

TOWN OF CLINTON VENDOR AGREEMENT

THIS AGREEMENT (the “Agreement”) made as of this June 11, 2024 day of by the Town of Clinton, a municipal corporation with an office located at 1215 Centre Road, Rhinebeck, New York 12572 (the “Town”) and **Gene Canaveri/Red Barn Band** (the “Vendor”).

WHEREAS, the Town desires to engage the Vendor for the purposes of providing services to the Town as part of its Community Day (the “Program”).

WHEREAS, the Town and the Vendor seek to enter into an agreement which sets forth the terms and conditions of the services provided by the Vendor to the Town as part of the Program.

NOW THEREFORE, in consideration of the mutual covenants and conditions contained herein, the parties do hereby mutually covenant and agree as follows:

1. **Term**. The Agreement shall commence on August 31, 2024 and shall terminate, unless earlier terminated pursuant to the terms of this Agreement, on August 31, 2024 (the “Term”).
2. **Duties**. The Town hereby retains the Vendor to perform the following services (the “Services”) as part of the Program:

Playing music with the band on Community Day August 31, 2024 from 10 AM until 4 PM.

3. **Expertise**. The Vendor represents and warrants to the Town that it has sufficient staff available to perform the Services and that all individuals providing the Services have the background, training and experience to perform properly the Services to be delivered under the Agreement and/or, as appropriate, for adequately supervising such individuals at the worksite(s), and/or, as appropriate, that the good(s) it provides hereunder shall perform as the Vendor has advertised or represented to the Town.
4. **Compensation**. The Town agrees to pay the Vendor **\$600.00** for the Services. Payment shall be due upon completion of the Services at which time the Vendor shall submit an invoice to the Town detailing the Services provided.
5. **Subcontractors**. The Vendor is prohibited from engaging any subcontractors for the purpose of performing the Services without the prior written consent of the Town. A subcontractor is any person or entity that the Vendor has arranged to provide services for or assist with the Services. The Vendor shall be solely responsible for payment of any subcontractors and shall bear the responsibility for any losses or damages caused by a subcontractor.

6. **Publicity.** The Town will provide publicity, and other notices for the Program to the extent possible. This includes possible postings on the Town website and providing email notification to Town residents.
7. **Compliance With Laws.** The Vendor represents and warrants that the Services shall be accomplished in compliance with all applicable Federal, State and local laws, ordinances, rules, regulations and codes, including, but not limited to, U.S. Occupational Safety and Health Administration (“OSHA”) requirements; applicable provisions of paragraphs (1) through (7) of section 202 of Executive Order 11246 relating to Equal Employment Opportunity; section 402 of the Vietnam Era Veterans Readjustment Act of 1974, as amended; and section 503 of the Rehabilitation Act of 1973. The Vendor and its subcontractors (if any), employees, and agents shall obtain and maintain in full force and effect, all necessary permits, licenses, and authorizations required by governmental and quasi-governmental agencies. The Vendor shall advise the Town of all permits and licenses required to be obtained in the Town’s own name for the Services to be provided hereunder, and shall cooperate with the Town in obtaining the same. The Vendor shall not solicit, possess, or use in any manner tools and equipment, including but not limited to ladders, hand tools, lifts or power tools, that are the property of the Town or its employees.
8. **No Employment Relationship.** It is understood and agreed between the parties that the Agreement is not intended to nor does it create an employment relationship between the Town and the Vendor nor any subcontractor. It is also further understood that the Agreement does not create a joint relationship or partnership between the parties hereto. The Vendor’s relationship to the Town is solely and exclusively that of an independent contractor and the Vendor nor its employees or subcontractors are entitled to any benefit that the Town provides for the Town’s employees. The Town is interested only in the results to be achieved and the conduct and control of the Services shall be solely with the Vendor. Except as specifically permitted in this Agreement, neither party shall use the name or trademarks of the other party or incur any obligation or expense for or on behalf of the other party without the other party’s prior written consent in each instance.
9. **No Withholding.** The Vendor is solely and exclusively responsible for the satisfaction of the Vendor’s own local, state, and federal income tax and Social Security withholding that may be applicable to the amounts payable by the Town under this Agreement.
10. **Assignment.** The Vendor shall not assign its duties hereunder without the prior written consent of the Town.
11. **Binding Effect.** This Agreement shall be binding upon the parties hereto and upon their respective successors and assigns.

