

ATTACHMENT A: SAMPLE FORM OF AGREEMENT
[INSERT FULL NAME OF ARTIST]

THIS AGREEMENT is made this ___ day of _____, 20__ (“Effective Date”) by and between **[INSERT FULL NAME - ALL CAPS/BOLD]**, a [(choose one of the following) a Minnesota Corporation / a Limited Liability Company / a Partnership] located at [full address of Artist] (“Artist”), and the **CITY OF BLOOMINGTON, MINNESOTA**, a Minnesota municipal corporation located at 1800 West Old Shakopee Road Bloomington, Minnesota 55431-3027 (“City”):

RECITALS

- A. Artist is engaged in the business of providing [fill in type of service the Artist will be provided] services.
- B. The City desires to secure a contract to provide [fill in specific services the City wants the Artist to provide].
- C. Artist represents that it has the expertise and capabilities to provide the City with the requested services.
- D. City desires to engage Artist to provide the services described in this Agreement and Artist is willing to provide such services on the terms and conditions set forth herein.

NOW, THEREFORE, in consideration of the terms and conditions expressed herein, the City and Artist agree as follows:

AGREEMENT

1. **Services to be Provided.** Artist agrees to provide the City with [fill in type of services provided same as A. above] services as set forth in Artist’s Scope of Services attached hereto as Exhibit A or any supplemental letter agreements, or both, entered into between the City and Artist (the “Services”). The Services referenced in the attached Exhibit A or any supplemental letter agreements shall be incorporated into this Agreement by reference. All Services shall be provided in a manner consistent with the level of care and skill ordinarily exercised by contractors currently providing similar services.
2. **Time for Completion.** This Agreement shall remain in force and effect commencing from Effective Date and continuing until the earlier of [completion date of contract] or completion of the project unless terminated by the City or amended pursuant to the Agreement.
3. **Consideration.** The consideration, which City shall pay to Artist and shall not exceed \$[fill in \$ amount of contract], for both the Services performed by Artist and the expenses incurred by Artist in performing the Services, shall be as set forth in Exhibit A and incorporated herein to this Agreement. City shall make progress payments, based on satisfactory completion of each phase of the Services, which shall be determined by the City’s Authorized Agent.
4. **Expense Reimbursement.** Artist will not be compensated separately for necessary incidental expenses. All expenses of Artist shall be built into Artist’s fixed compensation rates, unless reimbursement is provided for an expense that received the prior written approval of City, which approval may be provided via electronic mail.

5. **Approvals.** Artist will secure City's written approval before making any expenditures, purchases, or commitments on City's behalf beyond those listed in the Services. City's approval may be provided via electronic mail.
6. **Termination.** Notwithstanding any other provision hereof to the contrary, this Agreement may be terminated as follows:
 - a. The parties, by mutual written agreement, may terminate this Agreement at any time;
 - b. Artist may terminate this Agreement in the event of a breach of the Agreement by City upon providing thirty (30) days' written notice to City;
 - c. City may terminate this Agreement at any time at its option, for any reason or no reason at all;
 - d. City may terminate this Agreement immediately upon Artist's failure to have in force any insurance required by this Agreement; or
 - e. City may immediately terminate this Agreement without penalty if City does not obtain funding from the State of Minnesota, the federal government or any other funding source; if funding is withdrawn or cancelled, or if funding cannot be continued at a level sufficient to allow for the payment of the Services. City must provide Artist written notice of the lack of funding within a reasonable time of City's receiving its notice. City is not obligated to pay for any Services that are provided by Artist after reasonable notice and effective date of termination. However, Artist will be entitled to payment, determined on a pro rata basis, for Services satisfactorily performed to the extent that funds are available.

In the event of a termination, City shall pay Artist for Services performed to the date of termination and for all costs or other expenses incurred prior to the date of termination, except as otherwise provided in paragraph (e). As set forth in this Agreement, the parties agree that certain paragraphs in this Agreement survive termination of this Agreement.

