



Bella Vista City Council Regular Meeting Agenda

Date/Time: September 23, 2024
6:00 PM

Location: Bella Vista District Court
2483 Forest Hills Blvd.

City Council and Planning Commission regular meetings are live streamed and archived for your convenience. View the meeting at its scheduled time or after at <https://bit.ly/bvmeetingslive>.

Mayor:

John D. Flynn

City Clerk:

Wanda Lepillez Krug

Staff Attorney:

Jason Kelley

Council Members:

Ward 1, Position 1 - Jerry Snow

Ward 1, Position 2 - Wendy Hughes

Ward 2, Position 1 - Jim Wozniak

Ward 2, Position 2 - Larry Wilms

Ward 3, Position 1 - Doug Fowler

Ward 3, Position 2 - Craig Honchell

I. Call to Order

This meeting has been given public notice in accordance with Section 25-19-106 of the Arkansas Freedom of Information Act in such form that will apprise the public and news media of subject matter presented for consideration and action.

II. Pledge of Allegiance

III. Roll Call

IV. Citizen Input

Per the rules, there is a 3 minute per person time limit to address the Council on any topic of that person's choosing. The total time allotted for citizen input is 30 minutes. Any time extension beyond the 30-minute total will be at the discretion of the City Council.

V. Council Member Reply

Any Council Members' reply to comments made during Citizen Input Session is

limited to comments only and will not be a discussion period.

VI. Action on the Minutes

- A. Approval of August 26, 2024 Regular Meeting Minutes

VII. Reports

- A. Monthly Financial Report for July 31, 2024
- B. Childhood Cancer Awareness Proclamation

(The Chair will entertain a motion to suspend the rules of order and procedure to allow all ordinances on the agenda to be read by title only.)

VIII. Unfinished Business

IX. New Business

See meeting packet for complete ordinances and resolutions.

- A. **ORDINANCE:** WAIVING THE REQUIREMENTS OF FORMAL COMPETITIVE BIDDING AND AUTHORIZING A CONTRACT WITH SUPERIOR AUTOMOTIVE GROUP IN AN AMOUNT NOT TO EXCEED \$143,000.00 FOR THE PURCHASE OF TWO (2) 2024 CHEVROLET TAHOE FULLY EQUIPPED POLICE VEHICLES FOR USE BY THE POLICE DEPARTMENT
- B. **ORDINANCE:** APPROVING AN APPLICATION FOR A PRIVATE CLUB ALCOHOL PERMIT SUBMITTED BY BELLA VISTA VILLAGE PROPERTY OWNERS ASSOCIATION, INC.
- C. **RESOLUTION:** AMENDING THE 2024 BUDGET TO APPROPRIATE \$10,000.00 TO THE STREET DEPARTMENT FOR PURPOSES OF PAYING CLEAN-UP RELATED EXPENSES DUE TO AUGUST STORM EVENTS
- D. **RESOLUTION:** AUTHORIZING AND LEVYING THE MILLAGE RATE OF AD VALOREM REAL AND PERSONAL PROPERTY TAX FOR THE CITY OF BELLA VISTA, ARKANSAS FOR THE YEAR 2024 TO BE COLLECTED IN 2025
- E. **RESOLUTION:** APPROVING ART LEASES TO COMMENCE IN 2025

X. Announcements

- Next City Council Work Session: 5:30 pm Monday, October 21, 2024, at Bella Vista Police Training Room
- Next City Council Regular Meeting: 6:00 pm Monday, October 28, 2024, at Bella Vista District Court

- Planning Commission Work Session: 4:30 pm Thursday, October 3, 2024, at Bella Vista District Court
- Planning Commission Regular Meeting: 4:30 pm, or immediately following BZA, Monday, October 14, 2024, at Bella Vista District Court
- Board of Construction Appeals: 3:00 pm Tuesday, October 8, 2024, if necessary, at Fire Station #4 Conference Rm, 1639 Forest Hills Blvd.

XI. Adjournment

SPECIAL NOTICES TO THE PUBLIC: Upon reasonable notice, efforts will be made to accommodate the needs of disabled individuals through appropriate aids and services. To request this service, contact City Clerk prior to each meeting at 479-876-1255.

BELLA VISTA CITY COUNCIL REGULAR MEETING

August 26, 2024 6:00 PM

**Bella Vista District Court
2483 Forest Hills Blvd.**

MINUTES

Call to Order by Mayor John Flynn at 6:00 pm.

Pledge of Allegiance recited.

ROLL CALL of Council called by Clerk Krug. Council Members Wendy Hughes, Larry Wilms, James Wozniak, Doug Fowler, Craig Honchell present. Council Member Jerry Snow arrived shortly thereafter. Mayor Flynn present.

Citizen Input

One citizen signed up to speak. Mayor Flynn explained the 3-minute rule and called the person on the list.

Laura Gentry, 12 Mason Ln. She came to speak about numerous STR problems on her street and in her neighborhood. She thanked Doug Fowler for listening to her concerns and creating an STR ordinance that has been passed. She cited a situation of septic code violation among others. One neighbor felt isolated from his real neighbors and sold his home. She sees a zoning issue when a "hotel" situation exists on a cul-de-sac, and believes that regulations are not being enforced. She is concerned, along with other neighbors who will come to speak in the future, that STR saturation will ruin Bella Vista neighborhoods.

Council Member Reply

Council Member Fowler reviewed the second STR ordinance passing and following litigation. He reported a quiet period of no phone calls, followed by current calls concerning a few specific STRs. He knows many responsible STR owners: they do not over-occupy rentals, are sensitive to neighbors, and don't want abuse of their personal property, therefore keeping it maintained. He cited STR owners in support of both the first and second STR ordinances because "it leveled the playing field." He acknowledged Ms. Gentry's concerns, and will work to get these issues addressed.

Council Member Wilms thanked Ms. Gentry for coming forward. He thinks one challenge is that septic is controlled by a state agency, the city deals with

building code, and wastewater regulations is handled through public health services. A short discussion with Attorney Kelley ensued pertaining to legalities connected to creating more specific ordinances to address current troublesome issues.

Council Member Wozniak asked Ms. Gentry if she called the Police to report violations of septic overload and she responded affirmatively. He asked several questions regarding her experience with code officers. He is concerned that she hasn't had resolution from the city.

Action on the Minutes

Approval of July 22, 2024 Regular Meeting Minutes

Council Member Fowler made a motion to approve, seconded by Council Member Honchell. **Roll Call Vote unanimous to approve: (Ayes: 6/Nays: 0)**

Reports

Mayor Flynn announced a Press Release that afternoon regarding our cybersecurity incident. City Offices will reopen to the public on Tuesday, August 27th. Throughout the incident, police and fire operated the entire time. The threat has been contained. The City shut down the entire system voluntarily when the threat was detected on Sunday night, August 18th. City Hall, CDS, and the Library worked from home during the shut-down. The City did not pay for any ransomware. We have cyber insurance with AR Municipal League and there were no financial repercussions for the City. He gave a shout-out to the IT department for their hard work, basically 24-7 this entire time, along with outside consultants. He noted the volunteer help from Ft. Smith, Fayetteville, Springdale, and Benton and Washington Counties and the positive difference it made in recovery time. It's great to see cities in NWA working together.

Monthly Financial Report for June 30, 2024

Mayor Flynn stated County sales tax was slightly down from the same period last year, very unusual. He noted in the press that state revenues have been down, and other local city revenues have been down. The City of Bella Vista sales tax was up a bit more than 6%. Overall operating revenue was up 2.1% year to date. Operating expenses are also up, but we are \$525,000 below budget through June 30. He concludes that the City needs caution concerning pay raises in 2025, and there may be little new hiring in 2025. He cited optimistic new endeavors in Bella Vista, including Table a Pain and Rosita's in the old American Legion. BV65 will open in early September and also help increase city sales tax.

Streets Department Report - Superintendent Hunt and Assistant Supt.

Downing

They introduced themselves by describing the wealth of experience (51 years+ combined) and training that led to these positions. Supt. Hunt summarized the history of the BV Street Dept., including a fire incident that led to the new Streets Dept. building on Forest Hills Blvd. Moving into leadership in April 2023, they converted the old Fire Station #3 into the West Side Salt and Sand building, and oversaw the Wash Bay project which was a long time coming.

The Streets Department is responsible for mowing, tree-trimming, pothole patching, drainage, signs, snow removal, and fleet maintenance. They have 3 mechanics and do routine vehicle maintenance, heavy equipment repairs, and fabrication. The department manages street permits for utilities: water, sewer, and sometimes contractors. They oversee resurfacing contracts, which are hot mix and slurry seal. Karen and Dan have a vision and fresh perspectives for the Street Department moving forward, with BV developing and growing rapidly. They utilize a Streets Committee comprised of Council Member Wendy Hughes, Street Dept. leadership, and BV residents. They are restructuring their resurfacing program and the strategy of how to address the roads in BV. They hope to expand their mowing crew and develop a full-time tree crew.

Ass't. Supt. Downing explained the large standing map of all BV streets and how they are organized. There are over 550 miles of streets equating to over 2700 individual streets. He explained they partition the city into 8 zones, categorized by East, Central, and West. The department has 28 positions. 21 are crew positions that comprise three teams of seven to cover the East, Central, and West sections. YTD over 700 work order requests have been fulfilled, 251 streets have been prepped for resurfacing, and the overlay contract was completed with 53 streets paved with hot mix asphalt for a total of 15.6 miles. 23 of those were zipped, a process saving materials, and the City an estimated \$40,000. The slurry contract begins Sept. 3rd with 198 streets scheduled for a total of 31 miles. The overall slurry contract combined total is 46.6 miles of the 550+ within the city. This equals 8%. He cited the recent severe weather event, stating over 400 streets require debris removal. They are up for the challenges, and he recognized the dedication of the department staff.

Council Members Hughes, Fowler, Honchell, and Wilms commented and thanked the Department for their hard work.

Fire Station #1 and City Hall Construction - Chief Sims

Mayor Flynn introduced Chief Steve Sims for the Update on Fire Station #1, City Hall, and the Fire Dept. Administration offices. Chief Sims thanked the Street Department for working with Fire during the night of the weather event. One year ago, the demo project and renovation was approved by

the City Council. Currently, the City has spent \$2 million on this project, and it is almost finished. The cabinets are being installed with countertops, plumbing fixtures come next, and then flooring. The move-in date is set for the first part of October for fire personnel. This allows time before CDS moves into the old back portion of the fire station. Several parking spaces have been completed for personnel, to accommodate the move. He reported being slightly under budget for the first phase of the project. The new two-story building is on schedule with the second floor to be poured this week, the tresses arriving soon, and the roof put on by the second week of September. The interior walls should be put in starting October 1st. Then completion should come together between the two phases.

Council Member Wilms asked clarifying questions to which Chief Sims responded. He explained that the Planning Permitting Office would move to the front of City Hall, and the rest would move to the back part of the old Fire Station.

