

**AGENDA**  
**REDEVELOPMENT COMMISSION**  
**February 16, 2021 at 5:00 p.m.**

*Per the Governor's Executive Orders 20-04, 20-08, and 20-09, this meeting will be conducted electronically.  
The public may access the meeting at the following link:*

*<https://bloomington.zoom.us/j/91558114667?pwd=OXBLY2o2ZlpjU0l0TDAwSjdvVHZQZz09>*

*Meeting ID: 915 5811 4667  
Passcode: 132552*

- I. ROLL CALL**
- II. READING OF THE MINUTES** –February 1, 2021
- III. EXAMINATION OF CLAIM REGISTER** – February 5, 2021, for \$112,881.03
- IV. EXAMINATION OF PAYROLL REGISTERS**–January 29, 2021 for \$34,349.58
- V. REPORT OF OFFICERS AND COMMITTEES**
  - A. Director's Report
  - B. Legal Report
  - C. Treasurer's Report
  - D. Business Development Updates

**VI. NEW BUSINESS**

**PUBLIC HEARING**

- A. Resolution 21-09: Approval of CAC Recommendations

**PUBLIC HEARING ENDS**

- B. Resolution 21-10: Addendum to Agreement with T III Environments, for Art in Switchyard Park
- C. Resolution 21-11: Acceptance Conveyance of Ownership of 4<sup>th</sup> Street Parking Garage
- D. Resolution 21-12: Approval of Partnership Agreement with BCT Management, 2021

**VII. BUSINESS/GENERAL DISCUSSION**

**IX. ADJOURNMENT**

*Auxiliary aids for people with disabilities are available upon request with adequate notice. Please call [812-349-3429](tel:812-349-3429) or e-mail [human.rights@bloomington.in.gov](mailto:human.rights@bloomington.in.gov).*

***THE REDEVELOPMENT COMMISSION OF THE CITY OF BLOOMINGTON, INDIANA MET on Monday, February 1, 2021, at 5:00 p.m. via ZOOM, with Don Griffin, President, Presiding Meeting Recording Available at <https://catstv.net/m.php?q=9248>***

**I. ROLL CALL**

Commissioners Present: Don Griffin, Cindy Kinnarney, Nicholas Kappas and David Walter

Commissioners Absent: None

Staff Present: Brent Pierce, Interim Director, HAND; Christina Finley, Financial Specialist, HAND; Matt Swinney, Program Manager, HAND

Others Present: Larry Allen, Attorney, City Legal Department; Alex Crowley, Director, Economic & Sustainable Development (ESD); April Hennessey, MCCSC Representative; Dave Askins, B Square Beacon; Clark Greiner, BEDC; Jen Pearl, BEDC; Jim Shelton, Chamber of Commerce; Sean Starowitz, ESD

**II. READING OF THE MINUTES** – Nicholas Kappas moved to approve the January 19, 2021, minutes and January 19, 2021, Executive Summary. Cindy Kinnarney seconded the motion. The motion passed unanimously.

**III. EXAMINATION OF CLAIM REGISTER** – David Walter moved to approve the claim register for \$2,755,166.34. Cindy Kinnarney seconded the motion. The motion passed unanimously.

**IV. EXAMINATION OF PAYROLL REGISTERS** – Cindy Kinnarney moved to approve the payroll register for January 15, 2021 for \$34,106.14. Nicholas Kappas seconded the motion. The motion passed unanimously.

**V. REPORT OF OFFICERS AND COMMITTEES**

**A.** Director's Report. Brent Pierce was available to answer questions.

**B.** Legal Report. Larry Allen was available to answer questions.

**C.** Treasurer's Report. Jeff Underwood was available to answer questions.

**D.** Business Development Updates: Alex Crowley updated the commission on the latest activity related to the Economic Development Administration Grant (EDA Grant). Crowley said staff is completing an update to the application, which will be submitted next week. Staff will keep the commission apprised of any significant updates as they occur.

**VI. NEW BUSINESS**

**A.** Bid Openings for the 4<sup>th</sup> Street and Trades District Garage Space. Larry Allen said RDC property cannot be sold or leased without prior public notice that the RDC will receive offers. Any offers received must be opened at a public meeting. Allen said individual notices for the space open for leases within the 4<sup>th</sup> Street and Trades District Garages respectively were published on January 4 and 11, in the Herald-Times. The RDC did not receive any written offers for either garage space. Allen said that under the statute, the properties cannot be sold or leased for 30 days for an amount less than the average of the two appraisals. The amount in the notice of offering for the leases was \$20 per sq. ft. However, negotiations for a lease can begin, and the RDC can approve offers for the lease space less than \$20 per sq. ft. after the 30-day period.

- B. Resolution 21-07: Approval of Agreement for Trades District Gateway Art.** The RDC previously approved a project review and approval form supporting the effort to begin infrastructure improvements in the Trades District. The City solicited public input on Trades District Gateway Art designs for completion of the infrastructure project. The City along with the public selected a design from Stefan Reiss as the winning design. The City has negotiated an agreement with Ignition Arts, LLC, to fabricate and install the Gateway Art for an amount not to exceed \$90,230.

Sean Starowitz said that Ignition Arts is based in Indianapolis and is internationally known for public art fabrication. He said this is a 1% project.

Cindy Kinnarney asked if there will be additional funds needed for ongoing maintenance. Starowitz said maintenance is budgeted into the project.

Don Griffin asked for public comment. There were no comments from the public.

Cindy Kinnarney moved to approve Resolution 21-07 via roll-call vote. Nicholas Kappas seconded the motion. The motion passed unanimously.

- C. Resolution 21-08: Approval of Funding Agreement with Habitat for Humanity for Infrastructure Improvements.** Matt Swinney stated that the RDC previously approved funding to oversee and inspect the design and construction of Guy Drive extension for pedestrian, vehicular and other street improvements through the Osage Place development. The funding agreement is for an amount not to exceed \$121,361. Larry Allen said Habitat must keep 25% of the Homes affordable for a period of 30 years as part of the funding agreement.

Don Griffin asked for public comment. There were no comments from the public.

Cindy Kinnarney moved to approve Resolution 21-08 via roll-call vote. David Walter seconded the motion. Don Griffin and Nicholas Kappas voted yes. The motion passed unanimously.

Cindy Kinnarney moved to adjourn. Nicholas Kappas seconded the motion. The meeting was adjourned at 5:23 p.m.

## **D. BUSINESS/GENERAL DISCUSSION**

### **A. ADJOURNMENT**

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Don Griffin, President

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Cindy Kinnarney, Secretary

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Date

**21-09  
RESOLUTION  
OF THE  
REDEVELOPMENT COMMISSION  
OF THE  
CITY OF BLOOMINGTON, INDIANA**

**APPROVAL OF COMMUNITY DEVELOPMENT BLOCK GRANT RECOMMENDATIONS  
BY THE CITIZENS ADVISORY COMMITTEE**

WHEREAS, the City of Bloomington, Indiana, is eligible for Community Development Block Grant (CDBG) funds in the approximate amount of \$1,018,000 of grant funds for Fiscal Year 2021; and

WHEREAS, 15% of the grant can be used for social services, 20% for program administration, and 65% for physical improvements, which amounts to the following allocation:

\$152,700 for Social Services,  
\$203,600 for Program Administration, and  
\$661,700 for Physical Improvements; and

WHEREAS, the advice and input of the community as to the allocation of the Community Development Block Grant funds has been solicited and received through the efforts of the Citizens Advisory Committee; and

WHEREAS, the Citizens Advisory Committee has made recommendations on how to distribute any funds received that are more or less than the estimated amount, because the final allocation amount as not been received; and

WHEREAS, the Redevelopment Commission has reviewed the recommendations of the Citizens' Advisory Committee for allocation of funds anticipated to be received, which are attached to this Resolution as Exhibits A and B;

**NOW, THEREFORE, BE IT RESOLVED BY THE BLOOMINGTON REDEVELOPMENT COMMISSION THAT:**

1. The RDC finds that Citizens Advisory Committee's recommendations of the programs (attached hereto and made a part herein as Exhibit A and Exhibit B) will best serve the local and national objectives of the program.
2. If the received allocation is more or less than expected, the adjustment will be made to all of the approved social service programs and the approved physical improvement programs in accordance with the recommendations of the Citizens Advisory Committees as outlined in Exhibit A and Exhibit B.

**BLOOMINGTON REDEVELOPMENT COMMISSION**

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Donald Griffin, President

ATTEST:

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Cindy Kinnarney, Secretary

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Date

**EXHIBIT A  
PHYSICAL IMPROVEMENT RECOMMENDATIONS**

	<u>2021 Request</u>	<u>CAC Recommendation</u>
<b><u>HOUSING ASSISTANCE</u></b>		
Summit Hill Community Development Corp. Bloomington Housing Authority - Crestmont Site Improvements	\$150,000	\$150,000
Summit Hill Community Development Corp. Bloomington Housing Authority - Accessibility Upgrades	\$50,000	\$50,000
<b>Housing Assistance Subtotal:</b>	<b>\$200,000</b>	<b>\$200,000</b>
 <b><u>FACILITY IMPROVEMENTS</u></b>		
MCUM – Security Cameras	\$27,727	\$27,727
New Hope For Families – Playgrounds for Childcare Facility	\$191,151	\$191,151
LifeDesigns – Winslow and Dunn Group Homes Renovation	\$39,911	\$39,911
Centerstone – 635 S Rogers St. Hoosier House Exterior Work	\$53,000	\$53,000
Middle Way House – Upgrade and add cameras to security sys.	\$12,000	\$12,000
LifeDesigns- Tankless water heater for Housing Options 1	\$31,110	\$31,110
MCUM – Carpet and Paint for Digital Resource Center	\$2,019	\$2,019
New Hope For Families- Landscaping for new building site	\$25,750	\$25,750
Centerstone – 416 W. 1 <sup>st</sup> St. Bring wiring up to code new HVAC	\$40,000	\$40,000
<b>Facility Improvements Subtotal:</b>	<b>\$421,668</b>	<b>\$421,668</b>
 <b><u>COMMUNITY-WIDE INFRASTRUCTURE PROJECTS</u></b>		
City of Bloomington, Utilities –Evergreen Village Drainage Improvements	\$40,000	\$40,000
 <b><i>SUBTOTAL</i></b>	 <b>\$40,000</b>	 <b>\$40,000</b>
<b>TOTAL REQUESTED /ALL FUNDED PROJECTS:</b>	<b>\$661,668</b>	<b>\$661,668.00</b>
 <b>TOTAL AMOUNT ALLOCATED</b>		 <b>\$661,668.00</b>

All projects are to be funded at 100%. If funding exceeds \$661,700 then additional funds will be allocated for Public Infrastructure and Housing Rehabilitation Projects administered by HAND. If funds are under \$661,700 then CBU, 2<sup>nd</sup> Round SHCDC/BHA, 2<sup>nd</sup> Round LifeDesigns, 2<sup>nd</sup> Round New Hope For Families, 2<sup>nd</sup> Round Centerstone will each be reduced by the same percentage.

**EXHIBIT B  
SOCIAL SERVICE RECOMMENDATIONS**

	<u>2021 Request</u>	<u>CAC Recommendations</u>
<b><u>EMERGENCY NEEDS</u></b>		
Community Kitchen	\$25,000.00	\$25,000.00
Mother Hubbard's Cupboard	\$25,000.00	\$25,000.00
Hoosier Hills Food Bank	\$25,000.00	\$25,000.00
<b><i>SUBTOTAL</i></b>	<b>\$75,000.00</b>	<b>\$75,000.00</b>
<b><u>NON-EMERGENCY NEEDS</u></b>		
Boys & Girls Clubs of Bloomington	\$25,000.00	\$25,000.00
Monroe County United Ministries	\$25,000.00	\$25,000.00
New Leaf-New Life – Criminal Justice Transition	\$25,000.00	\$ 25,000.00
Broadview Learning Center-MCCSC	\$14,400.00	\$2,700.00
<b><i>SUBTOTAL</i></b>	<b>89,400.00</b>	<b>\$77,700.00</b>
<b>TOTAL REQUESTED ALL FUNDED AGENCIES</b>	<b>\$164,400.00</b>	
<b>TOTAL AMOUNT OF FUNDS AVAILABLE</b>		<b>\$152,700.00</b>
<b>TOTAL AMOUNT ALLOCATED</b>		<b>\$152,700.00</b>

If the 2021 funding level is greater than \$152,700.00, overage funds will be distributed as follows: Broadview Learning Center will receive funding in an amount not to exceed \$14,400.00 per their original request.

If the 2021 funding level is less than \$120,000.00, funds will be distributed as follows: (1) Community Kitchen and Boys & Girls Club will each receive 21% of total funds, (2) Hoosier Hills Food Banks and Mother Hubbard's Cupboard will each receive 20% of total funds, and (3) Monroe County United Ministries will receive 18% of total funds.

