including unions, to which the Performer is subject, contractually or otherwise.
- (vi) Provide and manage a PA system, as well as one or more sound technicians to manage FOH sound, stage monitor mixes and in-ear mixes.

5. PARTIES' REPRESENTATIONS AND WARRANTIES.

- (a) The Parties each represent and warrant as follows:
 - (i) Each Party has the full power, authority, and right to perform its obligations under the Agreement.
 - (ii) This Agreement is a legal, valid, and binding obligation of each Party, enforceable against it in accordance with its terms (except as may be limited by bankruptcy, insolvency, moratorium, or similar laws affecting creditors' rights generally and equitable remedies).
- (b) The Performer hereby represents and warrants as follows:
 - (i) The Performer has the experience and ability to provide the Performance required by this Agreement.
 - (ii) There is no outstanding contract, commitment, agreement, or legal impediment of any kind that conflicts with this Agreement or that might limit, restrict, or impair the Performer's obligations hereunder.
 - (iii) The Performance shall be performed in accordance with and shall not violate any applicable laws, rules, or regulations, including building and fire regulations, and the Performer shall obtain all permits, licenses, or permissions required to comply with such laws, rules, or regulations.
 - (iv) Conducting the Performance under the terms of the Agreement shall not infringe on the property right, copyright, patent right or any other right of any person.
- (c) The Purchaser hereby represents and warrants as follows:
 - (i) The Purchaser will make timely payments to the Performer under this Agreement and as detailed in Exhibit A hereto.
 - (ii) The Purchaser shall provide such other assistance to the Performer as it deems reasonable and appropriate.

6. TERM.

This Agreement shall become effective as of the Effective Date and, unless otherwise terminated in accordance with Section 7 of this Agreement, will continue until the Performance has been completed and the Performer has been paid in full for the Performance (the "Term").

7. TERMINATION.

This Agreement may be terminated and the Performance cancelled:

- (a) By the Purchaser of any engagements listed in this contract within 45 days before the performance date and the Purchaser will pay compensation of 50% of the total agreed upon compensation as a cancellation fee (\$600 in this case) to Performer within 10 calendar days of cancellation notice.
- (b) By Performer of any engagements listed in this contract within 3 days of performance date due to proven inability to perform due to sickness or accident. In such cases Performer agrees to refund any deposit received from Purchaser within 10 calendar days of cancellation notice.
- (c) By either Party immediately on notice to the other Party in the event of sickness, injury, accidents, fire, earthquake, flood, explosion, strike, riot, war, terrorism, or similar legitimate event beyond that Party's reasonable control (each a "Force Majeure Event"). In the event of a Force Majeure Event, both Parties shall be released and discharged from any obligations and liabilities under this Agreement, including the Purchaser's obligation to make any payments to the Performer, and the Performer shall promptly refund the Purchaser any payments, including any Deposit] already made by the Purchaser in connection with the Performance.
- (d) By either Party for a material breach of any provision of this Agreement by the other Party, if the other Party's material breach is not cured within seven (7) days of receipt of written notice thereof.
- (e) If weather conditions present a danger to Performer's health, safety, equipment and/or performance, in Performer's sole opinion, Performer shall have the right to cancel performance. In any cancellation for this cause, Performer shall be entitled to full compensation which would have otherwise been payable had the Performer Performed, or make attempt to reschedule on a mutually agreed upon new date. New scheduled date shall not surpass 90 days from original event date of September 7th, 2024.

8. ADDITIONAL SERVICES.

If the Purchaser requests performance time or services in addition to the Performance (the "Additional Services") and the Performer agrees and is able to fulfill such request, the Additional Services shall be billed to the Purchaser at the rates set forth in Exhibit A hereto.

9. RECORDING OF PERFORMANCE.

The Purchaser permitted to allow patrons and themselves engage in photographing, recording, broadcasting, or transmission of the Performance, under the provision that the Performer be notified and have the option to receive a digital copy of said photography or recordings if they are available.

10. PROMOTION.

The Purchaser shall be entitled to promote and advertise the Performance. The Purchaser shall have the right, for the Term of this Agreement, to use the Performer's name, biography, photographs, and likeness in connection with the promotion of the Performance and in connection with the publication of programs for the Performance. The Performer shall be entitled to use the Purchaser's name in any promotional or advertising materials.

11. RIGHT TO END PERFORMANCE.

The Performer reserves the right to end the Performance in the event of a legitimate threat or implied threat of injury or harm to the Performer and/or any of the Performer's personnel or property. The Purchaser shall remain liable for full payment of the Performance Fee, regardless of whether or not the Performer is able to resume and complete the Performance.]