Chief Sims addressed the road work in front of City Hall where a sidewalk is being installed. Eventually, there will be a 45-50 ft. driveway opening to enter and exit, despite the reduced current space. Council Member Hughes thanked the Fire Department for including space for personnel to relax and recharge by placing outdoor balconies, etc. Chief Sims welcomed Council Members to visit and see the progress. Council Member Honchell asked if Fire personnel staff would increase, but Chief Sims said it would stay at 7 personnel. He also asked if Fire needed more staff and the Chief responded affirmatively. His request was unmet in 2024, and he is meeting the need by using overtime. Council Member Wilms commented on the vacancies and the changing economy. Council Member Fowler commented on the budget and discussion ensued with Chief Sims addressing the additional phases of the renovation. Mayor Flynn mentioned the good quality of new hires in the Fire and Police Departments, stating that many people want to live here. He said the turnover of Streets Department personnel is quite low, to their favor.

(The Chair will entertain a motion to suspend the rules of order and procedure to allow all ordinances on the agenda to be read by title only.) Council Member Wilms made a motion to approve, seconded by Council Member Fowler. **Roll Call Vote unanimous to approve: (Ayes: 6/Nays: 0)**

Unfinished Business

New Business

WAIVING THE REQUIREMENT OF FORMAL COMPETITIVE BIDDING AND
AUTHORIZING THE MAYOR AND THE CITY CLERK TO ENTER INTO A CONTRACT

FOR STORM DEBRIS DISPOSAL SERVICES IN AN AMOUNT NOT TO EXCEED \$150,000.00 BASED ON BEST PRICE AND AVAILABILITY, AND AMENDING THE 2024 CITY BUDGET

Mayor Flynn read the ordinance for the first time. Supt. Hunt gave a brief summary of the request pertaining to the recent weather event, affecting mostly the west part of town. She said Fire and Police also helped during the night and more to serve the needs of the city. They need to hire outside contractors to help with cleaning debris on 400 streets, and want to move ahead with a bid waiver to expedite the work. She recommends moving to 3rd and final. Council Member Honchell thanked Streets for excellent recovery work. Council Member Fowler made a motion to suspend the rules and move to 3rd and final reading, seconded by Council Member Wilms.

Roll Call Vote unanimous to approve: (Yays: 6/Nays: 0) *Mayor Flynn read the ordinance for the third and final time. Council Member Wozniak made a motion to approve, seconded by Council Member Honchell.* **Roll Call Vote unanimous to approve. (Yays: 6/Nays: 0)**

Announcements

Mayor Flynn read through the upcoming meeting schedule.

- Next City Council Work Session: 5:30 pm, Monday, September 16, 2024, at Bella Vista Police Training Room
- Next City Council Regular Meeting: 6:00 pm, Monday, September 23, 2024, at Bella Vista District Court
- Planning Commission Work Session: 4:30 pm, Thursday, August 29, 2024, at Bella Vista District Court
- Planning Commission Regular Meeting: 4:30 pm, Monday, September 9, 2024, at Bella Vista District Court
- Board of Construction Appeals: 3:00 pm, Tuesday, September 10, if necessary, at Fire Station #4 Conference Room, 1639 Forest Hills Blvd.

Council Member Honchell said he would like the Library to report to the Council in the future, to inform them of their growing work in the community.

Adjournment

Mayor Flynn adjourned the meeting at 6:05 pm.

City Clerk Wanda Lepillez Krug

Mayor John D. Flynn

Childhood Cancer Awareness Month Proclamation

Whereas, childhood cancer is the leading cause of death by disease in children, and;

Whereas, 1 in 285 children in the United States will be diagnosed by their 20th birthday, and;

Whereas, 46 children per day or 16,790 children per year are diagnosed with cancer in the U.S., and;

Whereas, the average age of diagnosis is 6 years old, and;

Whereas, 80% of childhood cancer patients are diagnosed late and with metastatic disease, and;

Whereas, two-thirds of childhood cancer patients will have chronic health conditions as a result of their treatment toxicity, with one quarter being classified as severe to life-threatening, and;

Whereas, approximately one half of childhood cancer families rate the associated financial toxicity due to out-of-pocket expenses as considerable to severe, and;

Whereas, hundreds of non-profit organizations at the local and national level including the American Childhood Cancer Organization are helping children with cancer and their families cope through educational, emotional and financial support, and;

Whereas, researchers and healthcare professionals work diligently dedicating their expertise to treat and cure children with cancer, and;

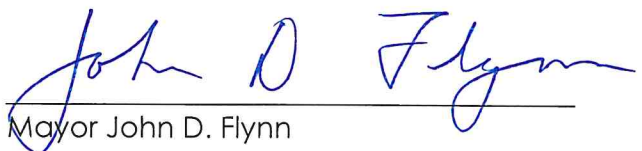
Whereas, too many children are affected by this deadly disease and more must be done to raise awareness and find a cure.

Now therefore, I, John D. Flynn, Mayor of Bella Vista, do hereby proclaim September 2024 as

"Childhood Cancer Awareness Month"

IN WITNESS WHEREOF, I have set my hand this 10th day of September, in the year of our Lord two thousand and twenty-four.




Mayor John D. Flynn



MEETING DATE	PREPARED BY	LEGISLATIVE TITLE
September 23, 2024	James Graves, Police Chief	ORDINANCE: WAIVING THE REQUIREMENTS OF FORMAL COMPETITIVE BIDDING AND AUTHORIZING A CONTRACT WITH SUPERIOR AUTOMOTIVE GROUP IN AN AMOUNT NOT TO EXCEED \$143,000.00 FOR THE PURCHASE OF TWO (2) 2024 CHEVROLET TAHOE FULLY EQUIPPED POLICE VEHICLES FOR USE BY THE POLICE DEPARTMENT

AGENDA ITEM # IX.A

ORDINANCE: WAIVING THE REQUIREMENTS OF FORMAL COMPETITIVE BIDDING AND AUTHORIZING A CONTRACT WITH SUPERIOR AUTOMOTIVE GROUP IN AN AMOUNT NOT TO EXCEED \$143,000.00 FOR THE PURCHASE OF TWO (2) 2024 CHEVROLET TAHOE FULLY EQUIPPED POLICE VEHICLES FOR USE BY THE POLICE DEPARTMENT

BACKGROUND

Due to normal fleet rotation based on millage and wear and tear of vehicles, the police department is in need of purchasing two new fully equipped Chevy Tahoe, AWD, police vehicles. These vehicles will be purchased with previously approved and allocated 2024 capital funds.

The Chevy Tahoe police vehicle was not included in the 2024 Arkansas bid contract. For this reason, a bid waiver is being requested to purchase these vehicles from Superior Automotive in Siloam Springs. Superior Automotive has the required inventory we need at a competitive price and will hold our vehicles until we are ready to purchase.

RECOMMENDATION

FISCAL IMPACT

Capital expenditure, from the police department budget, not to exceed \$143,000 is being requested to support the purchase of two fully equipped 2024 police Chevy Tahoes.

ATTACHMENTS

1. Bid Waiver Superior Auto Chevrolet Police Tahoes fully equipped

ORDINANCE NO _____

CITY OF BELLA VISTA, ARKANSAS

WAIVING THE REQUIREMENTS OF FORMAL COMPETITIVE BIDDING AND AUTHORIZING A CONTRACT WITH SUPERIOR AUTOMOTIVE GROUP IN AN AMOUNT NOT TO EXCEED \$143,000.00 FOR THE PURCHASE OF TWO (2) 2024 CHEVROLET TAHOE FULLY EQUIPPED POLICE VEHICLES FOR USE BY THE POLICE DEPARTMENT

WHEREAS, general shortages of available 2024 police cars make purchase pursuant to the state procurement contract impossible; and

WHEREAS, competitive bidding for 2024 vehicles will not result in any further ability to purchase said vehicles due to shortages; and

WHEREAS, two (2) 2024 Chevrolet Tahoe police vehicles are available for purchase from Superior Auto Group, but said vehicles are not subject to current state procurement contracts and cannot be obtained if the City proceeds through a bidding process; and

WHEREAS, the City must act with haste if it is to secure purchase of said vehicles;

NOW, THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF BELLA VISTA, ARKANSAS:

SECTION 1. The City Council of the City of Bella Vista, Arkansas hereby determines that the above circumstances make formal competitive bidding not feasible or practical and therefore waives the requirement of formal competitive bidding and authorizes a contract with Superior Auto Group in an amount not to exceed \$143,000.00 for the purchase of two (2) 2024 Chevrolet Tahoe fully equipped police vehicles for use by the Police Department.

ADOPTED THIS _____ DAY OF _____, 2024.

APPROVED:

JOHN D. FLYNN
MAYOR

ATTEST:

WANDA KRUG
CITY CLERK

Requested by: Mayor
Prepared by: Jason Kelley, Staff Attorney



MEETING DATE	PREPARED BY	LEGISLATIVE TITLE
September 23, 2024	Taylor Robertson, Planning Manager	ORDINANCE: APPROVING AN APPLICATION FOR A PRIVATE CLUB ALCOHOL PERMIT SUBMITTED BY BELLA VISTA VILLAGE PROPERTY OWNERS ASSOCIATION, INC.

AGENDA ITEM # IX.B

ORDINANCE: APPROVING AN APPLICATION FOR A PRIVATE CLUB ALCOHOL PERMIT SUBMITTED BY BELLA VISTA VILLAGE PROPERTY OWNERS ASSOCIATION, INC.

BACKGROUND

The Bella Vista Property Owners Association is requesting an alcohol permit for the private club within the Tanyard Creek Practice Facility that is currently under construction at 10 Nature Trail Lane in Bella Vista, Arkansas. The subject site is within a C-1 Neighborhood Commercial zone and the Planning Commission approved this development in December of 2023 via LSD 52143.

Supporting documents for the permit request from the POA are attached.

RECOMMENDATION

N/A

FISCAL IMPACT

None.

ATTACHMENTS

1. Supporting Documents for Request
2. Ordinance BVPOA alcohol private club



STATE OF ARKANSAS
ALCOHOLIC BEVERAGE CONTROL DIVISION

APPLICATION FOR PRIVATE CLUB PERMIT

Private Club _____

Permit No. _____

We hereby make applications for permits to serve alcoholic beverages on our premises to the club's adult members, members of their families over the age of 21, and duly qualified guests.

Bella Vista POA
Non-Profit Corporation

FEIN# 71-0390240

APPLICANT ON BEHALF OF CLUB Thomas Keith Lee
First Middle Last

HOME ADDRESS 6 Betty Lane Bella Vista 72715 Benton
Street City Zip County

BUSINESS NAME Tanyard Creek Practice Facility

BUSINESS ADDRESS 10 Nature Trail Ln Bella Vista 72715
Street City Zip County Benton

Is proposed location inside or outside city limits? Inside

Does the club own the premises? yes If leased, give name and address of owner:

Is your establishment primarily engaged in the business of serving food for consumption on the premises? No

Under which system of dispensing alcoholic beverages will the club operate?