**21-10**  
**RESOLUTION**  
**OF THE**  
**REDEVELOPMENT COMMISSION**  
**OF THE**  
**CITY OF BLOOMINGTON, INDIANA**

**ADDENDUM TO AGREEMENT WITH T III ENVIRONMENTS, LLC, FOR ART IN SWITCHYARD PARK**

WHEREAS, the Redevelopment Commission of the City of Bloomington (“RDC”) issued its “Redevelopment District Tax Increment Revenue Bonds of 2015” (the “Bond”) to pay for, among others things, the development of the Switchyard Park, and

WHEREAS, on June 16, 2015, the RDC approved in Resolution 15-30 a Project Review and Approval Form (“Form”) for the construction of Switchyard Park; and

WHEREAS, the RDC approved funding for the construction of Switchyard Park, including art, in Resolution 18-25; and

WHEREAS, pursuant to that authorization, the RDC approved a contract with T III Environments, LLC, for art in Switchyard Park, which is attached to this Resolution Exhibit A; and

WHEREAS, staff have negotiated an addendum, attached to this Resolution as Exhibit B, that extends the completion date of the art project to August 1, 2021; and

WHEREAS, no additional funding is necessary under this addendum;

NOW, THEREFORE, BE IT RESOLVED BY THE REDEVELOPMENT COMMISSION OF THE CITY OF BLOOMINGTON, INDIANA THAT:

1. The RDC reaffirms its support of the Project and reiterates that it serves the public’s best interest.
2. The RDC approves the addendum with TIII, and authorized Donald Griffin to sign on its behalf.

BLOOMINGTON REDEVELOPMENT COMMISSION

\_\_\_\_\_  
Donald Griffin, President

ATTEST:

\_\_\_\_\_  
Cindy Kinnarney, Secretary

\_\_\_\_\_  
Date



**AGREEMENT  
BETWEEN  
CITY OF BLOOMINGTON  
AND  
T III ENVIRONMENTS, LLC  
FOR  
PUBLIC ART IN SWITCHYARD PARK**

This Agreement, entered into on this 19th day of March, 2020, by and between the City of Bloomington and the Bloomington Redevelopment Commission (collectively the “City”), and T III Environments, LLC (“Artist”),

**WITNESSETH:**

WHEREAS, the City wishes to highlight the role of public art in the community by addition of a public art work in Switchyard Park; and

WHEREAS, the City requires the services of a professional Artist in order to design, fabricate and install art in Switchyard Park (the “Services” as further defined below); and

WHEREAS, it is in the public interest that such Services be undertaken and performed; and

WHEREAS, the Artist is a recognized artist whose work and reputation make the Artist uniquely qualified to create Artwork; and

WHEREAS, the Artist and the City wish to undertake the obligations expressed herein:

NOW, THEREFORE, in consideration of the mutual covenants herein contained, the parties hereto agree as follows:

**Article 1. Scope of Services**

The Artist shall perform all services and furnish all supplies, material and/or equipment as necessary for the design, fabrication, and installation of the Artwork described in the Artist’s response to the City’s Request for Qualifications and attached and described in Exhibit A, “Proposal”, attached to and incorporated into this Agreement, at the location described in Exhibit B (“Site”). Services shall be performed in a professional manner and in strict compliance with all terms and conditions in this Agreement.

**Article 2. Artist’s Obligations**

2.1 Artist shall diligently provide the Services under this Agreement and shall complete the Services described in this Agreement in a timely manner consistent with the Standard of Care identified in Article 3.

- 2.2 Artist shall complete the Services required under this Agreement on or before September 30, 2020, unless the parties mutually agree to a later completion date. Completion shall mean completion of all work related to the Services.
- 2.3 In the performance of Artist's work, Artist agrees to maintain such coordination with the City as may be requested and desirable, including primary coordination with Sean Starowitz as the City's Project Manager. Artist agrees that any information or documents, including digital GIS information, supplied by the City pursuant to Article 3, below, shall be used by Artist for this project only, and shall not be reused or reassigned for any other purpose without the written permission of the City.
- 2.2 The Artist shall determine the artistic expression, design, dimensions, and materials of the Artwork, subject to review and acceptance by the City as set forth in this Agreement. To ensure that the Artwork as installed shall not interfere with the intended use of the Site, pedestrian and other traffic flow, parking, and safety devices and procedures at the Site, the Artist's proposal shall be reviewed by the City or its designee, as necessary, for approval by the City to ensure compliance with these objectives.
- 2.3 The Artist shall prepare the Artwork design and corresponding budget as provided in Article 5 of this Agreement for the approved proposal.
- 2.4 Prior to submitting a Final Design, the Artist will gain an understanding of the Site's unique characteristics and coordinate with the City or its designee, as appropriate, to communicate about the Artwork and to ensure appropriate integration and/or installation.
- 2.5 Throughout the Project, the Artist shall provide the City or its designee sufficient detail to permit the City to determine compliance with applicable local, state or federal laws, ordinances and/or regulations, and to obtain any necessary approvals.
- 2.6 The Artist shall complete the installation of the Artwork by the scheduled date as provided in Article 7 of this Agreement.
- 2.7 The Artist shall secure any and all required licenses, permits and similar legal authorizations at the Artist's expense as may be necessary for the installation of the Artwork at the Site.
- 2.8 The Artist shall arrange the transportation and installation of the Artwork in consultation with the City or its designee. If the Artist does not personally install the Artwork, the Artist shall supervise and approve the installation. The Artist is responsible for the installation of the Artwork and for any repair or replacement of any of the site's components that are damaged or negatively impacted as part of the installation.
- 2.9 The Artist shall provide the insurance specified in Article 21 and **Exhibit G**, attached hereto and made a part of this Agreement.
- 2.10 The Artist shall provide the City with a list of all subcontractors and a copy of the agreement between the Artist and each subcontractor.

- 2.11 The Artist shall provide a maintenance manual with a written description of all materials and products utilized in the Artwork and the required care and upkeep involved (“Maintenance Manual”), which shall be attached and incorporated into this Agreement as Attachment 3.
- 2.12 The Artist shall provide photographic documentation of the Artwork as requested by the City.
- 2.13 The Artist shall be available with reasonable advance notice for meetings, ceremonies, and the like, as necessary.
- 2.14 The Artist acknowledges that, except as otherwise provided herein, until final acceptance of the Artwork by the City under Article 10, any injury to property or persons caused by the Artist’s Artwork or any damage to, theft of, vandalism to, or acts of God affecting the Artist’s Artwork are the sole responsibility of the Artist, including, but not limited to, any loss occurring during the creation, storage, transportation or delivery of the Artist’s Artwork, regardless of where such loss occurs.

**Article 3. Standard of Care**

Artist shall be responsible for completion of the Services in a manner to meet the professional standards consistent with the Artist’s profession in the location and at the time of the rendering of the services. Artist shall perform all services under this Agreement in a skillful and competent manner in accordance with normally accepted standards of the architectural and engineering professions and with that degree of care and skill which a professional engineer or architect would exercise under the same or similar circumstances. The City shall not unreasonably withhold its approval as to the adequacy of Artist’s performance. Upon notice to Artist and by mutual agreement between the parties, Artist will, without additional compensation, correct or replace any and all Services not meeting the Standard of Care.

**Article 4. City of Bloomington’s Obligations**

- 4.1 The City shall perform all obligations in strict compliance with all terms and conditions in this Agreement.
- 4.2 The City shall be responsible for providing the Artist, at no expense to the artist, copies of existing designs, drawings, and reports, a list of required permits, licenses, and other authorizations, and other existing relevant data, if any, which is needed by the Artist in order to perform.
- 4.3 The City shall be responsible for compliance with applicable laws and regulations with the exception of required licenses, permits and similar authorizations required to be secured by the Artist under Article 2.7, and shall explain any limitations imposed by such laws and/or regulations to the Artist.

- 4.4 The City shall be responsible for preparation of the Site in accordance with the specifications detailed in the Final Design in Article 8.4 of this Agreement. The Artist and the City will cooperate to determine reasonable costs for those items that the City will be responsible for in order to prepare the Site for the timely transportation and installation of the Artwork. The City shall be responsible for the completion of Site preparations by the scheduled installation start date as provided in Article 7 of this Agreement or shall notify the Artist in writing of any delays.
- 4.5 The City shall be responsible for the installation of a plaque on or near the Artwork containing a credit to the Artist.
- 4.6 The City shall not permit any use of the Artist's name or misuse of the Artwork which would reflect discredit on the Artist's reputation as an artist or which would violate the spirit of the Artwork, should such use or misuse be within the City's control.

#### **Article 5. Budget and Compensation**

- 5.1 The final budget to be prepared by the Artist pursuant to the provisions of this Article shall include all goods, services and materials, with such costs itemized. Calculation of the budget will take into consideration the possible inflation of service and material costs between the date of execution of this Agreement and the anticipated completion date.
- 5.2 Upon approval by the City, the budget shall be incorporated into and made a part of this Agreement by reference as part of Exhibit A-1.
- 5.3 The City shall pay Artist for all fees and expenses in an amount not to exceed a total of Sixty Thousand Dollars (\$60,000) based on the fee payment schedule set forth in Exhibit C. The final budget to be prepared by the Artist pursuant to the provisions of this Article shall include all goods, services and materials, with such costs itemized. Calculation of the budget will take into consideration the possible inflation of service and material costs between the date of execution of this Agreement and the anticipated completion date.
- 5.4 Invoices may be sent via first class mail postage prepaid or via email. Payment will be remitted to Artist within forty-five (45) days of receipt of invoice. Artist shall submit an invoice to the City upon the completion of the Services described in Article 1. Such invoices shall be prepared in a form supported by documentation as the City may reasonably require.
- 5.5 Tasks shall be invoiced separately, either as separate lines on a single invoice, or on separate invoices at the City's direction. The invoice shall be sent to:

Sean Starowitz  
City of Bloomington  
401 N. Morton, Suite 150  
Bloomington, Indiana 47404

- 5.6 Additional services not set forth in Article 1, or changes in the Services must be authorized in writing by the City or its designated project coordinator prior to such work being performed, or expenses incurred. The City shall not make payment for any unauthorized work or expenses.
- 5.7 Artist shall maintain accounting records of its costs in accordance with generally accepted accounting practices. Access to such records will be provided during normal business hours with reasonable notice during the term of this Agreement and for 3 years after completion.

**Article 6. Appropriation of Funds**

Notwithstanding any other provision of this Agreement, if funds for the continued fulfillment of this Agreement by the City are at any time not forthcoming or are insufficient, through failure of any entity, including the City itself, to appropriate funds or otherwise, then the City shall have the right to terminate this Agreement without penalty as set forth in Article 8 herein.

**Article 7. Schedule**

Artist shall submit a proposed schedule, which will be attached to this Agreement as Exhibit C, for the fabrication and installation of the Artwork, including a schedule for submission of progress reports and inspections, if any, to the City for approval. Artist shall perform the Services according to the schedule set forth in Exhibit C, Project Schedule, attached hereto and incorporated herein by reference. The time limits established by this schedule shall not be exceeded, except for reasonable cause as mutually agreed by the parties.

**Article 8. Design**

8.1 Concept/Schematic

- a. Within 30 days of the execution of this Agreement, the Artist shall submit to the City's Project Manager the proposed design (the "Schematic Design") in the form of detailed color drawings, models, and/or other documents as are required to present a meaningful representation of the Artwork. The Schematic Design will include a description of the method by which the Artwork is to be fabricated and installed; a description of any operational, maintenance and conservation requirements for the Artwork; a description of the installation of the Artwork at the Site and any site preparations that may be required by the City including, but not limited to, any changes or modifications to any utility system or structure of the Site as necessary within a reasonable cost and as required by the City. The Schematic Design shall include a description of all materials and products utilized in the Artwork and the required routine care and upkeep involved. The Schematic Design of the Artwork shall be incorporated into and made a part of this Agreement by reference as Attachment 1.
- b. The Artwork must be durable, taking into consideration that the Site is an unsecured public space that may be exposed to elements such as weather, temperature variation, and considerable movement of people and equipment. Artist must ensure that all maintenance requirements will be reasonable in terms of time and expense.
- c. The Schematic Design must include sufficient detail to permit the City to determine

compliance with applicable local, state or federal laws, ordinances and/or regulations.

- d. When the Artist submits the Schematic Design to the City or its designee for approval, the Artist shall also submit a detailed budget for approval for the design, fabrication and installation of the Artwork, including costs for Site preparation, as described in Article 5 of this Agreement.

## 8.2 Approval

- a. Within 15 days after the Artist submits the Schematic Design, the City will review the submitted Schematic Design. The City or its designee shall notify the Artist whether it approves or disapproves of the Schematic Design. The City shall have discretion to approve outright, approve with conditions, or disapprove the Schematic Design.
- b. The City or its designee shall notify the Artist of any revisions to the Schematic Design determined by the City to be necessary for the Artwork to comply with applicable laws, ordinances and/or regulations and other reasons including, but not limited to, ensuring the physical integrity of the Artwork or its installation at the Site. If agreed upon by both parties, such revisions will become a part of the accepted Schematic Design.