12. **Indemnification.** The Vendor agrees to defend, indemnify, and hold harmless the Town, its successors and assigns, and their respective trustees, officers, employees, and agents (the “Indemnified Parties”) to the fullest extent permitted by law from and against any and all claims or demands whatsoever, including, but not limited to, associated costs, expenses, and reasonable attorneys’ fees incurred on account thereof (“Claims”) asserted against the Town as a result of the Vendor’s Services or performance or non-performance of this Agreement, including, but not limited to, Claims that may be asserted by any person(s), including, but not limited to, employees of the Vendor’s subcontractors or agents (“Claimants”), for loss, damage, death, injury, sexual harassment, or molestation to or of persons or property; or, where applicable, infringement of any third-party intellectual property rights, including, but not limited to, those of copyright; or, where applicable, unauthorized release of or failure to protect confidential information of all types, including, but not limited to, personally identifiable information (PII) or electronic protected health information (ePHI) (“Losses”) arising in any manner out of or incident to the Vendor’s performance or nonperformance hereunder.
13. **Termination for Convenience.** Either party may terminate this Agreement with five (5) days prior written notice to the other party. The Vendor hereby acknowledges and agrees that, notwithstanding anything to the contrary contained in this Agreement, in the event of termination, the Town shall only be liable for, and the Vendor agrees only to retain, payment of the portion of the compensation earned as a result of Services actually and satisfactorily performed through the effective date of termination. In the event this Agreement is terminated, the effective date of termination shall be the date written notice is sent.
14. **Termination for Cause.** The Town may terminate this Agreement, by written notice of default to Vendor, in any one of the following circumstances:
- (a) the Vendor fails to perform any duties or obligations within the time specified herein or any written extension thereof granted by the Town;
 - (b) if Vendor so fails to make progress as to endanger performance of this Agreement in accordance with its terms;
 - (c) if Vendor fails to comply with any of the material terms and conditions of this Agreement. Such termination shall become effective if Vendor does not cure such failure within a period of five (5) days after written notice of default by the Town or any written extension of time thereof granted by the Town;
 - (d) If the Vendor is declared insolvent or bankrupt, or makes an assignment for the benefit of creditors, or a receiver is appointed or any proceeding is demanded by, for or against the other under any provision of the Federal Bankruptcy Act or any amendment thereof.

Upon termination of this Agreement, the Town may procure, upon such terms as it shall deem appropriate, services similar to those so terminated.

15. **Cooperation.** The parties agree to cooperate with each other in connection with any internal investigations by the Town or the Vendor of possible violation of their respective policies and procedures and any third-party litigation, except that the Town shall not be required to have any contact with any union or union representatives of the Vendor's employees or subcontractors or participate in any union grievance or other proceedings relative to the Vendor's employees or subcontractors.
16. **Recordings.** The Vendor gives the Town permission to use audio and image recordings of the Vendor and its subcontractor performing the Services. The Vendor may make audio and image recordings at the Program and use them solely to promote the Vendor's other programs which are similar to that given at the Town.
17. **Insurance.** The Vendor shall at all times during the term of this Agreement carry, and require its subcontractors to carry, at least the following types and amounts of insurance:
 - Workers Compensation insurance on all employees, whether paid or volunteer, as may be required by applicable state law. If the Vendor is exempt under appropriate state law from the requirement to carry workers compensation insurance, the Vendor must submit a written statement to that effect in a form satisfactory to the Town;
 - Commercial General Liability with limits of not less than \$1,000,000 each occurrence, \$1 million products and completed operations aggregate, and \$2 million general aggregate. Such insurance shall include coverage for claims arising from all activities and Services to be performed by Vendor;
 - If vehicles will be used in the performance of the Services, Commercial Automobile Liability insurance with limits of not less than \$1,000,000 combined single limit each accident covering all owned and non-owned vehicles;
 - If professional services, or any other services, requiring a license are to be performed by Vendor, professional liability (Malpractice) insurance with limits of not less than \$1 million each accident or occurrence covering claims arising from the professional service being performed.
 - The Town shall be named as additional insured on all of Vendor's liability insurance policies, and the Vendor's policies shall be primary coverage for the Town, regardless of whatever other insurance the Town may have available.

Such policies of insurance shall be maintained with insurance companies authorized to do business in the State of New York and provide that they may not be canceled or materially changed except upon 30 days prior written notice to the Town. Vendor shall, at the time of the execution of this Agreement, furnish the Town with a certificate of insurance evidencing such coverage, and naming the Town as an additional insured with respect to its liability coverages. It is the intent of the parties that Vendor's insurance be primary and non-contributory coverage for the Town for claims arising from Vendor's performance of this Agreement, regardless of whatever other insurance the Town may have available. The insurance required pursuant to this Section shall not be deemed to limit the Vendor's obligations to indemnify the Town under this Agreement.

If the Vendor is providing restaurant catering in which alcohol may be served, the Vendor's liability insurance shall include coverage for Dram Shop liability or similar liability imposed by law. The Vendor shall furnish a certificate from its insurance carrier showing that it has complied with the foregoing provisions, and providing that the said insurance policies will not be changed or canceled during their term until after at least thirty (30) days prior written notice by registered mail to the Town. If the required certificate of insurance is not provided to the Town in advance of the event, the Town shall have the right to terminate and receive a full refund of any amounts paid in advance.