Pool/Revolving ✓ Locker _____

Does anyone now hold an alcoholic beverage permit at this location? yes If so, give

name, address and permit no. (s) Thomas Lee 6 Betty Ln Bella Vista #04335

Amount of Dues \$ 40 ANNUAL () MONTHLY X



Give names and addresses of all officers/directors of the non-profit organization:

NAME

TITLE

ADDRESS

To many to list here. Attached in
Annual Report.

Has any member of the club's board of directors or other governing body, or any club officer, been under the sentence, whether suspended or otherwise, of any court for the conviction of a felony within two (2) years preceding the date of this application? YES _____ NO ☒ If yes, please explain _____

Signed this 28th day of August, 2024.

Signature of Applicant/Managing Agent

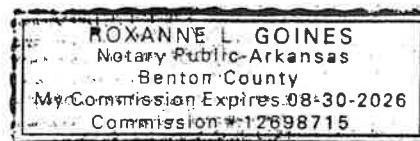
Director of Business Development

Official Title

Subscribed and sworn to before me this 28th day of August, 2024.

Notary Public

My Commission Expires: 08-30-2026



3/15/16

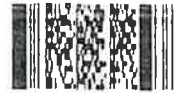
SCHEDULE A - INDIVIDUAL'S PERSONAL HISTORY



Application filled by Applicant A, Stockholder/Partner - S :

I submit answers to the following questions under oath:

1. Name Thomas Keith Lee Sex M Date of Birth 4/24/67
2. Home Address 6 Betty Ln Bella Vista 72715 Phone No. 479-544-4305
Street City Zip
3. Are you a person of good moral character and reputation in your community? yes
4. Are you a (CITIZEN) or (PERMANENT RESIDENT ALIEN) of the United States? **CIRCLE ONE**
Social Security No. 419-96-3768 Green Card No. _____
5. Are you a resident of the county in which application has been made? yes
If not, do you live within 35 miles of the premises to be permitted? _____
6. Have you ever been convicted of a felony? YES _____ NO ✓ If so, give full information _____
7. Have you been convicted of any violation of any law relating to alcoholic beverages within the five (5) years preceeding this application? YES _____ NO ✓ If so, give full information _____
8. Have you had any alcoholic beverage permit issued to you revoked within the five (5) years preceeding this application? YES _____ NO ✓ If so, give full information _____
9. Do you presently hold or have you ever held an alcoholic beverage permit(s)? yes If so, give name, place, and permit number(s) To many to list here. Attached
10. Have you applied and been refused a permit at the applied for location within the last 12 months? NO If so, give full information _____
11. Marital Status: Single () Married () Divorced () Separated () Other (✓)
12. Furnish complete information regarding members of immediate family:
Relationship Full Name Address Occupation
Widowed N/A Do children



- (a) Are any of the above to be connected with the operation of the outlet? N/A
- (b) If so, who and in what capacity? _____

13. Give your home address (city or town) and dates at each for the past five (5) years:

6 Betty Ln, Bella Vista, AR 72715 May 2022 - Present
49 Littrell Dr, Bella Vista, AR 72714 2016-2022

14. Covering the past five (5) years, give in detail the following:

Your Business or Occupation	Name & Address of Employer	Dates of Employment
<u>Bella Vista POA</u>	<u>98 Clubhouse Dr Bella Vista, AR</u>	<u>2016 - Present</u>
<u>Director of Business Development</u>		

I hereby state on oath that I will not violate any law of this State or any regulation of the Alcoholic Beverage Control Division, nor will any agent or employee be allowed to violate any law or regulation. It is hereby consented that the licensed premises and its books and records shall be open at all times to all law enforcement officials without warrant or other legal process.

[Signature]

Applicant's Signature

STATE OF ARKANSAS

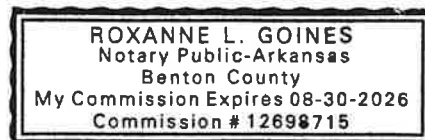
COUNTY OF Benton

Thomas K. Lee, being first duly sworn on oath deposes and says that he/she has read each of the questions to which he/she has made answer, and that his/her said answers in each instance are true and correct.

Subscribed and sworn to before me this 28th day of August, 2024

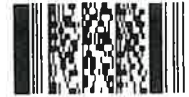
[Signature]
 Notary Public

My Commission Expires: 08-30-2026



Permits Held By
Thomas Keith Lee For
Bella Vista POA

Riordan Hall	3 Riordan Dr., Bella Vista	Private Club Class A #02792
Metfield Clubhouse	3 Euston Rd., Bella Vista	Private Club Class A Retail Beer On Premise #06306
Scotsdale Golf Club	10 Scotsdale Ln., Bella Vista	Private Club Class A Retail Beer On Premise #01878
Tanyard Creek Practice Center	10 Nature Trail Ln., Bella Vista	Retail Beer On Premise On Premise Wine #04335
Highlands Clubhouse	1 Pamona Dr., Bella Vista	Restaurant Mixed Drink Min Retail Beer On Premise #04924
Kingsdale Tennis Center	4 Euston Dr., Bella Vista	Retail Beer On Premise On Premise Wine #02075
Kingsdale Club	4 Kingsdale Ln, Bella Vista	Retail Beer On Premise On Premise Wine #00465
Lakepoint Restaurant & Event Center	101 Marina Dr., Bella Vista	Restaurant Mixed Drink Max #04344
Bella Vista Country Club	98 Clubhouse Dr., Bella Vista	Restaurant Mixed Drink Max Retail Beer On Premise #05080
Blowing Springs Beer Garden	700 Blowing Springs Road, Bella Vista	Retail Beer On Premises On Premise Wine #20816-01

DESCRIPTION OF BUSINESS AND ENTERTAINMENT ACTIVITIES
FOR PRIVATE CLUB PERMITNAME OF OUTLET Tanyard Creek Practice FacilityCITY Bella Vista COUNTY Benton

Arkansas Law requires that a private club must exist for some reason other than the consumption of alcoholic beverages. On this sheet of paper, which is a part of your verified application, you are to describe, in complete detail, what entertainment (live bands, dancers, food service, etc.), social functions, or other recreational events will be available at the club for the members. If you are in doubt about whether to list an item, you are urged to include it.

Under Section 1.34 of the ABC regulations, any permit issued by this agency is only valid for the uses described in the original application. Any material change in the club's operation or entertainment, other than originally listed in this application, *without prior approval of the director*, shall be grounds or revocation of your permit.

On your floor plan, which is a separate attachment, please mark the entrance to the private club, noting the location of the guest book, and mark any major features of the private club area, including where specific entertainment items will be located.

PLEASE PRINT OR TYPE YOUR RESPONSES BELOW. USE THE BACK OF FORM, OR ADDITIONAL SHEETS, IF NECESSARY.

Tanyard Creek Practice Facility will have
a golf driving range and golf course
simulator. It will also sell golf attire and
equipment. The facility will also have TVs
and XM music for entertainment.

ORDINANCE NO. _____

CITY OF BELLA VISTA, ARKANSAS

**APPROVING AN APPLICATION FOR A PRIVATE CLUB ALCOHOL
PERMIT SUBMITTED BY BELLA VISTA VILLAGE PROPERTY
OWNERS ASSOCIATION, INC.**

WHEREAS, Ark. Code Ann. § 3-9-222 provides that an application for a permit to operate as a private club may be made to the governing body of the municipality in which the private club seeks to be located; and

WHEREAS, if the governing body of the municipality approves by ordinance an application to operate as a private club, the Arkansas Alcoholic Beverage Control Division may issue a permit to operate as a private club to the applicant for the proposed location; and

WHEREAS, Bella Vista Village Property Owners Association, Inc. applied to the City of Bella Vista to operate such a private club at its Tanyard Creek Practice Facility location by communication dated on or about August 29, 2024;

**NOW, THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY
OF BELLA VISTA, ARKANSAS:**

SECTION 1: The application for a permit to operate as a private club at the Tanyard Creek Practice Facility made by Bella Vista Village Property Owners Association, Inc. on or about August 29, 2024, is hereby approved.

ADOPTED THIS _____ DAY OF _____, 2024.

APPROVED:

JOHN D. FLYNN
MAYOR

ATTEST:

WANDA KRUG
CITY CLERK

Requested by: Mayor
Prepared by: Jason Kelley, Staff Attorney



MEETING DATE	PREPARED BY	LEGISLATIVE TITLE
September 23, 2024	Karen Hunt, Street Superintendent	RESOLUTION: AMENDING THE 2024 BUDGET TO APPROPRIATE \$10,000.00 TO THE STREET DEPARTMENT FOR PURPOSES OF PAYING CLEAN-UP RELATED EXPENSES DUE TO AUGUST STORM EVENTS

AGENDA ITEM # IX.C

RESOLUTION: AMENDING THE 2024 BUDGET TO APPROPRIATE \$10,000.00 TO THE STREET DEPARTMENT FOR PURPOSES OF PAYING CLEAN-UP RELATED EXPENSES DUE TO AUGUST STORM EVENTS

BACKGROUND

A thunderstorm which occurred on the evening of August 16, 2024, caused extensive damage and downed trees, particularly on the west side of the city. To expedite the tree and debris clean-up, equipment rental of a telehandler and attachment will aid in storm clean-up. The telehandler's maneuverability is ideal for the topography of Bella Vista's street rights-of-way, and the telescoping arm increases the reach capabilities while collecting limbs and debris.

RECOMMENDATION

The Street Department recommends approval of the 2024 budget adjustment.

FISCAL IMPACT

Budget Amendment of \$10,000 from Unassigned Funds General Account to Capital C150.

ATTACHMENTS

1. Budget Adj F2024.09.23 Storm Debris Clean Up Revision
2. Resolution Budget Amend Street Storm Expenses

City of Bella Vista

Budget Amendment Request Form

Expense not included in the annual budget process.

Meeting Date

Department

Budget Impact Information

Agenda / Expense Description

Amount

Fund

Source

Expense Dept

Account Name or Number

RESOLUTION NO. _____

CITY OF BELLA VISTA, ARKANSAS

**AMENDING THE 2024 BUDGET TO APPROPRIATE \$10,000.00 TO THE
STREET DEPARTMENT FOR PURPOSES OF PAYING CLEAN-UP
RELATED EXPENSES DUE TO AUGUST STORM EVENTS**

**BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF BELLA VISTA,
ARKANSAS:**

SECTION 1: The City Council of the City of Bella Vista hereby amends the 2024 City Budget to appropriate \$10,000.00 in unassigned reserve funds to the Street Department for purposes of paying clean-up related expenses due to August storm events. A copy of the budget amendment is attached to this Resolution and incorporated herein as if set out word for word.

ADOPTED THIS _____ DAY OF _____, 2024.