7. **Amendments.** Except as expressly permitted by this Agreement, no amendments may be made to this Agreement except in writing signed by both parties.
8. **Remedies.** In the event of a termination of this Agreement by City because of a breach by Artist, City may complete the Services either by itself or by contract with other persons or entities, or any combination thereof. The foregoing remedies provided to City for breach of this Agreement by Artist shall not be exclusive. City shall be entitled to exercise any one or more other legal or equitable remedies available because of Artist's breach.
9. **Records/Inspection.** Pursuant to Minnesota Statutes § 16C.05, Subd. 5, Artist agrees that the books, records, documents, and accounting procedures and practices of Artist, that are relevant to the contract or transaction, are subject to examination by City and the state auditor or legislative auditor for a minimum of six years. Artist shall maintain such records for a minimum of six years after final payment. These obligations survive termination of this Agreement.
10. **Indemnification.** To the fullest extent permitted by law, Artist, and Artist's successors or assigns, agree to protect, defend, indemnify, save, and hold harmless the City, its officers, officials, agents, volunteers, and employees from any and all claims; lawsuits; causes of actions of any kind, nature, or character; damages; losses; or the costs, disbursements, and expenses of defending the same, including but not limited to attorneys' fees, professional services, and other technical, administrative or professional assistance resulting from or arising out of Artist's (or its subcontractors, agents, volunteers, members, invitees, representatives,

or employees) performance of the duties required by or arising from this Agreement, or caused in whole or in part by any negligent act or omission or willful misconduct, or arising out of the failure to obtain or maintain the insurance required by this Agreement. Nothing in this Agreement shall constitute a waiver or limitation of any immunity or limitation on liability to which City is entitled. The parties agree that these indemnification obligations will survive the completion or termination of this Agreement.

11. **Insurance.** Artist shall maintain reasonable insurance coverage throughout this Agreement. Artist agrees that before any work related to the approved Project can be performed, Artist shall maintain at a minimum:
- Worker's Compensation Insurance as required by Minnesota Statutes, Section 176.181;
 - Commercial General Liability in an amount of not less than \$1,000,000.00 per occurrence for bodily injury or death arising out of each occurrence, and \$1,000,000.00 per occurrence for property damage; and
 - Auto Liability insurance as required by the state the vehicle is licensed in.

To meet the minimum Commercial General Liability and Auto Liability requirements, Artist may use a combination of Excess and Umbrella coverage.

Artist shall also name City as an additional insured on its Commercial General Liability and Umbrella or Excess policies, and will provide City with a current certificate of insurance that includes the following language: **"The City of Bloomington is named as an additional insured with respect to the commercial general liability and umbrella or excess liability, as required by the contract. The umbrella or excess liability policy follows form on all underlying coverages."** The certificate of liability insurance must also contain a statement that Artist or its insurance provider shall not cancel or amend the policies included on the certificate unless thirty (30) days' written notice is provided to City, or ten (10) days' written notice in the case of non-payment. These obligations survive termination of this Agreement.

12. **Waiver of Subrogation.** To the fullest extent permitted by law, Artist waives all rights against City, its agents, officers, directors, and employees for recovery of damages to the extent these damages are covered by the workers' compensation and employers' liability, commercial general liability, or umbrella or excess liability insurance obtained by Artist pursuant to Paragraph 11 of this Agreement. Artist shall require its insurers to execute any waiver of subrogation endorsements which may be necessary to effect such waiver.
13. **Assignment and Subcontracting.** Neither City nor Artist shall assign, subcontract, or transfer any rights under or interest (including, but without limitation, moneys that may become due or moneys that are due) in this Agreement, in whole or in part, without the written consent of the other except to the extent that the effect of this limitation may be restricted by law. Unless specifically stated to the contrary in any written consent to an assignment, no assignment will release or discharge the assignor from any duty or responsibility under this Agreement. Nothing contained in this paragraph shall prevent Contractor from employing such independent consultants, associates, and subcontractors, as it may deem appropriate to assist it in the performance of Services required by this Agreement. Any instrument in violation of this paragraph is null and void.
14. **Independent Contractor.** Artist shall be deemed an independent contractor. Artist's duties will be performed with the understanding that Artist has special expertise as to the services which Artist is to

perform and is customarily engaged in the independent performance of the same or similar services for others. All required equipment and personnel shall be provided or contracted for by Artist. The manner in which the services are performed shall be controlled by Artist; however, the nature of the services and the results to be achieved shall be specified by City. The parties agree that this is not a joint venture and the parties are not co-partners. Artist is not to be deemed an employee or agent of City and has no authority to make any binding commitments or obligations on behalf of City except to the extent expressly provided herein. All services provided by the Artist pursuant to this Agreement shall be provided by the Artist as an independent contractor and not as an employee of the City for any purpose, including but not limited to: income tax withholding, workers' compensation, unemployment compensation, FICA taxes, liability for torts and eligibility for employee benefits.