## 8.3 Redesign

- a. If the City disapproves of the Schematic Design, the City or its designee will notify the Artist in writing of the reasons for such disapproval. In such event, the Artist will submit a Revised Design within 10 days after City staff has notified the Artist of its disapproval, addressing the identified reasons. This process shall continue until the City approves the Revised Design. The Artist will not be paid additional fees for the Revised Design(s).
- b. The Revised Design will reflect changes made to address the stated reasons for disapproval, as well as any adjustments in the budget or schedule that may be necessary. The City or its designee shall notify the Artist in writing whether the City approves or disapproves of the Revised Design within 10 days after the Artist submits the Revised Design.
- c. If the Artist refuses to revise the Schematic Design pursuant to Article 8.3(a), or if the Artist fails to adequately revise the Schematic Design in the judgment of the City, this Agreement shall terminate and the parties shall be under no further obligation to each other as of the date of such termination. The effective date of termination shall be the date the City submits its written disapproval of the Revised Design to the Artist. The City shall submit to the Artist a written termination notice with the disapproval. The termination notice shall advise the Artist that this Agreement has been terminated pursuant to this Article. The termination notice shall notify the Artist that the Artist is entitled to retain the compensation paid prior to the termination date, and that the Parties are under no further obligation to each other. The termination notice shall confirm that the Artist shall retain ownership of all Schematic Designs, Revised Designs and renderings thereof submitted hereunder.

#### 8.4 Final Design/Construction Documents

- a. The Artist shall prepare structural drawings for the approved Schematic Design (“Final Design”) detailing every physical feature of the construction of the Artwork and its integration with the Site. These drawings and supplementary documents shall indicate any issues involved in the construction, integration and maintenance of the Artwork, and shall identify any subcontractors needed to work on the project, including the work to be performed by the subcontractors.
- b. Where appropriate, the Artist shall present such drawings to a qualified engineer, licensed by the State of Indiana and paid by the Artist, for certification that the Artwork will be of adequate structural integrity, and the Artist shall provide the City with such certification, signed and stamped by the licensed engineer.
- c. The Artist shall provide a detailed narrative description of the artwork with explicit detail regarding the overall form or design, scale, dimensions, color, and surface treatment of the Artwork. The Final Design shall be incorporated into and made a part of this Agreement by reference as Attachment 2.

#### **Article 9. Installation**

- 9.1 Upon the City’s final approval of the fabricated Artwork as being in conformity with the Final Design, the Artist shall deliver and install the completed Artwork to the Site in accordance with the agreed-upon schedule.
- 9.2 The Artist will coordinate closely with the City or its designee to ascertain that the Site is prepared to receive the Artwork. The Artist must notify the City or its designee of any adverse conditions at the Site that would affect or impede the installation of the Artwork.
- 9.3 The Artist is responsible for timely installation of the Artwork. Site access procedures will be identified in coordination with the development of the Artwork design and installation schedule. The Artist may not install the Artwork until authorized to do so by the City.
- 9.4 The Artist will inform the City of the intent to enter into subcontracts for any part of the installation of the Artwork.
- 9.5 The Artist and any assistants or installation subcontractors shall, at the discretion of the City, participate in safety training classes for the purpose of accessing construction zones or the City rights-of-way.
- 9.6 The Artist shall supervise the installation of the Artwork.
- 9.7 Upon installation of the Artwork, the Artist shall provide the City with written instructions for the appropriate maintenance and preservation of the Artwork (“Maintenance Manual”), along with product data sheets for any material or finish used.
- 9.8 Upon written acceptance of the installation by the City in accordance with the provisions of



Article 10 herein, the Artwork shall be deemed to be in the custody of the City for purposes of Article 2.14 and Article 10 of this Agreement.

- 9.9 The City is responsible for the proper care and maintenance of the Artwork after written acceptance of the installation.

**Article 10. Approval and Acceptance**

- 10.1 The Artist shall notify the City in writing when all services have been completed in substantial conformity with the requirements of this Agreement and that the Artwork is ready for approval and acceptance.
- 10.2 The City shall, within 10 days after the Artist submits written notice pursuant to Article 10.1, notify the Artist of its final acceptance of the Artwork. The effective date of final acceptance shall be the date the City submits written notice to the Artist of its final acceptance of the Artwork. The final acceptance shall be understood to mean that the City acknowledges completion of the Artwork in substantial conformity with the Final Design, and that the City confirms that all services as required of the Artist have been completed.
- 10.3 If the City disputes that all the services have been performed, the City or its designee shall notify the Artist in writing of those services the Artist has failed to perform within 10 days after the Artist submitted written notice pursuant to Article 10.1 above. The Artist shall promptly perform those services indicated by the City.
- 10.4 If the Artist disputes the City's determination that not all services have been performed, the Artist shall submit reasons in writing to the City or its designee within 10 days of the City's notification. The City shall make reasonable efforts to resolve the dispute with the Artist in good faith. However, final determination as to whether all services have been performed shall remain with the City.
- 10.5 Upon the resolution of any disputes that arise under this Article 10, the City or its designee shall notify the Artist of its final acceptance of the Artwork.
- 10.6 After final acceptance of the Artwork, the Artist shall be available at such time(s) as may be mutually agreed upon by the City and the Artist to attend any public meetings and community outreach functions, as well as any inauguration or presentation ceremonies relating to the dedication of the Artwork. The City or its designee shall be solely responsible for coordinating public information materials and activities related to public presentations.

**Article 11. Artist's Representations and Warranties**

**11.1 Warranties of Title**

11.1.1 The Artist represents and warrants that:

- a. The Artwork is solely the result of the artistic effort of the Artist.
- b. Except as otherwise disclosed in writing to the City, the Artwork is unique and



- original and does not infringe upon any copyright or the rights of any person.
- c. The Artwork (or duplicate thereof) has not been accepted for sale elsewhere.
  - d. The Artist has not sold, assigned, transferred, licensed, granted, encumbered or utilized the Artwork or any element thereof or any copyright related thereto which may affect or impair the rights granted pursuant to this Agreement.
  - e. The Artwork is free and clear of any liens from any source whatsoever.
  - f. All Artwork created by the Artist under this Agreement, whether created by the Artist alone or in collaboration with others, shall be wholly original with the Artist and shall not infringe upon or violate the rights of any third party.
  - g. The Artist has the full power to enter into and perform this Agreement and to make the grant of rights contained in this Agreement.
  - h. All services performed hereunder shall be performed in accordance with all applicable laws, regulations, and ordinances, and with all necessary care, skill, and diligence.

11.1.2 These representations and warranties shall survive the termination or expiration of this Agreement.

## **11.2 Warranties of Quality and Condition**

The Artist represents and warrants that:

- 11.2.1 All work will be performed in accordance with professional standards consistent with the profession in the location and at the time of the rendering of the services and free from defective or inferior materials and workmanship (including any defects consisting of “inherent vice,” or qualities that cause or accelerate deterioration of the Artwork) for two years after the date of final acceptance by the City under Article 10.
- 11.2.2 The Artwork and the materials used are not currently known to be harmful to public health and safety.
- 11.2.3 Reasonable maintenance of the Artwork will not require procedures substantially in excess of those described in the maintenance and preservation recommendations submitted by the Artist pursuant to Article 9.7.
- 11.2.4 If within two years after Final Acceptance the City observes any breach of warranty described in this Article 11.2 that is curable by the Artist, the Artist shall, at the request of the City, cure the breach promptly, satisfactorily, and consistent with professional conservation standards, at no expense to the City. The City shall give notice to the Artist of such breach with reasonable promptness.
- 11.2.5 If within two years after Final Acceptance, the City observes a breach of warranty described in this Article 11.2 that is not curable by the Artist, the Artist shall be responsible for reimbursing the City for damages, expenses, and loss incurred by the City as a result of the breach. However, if the Artist disclosed the risk of this breach in the Proposal and the City accepted that it may occur, it shall not be deemed a breach for purposes of this Article 11.2 of this Agreement.

- 11.2.6 If after two years after Final Acceptance the City observes any breach of warranty described in this Article 11.2 that may be curable by the Artist, the City, at its discretion, has the option to either:
- a. Contact the Artist to make or supervise repairs or restorations at a reasonable fee; or
  - b. Seek the services of a qualified restorative conservator and maintenance expert.

### **11.3 Acceptable Standard of Display**

11.3.1 The Artist represents and warrants that:

- a. General routine cleaning and repair of the Artwork and any associated working parts and/or equipment will maintain the Artwork within an acceptable standard of public display.
- b. Foreseeable exposure to the elements and general wear and tear will cause the Artwork to experience only minor repairable damages and will not cause the Artwork to fall below an acceptable standard of public display.
- c. With general routine cleaning and repair, and within the context of foreseeable exposure to the elements and general wear and tear, the Artwork will not experience conditions that do not fall within an acceptable standard of public display, including mold, rust, fracturing, staining, chipping, tearing, abrading and peeling.
- d. To the extent the Artwork incorporates products covered by a manufacturer's warranty, the Artist shall provide copies of such warranties to the City.

11.3.2 The warranties in Article 11.3.1 are conditional, and shall be voided by the failure of the City to maintain the Artwork in accordance with the Artist's specifications and the applicable conservation standards. If the City fails to maintain the Artwork in good condition, the Artist, in addition to other rights or remedies the Artist may have in equity or at law, shall have the right to disown the Artwork as the Artist's creation and request that all credits be removed from the Artwork and reproductions thereof until the Artwork's condition is satisfactorily repaired.

### **11.4 Maintenance**

11.4.1 In accordance with Article 2.11, the Artist shall provide the City with a detailed Maintenance Manual with a description of all materials and products utilized in the Artwork and instructions for the required care and upkeep necessary to maintain the Artwork. The City recognizes that maintenance will be a regular part of the upkeep on the Artwork, and the City will be solely obliged to maintain the Artwork after Final Acceptance, as defined and outlined in Article 10. The City shall nonetheless have the right to determine, in its sole discretion, when and if maintenance, repairs, and restoration to the Artwork will be made. To the extent practical and if the Artist has maintained current address and contact information with the City, the City shall give the Artist an opportunity to consult on repairs or restorations in addition to those

described in the Maintenance Manual during the ten (10) years following Final Acceptance of the Artwork.

**Article 12. Termination**

In the event of a party's substantial failure to perform in accordance with the terms of this Agreement, the other party shall have the right to terminate the Agreement upon written notice. The nonperforming party shall have fourteen (14) calendar days from the receipt of the termination notice to cure or to submit a plan for cure acceptable to the other party.

The City may terminate or suspend performance of this Agreement at the City's prerogative at any time upon written notice to Artist. Artist shall terminate or suspend performance of the Services on a schedule acceptable to the City and the City shall pay the Artist for all the Services performed up to the date that written notice is received, plus reasonable termination or suspension expenses. Upon restart, an equitable adjustment shall be made to Artist's compensation and the schedule of services. Upon termination or suspension of this Agreement, all finished or unfinished reports, drawings, collections of data and other documents generated by Artist in connection with this Agreement shall become the property of the City, as set forth in Article 16 herein.

**Article 13. Identity of the Artist**

Artist acknowledges that one of the primary reasons for its selection by the City to perform the duties described in this Agreement is the qualification and experience of the principal personnel whom Artist has represented will be responsible there for. Artist thus agrees that the work to be done pursuant to this Agreement shall be performed by the principal personnel described in Exhibit D, Principal Personnel, and such other personnel in the employ under contract or under the supervision of Artist. Exhibit D is attached hereto and incorporated herein by reference as though fully set forth. The City reserves the right to reject any of the Artist's personnel or proposed outside professional sub-contractors, and the City reserves the right to request that acceptable replacement personnel be assigned to the project.

**Article 14. Opinions of Probable Cost**

All opinions of probable construction cost to be provided by Artist shall represent the best judgment of Artist based upon the information currently available and upon Artist's background and experience with respect to projects of this nature. It is recognized, however, that neither Artist nor the City has control over the cost of labor, materials or equipment, over contractors' method of determining costs for services, or over competitive bidding, market or negotiating conditions. Accordingly, Artist cannot and does not warrant or represent that the proposals or construction bids received will not vary from the opinions of probable construction cost estimates provided pursuant to this Agreement.

**Article 15. Reuse of Instruments of Service**

All documents, including but not limited to, drawings, specifications and computer software prepared by Artist pursuant to this Agreement are instruments of service in respect to this project. They are not intended or represented to be suitable for reuse by the City or others on modifications or extensions of this project or on any other project. The City may elect to reuse such documents; however any reuse or modification without prior written authorization of Artist will be at the City's sole risk and without liability or legal exposure to Artist. The City shall indemnify, defend, and hold harmless the Artist against all judgments, losses, claims, damages, injuries and expenses arising out of or resulting from such unauthorized reuse or modification.

**Article 16. Ownership of Documents and Intellectual Property**

- 16.1 All documents, drawings and specifications, including digital format files, prepared by Artist and furnished to the City as part of the Services shall become the property of the City for possible exhibition. The Artist retains all rights under the Copyright Act of 1976, 17 U.S.C. § 101 et seq., as the sole author of the Artwork for the duration of the copyright. Intellectual property developed, utilized or modified in the performance of the Services shall remain the property of Artist.
- 16.2 In view of the intention that the final Artwork shall be unique, the Artist shall not make any additional exact duplicate two-or three-dimensional reproductions of the final Artwork, nor shall the Artist grant permission to others to do so except with the written permission of the City. However, nothing shall prevent the Artist from creating future Artworks in the Artist's manner and style of artistic expression.
- 16.3 The Artist grants to the City and its assigns an irrevocable license to make two-dimensional reproductions of the Artwork for non-commercial purposes, including, but not limited to, reproductions used in brochures, media publicity, exhibition catalogues or other similar publications, provided that these rights are exercised in a tasteful and professional manner. All reproductions by the City shall contain a credit to the Artist in substantially the following form: [Artist's name, Artwork title, date of publication].
- 16.4 The Artist shall, at the Artist's expense, cause to be registered with the United States Register of Copyrights, a copyright in the Artwork in the Artist's name.
- 16.5 If the City wishes to make reproductions of the Artwork for commercial purposes, including, but not limited to, tee shirts, post cards and posters, the Parties shall execute a separate agreement to address the terms of the license granted by the Artist and the royalty the Artist shall receive.
- 16.6 The City is not responsible for any third party infringement of the Artist's copyright and is not responsible for protecting the intellectual property rights of the Artist.