APPROVED:

Mayor John D. Flynn

Attest:

City Clerk Wanda Krug

Requested by Mayor
Prepared by Jason Kelley, Staff Attorney



MEETING DATE	PREPARED BY	LEGISLATIVE TITLE
September 23, 2024	Wendi Hardina, HR Administrator	RESOLUTION: AUTHORIZING AND LEVYING THE MILLAGE RATE OF AD VALOREM REAL AND PERSONAL PROPERTY TAX FOR THE CITY OF BELLA VISTA, ARKANSAS FOR THE YEAR 2024 TO BE COLLECTED IN 2025

AGENDA ITEM # IX.D

RESOLUTION: AUTHORIZING AND LEVYING THE MILLAGE RATE OF AD VALOREM REAL AND PERSONAL PROPERTY TAX FOR THE CITY OF BELLA VISTA, ARKANSAS FOR THE YEAR 2024 TO BE COLLECTED IN 2025

BACKGROUND

RECOMMENDATION

FISCAL IMPACT

ATTACHMENTS

1. Resolution Millage Levy 2024

RESOLUTION NO. _____

CITY OF BELLA VISTA, ARKANSAS

AUTHORIZING AND LEVYING THE MILLAGE RATE OF AD VALOREM REAL AND PERSONAL PROPERTY TAX FOR THE CITY OF BELLA VISTA, ARKANSAS FOR THE YEAR 2024 TO BE COLLECTED IN 2025

WHEREAS, Ark. Code Ann. § 26-73-202 requires the governing body of a municipal corporation to make out and certify to the county clerk the rate of taxation levied by the city on all real and personal property within the city; and

WHEREAS, the City Council of the City of Bella Vista, Arkansas has determined that it is in the best interests of the City and its citizens to levy the rate of taxation on the real and personal property located in the city as set forth herein, to certify the same to the Benton County Clerk, and to authorize the Quorum Court of Benton County to levy said tax for the year 2024 to be collected in 2025;

NOW, THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF BELLA VISTA, ARKANSAS:

SECTION 1: That a tax is hereby levied on the real and personal property within the City of Bella Vista, Arkansas, for the year 2024 to be collected in 2025 for the following purposes at the following rates:

AD VALOREM REAL AND PERSONAL PROPERTY RATES

<u>Purpose</u>	<u>Levy</u>
General Fund-Operations	4.0 mills
Policemen's Pension Fund	1.0 mills
Firemen's Pension Fund	<u>1.0 mills</u>
TOTAL	6.0 mills

SECTION 2: That the real and personal property tax so levied and the rates provided herein are hereby certified to the County Clerk of Benton County, Arkansas, to be placed in the tax book and collected in the same manner that the county and school district taxes are collected.

SECTION 3: The City Clerk is hereby authorized and directed to file a certified copy of this Resolution in the office of the County Clerk of Benton County, Arkansas so that formal levy by the Quorum Court of Benton County, Arkansas may be enacted by ordinance, as required by law.

ADOPTED THIS _____ DAY OF _____, 2024.

APPROVED:

JOHN D. FLYNN
MAYOR

ATTEST:

WANDA KRUG
CITY CLERK

Requested by: Mayor
Prepared by: Jason B. Kelley, Staff Attorney



MEETING DATE	PREPARED BY	LEGISLATIVE TITLE
September 23, 2024	Wanda Krug, City Clerk	RESOLUTION: APPROVING ART LEASES TO COMMENCE IN 2025

AGENDA ITEM # IX.E

RESOLUTION: APPROVING ART LEASES TO COMMENCE IN 2025

BACKGROUND

RECOMMENDATION

FISCAL IMPACT

ATTACHMENTS

1. Resolution Art Leases (1)
2. BVAC Blue Bird Sculpture Agreements; 2024.09.18

RESOLUTION NO. _____

CITY OF BELLA VISTA, ARKANSAS

APPROVING ART LEASES TO COMMENCE IN 2025

**BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF BELLA VISTA,
ARKANSAS:**

SECTION 1: The City Council of the City of Bella Vista hereby approves art leases commencing in 2025 as attached and incorporated into this Resolution.

ADOPTED THIS _____ DAY OF _____, 2024.

APPROVED:

Mayor John D. Flynn

Attest:

City Clerk Wanda Krug

Requested by Mayor
Prepared by Jason Kelley, Staff Attorney

CITY OF BELLA VISTA PUBLIC ART PROGRAM
2025 Blue Bird Sculpture Trail
AGREEMENT BY AND BETWEEN CITY AND ARTIST

This Agreement, made this 28 day of August, 24, by and between the City of Bella Vista, a municipal corporation organized and existing under the laws of the State of Arkansas, (hereinafter referred to as the "City") and Artist Name and Address John Ross (hereinafter referred to as the "Artist").

3124 JG Ross Ave
Morganton NC 28655

WITNESSETH:

WHEREAS, the City desires to provide a sculpture walk along the Bluebird Trail which will include a certain work of art described in Exhibit A attached hereto and incorporated herein by this reference (the "Art Work"), which has been conceived and designed by Artist, to be installed on the City's property along the Blue Bird Sculpture Trail (hereinafter referred to as the "Site"), Bella Vista, Arkansas.

WHEREAS, the Artist desires to loan the Art Work to the City for a time period specified in this Agreement, and upon installation by Artist and Artist's Team, City desires to provide insurance coverage for the Art Work, from the time of installation of the Art Work until the time of removal of the Art Work from the City's property, pursuant to the terms and conditions of this Agreement.

NOW, THEREFORE, in consideration of the mutual promises and undertakings contained herein, the parties agree as follows:

ARTICLE 1: SCOPE OF SERVICES

1.1 General

- a) The Artist shall perform all services and furnish all supplies, materials, and equipment as deemed necessary for the completion, transportation, and installation of the Art Work at the Site.
- b) The Artist shall inspect the existing substrate and construction of the concrete slab to which the Art Work is to be attached and notify the City of any issues.
- c) The Artist shall meet with the City as deemed necessary to coordinate the installation and removal of the Art Work.
- d) The Artist shall loan the Art Work to the City for a twelve (12) month time period beginning on or around June 1, 2025 and ending on or around June 1, 2025. The installation date will be coordinated with all incoming artists to delivery on the same day and pick up on the same day based on mutual availability of artists and the city resources.
- e) If the City or another buyer desires to purchase said Art Work to add to the City's permanent Public Art collection, or the private collection of the individual, the purchase price shall not be greater than the price indicated on the Artist Application for said Art Work.
- f) If said Art Work is sold to a private collector, 15% of the total purchase price received will be donated by the Artist to the City.

1.2 Delivery and Installation

- a) The Artist shall notify the City when the Artist is ready to deliver and install the Art Work at the Site designated by the City.
- b) The Artist agrees to notify the City no fewer than seven (7) days prior to the Artist's intended time of delivery to determine the exact schedule of delivery and installation.
- c) The Artist shall deliver and install the completed Art Work at the Site June 11, date pending, 2025, and shall remove the Art Work from said Site as scheduled around June 1, 2026, date pending.
- d) The City shall be responsible for preparing the Site to allow the Artist to prepare for the timely installation of the Art Work.
- e) The Artist shall be responsible for all expenses, labor, and equipment necessary for the installation and removal of the Art Work.
- f) If the Art Work will be affixed to the City-provided pads, then the Artist shall affix the Art Work to the City-provided pads using tamper-resistant locking bolts.

1.3 Risk of Loss

- a) The risk of loss or damage to the Art Work shall be borne by the Artist until final installation is complete. After the complete installation of the Art Work, the risk of loss or damage to the Art Work shall be borne by the City during the loan period provided for in this Agreement, subject to the limitation on damages contained in Section 5.2 herein.

1.4 Indemnity

- a) The Artist agrees to indemnify and hold harmless the City from any liabilities, willful or non-willful acts of negligence by the Artist or the Artist's agents, or any or all elements of loss, theft, mutilation, vandalism or other damage (including those caused by acts of God) that may befall the Art Work during any activities related to the planning, creation, or delivery of the Art Work.
- b) Upon installation of the Art Work, the City shall, subject to the limitation on damages contained in Section 5.2 herein, indemnify and hold harmless the Artist from claims or liabilities relating to the maintenance of the Site at which the Art Work is installed, which claims or liabilities arise from and after the date of installation of the Art Work.
- b) The Artist shall indemnify and hold the City harmless from any and all costs, claims, liabilities or damages in any manner related to the Artist's breach of the representations and warranties set forth in Article 4 of this Agreement.

ARTICLE 2: COMPENSATION AND PAYMENT SCHEDULE

2.1 Fixed Fee

- a) The City shall pay the Artist a stipend of \$1,800 which shall constitute full compensation for all fees, services, expenses, and materials to be performed and furnished by the Artist under this Agreement. The fee shall be paid in full within thirty (30) days after final installation of the Art Work at a location specified by the City. The Artist shall provide the City with an invoice for the stipend amount after final installation has occurred.
- b) If the City decides to purchase the Art Work following the stated loan period, the stipend outlined in Section 2.1(a) will serve as a \$1,800 credit towards the final purchase price.

2.2 Artist's Expenses

- a) The Artist shall be responsible for the payment of all mailing or shipping charges on submissions to the City, the cost of transporting the Art Work to the Site, and the costs

of all travel by the Artist and the Artist's agents and employees necessary for the proper performance of the services required under this Agreement.

2.3 Invoices

- a) The Artist shall submit an invoice to the City for payment as described in section 2.1. The invoice shall be on stationary and must be signed and dated by the Artist.

ARTICLE 3: TIME OF PERFORMANCE

3.1 Duration

- a) The services to be required of the Artist as set forth in Article 1 shall be completed in accordance with the schedule for installation and removal of the Art Work as proposed by the Artist and approved by the City pursuant Section 1.2(c), provided that such time limits may be extended or otherwise modified by written agreement between the Artist and the City.

3.2 Installation Delays

- a) If, when the Artist is ready for installation of the Art Work, the Artist is delayed from installing the Art Work within the time specified in the schedule as a result of the construction of the Site not being sufficiently complete to reasonably permit installation of the Art Work, the City shall provide storage, or reimburse the Artist for reasonable transportation and storage costs incurred for the period between the time provided in the schedule for commencement of installation and the date upon which the Site is sufficiently complete to permit installation of the Art Work.

3.3 Early Completion of Artist Services

- a) The Artist shall bear any transportation and storage costs resulting from the completion of the Artist's services prior to the time provided in the schedule for installation.

3.4 Time Extensions

- a) The City shall grant a reasonable extension of time to the Artist in the event that there is a delay on the part of the Artist in performing its obligations under this Agreement, or if conditions beyond the Artist's control or Acts of God render timely performance of the Artist's services impossible or unexpectedly burdensome. Likewise, the Artist shall grant a reasonable extension of time to the City in the event that there is a delay on the part of the City in performing its obligations under this Agreement, or if conditions beyond the City's control or Acts of God render timely performance of the City's services impossible or unexpectedly burdensome. Failure to fulfill contractual obligations due to conditions beyond either party's reasonable control will not be considered a breach of contract, provided that such obligations shall be suspended only for the duration of such condition.