12. INDEMNIFICATION.

- (a) Of Purchaser by Performer. The Performer shall indemnify, defend, and hold harmless the Purchaser and the Purchaser's parent, subsidiaries, affiliates, employees, agents, successors, and assigns from and against any and all claims, including, but not limited to, claims of libel and copyright infringement, actions, damages, and losses, liabilities and expenses, including reasonable outside attorneys' fees, arising out of or caused by the Performer's obligations under this Agreement
- (b) Of Performer by Purchaser. The Purchaser shall indemnify, defend, and hold harmless the Performer and the Performer's parent, subsidiaries, affiliates, employees, agents, successors, and assigns from and against any and all claims, actions, damages, and losses, liabilities and expenses, including reasonable outside attorneys' fees, arising out of or caused by the Purchaser's obligations under this Agreement.

13. NATURE OF RELATIONSHIP.

The Performer agrees to provide the Performance hereunder solely as an independent contractor. The Parties agree that nothing in this Agreement shall be construed as creating a joint venture, partnership, franchise, agency, employer/employee, or similar relationship between the Parties, or as authorizing either Party to act as the agent of the other. The Performer is and will remain an independent contractor in its relationship to the Purchaser. The Purchaser shall not be responsible for withholding taxes with respect to the Performer's compensation hereunder.

The Performer shall have no claim against the Purchaser hereunder or otherwise for vacation pay, sick leave, retirement benefits, social security, worker's compensation, health or disability benefits, unemployment insurance benefits, or employee benefits of any kind.

14. AUTHORITY TO SIGN AGREEMENT.

If this Agreement is signed by a person other than the Performer, such person signing for the Performer expressly warrants that he or she is authorized by the Performer to sign this Agreement on the Performer's behalf.

15. ASSIGNMENT.

This Agreement may not be assigned by either Party without the prior written consent of the other Party.

16. SUCCESSORS AND ASSIGNS.

All references in this Agreement to the Parties shall be deemed to include, as applicable, a reference to their respective successors and assigns. The provisions of this Agreement shall be binding on and shall inure to the benefit of the successors and assigns of the Parties.

17. MODIFICATION.

This Agreement may be supplemented, amended, or modified only by the mutual agreement of the Parties, which agreement must be in writing and signed by both Parties.

18. NOTICE.

Any notice or other communication provided for herein or given hereunder to a Party hereto shall be in writing and shall be given in person, by overnight courier, by mail (registered or certified mail, postage prepaid, return-receipt requested), or my email to the respective Parties as follows:

If to the Purchaser:
amason@vhw.org
or
Village of Hawthorn Woods
Attn: Amy Mason
2 Lagoon Drive
Hawthorn Woods, IL 60047

If to the Performer:
WinnieCooperRocks@gmail.com
or
654 Blue Spruce Lane
Mundelein, IL 60060

19. GOVERNING LAW.

This Agreement shall be governed by the laws of the state of Illinois. In the event that litigation results from or arises out of this Agreement or the performance thereof, the Parties agree to reimburse the prevailing Party's reasonable attorneys' fees, court costs, and all other expenses, whether or not taxable by the court as costs, in addition to any other relief to which the prevailing Party may be entitled.

20. NO IMPLIED WAIVER.

The failure of either Party to insist on strict performance of any covenant or obligation under this Agreement, regardless of the length of time for which such failure continues, shall not be deemed a waiver of such Party's right to demand strict compliance in the future. No consent or waiver, express or implied, to or of any breach or default in the performance of any obligation under this Agreement shall constitute a consent or waiver to or of any other breach or default in the performance of the same or any other obligation.

21. SEVERABILITY.

Whenever possible, each provision of this Agreement will be interpreted in such manner as to be effective and valid under applicable law, but if any provision of this Agreement is held to be invalid, illegal, or unenforceable in any respect under any applicable law or rule in any jurisdiction, such invalidity, illegality, or unenforceability will not affect any other provision or any other jurisdiction, but this Agreement will be reformed, construed, and enforced in such jurisdiction as if such invalid, illegal, or unenforceable provisions had never been contained herein.

22. COUNTERPARTS/ELECTRONIC SIGNATURES.

This Agreement may be executed in one or more counterparts, each of which shall be deemed an original but all of which shall constitute one and the same instrument. For purposes of this Agreement, use of a facsimile, e-mail, or other electronic medium shall have the same force and effect as an original signature.

23. ENTIRE AGREEMENT.

This Agreement, together with Exhibit A hereto, constitutes the final, complete, and exclusive statement of the agreement of the Parties with respect to the subject matter hereof, and supersedes any and all other prior and contemporaneous agreements and understandings, both written and oral, between the Parties.