**Article 17. Artist's Rights and Alteration or Removal of Artwork**

- 17.1 The Artist retains all rights under state and federal laws, including §106A of the Copyright Act of 1976.
- 17.2 The City agrees that it will not intentionally alter, modify, change, destroy, damage, remove, or relocate the Artwork without first notifying the Artist. The City shall make a good faith effort to consult with the Artist in the planning and execution of any such alteration. The City shall make a reasonable effort to maintain the integrity of the Artwork.
- 17.3 If any alteration or damage to the Artwork occurs, or the Artwork is removed or relocated, the Artist shall have the right to disclaim authorship of the Artwork in addition to any remedies the Artist may have in law or equity under this contract. Upon written request, the City shall remove the identification plaque and all attributive references to the Artist at its own expense within 30 days of receipt of the written request. No provision of this Agreement

shall obligate the City to alter or remove any such attributive reference printed or published prior to the City's receipt of such written request. The Artist may take such other action as the Artist may choose in order to disavow the Artwork.

- 17.4 Article 17 is intended to replace and substitute for the rights of the Artist under the Visual Artists' Rights Act to the extent that any portion of this Agreement is in direct conflict with those rights. The parties acknowledge that this Agreement supersedes that law to the extent that this Agreement is in direct conflict therewith.

**Article 18. Permanent Record**

The City shall maintain on permanent file a record of this agreement and of the location and disposition of the Artwork.

**Article 19. Independent Contractor Status**

During the entire term of this Agreement, Artist shall be an independent contractor, and in no event shall any of its personnel, agents or sub-contractors be construed to be, or represent themselves to be, employees of the City. Artist shall be solely responsible for the payment and reporting of all employee and employer taxes, including social security, unemployment, and any other federal, state, or local taxes required to be withheld from employees or payable on behalf of employees.

**Article 20. Indemnification**

Artist shall defend, indemnify, and hold harmless the City of Bloomington, the City, and the officers, agents and employees of the City and the City from any and all claims, demands, damages, costs, expenses or other liability arising out of the Agreement or occasioned by the reckless or negligent performance of any provision thereof, including, but not limited to, any reckless or negligent act or failure to act or any misconduct on the part of the Artist or its agents or employees, or any independent contractors directly responsible to it (collectively "Claims").

**Article 21. Insurance**

During the performance of any and all Services under this Agreement, Artist shall maintain the following insurance in full force and effect:

- a. General Liability Insurance, with a minimum combined single limit of \$1,000,000 for each occurrence and \$2,000,000 in the aggregate.
- b. Automobile Liability Insurance, with a minimum combined single limit of \$1,000,000 for each person and \$1,000,000 for each accident.
- c. Professional Liability Insurance ("Errors and Omissions Insurance") with a minimum limit of \$1,000,000 annual aggregate.
- d. Workers' Compensation Insurance in accordance with the statutory requirements of Title 22 of the Indiana Code.

All insurance policies shall be issued by an insurance company authorized to issue such insurance in the State of Indiana. The City of Bloomington, the City, and the officers, employees and agents of each shall be named as insureds under the General Liability, Automobile, and Worker's Compensation policies, and such policies shall stipulate that the insurance will operate as primary

insurance and that no other insurance of the City's will be called upon to contribute to a loss hereunder.

Artist shall provide evidence of each insurance policy to the City prior to the commencement of work under this Agreement, which shall be attached to this Agreement as Exhibit G. Approval of the insurance by the City shall not relieve or decrease the extent to which Artist may be held responsible for payment of damages resulting from Artist's provision of the Services or its operations under this Agreement. If Artist fails or refuses to procure or maintain the insurance required by these provisions, or fails or refuses to furnish the City's required proof that the insurance has been procured and is in force and paid for, the City shall have the right at its election to terminate the Agreement.

**Article 22. Conflict of Interest**

Artist declares that it has no present interest, nor shall it acquire any interest, direct or indirect, which would conflict with the performance of Services under this Agreement. Artist agrees that no person having any such interest shall be employed in the performance of this Agreement.

**Article 23. Waiver**

No failure of either party to enforce a term of this Agreement against the other shall be construed as a waiver of that term, nor shall it in any way affect the party's right to enforce that term. No waiver by any party of any term of this Agreement shall be considered to be a waiver of any other term or breach thereof.

**Article 24. Severability**

The invalidity, illegality or unenforceability of any provision of this Agreement or the occurrence of any event rendering any portion or provision of this Agreement void shall in no way affect the validity or enforceability of any other portion or provision of this Agreement. Any void provision shall be deemed severed from this Agreement, and the balance of the Agreement shall be construed and enforced as if it did not contain the particular provision to be held void. The parties further agree to amend this Agreement to replace any stricken provision with a valid provision that comes as close as possible to the intent of the stricken provision. The provisions of this Article shall not prevent this entire Agreement from being void should a provision which is of the essence of this Agreement be determined void.

**Article 25. Assignment**

Neither the City nor the Artist shall assign any rights or duties under this Agreement without the prior written consent of the other party. Unless otherwise stated in the written consent to an assignment, no assignment will release or discharge the assignor from any obligation under this Agreement.

**Article 26. Third Party Rights**

Nothing in this Agreement shall be construed to give any rights or benefits to anyone other than the City and Artist.

**Article 27. Governing Law and Venue**

This Agreement shall be governed by the laws of the State of Indiana. Venue of any disputes arising under this Agreement shall be in the Monroe Circuit Court, Monroe County, Indiana.



**Article 28. Non-Discrimination**

Artist shall comply with City of Bloomington Ordinance 2.21.020 and all other federal, state and local laws and regulations governing non-discrimination in all regards, including, but not limited to, employment.

The Artist understands that the City of Bloomington prohibits its employees from engaging in harassment or discrimination of any kind, including harassing or discriminating against independent contractors doing work for the City. If the Artist believes that a City employee engaged in such conduct towards the Artist and/or any of its employees, the Artist or its employees may file a complaint with the City department head in charge of the Artist's work, and/or with the City human resources department or the Bloomington Human Rights Commission. The City takes all complaints of harassment and discrimination seriously and will take appropriate disciplinary action if it finds that any City employee engaged in such prohibited conduct.

**Article 29. Compliance with Laws**

In performing the Services under this Agreement, Artist shall comply with any and all applicable federal, state and local statutes, ordinances, plans and regulations, including any and all regulations for protection of the environment. Where such statutes, ordinances, plans or regulations of any public authority having any jurisdiction over the project are in conflict, Artist shall proceed using its best judgment only after attempting to resolve any such conflict between such governmental agencies, and shall notify the City in a timely manner of the conflict, attempts of resolution, and planned course of action.

**Article 30. E-Verify**

Artist is required to enroll in and verify the work eligibility status of all newly-hired employees through the E-Verify program. (This is not required if the E-Verify program no longer exists). Artist shall sign an affidavit, attached as Exhibit E, affirming that Artist does not knowingly employ an unauthorized alien. "Unauthorized alien" is defined at 8 U.S. Code 1324a(h)(3) as a person who is not a U.S. citizen or U.S. national and is not lawfully admitted for permanent residence or authorized to work in the U.S. under 8 U.S. Code chapter 12 or by the U.S. Attorney General.

Artist and any subcontractors may not knowingly employ or contract with an unauthorized alien, or retain an employee or contract with a person that the Artist or subcontractor subsequently learns is an unauthorized alien. If the City obtains information that the Artist or subcontractor employs or retains an employee who is an unauthorized alien, the City shall notify the Artist or subcontractor of the contract violation and require that the violation be remedied within 30 days of the date of notice. If the Artist or subcontractor verified the work eligibility status of the employee in question through the E-Verify program, there is a rebuttable presumption that the Artist or subcontractor did not knowingly employ an unauthorized alien. If the Artist or subcontractor fails to remedy the violation within the 30 day period, the City shall terminate the contract, unless the City Commission or City that entered into the contract determines that terminating the contract would be detrimental to the public interest or public property, in which case the City may allow the contract to remain in effect until the City procures a new Artist. If the City terminates the contract, the Artist or subcontractor is liable to the City for actual damages.

Artist shall require any subcontractors performing work under this contract to certify to the Artist that, at the time of certification, the subcontractor does not knowingly employ or contract with an unauthorized alien and the subcontractor has enrolled in and is participating in the E-Verify program.

Artist shall maintain on file all subcontractors' certifications throughout the term of the contract with the City.

**Article 31. Steel or Foundry Products**

31.1 To comply with Indiana Code 5-16-8, affecting all contracts for the construction, reconstruction, alteration, repair, improvement or maintenance of public works, the following provision shall be added: If steel or foundry products are to be utilized or supplied in the performance of any contract or subcontract, only domestic steel or foundry products shall be used. Should the City feel that the cost of domestic steel or foundry products is unreasonable; the City will notify the Artist in writing of this fact.

31.2 Domestic Steel products are defined as follows:

“Products rolled, formed, shaped, drawn, extruded, forged, cast, fabricated or otherwise similarly processed, or processed by a combination of two (2) or more of such operations, from steel made in the United States by open hearth, basic oxygen, electric furnace, Bessemer or other steel making process.”

31.3 Domestic Foundry products are defined as follows:

“Products cast from ferrous and nonferrous metals by foundries in the United States.”

31.4 The United States is defined to include all territory subject to the jurisdiction of the United States.

31.5 The City may not authorize or make any payment to the Artist unless the City is satisfied that the Artist has fully complied with this provision.

**Article 32. Performance Bond and Payment Bond**

32.1 For contracts in excess of \$100,000, the Artist shall provide the City with both a Performance Bond and a Payment Bond in the amount of one hundred percent (100%) of the contract amount. Proof of the Bonds shall be attached to this Agreement.

32.2 Failure by the Artist to perform the work in a timely or satisfactory fashion may result in forfeiture of the Artist's Performance Bond.

32.3 Failure by the Artist to pay for labor and services performed, material furnished or services rendered may result in forfeiture of the Artist's Payment Bond.

32.4 If the surety on any bond furnished by the Artist becomes a party to supervision, liquidation, or rehabilitation action pursuant Indiana Code 27-9 *et seq.* or its right to do business in the State of Indiana is terminated, the Artist shall, within thirty (30) calendar days thereafter, substitute another bond and surety, both of which must be acceptable to the City.



- 32.5 Payment of Subcontractors the Artist shall pay all subcontractors, laborers, material suppliers and those performing services to the Artist on the project under this Agreement. The City may, as a condition precedent to any payment hereunder, require the Artist to submit satisfactory evidence of payments of any and all claims of subcontractors, laborers, material suppliers, and those furnishing services to the Artist. Upon receipt of a lawful claim, the City shall withhold money due to the Artist in a sufficient amount to pay the subcontractors, laborers, material suppliers, and those furnishing services to the Artist.
- 32.6 The surety of the Payment Bond may not be released until one (1) year after the Board's final settlement with the Artist.

**Article 33. Notices**

Any notice required by this Agreement shall be made in writing to the individuals/addresses specified below:

**City:**

City of Bloomington  
Attn: Sean Starowitz  
401 N. Morton, Suite 150  
Bloomington, Indiana 47402

**Artist:**

T III Environments, LLC  
5655 Crystal Bay W Drive  
Plainfield, IN 46168

Nothing contained in this Article shall be construed to restrict the transmission of routine communications between representatives of the City and Artist.

**Article 34. Intent to be Bound**

The City and Artist each binds itself and its successors, executors, administrators, permitted assigns, legal representatives and, in the case of a partnership, its partners to the other party to this Agreement, and to the successors, executors, administrators, permitted assigns, legal representatives and partners of such other party in respect to all provisions of this Agreement.

**Article 35. Integration and Modification**

This Agreement, including all Exhibits incorporated by reference, represents the entire and integrated agreement between the City and the Artist. It supersedes all prior and contemporaneous communications, representations and agreements, whether oral or written, relating to the subject matter of this Agreement. This Agreement may be modified only by a written amendment signed by both parties hereto.

**Article 36. Non-Collusion**

Artist is required to certify that it has not, nor has any other member, representative, or agent of Artist, entered into any combination, collusion, or agreement with any person relative to the price to be offered by any person nor prevented any person from making an offer nor induced anyone to refrain from making an offer and that this offer is made without reference to any other offer. Artist shall sign an affidavit, attached hereto as Exhibit F, affirming that Artist has not engaged in any collusive conduct. Exhibit F is attached hereto and incorporated by reference as though fully set forth.