ARTICLE 4: WARRANTIES

4.1 Warranties of Title

- a) The Artist represents and warrants that:
 - 1) The Art Work is solely the result of the artistic effort of the Artist;
 - 2) Except as otherwise disclosed in writing to the City, the Art Work is unique and original and does not infringe upon any copyright;
 - 3) The Art Work, or a duplicate thereof, has not been accepted for sale elsewhere;
 - 4) The Art Work is free and clear of any liens from any source whatever.

4.2 Warranties of Quality and Condition

- a) The Artist represents and warrants, except as otherwise disclosed to the City in writing in connection with the submission of the Application and pursuant to Article 1, that:
 - 1) The execution and fabrication of the Art Work will be performed in a workmanlike manner;
 - 2) The Art Work, as fabricated and installed, will be free of defects in material and workmanship, including any inherent defects or qualities which cause or accelerate deterioration of the Art Work; and
- b) In the event that the City purchases the Art Work, the warranties described in this Section 4.2 shall survive for a period of five (5) years after the final acceptance of the Art Work. The City shall give notice to the Artist of any observed breach with reasonable promptness. The Artist shall, at the request of the City, and at no cost to the City, cure reasonably and promptly the breach of any such warranty which is curable by the Artist and which cure is consistent with professional conservation standards (including, for example, cure by means of repair or re-fabrication of the Art Work).

ARTICLE 5: INSURANCE

5.1 Artist Insurance

- a) The Artist and all employees of the Artist shall maintain insurance to protect the Artist from claims under workers' compensation acts; claims for damages because of bodily injury including personal injury, sickness or disease, or death of any of the Artist's employees or of any person other than the Artist's employees; and from claims for damages because of injury to or destruction of tangible property; including loss of use resulting there from; and from claims arising out of their performance of professional services caused by errors, omissions, or negligent acts for which the Artist is legally liable.
- b) The Artist shall provide proof of insurance for the retail value of the artwork stated on the Artist Application to the City upon installation of the art exhibit.

5.2 City/Art Exhibit Insurance

- a) Through the duration of the period that the Art Work is loaned to the City for the art exhibit, as identified in Section 1.1(d), the City will provide a maximum of \$25,000.00 in property loss and liability insurance coverage for the Art Work. The Artist acknowledges and agrees that the maximum amount that shall be paid to the Artist in damages related to any aspect of this Agreement shall be the price for the Art Work indicated on the Artist Application, or the \$25,000.00 insurance limit, whichever amount is lower.

ARTICLE 6: REPRODUCTION RIGHTS

6.1 General

- a) The Artist retains all rights under the Copyright Act of 1976, 17 U.S.C., 101 et. seq., and all other rights in and to the Art Work including ownership and possession. The Artist grants to the City the right to photograph and reproduce images of the Art Work for promotional and educational purposes.

6.2 Notice

- a) All reproductions by the City shall contain a credit to the Artist and a copyright notice substantially in the following form: [Artist's Name], year of publication.

ARTICLE 7: ARTIST'S RIGHTS

7.1 Identification

- a) The City shall, at its expense, prepare and install at the Site a plaque identifying the Artist, the title of the Art Work, the year of completion, and the City of Bella Vista Public Art Program; and shall reasonably maintain such notice to the extent as may be practicable.

7.2 Maintenance

- a) The City recognizes that maintenance of the Art Work on a regular basis is essential to the integrity of the Art Work. The Artist shall submit reasonable maintenance recommendations to the City, and the City shall take such action to reasonably assure that the Art Work is properly maintained and protected, taking into account the Artist's recommendations.

7.3 Alteration of the Work

- a) The City agrees that it will not intentionally damage, alter, modify, or change the Art Work without the prior written approval of the Artist.

7.4 Record

- a) The City shall maintain a record of this Agreement and the location and disposition of the Art Work.

ARTICLE 8: ARTIST AS INDEPENDENT CONTRACTOR

- a) The Artist shall perform all work under this Agreement as an independent contractor and not as an agent or an employee of the City. The Artist shall not be supervised by any employee or official of the City, nor shall the Artist exercise supervision over any employee or official of the City.

ARTICLE 9: ASSIGNMENTS, TRANSFER, SUBCONTRACTING

9.1 Transfer of Agreement

- a) Neither this Agreement nor any interest herein shall be transferred by the Artist.

9.2 Subcontracting by Artist

- a) The Artist may subcontract portions of the services to be provided hereunder relating to the installation of the Art Work at the Artist's expense provided that said subcontracting shall not negatively affect the design, appearance, or visual quality of the Art Work and shall be carried out under the personal supervision of the Artist. The Artist must obtain approval from the City prior to hiring any subcontractor who will assist with the installation process. This approval may be achieved via electronic correspondence.

ARTICLE 10: TERMINATION

If either party to this Agreement shall willfully or negligently fail to fulfill in a timely and proper manner, or otherwise violate, any of the covenants, agreements, or stipulations material to this Agreement, the other party shall thereupon have the right to terminate this Agreement by giving written notice to the defaulting party of its intent to terminate specifying the grounds for termination. The defaulting party shall have thirty (30) days after receipt of the notice to cure the default. If the default is not cured, then this Agreement shall terminate. In the event of default by the City, the City shall promptly compensate the Artist for all services performed by the Artist prior to termination. In the event of default by the Artist, all finished and unfinished drawings, sketches,

photographs, and other work products prepared and submitted or prepared for submission by the Artist under this Agreement shall at the City's option become its property, provided that no right to fabricate or execute the Art Work shall pass to the City and the City shall compensate the Artist pursuant to Article 2 for all services performed by the Artist prior to termination; or the Artist shall refund all amounts paid by the City in exchange for all finished and unfinished related Art Works. Notwithstanding the previous sentence, the Artist shall not be relieved of liability to the City for damages sustained by the City by virtue of any breach of this Agreement by the Artist, and the City may reasonably withhold payments to the Artist until such time as the exact amount of such damages due the City from the Artist is determined.

ARTICLE 11: COMPLIANCE

- a) The Artist shall be required to comply with Federal, State, and City statutes, ordinances, and regulations applicable to the performance of the Artist's services under this Agreement.

ARTICLE 12: NOTICES

- a) All notices, requests, demands and other communications which are required or permitted to be given under this Agreement shall be in writing and shall be deemed to have been duly given upon the delivery or receipt thereof, as the case may be, if delivered personally or sent by registered or certified mail, return receipt requested, postage prepaid, as follows:

1) if to the City, to:

City Contact Mayor John Flynn
City of Bella Vista
101 NE Towncenter
Bella Vista, AR 72714

2) if to the Artist, to:

Name	John Ross
Street Address	124 JG Ross Avenue
City, State and Zip Code	Morgantown, NC 28655

ARTICLE 13: MISCELLANEOUS

This Agreement constitutes the entire agreement between the parties hereto pertaining to the subject matter hereof and supersedes all negotiations, preliminary agreements and all prior and contemporaneous discussions, agreements and understandings of the parties in connection with the subject matter hereof. No amendment, change or modification of any of the terms, provisions or conditions of this Agreement shall be effective unless made in writing and signed or initialed by all parties. Waiver of any provision of this Agreement shall not be deemed a waiver of future compliance therewith and such provision shall remain in full force and effect. In the event any provision of this Agreement is held invalid, illegal or unenforceable, in whole or in part, the remaining provisions of this Agreement shall not be affected thereby and shall continue to be valid and enforceable. This Agreement shall be governed by and construed in accordance with the laws of the State of Arkansas. This Agreement shall be binding upon and shall inure to the benefit of the parties hereto and their respective legal representatives, heirs, successors and permitted assigns. Nothing in this Agreement, express or implied, is intended to confer upon any party,

other than the parties hereto (and their respective heirs, legal representatives, successors and permitted assigns), any rights, remedies, obligations or liabilities under or by reason of this Agreement. In addition to any other remedies available at law or in equity to the parties hereto with respect to a breach hereof, the parties hereto each reserve the right to enforce this Agreement by specific performance. The titles or captions of paragraphs in this Agreement are provided for convenience of reference only, and shall not be considered a part hereof for purposes of interpreting or applying this Agreement and such title or captions do not define, limit, extend, explain or describe the scope or extent of this Agreement or any of its terms or conditions. Words and phrases herein shall be construed as in the singular or plural number, and as masculine, feminine or neuter gender, according to the context. Each of the parties hereto hereby irrevocably waives all right to trial by jury in any action, proceeding or counterclaim arising out of or relating to this Agreement.

This agreement is executed on day and year first written above.

ARTIST

Artist Name John Ross

Artist Signature [Signature]

CITY

Signature [Signature]
Mayor John Flynn
City of Bella Vista

Cosmic Knot

2023

14 Ft tall

Multiple pieces are transported and assembled on site.

Steel, plexiglass, and stainless steel

\$25,000

John Ross Phone: 828 432 7263

Email: johnrossmetalsculptures@gmail.com johnrossmetalsculptures.com

Artist statement.

When I create a piece of sculpture, it starts as a vision, I take down a quick sketch and off to the studio to start the planning and construction. During the building process the sculpture will basically direct me as I build. I build with the intention to allow the sculpture to emit positive energy, I want the viewer to feel the happiness that these sculptures posses.

I have mystical visions and cosmic vibrations.

Visions that drown in colors and idea's constructed of fragmented shapes. Getting lost in a whirl wind of feelings. Mesmerizing red circles thrust into the cloud spotted blue sky. Yellow lines continue outward into space. Black forms hold heavy to the ground. The feeling is electric, energy passes from fingers tip to cold steel. Steel crafted by cold hands and pure feeling. The marriage of metals. Take form to radical thoughts only in my mind. The hieroglyphs of a madman. On to the next one. The feeling has past. New visions, new vibrations. The rush of creation, addictive. The fix, other worldly. Cosmic vibrations



CITY OF BELLA VISTA PUBLIC ART PROGRAM
2025 Blue Bird Sculpture Trail
AGREEMENT BY AND BETWEEN CITY AND ARTIST

This Agreement, made this 22 day of August, 2024, by and between the City of Bella Vista, a municipal corporation organized and existing under the laws of the State of Arkansas, (hereinafter referred to as the "City") and Artist Name and Address: Joe and Terry Malesky - New Adventure Sculptures, 1150 Jarrett Branch Road Strafford, MO. 65757 (hereinafter referred to as the "Artist").

WITNESSETH:

WHEREAS, the City desires to provide a sculpture walk along the Bluebird Trail which will include a certain work of art described in Exhibit A attached hereto and incorporated herein by this reference (the "Art Work"), which has been conceived and designed by Artist, to be installed on the City's property along the Blue Bird Sculpture Trail (hereinafter referred to as the "Site"), Bella Vista, Arkansas.

