



Board of Public Works and Safety

Agenda Item

Cover Sheet

MEETING DATE: January 28, 2025

- ☐ Consent Agenda Item
- ☒ New Item for Discussion
- ☐ Previously Discussed Item
- ☐ Miscellaneous

ITEM #: 3

INITIATED BY: Aaron Head

- ☒ Information Attached
- ☐ Bring Paperwork from Previous Meeting
- ☐ Verbal
- ☐ No Paperwork at Time of Packets



TO: BOARD OF PUBLIC WORKS AND SAFETY
FROM: AARON HEAD, COMMUNITY ENGAGEMENT MANAGER
SUBJECT: MEMORANDUM OF UNDERSTANDING – INDIANA PEONY FESTIVAL
DATE: JANUARY 16, 2025

Attached is the Memorandum of Understanding between the City of Noblesville and Indiana Peony Festival for 2024.

If you have any questions prior to the meeting on January 28th, please feel free to contact me at 317-776-6325 or at ahead@noblesville.in.gov

Attachments:

1. Memorandum of Understanding
2. Certificate of Insurance
3. E-Verify Affidavit

Km

Memorandum of Understanding

This document constitutes a Memorandum of Understanding (hereinafter referred to as "MOU") between Indiana Peony Festival, Inc. (hereinafter referred to as "IPF"), an Indiana non-profit corporation organized under IRS code 501(c)(3), and the City of Noblesville, Indiana, a municipal corporation (hereinafter referred to as "City" or "Noblesville"), is executed pursuant to the terms and conditions set forth herein.

Recitals

Whereas, IPF has a purpose for inspiring Indiana residents local & statewide to celebrate the state flower, enhancing the well-being of Noblesville residents through beautification projects, peony gardens, and horticulture education, and promoting Noblesville specifically as *the* peony capital and a desired visitor destination in the month of May

Whereas, IPF executes the Indiana Peony Festival during the month of May; and

Whereas, IPF has created additional events and opportunities for the celebration of the state flower; and

Whereas, IPF seeks continued growth to highlight Noblesville as the peony capital of Indiana; and

Whereas, IPF has created additional economic impact within the downtown area for merchants and restaurants; and

Whereas, IPF creates tourism opportunities for Noblesville in which the community can be showcased to visitors; and

Whereas, the City of Noblesville desires to support IPF in its mission and provide for the advocacy and promotion of the community.

Now therefore, in consideration of the mutual promises contained herein and other considerations, the receipt and sufficiency of which are hereby acknowledged; IPF and the City agree as follows:

- 1. RECITALS.** The representations set forth in the above recitals are material to the MOU and are hereby incorporated into and made a part of the MOU as if fully set forth in the body of the MOU.
- 2. DUTIES OF IPF.** IPF shall perform the functions as set forth or described in Exhibit A, attached to and made a part of this MOU.
- 3. TERM AND RENEWAL.**

- A. The term of this MOU shall begin at execution by the Board of Works and ending on December 31, 2025 unless terminated in accordance with this MOU.
- B. The parties anticipate continuing to work in partnership beyond the annual term of this agreement and agree to meet during Q2 2025 to discuss a 2026 agreement so that the funding request specified in Exhibit A, Section 2.G. and related considerations can be incorporated into the city's budget formation efforts. The parties understand that appropriation decisions are made by the Common Council and that those appropriation decisions can affect the amount of funds available to support future years' agreements. To facilitate planning and cooperation, Noblesville will inform IPF of its budget request by September 30, 2025 and will notify IPF by November 1, 2025 (the deadline for budget adoption) of how much was appropriated and available for 2026 support.

4. COMPENSATION OF IPF.

- A. IPF shall furnish all labor, materials, supplies, and services in accordance with the conditions of this MOU necessary to perform the functions as defined in Exhibit A.
- B. Payment will be for the amount of \$35,000, subject to an invoice being submitted by IPF at least thirty (30) days in advance.