24. HEADINGS.

Headings used in this Agreement are provided for convenience only and shall not be used to construe meaning or intent.

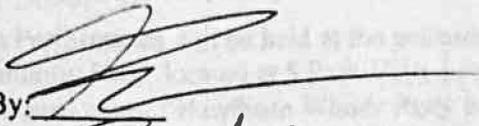
[SIGNATURE PAGE FOLLOWS]

IN WITNESS WHEREOF, the Parties hereto have executed this Agreement as of the date first above written.

Dated: February 26, 2024

PERFORMER

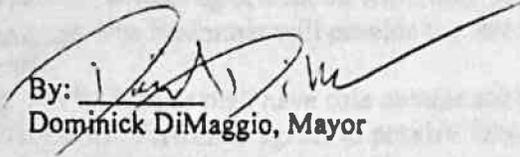
"Winnie Cooper", Patrick McGovern

By: 

Name: PATRICK MCGOVERN

PURCHASER

Village of Hawthorn Woods

By: 

Dominick DiMaggio, Mayor

EXHIBIT A

1. PERFORMANCE DETAILS.

In exchange for the Performance Fee, as set forth in Section 3 to this Exhibit A, the Performer agrees to provide the Performance as follows:

- (a) Performance Venue. The Performance will be held at the premises known as “Hawthorn Woods Community Park” located at 5 Park View Lane, Hawthorn Woods, IL 60047 at the annual event, “Hawthorn Woods Party in the Park”.
- (b) Performance Date[s] and Time[s]. The Performance will take place on the following date[s] and time[s]:

Saturday September 7th, 4:00pm to 6:00pm

- (c) Length of Performance. The Performance will be approximately 120 minutes, but may extend beyond that with written agreement between both parties.
- (d) Description of Performance. The Performer will provide the following Performance: Live music.
- (e) Performance Content. The Performer shall have sole control and responsibility for the content of the Performance. Performer agrees to provide family-friendly content.
- (f) Set-up and Take-down. Set-up for the Performance shall begin { 2 } hours prior to the Performance, at approximately 2:00pm. Take-down of the Performance shall be completed directly after the Performance to allow the next act to get on stage as quickly as possible (as needed).

2. PERFORMANCE SERVICES.

- (a) Purchaser Services. The Purchaser, at its own expense, agrees to provide the following Services in connection with the Performance:
 - (i) Provide a safe location on solid ground for the performance.
 - (ii) Supply power and lighting as follows:
 - (i) No less than 3 electrical outlets or comparable extension cords attached to a reliable power source
 - (ii) (Optional) Any lighting necessary or desired to illuminate the Performers should sunlight not be sufficient.
 - (iii) Provide Heating or Cooling as necessary to ensure performers are as comfortable as possible during the duration of the performance
 - (iv) Provide reasonable security to protect the Performer and the Performer’s property on the stage and in any backstage areas.
 - (v) Provide parking for up to 5 vehicles of the Performer for a period of 12 hours, beginning at time within 2 hours of load-in, at a location close to the Venue.
- (b) Performer Services. The Performer, at its own expense, agrees to provide the following Services in connection with the Performance:
 - (i) Arrive at the Venue at a load-in time, agreed upon in writing by both parties.

- (ii) Control and direct the production and presentation of the Performance
- (iii) Supply any and all equipment and personnel necessary for the Performance other than the equipment and personnel to be supplied by the Purchaser.

3. COMPENSATION.

- (a) Performance Fee. As full compensation for the Performance, the Purchaser shall pay the Performer by cash, or by money order or check made payable to Summit Entertainment LLC a total sum of \$1200 Dollars (One-thousand and two-hundred dollars) to be paid in full prior to the start of the Performance. The Purchaser shall be charged a fee of thirty Dollars (\$30) for each bounced check.

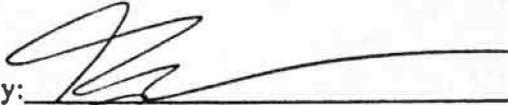
[SIGNATURE PAGE FOLLOWS]

By signing below, the Parties agree to comply with all of the requirements contained in this Exhibit A.

Dated: February 26, 2024

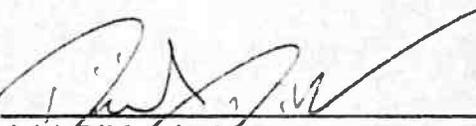
PERFORMER

"Winnie Cooper", Patrick McGovern

By: 
Name: PATRICK MCGOVERN

PURCHASER

Village of Hawthorn Woods

By: 
Dominick DiMaggio, Mayor