WHEREAS, the Artist desires to loan the Art Work to the City for a time period specified in this Agreement, and upon installation by Artist and Artist's Team, City desires to provide insurance coverage for the Art Work, from the time of installation of the Art Work until the time of removal of the Art Work from the City's property, pursuant to the terms and conditions of this Agreement.

NOW, THEREFORE, in consideration of the mutual promises and undertakings contained herein, the parties agree as follows:

ARTICLE 1: SCOPE OF SERVICES

1.1 General

- a) The Artist shall perform all services and furnish all supplies, materials, and equipment as deemed necessary for the completion, transportation, and installation of the Art Work at the Site.
- b) The Artist shall inspect the existing substrate and construction of the concrete slab to which the Art Work is to be attached and notify the City of any issues.
- c) The Artist shall meet with the City as deemed necessary to coordinate the installation and removal of the Art Work.
- d) The Artist shall loan the Art Work to the City for a twelve (12) month time period beginning on or around June 1, 2025 and ending on or around June 1, 2026. The installation date will be coordinated with all incoming artists to delivery on the same day and pick up on the same day based on mutual availability of artists and the city resources.
- e) If the City or another buyer desires to purchase said Art Work to add to the City's permanent Public Art collection, or the private collection of the individual, the purchase price shall not be greater than the price indicated on the Artist Application for said Art Work.
- f) If said Art Work is sold to a private collector, 15% of the total purchase price received will be donated by the Artist to the City.

1.2 Delivery and Installation

- a) The Artist shall notify the City when the Artist is ready to deliver and install the Art Work at the Site designated by the City.
- b) The Artist agrees to notify the City no fewer than seven (7) days prior to the Artist's intended time of delivery to determine the exact schedule of delivery and installation.
- c) The Artist shall deliver and install the completed Art Work at the Site June 11, date pending, 2025, and shall remove the Art Work from said Site as scheduled around June 1, 2026, date pending.
- d) The City shall be responsible for preparing the Site to allow the Artist to prepare for the timely installation of the Art Work.
- e) The Artist shall be responsible for all expenses, labor, and equipment necessary for the installation and removal of the Art Work.
- f) If the Art Work will be affixed to the City-provided pads, then the Artist shall affix the Art Work to the City-provided pads using tamper-resistant locking bolts.

1.3 Risk of Loss

- a) The risk of loss or damage to the Art Work shall be borne by the Artist until final installation is complete. After the complete installation of the Art Work, the risk of loss or damage to the Art Work shall be borne by the City during the loan period provided for in this Agreement, subject to the limitation on damages contained in Section 5.2 herein.

1.4 Indemnity

- a) The Artist agrees to indemnify and hold harmless the City from any liabilities, willful or non-willful acts of negligence by the Artist or the Artist's agents, or any or all elements of loss, theft, mutilation, vandalism or other damage (including those caused by acts of God) that may befall the Art Work during any activities related to the planning, creation, or delivery of the Art Work.
- b) Upon installation of the Art Work, the City shall, subject to the limitation on damages contained in Section 5.2 herein, indemnify and hold harmless the Artist from claims or liabilities relating to the maintenance of the Site at which the Art Work is installed, which claims or liabilities arise from and after the date of installation of the Art Work.
- b) The Artist shall indemnify and hold the City harmless from any and all costs, claims, liabilities or damages in any manner related to the Artist's breach of the representations and warranties set forth in Article 4 of this Agreement.

ARTICLE 2: COMPENSATION AND PAYMENT SCHEDULE

2.1 Fixed Fee

- a) The City shall pay the Artist a stipend of \$1,800 which shall constitute full compensation for all fees, services, expenses, and materials to be performed and furnished by the Artist under this Agreement. The fee shall be paid in full within thirty (30) days after final installation of the Art Work at a location specified by the City. The Artist shall provide the City with an invoice for the stipend amount after final installation has occurred.
- b) If the City decides to purchase the Art Work following the stated loan period, the stipend outlined in Section 2.1(a) will serve as a \$1,800 credit towards the final purchase price.

2.2 Artist's Expenses

- a) The Artist shall be responsible for the payment of all mailing or shipping charges on submissions to the City, the cost of transporting the Art Work to the Site, and the costs

2.3 Invoices

- a) The Artist shall submit an invoice to the City for payment as described in section 2.1. The invoice shall be on stationary and must be signed and dated by the Artist.

ARTICLE 3: TIME OF PERFORMANCE

3.1 Duration

- a) The services to be required of the Artist as set forth in Article 1 shall be completed in accordance with the schedule for installation and removal of the Art Work as proposed by the Artist and approved by the City pursuant Section 1.2(c), provided that such time limits may be extended or otherwise modified by written agreement between the Artist and the City.

3.2 Installation Delays

- a) If, when the Artist is ready for installation of the Art Work, the Artist is delayed from installing the Art Work within the time specified in the schedule as a result of the construction of the Site not being sufficiently complete to reasonably permit installation of the Art Work, the City shall provide storage, or reimburse the Artist for reasonable transportation and storage costs incurred for the period between the time provided in the schedule for commencement of installation and the date upon which the Site is sufficiently complete to permit installation of the Art Work.

3.3 Early Completion of Artist Services

- a) The Artist shall bear any transportation and storage costs resulting from the completion of the Artist's services prior to the time provided in the schedule for installation.

3.4 Time Extensions

- a) The City shall grant a reasonable extension of time to the Artist in the event that there is a delay on the part of the Artist in performing its obligations under this Agreement, or if conditions beyond the Artist's control or Acts of God render timely performance of the Artist's services impossible or unexpectedly burdensome. Likewise, the Artist shall grant a reasonable extension of time to the City in the event that there is a delay on the part of the City in performing its obligations under this Agreement, or if conditions beyond the City's control or Acts of God render timely performance of the City's services impossible or unexpectedly burdensome. Failure to fulfill contractual obligations due to conditions beyond either party's reasonable control will not be considered a breach of contract, provided that such obligations shall be suspended only for the duration of such condition.

ARTICLE 4: WARRANTIES

4.1 Warranties of Title

- a) The Artist represents and warrants that:
 - 1) The Art Work is solely the result of the artistic effort of the Artist;
 - 2) Except as otherwise disclosed in writing to the City, the Art Work is unique and original and does not infringe upon any copyright;
 - 3) The Art Work, or a duplicate thereof, has not been accepted for sale elsewhere;
 - 4) The Art Work is free and clear of any liens from any source whatever.

City of Bella Vista Public Art Program Page 3

4.2 Warranties of Quality and Condition

- a) The Artist represents and warrants, except as otherwise disclosed to the City in writing in connection with the submission of the Application and pursuant to Article 1, that:
 - 1) The execution and fabrication of the Art Work will be performed in a workmanlike manner;
 - 2) The Art Work, as fabricated and installed, will be free of defects in material and

- workmanship, including any inherent defects or qualities which cause or accelerate deterioration of the Art Work; and
- b) In the event that the City purchases the Art Work, the warranties described in this Section 4.2 shall survive for a period of five (5) years after the final acceptance of the Art Work. The City shall give notice to the Artist of any observed breach with reasonable promptness. The Artist shall, at the request of the City, and at no cost to the City, cure reasonably and promptly the breach of any such warranty which is curable by the Artist and which cure is consistent with professional conservation standards (including, for example, cure by means of repair or re-fabrication of the Art Work).

ARTICLE 5: INSURANCE

5.1 Artist Insurance

- a) The Artist and all employees of the Artist shall maintain insurance to protect the Artist from claims under workers' compensation acts; claims for damages because of bodily injury including personal injury, sickness or disease, or death of any of the Artist's employees or of any person other than the Artist's employees; and from claims for damages because of injury to or destruction of tangible property; including loss of use resulting there from; and from claims arising out of their performance of professional services caused by errors, omissions, or negligent acts for which the Artist is legally liable.
- b) The Artist shall provide proof of insurance for the retail value of the artwork stated on the Artist Application to the City upon installation of the art exhibit.

5.2 City/Art Exhibit Insurance

- a) Through the duration of the period that the Art Work is loaned to the City for the art exhibit, as identified in Section 1.1(d), the City will provide a maximum of \$ 15,000. in property loss and liability insurance coverage for the Art Work. The Artist acknowledges and agrees that the maximum amount that shall be paid to the Artist in damages related to any aspect of this Agreement shall be the price for the Art Work indicated on the Artist Application, or the \$ 15,000. insurance limit, whichever amount is lower.

ARTICLE 6: REPRODUCTION RIGHTS

6.1 General

- a) The Artist retains all rights under the Copyright Act of 1976, 17 U.S.C., 101 et. seq., and all other rights in and to the Art Work including ownership and possession. The Artist grants to the City the right to photograph and reproduce images of the Art Work for promotional and educational purposes.

6.2 Notice

- a) All reproductions by the City shall contain a credit to the Artist and a copyright notice substantially in the following form: [Artist's Name], year of publication.

City of Bella Vista Public Art Program Page 4

ARTICLE 7: ARTIST'S RIGHTS

7.1 Identification

- a) The City shall, at its expense, prepare and install at the Site a plaque identifying the Artist, the title of the Art Work, the year of completion, and the City of Bella Vista Public Art Program; and shall reasonably maintain such notice to the extent as may be practicable.

7.2 Maintenance

- a) The City recognizes that maintenance of the Art Work on a regular basis is essential to the integrity of the Art Work. The Artist shall submit reasonable maintenance recommendations to the City, and the City shall take such action to reasonably assure that the Art Work is properly maintained and protected, taking into account the Artist's recommendations.

7.3 Alteration of the Work

- a) The City agrees that it will not intentionally damage, alter, modify, or change the Art Work without the prior written approval of the Artist.

7.4 Record

- a) The City shall maintain a record of this Agreement and the location and disposition of the Art Work.

ARTICLE 8: ARTIST AS INDEPENDENT CONTRACTOR

- a) The Artist shall perform all work under this Agreement as an independent contractor and not as an agent or an employee of the City. The Artist shall not be supervised by any employee or official of the City, nor shall the Artist exercise supervision over any employee or official of the City.

ARTICLE 9: ASSIGNMENTS, TRANSFER, SUBCONTRACTING

9.1 Transfer of Agreement

- a) Neither this Agreement nor any interest herein shall be transferred by the Artist.

9.2 Subcontracting by Artist

- a) The Artist may subcontract portions of the services to be provided hereunder relating to the installation of the Art Work at the Artist's expense provided that said subcontracting shall not negatively affect the design, appearance, or visual quality of the Art Work and shall be carried out under the personal supervision of the Artist. The Artist must obtain approval from the City prior to hiring any subcontractor who will assist with the installation process. This approval may be achieved via electronic correspondence.