5. TERMINATION FOR CAUSE OR CONVENIENCE.

- A. If IPF becomes insolvent, or if it refuses or fails to perform the work and functions provided by this MOU, or if it refuses to perform disputed work or functions as directed pending resolution of such dispute, or if it fails to make payments to subcontractors or consultants employed by it, or if it otherwise violates or fails to perform any term, covenant or provision of this MOU, then City may, without prejudice to any other right or remedy, terminate this MOU in whole or in part, in writing, provided that IPF shall be given, except in the case of emergencies, (a) not less than ninety (90) calendar days' notice of City's intent to terminate, and (b) an opportunity for consultation with City prior to termination. In determining the amount of final payment to be made to IPF upon such termination for default, if any, no amount shall be allowed for anticipated profit on unperformed services or other work; furthermore, an adjustment shall be made to the extent of any additional costs incurred or reasonably foreseen by City to be incurred by reason of IPF's default.
- B. This MOU may be terminated in whole or in part in writing by City for City's convenience; provided that IPF is given (a) not less than ninety (90) calendar days' notice of intent to terminate and (b) an opportunity for consultation with City prior to termination. If City effects termination for convenience, IPF's compensation shall be equitably adjusted.

km

6. TERMINATION FOR FAILURE OF FUNDING.

Notwithstanding any other provision of this MOU and pursuant to Indiana law, if funds for the continued fulfillment of this MOU by City are at any time insufficient or not forthcoming through failure of any entity to appropriate funds or otherwise, then City shall have the right to terminate this Agreement without penalty by giving written notice documenting the lack of funding, in which instance unless otherwise agreed to by the parties, this Agreement shall terminate and become null and void.

7. GENERAL PROVISIONS.

- A. Non-Agent. Notwithstanding anything to the contrary in this MOU or elsewhere, IPF is not an agent of the City and shall not in any way purport to act or speak for or on behalf of the City.
- B. Independent Contractor. The parties agree that IPF is an independent contractor as that term is commonly used and is not an employee of City. As such, IPF is solely responsible for all taxes and none shall be withheld from the sums paid to IPF. IPF acknowledges that it is not insured in any manner by City for any loss of any kind whatsoever. The IPF has no authority, express or implied, to bind or obligate City in any way.
- C. Subcontracting. The parties agree that IPF shall not subcontract, assign or delegate any responsibility to perform under this Agreement without prior written approval of City. In the event that City approves of any such subcontracting, assignment or delegation, IPF shall remain responsible for managing, directing and paying the person or persons to whom such responsibilities or obligations are sublet, assigned or delegated. City shall have no obligation whatsoever toward such persons. IPF shall take sole responsibility for the quality and quantity of any services rendered by such persons. Any consent given in accordance with this provision shall not be construed to relieve IPF of any responsibility for performing under this Agreement.
- D. Necessary Qualifications. IPF certifies that it will furnish to City, if requested, any and all documentation, certification, authorization, license, permit, or registration required by the laws or rules and regulations of City, other units of local government, the State of Indiana, and the United States. IPF further certifies that it is now and will remain in good standing with such governmental agencies and that it is now and will maintain all licenses, permits, registrations, authorizations, or certifications, as applicable to the services in force during the term of this Agreement.