15. **Compliance with Laws.** Artist shall exercise due care to comply with applicable federal, state and local laws, rules, ordinances and regulations in effect as of the date Artist agrees to provide the applicable services detailed in Exhibit A or any supplemental letter agreement. Artist's guests, invitees, members, officers, officials, agents, employees, volunteers, representatives, and subcontractors shall abide by the City's policies prohibiting sexual harassment, firearms, and smoking, as well as all other reasonable work rules, safety rules, or policies regulating the conduct of persons on City property, at all times while performing duties pursuant to this Agreement. Artist agrees and understands that a violation of any of these policies or rules constitutes a breach of the Agreement and sufficient grounds for immediate termination of the Agreement by the City. These obligations survive termination of this Agreement.
16. **Entire Agreement.** This Agreement, any attached exhibits and any addenda or amendments signed by the parties shall constitute the entire agreement between City and Artist, and supersedes any other written or oral agreements between City and Artist. This Agreement can only be modified in writing signed by City and Artist. If there is any conflict between the terms of this Agreement and referenced or attached items, the terms of this Agreement shall prevail.
17. **Third Party Rights.** The parties to this Agreement do not intend to confer on any third party any rights under this Agreement.
18. **Choice of Law and Venue.** This Agreement shall be governed by and construed in accordance with the laws of the state of Minnesota. Any disputes, controversies, or claims arising out of this Agreement shall be heard in the state or federal courts of Hennepin County, Minnesota, and all parties to this Agreement waive any objection to the jurisdiction of these courts, whether based on convenience or otherwise.
19. **Conflict of Interest.** Artist shall use reasonable care to avoid conflicts of interest and appearances of impropriety in representation of City. In the event of a conflict of interest, Artist shall advise City and either secure a waiver of the conflict or advise City that it will be unable to provide the requested services.
20. **Work Products and Ownership of Documents.** All records, information, materials and other work products, including, but not limited to the completed reports, drawings, plans, and specifications prepared and developed in connection with the provision of Services pursuant to this Agreement shall become the property of City, but reproductions of such records, information, materials and other work products in whole or in part may be retained by Artist. Regardless of when such information was provided, Artist agrees that it will not disclose for any purpose any information Artist has obtained arising out of or related to this Agreement, except as authorized by City or as required by law.

The Artist is the author and creator of the material submitted to the City and said material does not, and will not, infringe upon the proprietary or any intellectual property rights of any other persons or entities. These obligations survive termination of this Agreement.

21. **Agreement Not Exclusive.** The City retains the right to hire other [list type of services from Paragraph A above] service providers for other matters, in the City's sole discretion.
22. **Data Practices Act Compliance.** Any and all data provided to the Artist, received from the Artist, created, collected, received, stored, used, maintained, or disseminated by the Artist pursuant to this Agreement shall be administered in accordance with, and is subject to the requirements of the Minnesota Government Data Practices Act, Minnesota Statutes, Chapter 13. Artist agrees to notify the City within three (3) business days if it receives a data request from a third party. This paragraph does not create a duty on the part of the Artist to provide access to public data to the public if the public data are available from the City, except as required by the terms of this Agreement. These obligations survive the termination of this Agreement.
23. **No Discrimination.** Artist agrees not to discriminate in providing products and services under this Agreement on the basis of race, color, sex, creed, national origin, disability, age, sexual orientation, status with regard to public assistance, or religion. Violation of any part of this provision may lead to immediate termination of this Agreement. Contractor agrees to comply with Americans with Disabilities Act, as amended ("ADA"), Section 504 of the Rehabilitation Act of 1973, and the Minnesota Human Rights Act, Minnesota Statutes, Chapter 363A. Artist agrees to hold harmless and indemnify City from costs, including but not limited to damages, attorney's fees and staff time, in any action or proceeding brought alleging a violation of these laws by Artist or its guests, invitees, members, officers, officials, agents, employees, volunteers, representatives and subcontractors. Upon request, Artist shall provide accommodation to allow individuals with disabilities to participate in all Services under this Agreement. Artist agrees to utilize its own auxiliary aid or service in order to comply with ADA requirements for effective communication with people with disabilities.
24. **Authorized Agents.** The City's authorized agent for purposes of administration of this contract is [City's department contact for this contract], the [Title of City contact] of the City, or her designee. The Artist's authorized agent for purposes of administration of this contract is [Artist's contact name], and all Services shall be performed by or under his supervision.
25. **Notices.** Any notices permitted or required by this Agreement shall be deemed given when personally delivered or upon deposit in the United States mail, postage fully prepaid, certified, return receipt requested, addressed to:
- Artist: [Artist's address, contact person information];
City: City of Bloomington, 1800 West Old Shakopee Road, Bloomington, MN 55431,
Attn: [City's contact person]; _____@bloomingtonmn.gov; 952-563-_____;
or such other contact information as either party may provide to the other by notice given in accordance with this provision.
26. **Waiver.** No waiver of any provision or of any breach of this Agreement shall constitute a waiver of any other provisions or any other or further breach, and no such waiver shall be effective unless made in writing and signed by an authorized representative of the party to be charged with such a waiver.