ARTICLE 10: TERMINATION

If either party to this Agreement shall willfully or negligently fail to fulfill in a timely and proper manner, or otherwise violate, any of the covenants, agreements, or stipulations material to this Agreement, the other party shall thereupon have the right to terminate this Agreement by giving written notice to the defaulting party of its intent to terminate specifying the grounds for termination. The defaulting party shall have thirty (30) days after receipt of the notice to cure the default. If the default is not cured, then this Agreement shall terminate. In the event of default by the City, the City shall promptly compensate the Artist for all services performed by the Artist prior to termination. In the event of default by the Artist, all finished and unfinished drawings, sketches,

City of Bella Vista Public Art Program Page 5

photographs, and other work products prepared and submitted or prepared for submission by the Artist under this Agreement shall at the City's option become its property, provided that no right to fabricate or execute the Art Work shall pass to the City and the City shall compensate the Artist pursuant to Article 2 for all services performed by the Artist prior to termination; or the Artist shall refund all amounts paid by the City in exchange for all finished and unfinished related Art Works. Notwithstanding the previous sentence, the Artist shall not be relieved of liability to the City for damages sustained by the City by virtue of any breach of this Agreement by the Artist, and the City may reasonably withhold payments to the Artist until such time as the exact amount of such damages due the City from the Artist is determined.

ARTICLE 11: COMPLIANCE

- a) The Artist shall be required to comply with Federal, State, and City statutes, ordinances, and regulations applicable to the performance of the Artist's services under this Agreement.

ARTICLE 12: NOTICES

- a) All notices, requests, demands and other communications which are required or permitted to be given under this Agreement shall be in writing and shall be deemed to have been duly given upon the delivery or receipt thereof, as the case may be, if delivered personally or sent by registered or certified mail, return receipt requested, postage prepaid, as follows:

1) if to the City, to:

City Contact Mayor John Flynn
City of Bella Vista
101 NE Towncenter
Bella Vista, AR 72714

2) if to the Artist, to:

Name Joe and Terry Malesky - New Adventure Sculptures
Street Address 1150 Jarrett Branch Road
City, State and Zip Code Strafford, MO. 65757

ARTICLE 13: MISCELLANEOUS

This Agreement constitutes the entire agreement between the parties hereto pertaining to the subject matter hereof and supersedes all negotiations, preliminary agreements and all prior and contemporaneous discussions, agreements and understandings of the parties in connection with the subject matter hereof. No amendment, change or modification of any of the terms, provisions or conditions of this Agreement shall be effective unless made in writing and signed or initialed by all parties. Waiver of any provision of this Agreement shall not be deemed a waiver of future compliance therewith and such provision shall remain in full force and effect. In the event any provision of this Agreement is held invalid, illegal or unenforceable, in whole or in part, the remaining provisions of this Agreement shall not be affected thereby and shall continue to be valid and enforceable. This Agreement shall be governed by and construed in accordance with the laws of the State of Arkansas. This Agreement shall be binding upon and shall inure to the benefit of the parties hereto and their respective legal representatives, heirs, successors and permitted assigns. Nothing in this Agreement, express or implied, is intended to confer upon any party,

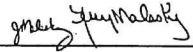
City of Bella Vista Public Art Program Page 6

other than the parties hereto (and their respective heirs, legal representatives, successors and permitted assigns), any rights, remedies, obligations or liabilities under or by reason of this Agreement. In addition to any other remedies available at law or in equity to the parties hereto with respect to a breach hereof, the parties hereto each reserve the right to enforce this Agreement by specific performance. The titles or captions of paragraphs in this Agreement are provided for convenience of reference only, and shall not be considered a part hereof for purposes of interpreting or applying this Agreement and such title or captions do not define, limit, extend, explain or describe the scope or extent of this Agreement or any of its terms or conditions. Words and phrases herein shall be construed as in the singular or plural number, and as masculine, feminine or neuter gender, according to the context. Each of the parties hereto hereby irrevocably waives all right to trial by jury in any action, proceeding or counterclaim arising out of or relating to this Agreement.

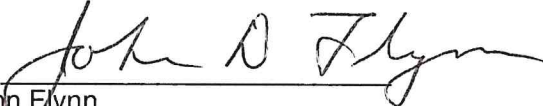
This agreement is executed on day and year first written above.

ARTIST

Artist Name: Joe and Terry Malesky - New Adventure Sculptures

Artist Signature 

CITY

Signature 
Mayor John Flynn
City of Bella Vista

City of Bella Vista Public Art Program Page 7

Exhibit A

Title Sara's Inspiration
Year Created 2021
Materials Hand painted repurposed steel
Purchase Value: \$15,000.

Description and Artist Statement related to the sculpture.

Insert Image

SARA'S INSPIRATION

NEW ADVENTURE SCULPTURES

JOE AND TERRY MALESKY

We met Sara Walla, Senior Marketing and Special Projects manager @ HRCCA in May 2018 when we delivered our sculpture Raptor to her. This sculpture was displayed for a year at a recreation center. Joe and I both enjoyed Sara the minute we met her and we were excited to have this great connection in the art world, especially since we were "newbies" on the sculpture art circuit. In the spring of 2019, we found out that Raptor was going to be purchased! That was our first SOLD piece of public art AND it was the first piece that Sara had SOLD too. It was just another very nice connection.

When we picked up Raptor in May 2019 to deliver it to the new owners we had another nice visit with Sara. Sara did not get any of our sculptures for the 2019-2020 Douglas County Art Encounters so we knew we wouldn't see her for that year. During our visit though, it came up in conversation that Sara loved sea turtles and that she would love to see a sculpture of a sea turtle. That day, I googled a sea turtle and saved the picture on my phone for future reference, because we liked the idea of creating one too!

Fast forward to March 2021. Sara emailed us to let us know that she got two of our sculptures that we entered into the Art Encounters. We were very happy to be working with her again this year. Then a slight problem arose. One of the sculptures she chose had a possibility to be purchased. If we were to remove the sculpture before that decision was made, we would lose that possibility. I decided to call Sara and explain the situation and she was extremely understanding and supportive.

I told her we had a couple of options. I proposed that if that sculpture doesn't sell, then I would guarantee it to her for the 2022-2023 Art Encounters or we could create a second one and it would not be exact but very similar, or we could create a sea turtle. Sara was silent. I said "Sara do you remember you told me you love sea turtles and you would love a sculpture of one?" She responded "yes, I just can't believe you remembered that!".

Joe and I had already discussed if we could get a sea turtle created by the delivery deadline before that option was even presented to Sara. We knew we could do it, and it made us happy knowing that Sara would experience that JOY!

SARA'S INSPIRATION was completed on Saturday, May 7, 2021.
She is beautiful, she is inviting, she is interactive and most importantly she is SARA, named after her person of inspiration.....Sara Walla.

**SARA'S INSPIRATION
NEW ADVENTURE SCULPTURES
JOE AND TERRY MALESKY**

Created: 2021

Material: Steel, hand painted and sealed with a protective automotive clear coat

Weight: 450 pounds

Height: 59"

Depth: 86"

Width: 78"

Base plate: 17"x 22"

Installation: 4 - 1/2" anchor bolts

Value: \$15,000.



CITY OF BELLA VISTA PUBLIC ART PROGRAM
2025 Blue Bird Sculpture Trail
AGREEMENT BY AND BETWEEN CITY AND ARTIST

This Agreement, made this 23 day of August, 2024, by and between the City of Bella Vista, a municipal corporation organized and existing under the laws of the State of Arkansas, (hereinafter referred to as the "City") and Artist Name and Address James Douglas Cox (hereinafter referred to as the "Artist").

WITNESSETH:

WHEREAS, the City desires to provide a sculpture walk along the Bluebird Trail which will include a certain work of art described in Exhibit A attached hereto and incorporated herein by this reference (the "Art Work"), which has been conceived and designed by Artist, to be installed on the City's property along the Blue Bird Sculpture Trail (hereinafter referred to as the "Site"), Bella Vista, Arkansas.

WHEREAS, the Artist desires to loan the Art Work to the City for a time period specified in this Agreement, and upon installation by Artist and Artist's Team, City desires to provide insurance coverage for the Art Work, from the time of installation of the Art Work until the time of removal of the Art Work from the City's property, pursuant to the terms and conditions of this Agreement.

NOW, THEREFORE, in consideration of the mutual promises and undertakings contained herein, the parties agree as follows:

ARTICLE 1: SCOPE OF SERVICES

1.1 General

- a) The Artist shall perform all services and furnish all supplies, materials, and equipment as deemed necessary for the completion, transportation, and installation of the Art Work at the Site.
- b) The Artist shall inspect the existing substrate and construction of the concrete slab to which the Art Work is to be attached and notify the City of any issues.
- c) The Artist shall meet with the City as deemed necessary to coordinate the installation and removal of the Art Work.
- d) The Artist shall loan the Art Work to the City for a twelve (12) month time period beginning on or around June 1, 2025 and ending on or around June 1, 2026. The installation date will be coordinated with all incoming artists to delivery on the same day and pick up on the same day based on mutual availability of artists and the city resources.
- e) If the City or another buyer desires to purchase said Art Work to add to the City's permanent Public Art collection, or the private collection of the individual, the purchase price shall not be greater than the price indicated on the Artist Application for said Art Work.
- f) If said Art Work is sold to a private collector, 15% of the total purchase price received will be donated by the Artist to the City.

1.2 Delivery and Installation

- a) The Artist shall notify the City when the Artist is ready to deliver and install the Art Work at the Site designated by the City.
- b) The Artist agrees to notify the City no fewer than seven (7) days prior to the Artist's intended time of delivery to determine the exact schedule of delivery and installation. c) The Artist shall deliver and install the completed Art Work at the Site June 11, date pending, 2025, and shall remove the Art Work from said Site as scheduled around June 1, 2026, date pending.
- d) The City shall be responsible for preparing the Site to allow the Artist to prepare for the timely installation of the Art Work.
- e) The Artist shall be responsible for all expenses, labor, and equipment necessary for the installation and removal of the Art Work.
- f) If the Art Work will be affixed to the City-provided pads, then the Artist shall affix the Art Work to the City-provided pads using tamper-resistant locking bolts.

1.3 Risk of Loss

- a) The risk of loss or damage to the Art Work shall be borne by the Artist until final installation is complete. After the complete installation of the Art Work, the risk of loss or damage to the Art Work shall be borne by the City during the loan period provided for in this Agreement, subject to the limitation on damages contained in Section 5.2 herein.

1.4 Indemnity

- a) The Artist agrees to indemnify and hold harmless the City from any liabilities, willful or non-willful acts of negligence by the Artist or the Artist's agents, or any or all elements of loss, theft, mutilation, vandalism or other damage (including those caused by acts of God) that may befall the Art Work during any activities related to the planning, creation, or delivery of the Art Work.
- b) Upon installation of the Art Work, the City shall, subject to the limitation on damages contained in Section 5.2 herein, indemnify and hold harmless the Artist from claims or liabilities relating to the maintenance of the Site at which the Art Work is installed, which claims or liabilities arise from and after the date of installation of the Art Work.
- b) The Artist shall indemnify and hold the City harmless from any and all costs, claims, liabilities or damages in any manner related to the Artist's breach of the representations and warranties set forth in Article 4 of this Agreement.