**This Agreement may be modified only by a written amendment signed by both parties hereto.**

**IN WITNESS WHEREOF**, the parties hereto have caused this Agreement to be executed the day and year first written above.


**CITY OF BLOOMINGTON**

  
\_\_\_\_\_  
Philippa Guthrie, Corporation Counsel

**T III ENVIRONMENTS LLC**

  
\_\_\_\_\_  
Thomas M. Fansler III, President

**CITY OF BLOOMINGTON REDEVELOPMENT COMMISSION**

  
\_\_\_\_\_  
Donald Griffin, President

## EXHIBIT A

### Proposal

The Services shall include the following:

#### **Switchyard Park Sculpture Installation Proposal**

Artist Team: Tom Fansler and Rachel Kavathe  
July 1, 2019

#### **Concept Description**

T3 Environments proposes to create an interactive art installation on the wall of the splash pad building that celebrates the rich history of the site in a contemporary way. Our goal for the artwork is to honor the heritage of the site and its important history as a rail switchyard, and also to create an artwork that is fitting with the modern design of the new park development.

#### **Materials and Maintenance**

We understand through our years of experience that when working on projects in outdoor environments, it is critical to consider the durability of materials when they are exposed to the elements. We also understand that at a highly trafficked location such as this, building a sculpture that is safe and accessible to all visitors is imperative. The proposed sculpture will be made primarily from steel and aluminum. The pieces will be powder coated or painted with automotive grade paint. These materials are extremely durable, and will not rust.

All fasteners and anchors to the wall will be stainless steel, ensuring maximum durability and longevity. As a result, ongoing maintenance over the years will be minimal. Occasional touchup of paint may be necessary, however powder coated steel and automotive grade paints need very little maintenance, and will maintain their vibrant colors even in outdoor weather conditions.

The tracks and the movable pieces will be made with primarily steel, and therefore will be extremely durable. Maintenance of the moveable pieces will therefore be minimal. An occasional inspection of the artwork every few years would be recommended to ensure that all pieces are functioning properly.

**EXHIBIT A-1**  
**Budget Switchyard**

**Detailed Budget**

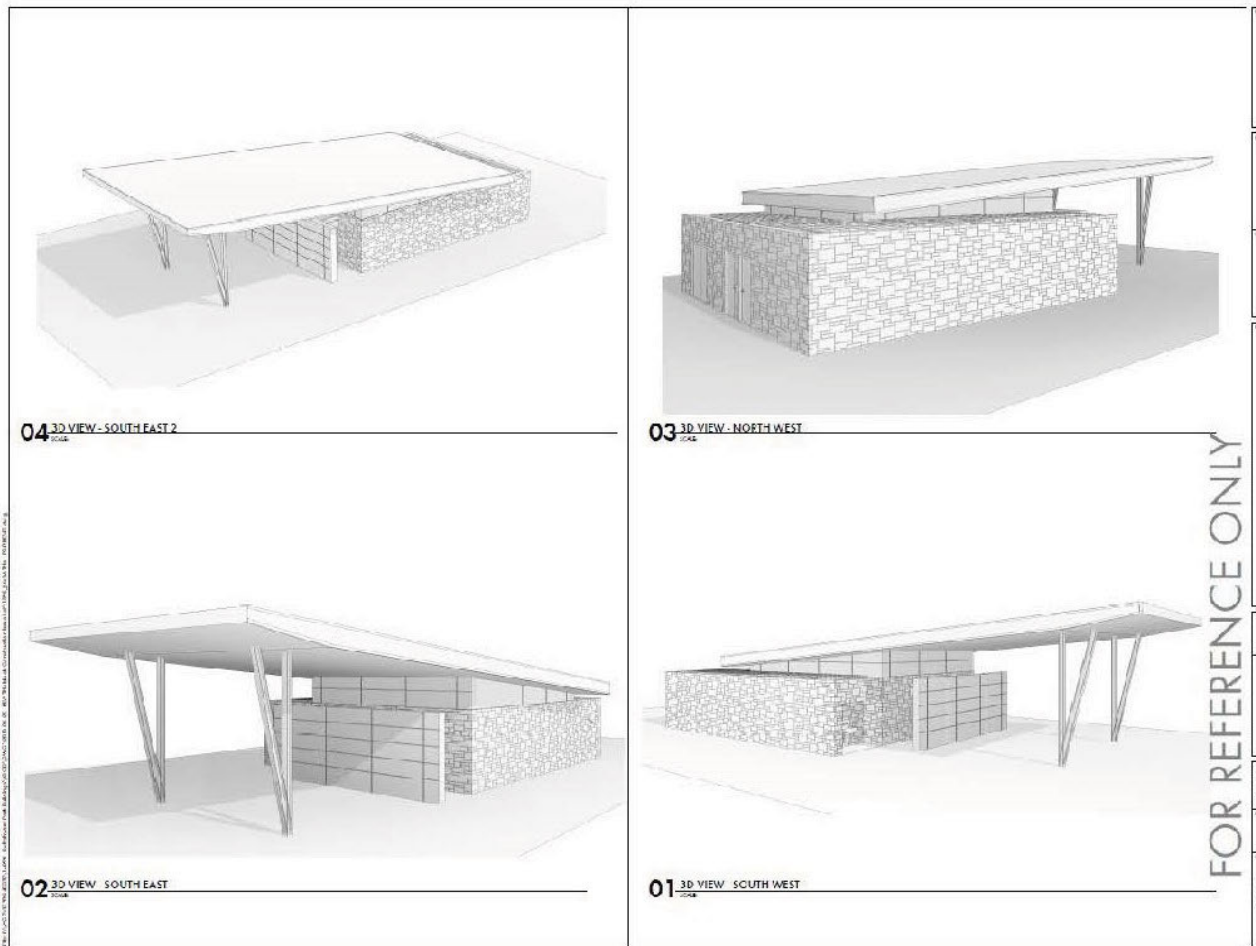
Material	\$8000
Fabrication	\$20,000
Transport, shipping	\$2000
Installation	\$5000
Artists' Fee	\$5000
<b>TOTAL</b>	<b>\$40,000</b>

Budget Big Dipper

Material	\$7,000
Fabrication	\$6,000
Installation	\$5,000
Artist Fee	\$2,000
<b>SUBTOTAL</b>	<b>\$20,000</b>

GRAND TOTAL \$60,000

### EXHIBIT B Switchyard Park Site





**EXHIBIT B (cont.)**





**EXHIBIT B (cont.)**



**BIRD'S EYE OF PLATFORM**  
RUNDELL ERNSTBERGER ASSOCIATES



**VIEW OF SPRAY PLAZA**  
RUNDELL ERNSTBERGER ASSOCIATES



**EXHIBIT C**  
**Project and Payment Schedule**

**Timeline**

March 2020 Execute Contract  
 April 2020 Detail Design Review  
 May 2020 Final Drawings Accepted  
 June / July / August 2020 Fabrication  
 September 2020 Installation and Final Acceptance

**Proposed Project Timeline**

August 2019	Begin construction drawings, design detailing
September 2019	Review detailed designs and construction plan with City, BAC, project team and building architect
October 2019	Finalize construction drawings and design detailing, order materials
November 2019	Create updated project rendering for ribbon cutting event
Dec/Jan 2020	Begin fabrication
February 2020	Continue fabrication
March 2020	Complete fabrication
April 2020	Install spring 2020, weather permitting

**UTILIZE SAME PERCENTAGE PAYMENT SCHEDULE FOR THE \$60,000 CONTRACT**  
**Payment Schedule**

<b>Target Item</b>	<b>Payment Percentage</b>
1. Approval of Detailed Designs and Construction Plan	50% Payment \$30,000
2. Approval of Final Drawings and Project Model/Rendering	20% Payment \$12,000
3. Fabrication Approval and Invoice	20% Payment \$12,000
4. Final Acceptance	10% Payment \$6,000



**AMENDMENT TO EXTEND AGREEMENT**

This Amendment, entered into this 16th day of February, 2021, by and between the City of Bloomington, Indiana, and its Redevelopment Commission (collectively the “City”) and T III Environments, LLC (“Artist”), amends the Agreement for Public Art in Switchyard Park as follows:

- I. Artists Obligations: Section 2.2 of Article 2 states in relevant part: “Artist shall complete the Services required under this Agreement on or before September 30, 2020, unless the parties mutually agree to a later completion date.”

The parties believe it is in the best interest of the project and agreement to extend the completion date for the services until August 1, 2021, unless further extended by the parties in writing.

- II. In all other respects, the Original Agreement shall continue in effect as originally executed.

IN WITNESS WHEREOF, the parties hereto have caused this Amendment to be executed the day and year first written above.

**CITY OF BLOOMINGTON, INDIANA**

**T III ENVIRONMENTS, LLC**

By: \_\_\_\_\_  
Philippa Guthrie, Corporation Counsel

By:   
Thomas M. Fansler III, President

**CITY OF BLOOMINGTON  
REDEVELOPMENT COMMISSION**

By: \_\_\_\_\_  
Donald Griffin, President

**21-11  
RESOLUTION  
OF THE  
REDEVELOPMENT COMMISSION  
OF THE  
CITY OF BLOOMINGTON, INDIANA**

**ACCEPTING CONVEYANCE OF OWNERSHIP OF  
4TH STREET PARKING GARAGE**

- WHEREAS, on October 15, 2018, the Redevelopment Commission of the City of Bloomington (“RDC”) approved in Resolution 18-67 a Project Review and Approval Form (“Form”), which sought the support of the RDC regarding the construction of a new 4<sup>th</sup> Street Garage (“Project”); and
- WHEREAS, the RDC approved the issuance of a tax increment revenue bond for the financing of the Project in Resolution 18-68 (“Bonds”), and the City of Bloomington Common Council voted to authorize the Bonds in Council Resolution 19-06; and
- WHEREAS, as part of the Project and the Bonds, it is necessary for the City of Bloomington Board of Public Works to convey ownership of the 4th Street Garage site and improvements to the RDC; and
- WHEREAS, the RDC is funding the Project and has the ability to oversee and manage the 4th Street Parking Garage site, so it is appropriate that the RDC be the owner of the 4th Street Garage site and improvements;

NOW, THEREFORE, BE IT RESOLVED BY THE REDEVELOPMENT COMMISSION OF THE CITY OF BLOOMINGTON, INDIANA, THAT:

1. The attached Quitclaim Deed conveying the 4th Street Parking Garage site and improvements to the RDC is hereby accepted and approved.

**BLOOMINGTON REDEVELOPMENT COMMISSION**

\_\_\_\_\_  
Donald Griffin, President

ATTEST:

\_\_\_\_\_  
Cindy Kinnarney, Secretary

\_\_\_\_\_  
Date

**QUITCLAIM DEED**

The CITY OF BLOOMINGTON, INDIANA, an Indiana municipal corporation by through its BOARD OF PUBLIC WORKS ("Grantor"), whose principal office is at Bloomington, Indiana, QUITCLAIMS to the CITY OF BLOOMINGTON REDEVELOPMENT COMMISSION ("Grantee"), for and in consideration of the sum of One Dollar (\$1.00) and other valuable consideration, the receipt of which is acknowledged, the following described real estate in Monroe County, State of Indiana:

The parking garage site at 4<sup>th</sup> and Walnut Streets, more particularly described as:

Lot Numbers 34, 35, 36 and the North half of Lot Number 33, all in the Original Plat of the City of Bloomington, Monroe County, Indiana. ALSO the vacated alley between Lots 34 and 35 described as follows: Six feet by parallel lines adjacent to the South of Lot Number 35 and six feet by parallel lines adjacent to the North of Lot Number 34.

Subject to a utility easement granted to Indiana Bell Telephone Company and to Indiana Gas Company, described as follows: Part of the North half of In Lot Number 33 in the City of Bloomington, Monroe County, Indiana, to-wit: Twelve feet by parallel lines off the South end of the North half of In Lot Number 33 in the City of Bloomington, Indiana. (Deed Record 320 pages 74-7).

Subject to all taxes, easements, rights-of-way and other liens, if any, of record.

There is no Indiana gross income tax due as a result of this conveyance.

The undersigned persons executing this deed on behalf of the Grantor represent that they are the duly appointed President and Vice-President of the Board of Public Works; they have been fully empowered by proper resolution of the Bloomington Board of Public Works of the Grantor to execute and deliver this deed; Grantor has full capacity to convey the real estate described in this deed; and all necessary action for making this conveyance has been taken and done.

Grantor has executed this deed this \_\_\_\_\_ day of \_\_\_\_\_, 2021.

**BLOOMINGTON BOARD OF PUBLIC WORKS**

By:

\_\_\_\_\_  
Dana Palazzo, President

By:

\_\_\_\_\_  
Beth H. Hollingsworth, Vice President

**STATE OF INDIANA ) SS:**  
**COUNTY OF MONROE )**

Before me, the undersigned, a Notary Public in and for said County and State, this \_\_\_\_\_ day of \_\_\_\_\_, 2021, came Dana Palazzo and Beth H. Hollingsworth, President and Vice President, respectively, of the Bloomington Board of Public Works, and acknowledged the execution of this instrument.