27. **Headings.** The headings contained in this Agreement have been inserted for convenience of reference only and shall in no way define, limit or affect the scope and intent of this Agreement.
28. **Mediation.** Both parties agree to submit all claims, disputes and other matters in question between the parties arising out of or relating to this Agreement to mediation at the Conflict Resolution Center, 2101 Hennepin Avenue, Suite 100, Minneapolis, Minnesota 55405. In the event mediation is unsuccessful, either party may exercise its legal or equitable rights.
29. **Payment of Subcontractors.** Artist agrees that it must pay any subcontractor within ten (10) days of the prime contractor's receipt of payment from the municipality for undisputed services provided by the subcontractor. Artist agrees that it must pay interest of 1-1/2 percent per month or any part of a month to the subcontractor on any undisputed amount not paid on time to the subcontractor. The minimum monthly interest penalty payment for an unpaid balance of \$100 or more is \$10. For an unpaid balance of less than \$100, the prime contractor shall pay the actual penalty due to the subcontractor. A subcontractor who prevails in a civil action to collect interest penalties from a prime contractor must be awarded its costs and disbursements, including attorney's fees, incurred in bringing the action.
30. **Publicity.** City and Artist shall develop language to use when discussing the Services. Artist agrees that any publicity regarding the Services or the subject matter of this Agreement must not be released unless it complies with the approved language. Artist must not use the City's logo or state that the City endorses its services without the City's advanced written approval. City and Artist agree to credit the work as "_____ by _____, commissioned by City of Bloomington."
31. **Severability.** In the event that any provision of this Agreement shall be illegal or otherwise unenforceable, such provision shall be severed, and the balance of the Agreement shall continue in full force and effect.
32. **Signatory.** Each person executing this Agreement ("Signatory") represents and warrants that he/she/they is duly authorized. In the event Artist did not authorize the Signatory to sign on its behalf, the Signatory agrees to assume responsibility for the duties and liability of Artist, as described in this Agreement, personally.
33. **Counterparts and Electronic Communication.** This Agreement may be executed in two or more counterparts, each of which shall be deemed an original, but all of which taken together shall constitute one and the same instrument. This Agreement may be transmitted by electronic mail in portable document format ("pdf") and signatures appearing on electronic mail instruments shall be treated as original signatures.

[The balance of this page left blank intentionally.]

IN WITNESS WHEREOF, the City and the Artist have caused this Services Agreement to be executed by their duly authorized representatives in duplicate on the respective dates indicated below.

CITY OF BLOOMINGTON, MINNESOTA

DATED: _____ BY: _____

Its: Mayor

DATED: _____ BY: _____

Its: Parks and Recreation Director

Reviewed and approved by the City Attorney.

ARTIST

[ARTIST'S FULL NAME - ALL CAPS/BOLD]

DATED: _____ BY: _____

Its: _____

EXHIBIT A TO AGREEMENT BETWEEN
THE CITY OF BLOOMINGTON, MINNESOTA AND [INSERT FULL NAME OF ARTIST]

SCOPE OF SERVICES

Included here, for example:

- *Project proposal, renderings*
- *Timeline*
- *Payment plan based on deliverables*