ARTICLE 2: COMPENSATION AND PAYMENT SCHEDULE

2.1 Fixed Fee

- a) The City shall pay the Artist a stipend of \$1,800 which shall constitute full compensation for all fees, services, expenses, and materials to be performed and furnished by the Artist under this Agreement. The fee shall be paid in full within thirty (30) days after final installation of the Art Work at a location specified by the City. The Artist shall provide the City with an invoice for the stipend amount after final installation has occurred.
- b) If the City decides to purchase the Art Work following the stated loan period, the stipend outlined in Section 2.1(a) will serve as a \$1,800 credit towards the final purchase price.

2.2 Artist's Expenses

- a) The Artist shall be responsible for the payment of all mailing or shipping charges on submissions to the City, the cost of transporting the Art Work to the Site, and the costs

of all travel by the Artist and the Artist's agents and employees necessary for the proper performance of the services required under this Agreement.

2.3 Invoices

- a) The Artist shall submit an invoice to the City for payment as described in section 2.1. The invoice shall be on stationary and must be signed and dated by the Artist.

ARTICLE 3: TIME OF PERFORMANCE

3.1 Duration

- a) The services to be required of the Artist as set forth in Article 1 shall be completed in accordance with the schedule for installation and removal of the Art Work as proposed by the Artist and approved by the City pursuant Section 1.2(c), provided that such time limits may be extended or otherwise modified by written agreement between the Artist and the City.

3.2 Installation Delays

- a) If, when the Artist is ready for installation of the Art Work, the Artist is delayed from installing the Art Work within the time specified in the schedule as a result of the construction of the Site not being sufficiently complete to reasonably permit installation of the Art Work, the City shall provide storage, or reimburse the Artist for reasonable transportation and storage costs incurred for the period between the time provided in the schedule for commencement of installation and the date upon which the Site is sufficiently complete to permit installation of the Art Work.

3.3 Early Completion of Artist Services

- a) The Artist shall bear any transportation and storage costs resulting from the completion of the Artist's services prior to the time provided in the schedule for installation.

3.4 Time Extensions

- a) The City shall grant a reasonable extension of time to the Artist in the event that there is a delay on the part of the Artist in performing its obligations under this Agreement, or if conditions beyond the Artist's control or Acts of God render timely performance of the Artist's services impossible or unexpectedly burdensome. Likewise, the Artist shall grant a reasonable extension of time to the City in the event that there is a delay on the part of the City in performing its obligations under this Agreement, or if conditions beyond the City's control or Acts of God render timely performance of the City's services impossible or unexpectedly burdensome. Failure to fulfill contractual obligations due to conditions beyond either party's reasonable control will not be considered a breach of contract, provided that such obligations shall be suspended only for the duration of such condition.

ARTICLE 4: WARRANTIES

4.1 Warranties of Title

- a) The Artist represents and warrants that:
 - 1) The Art Work is solely the result of the artistic effort of the Artist;
 - 2) Except as otherwise disclosed in writing to the City, the Art Work is unique and original and does not infringe upon any copyright;
 - 3) The Art Work, or a duplicate thereof, has not been accepted for sale elsewhere;
 - 4) The Art Work is free and clear of any liens from any source whatever.

4.2 Warranties of Quality and Condition

- a) The Artist represents and warrants, except as otherwise disclosed to the City in writing in connection with the submission of the Application and pursuant to Article 1, that:
 - 1) The execution and fabrication of the Art Work will be performed in a workmanlike manner;
 - 2) The Art Work, as fabricated and installed, will be free of defects in material and workmanship, including any inherent defects or qualities which cause or accelerate deterioration of the Art Work; and
- b) In the event that the City purchases the Art Work, the warranties described in this Section 4.2 shall survive for a period of five (5) years after the final acceptance of the Art Work. The City shall give notice to the Artist of any observed breach with reasonable promptness. The Artist shall, at the request of the City, and at no cost to the City, cure reasonably and promptly the breach of any such warranty which is curable by the Artist and which cure is consistent with professional conservation standards (including, for example, cure by means of repair or re-fabrication of the Art Work).

ARTICLE 5: INSURANCE

5.1 Artist Insurance

- a) The Artist and all employees of the Artist shall maintain insurance to protect the Artist from claims under workers' compensation acts; claims for damages because of bodily injury including personal injury, sickness or disease, or death of any of the Artist's employees or of any person other than the Artist's employees; and from claims for damages because of injury to or destruction of tangible property; including loss of use resulting there from; and from claims arising out of their performance of professional services caused by errors, omissions, or negligent acts for which the Artist is legally liable.
- b) The Artist shall provide proof of insurance for the retail value of the artwork stated on the Artist Application to the City upon installation of the art exhibit.

5.2 City/Art Exhibit Insurance

- a) Through the duration of the period that the Art Work is loaned to the City for the art exhibit, as identified in Section 1.1(d), the City will provide a maximum of \$24,000 in property loss and liability insurance coverage for the Art Work. The Artist acknowledges and agrees that the maximum amount that shall be paid to the Artist in damages related to any aspect of this Agreement shall be the price for the Art Work indicated on the Artist Application, or the \$24,000 insurance limit, whichever amount is lower.

ARTICLE 6: REPRODUCTION RIGHTS

6.1 General

- a) The Artist retains all rights under the Copyright Act of 1976, 17 U.S.C., 101 et. seq., and all other rights in and to the Art Work including ownership and possession. The Artist grants to the City the right to photograph and reproduce images of the Art Work for promotional and educational purposes.

6.2 Notice

- a) All reproductions by the City shall contain a credit to the Artist and a copyright notice substantially in the following form: [Artist's Name], year of publication.

ARTICLE 7: ARTIST'S RIGHTS

7.1 Identification

- a) The City shall, at its expense, prepare and install at the Site a plaque identifying the Artist, the title of the Art Work, the year of completion, and the City of Bella Vista Public Art Program; and shall reasonably maintain such notice to the extent as may be practicable.

7.2 Maintenance

- a) The City recognizes that maintenance of the Art Work on a regular basis is essential to the integrity of the Art Work. The Artist shall submit reasonable maintenance recommendations to the City, and the City shall take such action to reasonably assure that the Art Work is properly maintained and protected, taking into account the Artist's recommendations.

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- a) The City shall maintain a record of this Agreement and the location and disposition of the Art Work.

ARTICLE 8: ARTIST AS INDEPENDENT CONTRACTOR

- a) The Artist shall perform all work under this Agreement as an independent contractor and not as an agent or an employee of the City. The Artist shall not be supervised by any employee or official of the City, nor shall the Artist exercise supervision over any employee or official of the City.

ARTICLE 9: ASSIGNMENTS, TRANSFER, SUBCONTRACTING

9.1 Transfer of Agreement

- a) Neither this Agreement nor any interest herein shall be transferred by the Artist.

9.2 Subcontracting by Artist

- a) The Artist may subcontract portions of the services to be provided hereunder relating to the installation of the Art Work at the Artist's expense provided that said subcontracting shall not negatively affect the design, appearance, or visual quality of the Art Work and shall be carried out under the personal supervision of the Artist. The Artist must obtain approval from the City prior to hiring any subcontractor who will assist with the installation process. This approval may be achieved via electronic correspondence.

ARTICLE 10: TERMINATION

If either party to this Agreement shall willfully or negligently fail to fulfill in a timely and proper manner, or otherwise violate, any of the covenants, agreements, or stipulations material to this Agreement, the other party shall thereupon have the right to terminate this Agreement by giving written notice to the defaulting party of its intent to terminate specifying the grounds for termination. The defaulting party shall have thirty (30) days after receipt of the notice to cure the default. If the default is not cured, then this Agreement shall terminate. In the event of default by the City, the City shall promptly compensate the Artist for all services performed by the Artist prior to termination. In the event of default by the Artist, all finished and unfinished drawings, sketches,

photographs, and other work products prepared and submitted or prepared for submission by the Artist under this Agreement shall at the City's option become its property, provided that no right to fabricate or execute the Art Work shall pass to the City and the City shall compensate the Artist pursuant to Article 2 for all services performed by the Artist prior to termination; or the Artist shall refund all amounts paid by the City in exchange for all finished and unfinished related Art Works. Notwithstanding the previous sentence, the Artist shall not be relieved of liability to the City for damages sustained by the City by virtue of any breach of this Agreement by the Artist, and the City may reasonably withhold payments to the Artist until such time as the exact amount of such damages due the City from the Artist is determined.

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1) if to the City, to:

City Contact Mayor John Flynn
City of Bella Vista
101 NE Towncenter
Bella Vista, AR 72714

2) if to the Artist, to:

Name James Douglas Cox
Street Address 206 E. Hines St.
City, State and Zip Code Republic, MO. 65738

ARTICLE 13: MISCELLANEOUS

This Agreement constitutes the entire agreement between the parties hereto pertaining to the subject matter hereof and supersedes all negotiations, preliminary agreements and all prior and contemporaneous discussions, agreements and understandings of the parties in connection with the subject matter hereof. No amendment, change or modification of any of the terms, provisions or conditions of this Agreement shall be effective unless made in writing and signed or initialed by all parties. Waiver of any provision of this Agreement shall not be deemed a waiver of future compliance therewith and such provision shall remain in full force and effect. In the event any provision of this Agreement is held invalid, illegal or unenforceable, in whole or in part, the remaining provisions of this Agreement shall not be affected thereby and shall continue to be valid and enforceable. This Agreement shall be governed by and construed in accordance with the laws of the State of Arkansas. This Agreement shall be binding upon and shall inure to the benefit of the parties hereto and their respective legal representatives, heirs, successors and permitted assigns. Nothing in this Agreement, express or implied, is intended to confer upon any party,

other than the parties hereto (and their respective heirs, legal representatives, successors and permitted assigns), any rights, remedies, obligations or liabilities under or by reason of this Agreement. In addition to any other remedies available at law or in equity to the parties hereto with respect to a breach hereof, the parties hereto each reserve the right to enforce this Agreement by specific performance. The titles or captions of paragraphs in this Agreement are provided for convenience of reference only, and shall not be considered a part hereof for purposes of interpreting or applying this Agreement and such title or captions do not define, limit, extend, explain or describe the scope or extent of this Agreement or any of its terms or conditions. Words and phrases herein shall be construed as in the singular or plural number, and as masculine, feminine or neuter gender, according to the context. Each of the parties hereto hereby irrevocably waives all right to trial by jury in any action, proceeding or counterclaim arising out of or relating to this Agreement.

This agreement is executed on day and year first written above.

ARTIST

Artist Name James Douglas Cox
Artist Signature James D. Cox

CITY

Signature John D. Flynn
Mayor John Flynn
City of Bella Vista