\_\_\_\_\_  
Signature of Notary Public

\_\_\_\_\_  
Printed Name of Notary Public

County of Residence: \_\_\_\_\_

Commission Number: \_\_\_\_\_

My Commission Expires: \_\_\_\_\_

WITNESS TO THE ABOVE SIGNATURE

\_\_\_\_\_  
Witness' Signature

\_\_\_\_\_  
Witness' Printed Name

**STATE OF INDIANA ) SS:**  
**COUNTY OF MONROE )**

Before me, a Notary Public in and for said County and State, on the \_\_\_ day of \_\_\_\_\_, 2021, personally appeared the above named WITNESS to the foregoing instrument, who, being duly sworn by me, did depose and say that he/she knows Dana Palazzo to be the individual described herein and who executed the foregoing instrument; that said witness was present and saw Dana Palazzo execute the same; and that said WITNESS at the same time subscribed his/her name as a witness thereto.

\_\_\_\_\_  
Signature of Notary Public

\_\_\_\_\_  
Printed Name of Notary Public

County of Residence: \_\_\_\_\_

Commission Number: \_\_\_\_\_

My Commission Expires: \_\_\_\_\_

This Instrument Prepared by Larry D. Allen, Attorney, PO Box 100, Bloomington IN 47402. I affirm under penalties of perjury that I have taken reasonable care to redact each Social Security Number in this document, unless required by law.

/s/ Larry D. Allen  
Attorney No. 30505-53

The mailing address to which statements should be mailed under Ind. Code § 6-1.1-22-8.1 is City of Bloomington Redevelopment Commission, Office of Controller, 401 N. Morton Street, Bloomington, IN 47404.

**21-12  
RESOLUTION  
OF THE  
REDEVELOPMENT COMMISSION  
OF THE  
CITY OF BLOOMINGTON, INDIANA**

**APPROVAL OF PARTNERSHIP AGREEMENT WITH BCT MANAGEMENT, INC. FOR 2021**

WHEREAS, pursuant to Indiana Code § 36-7-14 *et seq.*, the Redevelopment Commission of the City of Bloomington (“RDC”) and the Common Council of the City of Bloomington has created an tax increment financing allocation area known as the Consolidated Economic Development Area (“Consolidated TIF”); and

WHEREAS, the Buskirk-Chumley Theater (“Theater”) building is a historic landmark—listed in the National Register of Historic Places—located within the Consolidated TIF, which has been rehabilitated and serves as a performing arts and community program venue serving Bloomington and the surrounding area; and

WHEREAS, the presence of the Theater is a major contributor to the economic and cultural vitality of downtown Bloomington; and

WHEREAS, it is recognized that support for the arts and culture is in the public interest and plays a major role in improving the quality of life and business development environment in communities in which such support is provided; and

WHEREAS, since 2001 the RDC has approved a series of partnership agreements with BCT Management, Inc. regarding the Theater; and

WHEREAS, a new partnership agreement has been negotiated with BCT Management, Inc. (“2021 Partnership Agreement”), and is attached to this Resolution as Exhibit A; and

WHEREAS, as in previous years, the 2021 Partnership Agreement provides that the Redevelopment Commission shall provide “up to Seventy-Four Thousand Dollars (\$74,000.00) from the Consolidated TIF” to be used on the Theater as permitted by Indiana Code § 36-7-14-39; and

WHEREAS, the 2021 Partnership Agreement also provides that the City shall provide “Fifty Five Thousand Dollars (\$55,000.00) to support the operations at the BCT (‘Operations Funding’); and

WHEREAS, the RDC is not the source of the Operations Funding; and

WHEREAS, the RDC has available funds in the Consolidated TIF to pay for its obligations under the 2020 Partnership Agreement.

NOW, THEREFORE, BE IT RESOLVED BY THE REDEVELOPMENT COMMISSION OF THE CITY OF BLOOMINGTON, INDIANA, THAT:

1. The Redevelopment Commission finds that the use of Consolidated TIF funds in a manner permitted by Indiana Code § 36-7-14-39 to support the Buskirk-Chumley Theater as described in the 2021 Partnership Agreement is an appropriate use of the Consolidated TIF.
2. The Redevelopment Commission approves the 2021 Partnership Agreement, and authorizes Donald Griffin to sign the agreement on its behalf.
3. The Redevelopment Commission approves the expenditure of an amount not to exceed Seventy-Four Thousand Dollars (\$74,000.00) from the Consolidated TIF to be used on the Theater. Specific expenditures of the Seventy-Four Thousand Dollars (\$74,000.00) will be presented to the Redevelopment Commission for review and approval when: (1) BCT Management, Inc., following the City’s procurement process as set forth in the City’s Financial Policies Manual, has made a request to receive part of that funding, and (2) the City, through the Director of Parks and Recreation or her designee, has approved the request. No Project Review and Approval Form shall be necessary for an expenditure under the 2021 Partnership Agreement.
4. The funding authorizations contained in this Resolution shall terminate on December 31, 2021, unless otherwise extended by the RDC.

BLOOMINGTON REDEVELOPMENT COMMISSION

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Donald Griffin, President

ATTEST:

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Cindy Kinnarney, Secretary

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Date



## **PARTNERSHIP AGREEMENT**

This Agreement, made and entered into this \_\_\_\_ day of February, 2021, by and between the **City of Bloomington, Indiana (“City”)** by its Mayor, Board of Park Commissioners (**“Parks Board”**), and Redevelopment Commission (**“Commission”**) and **BCT Management, Inc.**, an Indiana non-profit corporation (**“BCTM”**).

### **WITNESSETH:**

**WHEREAS**, the Buskirk-Chumley Theater (**“BCT”**) is a performing arts facility in downtown Bloomington, Monroe County, Indiana, that is owned by the Parks Board; and

**WHEREAS**, BCTM has managed the BCT since 2001 pursuant to an agreement with the City, and the City wishes to enter into this Partnership Agreement (**“Agreement”**) with BCTM to manage and operate the BCT; and

**WHEREAS**, BCTM is an Indiana non-profit corporation which has the capacity and commitment to manage the BCT as an accessible and affordable community resource; and

**WHEREAS**, the previous Management Agreement between the City and BCTM was set to expire on December 31, 2020; and

**WHEREAS**, the City has determined that it is in the public interest to enter into a new Agreement with BCTM for the management of the BCT for the period of January 1, 2021 through December 31, 2021, with the intent to continue the parties’ successful relationship into the future; and

**WHEREAS**, the City may from time to time develop partnerships with non-City organizations in order to promote such entertainment services; and

**WHEREAS**, it is in the public interest that such partnership continue;

**NOW, THEREFORE**, in consideration of the mutual covenants, terms and conditions in this Agreement, the City and BCTM agree as follows:

**1. PURPOSE OF AGREEMENT**

The purpose of this Agreement is to outline a program partnership, which will provide entertainment to the public at the BCT.

**2. DURATION OF AGREEMENT**

This Agreement shall be in full force and effect from January 1, 2021, to December 31, 2021, unless early termination occurs as described in paragraph 6(j), below.

**3. FUNDING**

The City shall, for the term of this Agreement, provide Fifty Five Thousand Dollars (\$55,000.00) to support the operations and programming at the BCT (“Operations Funding”). The Operations Funding shall be paid in four (4) quarterly payments of Thirteen Thousand Seven Hundred Fifty Dollars (\$13,750.00). These funds shall not be used for capital needs of the BCTM.

The City through its Parks and Recreation Department shall, for the term of this Agreement, provide up to Fifteen Thousand Dollars (\$15,000.00) for emergency repairs at the BCT, unless the Parties otherwise agree in writing to additional repairs and funding.

The Redevelopment Commission shall, for the term of this Agreement, provide up to Seventy-Four Thousand Dollars (\$74,000.00) from the Consolidated TIF (“Tax Increment Funding”). The Tax Increment Funding may be used only for purposes permitted by Indiana Code § 36-7-14-39. The Tax Increment Funding will only be provided after: (1) BCTM has followed the City’s procurement process, as set forth in its Financial Policies Manual, to obtain bids or quotes for a desired purchase, (2) the BCTM has made a request for Tax Increment Funding, (3) the City—through the Director of Parks and Recreation or her designee—has approved the request for Tax Increment Funding, and (4) the Redevelopment Commission has approved the request for Tax Increment Funding via resolution. No Project Review and Approval Form shall be necessary for the expenditure of Tax Increment Funding under this Agreement. If Tax Increment Funding is not expended earlier, BCTM shall submit to the City no later than November 1, 2021, a list of 2021 projects to be considered for potential 2021 Tax Increment Funding. The City and BCTM shall cooperate on selecting priorities for the Tax Increment Funding.

**4. BCTM**

The goal of BCTM is to provide a world-class entertainment schedule at the BCT for the Bloomington area community, including residents of Monroe County and surrounding counties and visitors. Except as provided in this Agreement, BCTM shall have the exclusive authority to operate and manage the BCT under this Agreement. BCTM agrees to:

**a. Programming:**

- i. BCTM shall manage the BCT in a professional manner and utilize its best efforts to preserve and expand the BCT’s role as a high quality, accessible community resource, and to schedule and promote a diverse program of local, regional, and national artists and events, so as to serve a broad segment of the community and a wide variety of interests and audiences. BCTM shall maintain and administer



booking procedures and rental rates that give performers, renters, and other users a fair and reasonable opportunity to use the facility.

- ii. BCTM shall use the BCT premises only for operation of the BCT as a venue for presenting arts and entertainment events, private events, educational programs, community events and other programs and events benefiting the public. The BCT premises may be used and occupied only for the uses described in this Agreement. BCTM shall not permit any nuisance to be maintained or permitted on the premises, nor any disturbance, noise, or other annoyance that interferes with the reasonable comfort and quiet enjoyment of persons occupying adjacent properties. If BCTM fails to remedy the nuisance, then the City shall have the right to enter on the premises to remedy the nuisance. However, the City's failure to assert its right to remedy a nuisance shall not impose an affirmative duty on the City so that it assumes liability for the nuisance. Regardless of any entry or non-entry onto the premises by the City for the purpose of remedying a nuisance, BCTM shall remain solely liable for any and all liability resulting to any persons from any nuisance maintained or permitted on the premises.

**b. Management Obligation:** BCTM shall manage the BCT as follows:

- i. BCTM agrees to maintain its principal and only corporate office with regular office hours on the BCT premises.
- ii. As an independent contractor, and at its sole cost and expense, BCTM shall employ an Executive Director, and such other personnel as necessary in its sole opinion to the operation of the BCT in conformance with the terms of this Agreement. BCTM and its personnel, agents, volunteers, contractors or subcontractors shall in no event be construed to be, or represent themselves to be employees of the City.
- iii. BCTM shall use the BCT premises only for operation of the BCT as a venue for presenting arts and entertainment events, private events, educational programs, community events and other programs and events benefiting the public. The BCT premises may be used and occupied only for the uses described in this Agreement.
- iv. BCTM shall be solely liable and responsible for any and all operating expenses incurred and contracts and agreements entered into in the course of its operation and management of the BCT, provided, however, that BCTM does not assume, and shall not be liable for, any financial obligations of the City regarding the BCT. However, expenses such as property taxes charged directly to the City that stem from BCTM's operation, contracts and agreements with third parties must be reimbursed by BCTM to the City. The BCT shall also take responsibility for all expenses related to the Alcoholic Beverages permit the City obtained for BCTM.
- v. BCTM shall operate the BCT as a venue for presentation of BCT programming, and BCTM may, at its sole discretion, produce and promote its own events at the BCT. BCTM shall have the authority to make all scheduling decisions for the BCT, and at its sole discretion, set rental rates for the BCT. BCTM shall keep the City informed regarding its rental rates for the BCT, and shall advise the City of

any proposed change to the rates at least ten (10) business days prior to the effective date of the change.

- vi. The City's logo and/or such other acknowledgement of the City's support that the City deems appropriate, in its sole discretion, shall be displayed in the BCT and on the BCTM website. An announcement of the City's support of the BCT shall be made prior to "BCT presents" performances.
- vii. BCTM shall be solely responsible for obtaining and maintaining any licenses or permits required by any governmental entity in connection with the operation of the BCT, except as expressly provided in this Agreement. BCTM shall not enter into any contracts or agreements that authorize or allow for violation of any City ordinance.

**c. Sale of Alcoholic Beverages:**

- i. The City, as owner of the BCT, has obtained on BCTM's behalf an Alcoholic Beverages permit for the premises and shall retain rights to this permit because it has applied for an alcoholic beverage permit (liquor, beer and wine retailer for a Civic Center, license type 219) on behalf of the BCTM pursuant to Indiana Code § 7.1-3-1-25. This permit, granted in 2011 and renewable on an annual basis, is not part of the regular Alcoholic Beverage permits that are granted following a quota system, and can only be obtained when the City applies for it. If granted, such a permit is particular to the circumstances of the location in that the building must be owned by the City, and that it must be open for specific purposes.
- ii. BCTM agrees to be in compliance with all laws, federal, state and local, that apply to this alcoholic beverages permit, which is only to be used at the current BCT Premises. It agrees that its obligations to indemnify the City under this Agreement extend to its actions under the laws applicable to this permit, including, without limitation, any penalties for violations of the permit or its requirements.
- iii. BCTM shall, at its own expense during the duration of this Agreement, maintain liquor liability insurance in compliance with Section 6(h) of this Agreement, and carry the financial cost for application and renewals, or any other expense related to the permit.
- iv. BCTM agrees that, in the event of termination of this Agreement for any reason, or if BCTM determines it cannot or will not start or continue to perform its rights and obligations under the alcoholic beverages permit, BCTM will, at the option of the City exercised in writing, either surrender BCTM's Alcoholic Beverages permit for the BCT's location, or take all necessary or desirable lawful steps requested by the City to transfer the alcoholic beverages permit for the BCT to another prospective permittee to be designated by the City, and approved of by the Indiana Alcohol and Tobacco Commission. Such steps may include, but are not limited to, having BCTM officers and/or directors execute lawful documents at the request of the City. In the event of such surrender or transfer upon termination of this Agreement BCTM will not be entitled to any monetary payment or other compensation for complying with this Agreement.