18. **Force Majeure.** Notwithstanding anything to the contrary contained in the Agreement, The Town shall not be liable, nor shall any credit or other remedy be extended, for The Town's failure, in whole or in part, to fulfill its obligations under the Agreement where such failure arises from or in connection with causes beyond the Town's control, including, but not limited to, acts of God, pandemic, flood, extreme weather, fire or other natural calamity, terrorist attack, any law, order, or regulation or action of any governmental entity or civil or military authority, power or utility failure, cable cuts, unavailability of rights-of-way, national emergencies, riots, wars, strikes, lock-outs, work stoppages, or other labor difficulties (each a "Force Majeure Event"). If a Force Majeure Event occurs during the term hereof, the Town shall be excused from performance hereunder.
19. **Set Up, Take Down and Cleaning.** Unless otherwise provided in this Agreement, the Vendor shall be responsible for setting up and taking down all required facilities and providing all items and materials necessary for providing the Services. The Vendor is responsible for cleaning and maintaining any space provided by the Town for the purpose of performing the Services in an organized and neat manner. The Vendor shall not install any permanent fixtures in any space provided by the Town. The Vendor shall also be responsible for removing bulk trash. The Vendor's failure to keep such space in an orderly manner will result in a reduction of payment to the Vendor and/or termination of this Agreement. The Vendor agrees that the space utilized by the Vendor shall be returned to the Town in broom clean condition upon completion of the Program. The Town may elect to withhold payment should the Vendor fail to return the space in such condition.
20. **Governing Law and Jurisdiction.** Except as may be preempted by federal law, this Agreement shall be governed by the laws of the State of New York, without regard to its choice of law principles. Litigation of all disputes between the parties arising from or in connection with this Agreement shall be conducted in a court of appropriate jurisdiction in the State of New York, County of Dutchess.
21. **Notices.** All notices to the Town in connection with this Agreement shall be sent by email and regular mail to:

Michael Whitton
TownSupervisor@TownofClinton.com
Town Supervisor

1215 Centre Road
Rhinebeck, New York 12572

with simultaneous copies to:
Carol Mackin
TownClerk@TownofClinton.com
Town Clerk
1215 Centre Road
Rhinebeck, New York 12572

All notices to Vendor in connection with this Agreement shall be sent by email and regular mail to:

Gene Canaveri/ Red Barn Band

22. **No Waiver.** Failure of either party to enforce any of its rights hereunder shall not constitute a waiver of such right(s) or of any other rights and shall not be construed as a waiver or relinquishment of any such provisions, rights, or remedies; rather, the same shall remain in full force and effect.
23. **Limitation on Consequential and Indirect Damages.** Except for gross negligence or willful misconduct or as otherwise provided for in this Agreement, neither party will be liable to the other for any loss of profit, indirect, incidental, special, punitive, or consequential damages arising out of or relating to this Agreement.
24. **Severability.** If any provision of this Agreement will be held to be invalid or unenforceable for any reason, the remaining provisions will continue to be valid and enforceable. If a court finds that any provision of this Agreement is invalid or unenforceable, but that by limiting such provision it would become valid and enforceable, then such provision will be deemed to be written, construed, and enforced as so limited.
25. **Authority.** The parties represent and warrant that the execution, delivery and performance of this Agreement has been duly authorized by the Town and the Vendor.
26. **Headings.** Section headings contained in this Agreement are inserted for convenience of reference only. The section headings shall not be deemed to be a part of this Agreement for any purpose and shall not in any way define or affect the meaning, construction or scope of any of the provisions hereof.
27. **No Modification.** This Agreement may not be changed, altered, amended, waived, terminated or otherwise modified unless the same shall be in writing and signed by all parties hereto.
28. **Electronic Signature and Counterparts.** This Agreement may be executed in counterparts, all of which taken together shall constitute one and the same instrument and

shall be deemed an original. An executed facsimile, pdf. or other signed copy of this Agreement shall be deemed an original.

29. **Entire Agreement.** This Agreement, together with any exhibits or addenda annexed hereto, is the sole, complete, and exclusive expression of the parties' intent with respect to the subject matter hereof. Notwithstanding the foregoing, in the event of any conflict or discrepancy between the terms and conditions of this Agreement and those of any exhibit, rider, or addendum hereto, the terms of this Agreement shall control. This Agreement may be amended or modified only by a writing countersigned by authorized representatives of each party.

TOWN OF CLINTON

**GENE CANAVERI
RED BARN BAND, VENDOR**

By: _____
Michael Whitton, Town Supervisor

By: _____
[NAME], [TITLE]

Print: _____

Attachments:

**Insurance Requirements
Hold Harmless Agreement**