**d. BCTM's Responsibility for Maintenance, Repair and Utilities**

- i. BCTM shall keep the BCT premises, including the auditorium, entrances, eastern portion of the storefront retail space, offices, restrooms, and adjacent sidewalks in a clean, safe, and operable condition and in compliance with all applicable statutes and ordinances, except for those items that are the responsibility of the City as detailed in Exhibit A, Section 2.
- ii. In the event that BCTM enters into a lease of the western portion of the storefront retail space as described in paragraph 6.a.iii., below, the lease shall require the tenant to maintain the premises in a clean and safe condition and in compliance with all applicable statutes and ordinances. In the event that BCTM does not enter into a lease of the western portion of the storefront retail space, BCTM shall maintain the western portion of the storefront retail space, as required by paragraph 4.d.i., above.
- iii. BCTM shall be responsible for the repair of any damage other than ordinary course wear and tear done to the BCT premises by BCTM or BCTM's employees, invitees, or any other occupant or other person whom BCTM permits to be in or about the BCT premises.
- iv. BCTM shall be responsible for maintenance and repair of the interior of the building, as detailed in Exhibit A, Section 1; provided, however, that BCTM shall not be responsible for replacement of those items that are the responsibility of the City pursuant to Exhibit A, Section 2.
- v. BCTM shall be responsible for the ordinary course repair and maintenance of BCT equipment and furnishings listed in Exhibit B; provided, however, that BCTM shall not be responsible for replacement of those items that are the responsibility of the City pursuant to Exhibit A, Section 2.
- vi. BCTM shall maintain all premises, equipment and furnishings in such condition, order, and repair as the same were in at the commencement of this Agreement or may be installed during the term of this Agreement, reasonable wear and tear excepted, other than as provided in Exhibit A. In the event BCTM fails to undertake any repair or maintenance under their responsibility after thirty (30) days' notice in writing from the City, the City may undertake the repair or maintenance, and BCTM shall be obligated to pay within thirty (30) days after invoice the full amount of any such expense paid by the City. The City agrees to reimburse BCTM for unexpected emergency repairs; however, BCTM will make all reasonable efforts to contact City and obtain City approval before commencing the repairs.
- vii. BCTM requests to use Tax Increment Funding shall be compliant, with applicable state law, including Indiana Code 5-22-8 *et seq.* With respect to requests to use Tax Increment Funding, BCTM shall make diligent efforts to follow the City's procurement methods, as set by the City Controller, including—where applicable—obtaining three (3) quotes. Requests for Tax Increment Funding shall

include: (1) the names of the persons or companies that provided quotes, (2) the amounts of the quotes, (3) BCTM's preference of quote, and (4) an explanation for BCTM's preference of quote.

- viii. BCTM shall not cause or permit any alterations, additions, or changes of or upon any part of the BCT premises without first obtaining written consent of the City. If any alterations, additions, or changes to the BCT premises are made by BCTM and met with the City's consent under this sub-paragraph, they shall be made at BCTM's expense and in a good and workmanlike manner, in accordance with all applicable laws, and shall become the property of the City as owner of the BCT.
- ix. The City shall provide BCTM with a list of acceptable vendors with which BCTM might contact for emergency and/or after-hours repair. BCTM shall immediately communicate with the Director of Parks and Recreation on the day following the occurrence of emergency repair describing the nature of, and the manner in which BCTM handled, the repair.
- x. BCTM shall pay all bills and charges for water, sanitary and storm sewer, electricity, gas, and other utilities that may be assessed or charged against any occupant of the BCT Premises during the term of this Agreement.
- xi. BCTM shall not permit any lawful mechanic's or other liens to accrue against the BCT Premises by reason of labor, services or materials claimed to have been performed or furnished to or for BCTM. BCTM shall cause any lien filed against the BCT Premises as a result of the action or inaction of BCTM to be discharged and released within ninety (90) days of the date of filing. In the event the lien is not discharged and released within that time period and BCTM continues to desire to contest the lien, BCTM shall post a surety bond or letter of credit in an amount reasonably anticipated to be necessary to satisfy the lien.

**e. Organizational Information:** BCTM shall share financial information with the City.

- i. Once per calendar year, BCTM shall provide financial reports which have been reviewed or audited by a Certified Professional Accountant, as defined by the Financial Standards Accounting Board (FASB). Included with these financial reports shall be the total, end-of-year balances in any and all BCTM financial accounts. Said reports shall be delivered to the City not later than April 15, 2022.
- ii. BCTM shall provide an annual written report of BCT fundraising and operations to the City, which shall be delivered to the City no later than April 15, 2022. The annual report shall be comprehensive and shall address all relevant topics, including, but not limited to, a listing of all programs and events held in the BCT during 2021, income and expenses related to the BCT property for 2021, updates on the preventative maintenance BCTM undertook in 2021, progress reports on fundraising, including the amount of funds received through fundraising, the number of donors of funds, and the steps taken to generate funds.
- iii. BCTM shall provide a copy of its timely filed IRS Form 990, Return of Organization Exempt from Income Tax Form. The Form 990 shall be provided

to the City within thirty (30) days of when it is filed with the Internal Revenue Service.

- iv. BCTM will remain compliant with all returns and payments associated with all applicable taxes—including payroll taxes. BCTM will provide the City with a copy of all returns filed with and payments made to all taxing entities within thirty (30) days of filing and payment.
- v. BCTM shall provide a copy of all filings with the Indiana Secretary of State's Office. These filings shall be provided to the City within thirty (30) days of when they are filed with the Indiana Secretary of State's Office.
- vi. The City shall set a meeting after April 15, 2021, and prior to May 30, 2021, for BCTM to present the 2020 annual report to the Director of the City's Economic and Sustainable Development Department and to respond to questions. BCTM shall designate at least one voting member of its Board and one staff member to present the report during the City's meeting.
- vii. During the year and in addition to the annual report, BCTM representatives shall provide to the City such information as may be requested by the City concerning BCT operations and events.
- viii. The City may, upon one (1) week's notice, inspect the BCT's books and records maintained by BCTM.
- ix. The City shall have one (1) non-voting representative on the BCTM Board of Directors. The Mayor shall designate this representative, who shall be subject to removal by the Mayor at anytime for any reason.
- x. BCTM shall provide BCT participation data to the City on a quarterly basis to the City no more than fifteen days after the end of each quarter. This data will be used in the Bloomington Parks and Recreation annual report.
- xi. The 2022 BCTM goals will be submitted to the City by July 1, 2021, following the City's format for annual goals.
- xii. The City shall set a partnership evaluation meeting after October 19, 2021, and prior to November 20, 2021, to evaluate the 2021 partnership and prepare the 2022 partnership agreement for City approvals in December 2021.

**f. Inventory List and Disposal of Surplus Property:**

- i. BCTM shall provide an updated inventory of all equipment and furnishings to the City on or before December 31, 2021. The inventory shall include the funding source or sources for all equipment and furnishings purchased. At the end of this Agreement, prior to renewal, the City shall, at its own discretion, be permitted to conduct an inventory of City owned assets to ensure their presence on-site. BCTM shall be held accountable for any missing City owned assets that BCTM had not previously reported to the City as the subject of theft or third-party

damage or that was not subject to replacement by the City pursuant to Exhibit A, Section 2.

- ii. Any non-fixed BCT assets acquired by BCTM through purchase of its own funds or received via in-kind contribution will be the property of BCTM.
- iii. BCTM shall inform the City when it desires to dispose of surplus City property (“Surplus Property”) in writing, and the City shall, at its earliest convenience, comply with disposal of Surplus property policies as provided by statute and the City’s Financial Policies Manual (including the Controller and Corporation Counsel’s review of the request, and the submission of the request to the appropriate board). Revenue generated by the sale of Surplus Property will be credited to the department from which such personal property is sold, pursuant to Bloomington Municipal Code 2.52.020.

## 5. CITY OF BLOOMINGTON

The goal of the City is to provide entertainment and cultural opportunities to the Bloomington area community, including residents of Monroe County and surrounding counties and visitors. City agrees to provide:

### a. Programming and Premises:

- i. The City’s one (1) non-voting representative will serve on the BCTM Board of Directors.
- ii. The City, as owner of the BCT, shall retain decision-making authority regarding signage to be affixed to the BCT premises. The City shall also retain the right to display and distribute promotional materials regarding City programs in the lobby of the BCT in such a way that does not interfere with BCTM’s use of the BCT and ability to manage and promote events at the BCT.
- iii. Any matters related to the BCT Premises that are not specifically addressed in this Agreement shall be decided by the City pursuant to its authority as owner of the BCT.
- iv. Ownership of the equipment and furnishings inside the building necessary to its functionality as a Theater is as detailed in Exhibit B.
- v. The City will consult with BCTM during the term of this Agreement regarding replacements, upgrades and major repairs to equipment and furnishings; however, all decisions regarding the same shall be made in the City’s discretion.
- vi. The City shall be responsible for maintenance and repair of the building and the marquee as detailed in Exhibit A, Section 2 of this Agreement.
- vii. The City shall be responsible for addressing BCTM requests to the City for Tax Increment Funding, as detailed in paragraph 5.b.ii of this Agreement, in a timely manner.

- viii. The City reserves the right to make any structural, roof and major mechanical repairs it deems necessary beyond otherwise required repair and maintenance of the Premises, and agrees to make all reasonable efforts to work with BCTM in planning and scheduling such repairs as to minimize or avoid interruption of use of the BCT.
- ix. The City or its agent shall have the right to enter upon the BCT Premises to inspect the same during the BCT's business hours, or at any other reasonable time as the parties shall agree.
- x. The City shall have the right to use the BCT, with no rental fee, for up to five (5) days each calendar year, which dates will be coordinated with BCTM in advance. A day of use is defined as the time between 8:00 a.m. and 12:00 a.m. (midnight) on the day of the rental. Additional hours may be added to a day of use with BCTM approval.

**b. Payments:**

- i. The City and the Redevelopment Commission shall provide funding as detailed in Section 3.

**6. TERMS MUTUALLY AGREED TO BY ALL PARTNERS TO THIS AGREEMENT**

**a. ASSIGNMENT AND LEASING:**

- i. BCTM may not assign this Agreement or its obligations under this Agreement.
- ii. Upon the termination of this Agreement, whether such termination shall occur by expiration of the term or in any other manner whatsoever, BCTM agrees to surrender immediate possession of the BCT Premises in the same condition of cleanliness, repair, and sightliness as of the first day of possession under its first Management Agreement, and agrees to clean the BCT Premises thoroughly or, if BCTM should fail to clean the premises thoroughly, to pay the City for the cleaning necessary to restore the premises to such condition, loss by fire or by the elements and reasonable wear and tear excepted. If BCTM shall remain in possession of all or any part of the BCT Premises after expiration of the term of this Agreement, with the consent of the City, then this Agreement shall continue in effect from month-to-month until terminated in writing by either party.
- iii. BCTM shall have the right to lease or subcontract for management of the western portion of the storefront retail space on Kirkwood Avenue, as provided in this Agreement. Such lease or subcontract shall be subject to the prior consent of the City, but such consent shall not be unreasonably withheld. BCTM acknowledges that a lease of the western portions of the storefront retail space is subject to statutory requirements regarding leasing of municipally-owned property, and includes a duty to get reimbursed for any property taxes associated with such a lease or subcontract, and the terms of and method of procuring any such lease or subcontract must be approved by the Mayor or his designee. Any and all revenues

received by BCTM from the management or rental of the western portion of the storefront retail space shall be applied to offset associated costs of management and maintenance of the BCT.

If BCTM and the City's contractual relationship is terminated for any reason during the term of the storefront retail lease or subcontract, the City will honor the remaining term of the storefront retail lease or subcontract. A copy of the storefront retail lease or subcontract shall be provided to the City.

- iv. The City expressly retains the right to lease or contract separately for management of the eastern portion of the retail space along Kirkwood Avenue in the event that BCTM ceases using the space as a box office.

**b. INDEMNIFICATION AND RELEASE**

- i. BCTM shall indemnify, defend, and hold the City harmless from any contractual claim, demand, action, liability, or responsibility arising directly or indirectly from its management, operation, occupancy, use, or possession of the BCT under this Agreement. BCTM shall indemnify, defend and hold the City harmless from and against any claim, demand, liability, proceeding, damages, loss, and costs, including attorney's fees, arising from personal injury, death, or property damage connected, directly or indirectly, with this Agreement or BCTM's occupancy, control, or use of the BCT Premises and personal property, including without limitation, any liability that the City might have to any person, including BCTM and any lessee, and/or its employees and invitees, in or about the BCT Premises with the consent, license, or invitation, express or implied, of BCTM or any lessee. BCTM agrees that its obligations to indemnify the City under this Agreement extend to its actions under the laws applicable to its Alcoholic Beverages permit, including, without limitation, any penalties for violations of the permit or its requirements.
- ii. If the City shall, without fault, become a party to litigation commenced by or against BCTM, then BCTM shall indemnify and hold the City harmless from such litigation. The indemnification provided in this paragraph shall include the City's attorney's fees and costs in connection with any such claim, action, or proceedings. BCTM does hereby release the City from all liability for any accident, damage, or injury caused to person or property on or about the BCT Premises. The City shall remain liable for its own gross negligence and the gross negligence of its agents and employees, and in such case, the indemnification, hold harmless, and release provisions provided herein shall not apply.

- c. **Risk of Loss:** In the event that the BCT Premises sustains damage of any nature, any and all property insurance proceeds arising from the loss shall be applied to restore the BCT Premises. In the event that the BCT Premises are destroyed and cannot be restored within one hundred eighty (180) days, then this Agreement may be terminated by either party without further obligation. All property of BCTM, its agents and employees, kept, stored or maintained within the BCT Premises shall be at BCTM's exclusive risk.



- d. **E-VERIFY:** Pursuant to Indiana Code § 22-5-1.7-11(a) BCTM shall enroll in and verify the work eligibility status of all newly hired employees through the E-Verify program. BCTM is not required to continue this verification if the E-Verify program no longer exists. BCTM shall sign an affidavit affirming that they participate in the E-Verify program and that they do not currently knowingly employ an unauthorized alien. The affidavit is attached to and incorporated into this Agreement as Exhibit C.
- e. **Nuisance:** BCTM shall not permit any nuisance to be maintained or permitted on the premises, nor any disturbance, noise, or other annoyance that interferes with the reasonable comfort and quiet enjoyment of persons occupying adjacent properties. If BCTM fails to remedy the nuisance, then the City shall have the right to enter on the premises to remedy the nuisance. However, the City's failure to assert its right to remedy a nuisance shall not impose an affirmative duty on the City so that it assumes liability for the nuisance. Regardless of any entry or non-entry onto the premises by the City for the purpose of remedying a nuisance, BCTM shall remain solely liable for any and all liability resulting to any persons from any nuisance maintained or permitted on the premises.
- f. **Firearms Policy:** Pursuant to Indiana Code § 35-47-11.1-4(10), BCTM may develop and implement, at its own discretion, rules of conduct or admission regarding the carrying and storage of firearms, upon which attendance at and participation in its activities is conditioned. BCTM has developed such a policy for its activities, which is incorporated into this Agreement as Exhibit D.
- g. **Non-Waiver:** Failure on the part of either the City or BCTM to exercise any right or remedy under this Agreement shall not constitute a waiver thereof as to any default or future default or breach by the other party. No waiver of any default shall be effective unless in writing.
- h. **Insurance:** BCTM shall, at its own expense during the term of this Agreement, maintain in full force and effect for the mutual benefit and protection of both BCTM and the City, as additional insured, General Liability Insurance, in an amount and with an insurance company approved by City, against claims of bodily injury, death, or damage to the property of third parties occurring in or about the BCT premises. The minimum limits of liability of such General Liability Insurance shall be One Million Dollars (\$1,000,000.00) per occurrence, Two Million Dollars (\$2,000,000) in the aggregate, and One Hundred Thousand Dollars (\$100,000.00) with respect to property damage/fire legal liability. BCTM shall, at its own expense during the term of this Agreement, maintain and keep in full force and effect for the mutual benefit and protection of both BCTM and the City, as additional insured, Fire and Extended Casualty Insurance coverage upon those contents, furnishings, and personal property owned or maintained by BCTM, as indicated in this Agreement or otherwise. BCTM shall provide the City with an All Risk/Special Form regarding such contents, furnishings and personal property. BCTM shall maintain Workers Compensation Insurance in accordance with the statutory requirements of Title 22 of the Indiana Code. BCTM shall provide to the City certificates of insurance evidencing the insurance required pursuant to this paragraph. All policies of insurance on which the City is named as additional insured shall require that the City be provided a minimum of thirty (30) days' notice in writing of any intended cancellation.

In addition, BCTM shall, at its own expense during the duration of this Agreement, maintain liquor liability insurance with an insurance agency approved by the City. BCTM's liquor liability insurance shall name the City as an additional insured. BCTM shall maintain liquor liability

insurance with limits no less than One Million Dollars (\$1,000,000) per occurrence and Two Million Dollars (\$2,000,000) in the aggregate. Additionally, BCTM's liquor liability insurance policy shall require that the City be provided at least thirty (30) days' notice in writing of any intended cancellation. BCTM shall provide the City with insurance certificates evidencing the required liquor liability coverage.

- i. **Notice:** Notice regarding any significant concerns and/or breaches of this Agreement shall be given to contacts as follows:

To City:

City of Bloomington Legal Department  
P.O. Box 100  
401 N. Morton Street, Suite 220  
Bloomington, IN 47404

To BCTM:

BCT Management, Inc.  
Buskirk-Chumley Theater  
114 E Kirkwood Ave  
Bloomington, Indiana 47408

All notices under this Agreement shall be in writing and shall be delivered personally or sent by Certified Mail, Return Receipt Requested to the above-described addresses, provided that each party by like notice may designate any further or different address to which subsequent notices may be sent.

- j. **Termination:** Either party may terminate this Agreement upon giving written notice of the intention to do so six (6) months prior to the intended date of termination.

If BCTM and the City's contractual relationship is terminated for any reason during the term of a rental agreement that BCTM has with a third-party for use of the BCT, the City will honor the remaining term of the rental agreement. A copy of any third-party rental agreement shall be provided to the City.

Upon termination, subject to limitation by applicable law or regulation expressly including those governing non-profit entities, the City shall have the first right of refusal to purchase any BCTM-owned non-fixed assets for the depreciated net value or a price mutually agreed upon by the Parties. Also upon termination, the BCTM shall immediately surrender and convey to the City any remaining cash balances that were accrued by the BCTM as the result of operations and fundraising of the BCT, which shall be used by the City for reinvestment in the BCT, or to procure a new management company to operate the BCT.

- k. **Default:**

- i. **By City:** If the City should fail to perform any of the covenants, agreements, or conditions of this Agreement, on its part to be kept and performed, and such default is not cured within thirty (30) days after written notice is given to the City by BCTM by Certified Mail Return Receipt Requested setting forth the nature of such default, this Agreement may be terminated by BCTM before expiration of its term. The parties agree to meet within five (5) days after a written notice of default has been given by BCTM and to endeavor to resolve any dispute concerning the alleged default by direct negotiations.
  - ii. **By BCTM:** If BCTM should fail to perform any of the covenants, agreements or conditions of this Agreement, on its part to be kept and performed, and such default is not cured within thirty (30) days after written notice is given to BCTM by the City by Certified Mail, Return Receipt Requested setting forth the nature of such default; or if BCTM shall make an assignment for the benefit of creditors; or if the interest of BCTM hereunder shall be sold under execution or other legal process; or if BCTM shall be placed in the hands of a receiver; then, in any of such events, it shall be lawful for the City, without notice or process of law, to enter upon and take possession of the BCT Premises, and thereupon this Agreement and everything herein contained on the part of the City to be done and performed shall cease, terminate, and be utterly void, all at the option of the City; without prejudice, however, to the right of the City to recover from BCTM, and without such action being deemed a surrender of this Agreement or a termination of BCTM's liabilities, undertakings, and responsibilities under this Agreement. BCTM shall not be considered in default under this Agreement if it is temporarily unable to maintain operations or otherwise provide programming as a result of circumstances beyond its control making performance inadvisable, commercially impracticable, illegal, or impossible, expressly including as a result of a public health crisis, war or insurrection, or natural disaster.
- l. **Successors:** The provisions, covenants and conditions of this Agreement shall bind and inure to the benefit of the legal representatives, successors and permitted assigns of the parties.
  - m. **Severability:** If any part of this Agreement is invalid or unenforceable under any statute, regulation, ordinance, executive order or other rule of law, such term shall be deemed reformed or deleted, but only to the extent necessary to comply with such statute, regulation, ordinance, order or rule and the remaining provisions of this agreement shall remain in full force and effect
  - n. **Choice of Law and Venue:** This Agreement shall be governed and construed in accordance with the laws of the State of Indiana. The venue for any legal proceeding instituted under this Agreement shall be Monroe County, Indiana.

IN WITNESS WHEREOF, the parties have signed this Agreement on the date first set forth.

**CITY OF BLOOMINGTON, INDIANA**

**BCT MANAGEMENT, INC.**

By: \_\_\_\_\_  
Alex Crowley, Director  
Economic & Sustainable Development

By: \_\_\_\_\_  
Sarah Laughlin, President

By: \_\_\_\_\_  
Philippa M. Guthrie, Corporation Counsel

**REDEVELOPMENT COMMISSION**

**BOARD OF PARK COMMISSIONERS**

By: \_\_\_\_\_  
Donald Griffin, President

By: \_\_\_\_\_  
Kathleen Mills, President

**BOARD OF PUBLIC WORKS**

By: \_\_\_\_\_  
Dana Palazzo, President

## **EXHIBIT A**

1. BCT Management, Inc. (BCTM) shall be responsible for:
  - Repair and maintenance building interior, including but not limited to, e.g., walls, floors, floor coverings, ceilings, plumbing fixtures, flush valves, toilet paper dispensers, paper towel dispensers, soap dispensers, water fountains, lighting fixtures, railings, interior doors, interior door glass, locks, keys, and hardware
  - Repair and maintenance of all stage equipment and soft goods
  - Repair and maintenance of theater seats, free-standing chairs, tables, desks, counters, and other furniture
  - Repair and maintenance of the Theater's mechanical systems– electrical, plumbing, and HVAC (including annual service contract for HVAC system)
  - Repair and maintenance of the Theater's fire alarm and sprinkler system, (including annual service contract for the alarm system) and fire extinguishers
  - Repair, maintenance, replacement and purchase of BCTM – owned office equipment and furniture necessary for BCTM business operation, not directly related to BCT's operation as a Theater, and not intended for City ownership
  - Repair and maintenance of the western portion of the storefront retail space, including the mechanical systems (electrical, plumbing, and HVAC) associated with that space.
  - An annual report on such repair and maintenance as well as preventative maintenance
  
2. The City of Bloomington shall be responsible for:
  - Repairs and maintenance of the Theater's exterior structure, including doors, door locks, windows and window locks (where applicable)
  - Repairs and maintenance of the Marquee
  - Replacement of mechanical systems (electrical, plumbing, and HVAC)
  - Replacement of fire alarm and sprinkler systems
  - Replacement of existing City property within BCT – floors, floor covering, fixed seats, free-standing seats, sound system, lighting system, microphones, box office equipment, soft goods, rigging, stage extension, piano, and any other items listed on the property and equipment inventory

**EXHIBIT B**

[BCT Equipment and Facility Item List as of February 1, 2020.](#)

[Printed PDF File to be Included with Final Contract]

**EXHIBIT C**

STATE OF INDIANA )  
 )  
COUNTY OF MONROE )

**AFFIDAVIT**

The undersigned, being duly sworn, hereby affirms and says that:

1. The undersigned is the \_\_\_\_\_ of \_\_\_\_\_.  
(job title) (company name)
2. BCT Management, Inc., employer of the undersigned, has contracted with the City of Bloomington to provide services;
3. BCT Management, Inc., employer of the undersigned, is enrolled in and participates in the State of Indiana E-Verify program.
4. The undersigned is authorized by his/her employer, BCT Management, Inc., to sign affidavits on its behalf.
5. The undersigned states that, to the best of his/her knowledge and belief, BCT Management, Inc. does not knowingly employ an “unauthorized alien,” as defined at 8 U.S.C. § 1324a. (h)(3), and, BCT Management, Inc. is enrolled and participating in E-verify to check the eligibility status of all its newly hired employees, and requires the same from its sub-contractors who work under this Agreement.

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Date

\_\_\_\_\_  
Printed name

STATE OF INDIANA )  
 )  
COUNTY OF MONROE )

Before me, a Notary Public in and for said County and State, personally appeared \_\_\_\_\_ and acknowledged the execution of the foregoing this \_\_\_\_ day of \_\_\_\_\_, 2021.

\_\_\_\_\_  
Signature of Notary Public

\_\_\_\_\_  
Printed Name of Notary Public

County of Residence: \_\_\_\_\_

My Commission Expires: \_\_\_\_\_

## **EXHIBIT D**

### **BCTM Firearms Policy**

BCTM does not standardly restrict firearms and other weapons from the Buskirk-Chumley Theater. However, any presenter partner and/or a performing artist may request that firearms and other weapons be prohibited from the venue, provided the presenter partner and/or performing artist is willing to compensate BCTM for the cost of hiring security to enforce the prohibition.