Km

- E. Confidentiality of City Information. IPF understands that the information provided to it or obtained from City during the performance of its responsibilities may be confidential and may not, without prior written consent of City, be disclosed to a person not in City's employ except to employees or agents of IPF who have a need to know in order to provide the services. The obligations of this section shall survive the termination of this Agreement and shall be applicable to the full extent permissible under statutes governing access to public records. Confidential information shall not include information, that: (a) was known by IPF at the time it was received; (b) is, as of the time of its disclosure or thereafter becomes, part of the public domain through a source other than IPF; (c) is made known to IPF by a third person who does not impose any obligation of confidence on IPF with respect to such information; (d) is required to be disclosed pursuant to governmental authority, law, regulation, duly authorized subpoena, or court order whereupon IPF shall provide notice and an opportunity to object to City prior to such disclosure; or (e) information that is independently developed by IPF without references to the confidential information. IPF shall not, under any circumstances, release information provided to it by, or on behalf of, City that is required to be kept confidential by City pursuant to Indiana law, except as contemplated by this section, clause (d).
- F. Records; Audit. IPF shall maintain books, records, documents and other evidence directly pertinent to performance under this Agreement. IPF shall make such materials available at its offices at all reasonable times during the Agreement period and for three (3) years from termination or the date of final payment under this Agreement for inspection by City or any other authorized representative of City. Copies thereof, if requested, shall be furnished at no cost to City.
- G. Remedies. Following the occurrence of any default, breach, or other failure to perform, or an act of negligence or misconduct causing damage to either Party, by the other or any of its employees, agents, or subcontractors, the aggrieved party shall have every remedy now or hereafter existing at law or in equity or by statute or otherwise which may be available. This provision shall survive any termination of this Agreement.
- H. Indemnification. IPF agrees to indemnify, defend, and hold harmless City and its officers, agents, officials, and employees for any and all third party claims, actions, causes of action, judgments and liens to the extent they arise out of any act or omission by IPF or any of its officers, agents, employees or subcontractors, regardless of whether or not it is caused in part by the negligence of a party indemnified hereunder. Such indemnity shall include attorney's fees and all costs and other expenses arising therefrom or incurred in connection therewith and shall not be limited by reason of the enumeration of any insurance coverage. This provision shall survive any termination of this Agreement.
-

Km

- I. Insurance. IPF shall furnish, or cause to be furnished, City with certification of comprehensive general liability insurance coverage with a minimum limit of Two Million Dollars (\$2,000,000.00) per occurrence. IPF shall furnish certificates of insurance provided by the insurer, and the certificates shall provide that such insured is in effect and will not be cancelled during the required period without thirty (30) days prior written notice of such cancellation to City.
- J. Notice. Any notice or other correspondence required to be sent under this Agreement shall be sent to:

To IPF:

Indiana Peony Festival, Inc.
c/o Kelly McVey, Executive
Director
7161 Oakview Circle
Noblesville, IN 46062

To Noblesville:

City of Noblesville
16 S. 10th Street
Noblesville, IN 46060
Attn: Mayor's Office

Copy to:
City of Noblesville
Attn: City Attorney
16 S. 10th Street
Noblesville, IN 46060

K. Non-discrimination. IPF and its subcontractors shall not discriminate against any employee or applicant for employment to be employed in the performance of this Agreement, with respect to her or his hire, tenure, terms, conditions, or privileges of employment, or any matter directly or indirectly related to employment, because of her or his race, religion, color, sex, sexual orientation, handicap, disability, national origin, ancestry, disabled veteran status, or Vietnam-era veteran status. Breach of this section shall be regarded as a material breach of this Agreement.

L. Conflict of Interest. IPF certifies and warrants to Noblesville that neither it nor any of its agents, representatives or employees who will participate in the performance of any services required by this Agreement has or will have any conflict of interest, direct or indirect, with Noblesville.

M. Force Majeure. In the event that either party is unable to perform any of its obligations under this Agreement – or to enjoy any of its benefits – because of natural disaster, pandemic, or decrees of governmental bodies not the fault of the affected party (hereinafter referred to as Force Majeure Event), the party who has been so affected shall immediately give notice to the other and shall take commercially reasonable actions to resume performance. Upon receipt of such notice, all obligations under this Agreement shall be immediately suspended except for payment obligations with respect to service already provided. If the period of nonperformance exceeds one hundred eighty (180) days from the receipt of the Force Majeure Event, the party whose ability to perform has not been so affected may, by giving written notice, terminate this Agreement.

KM

N. Applicable Laws; Forum. IPF agrees to comply with all applicable federal, state and local laws, rules, regulations or ordinances, and all provisions required thereby to be included herein are hereby incorporated by reference. The enactment of any state or federal statute or the promulgation of regulations thereunder after execution of this Agreement shall be reviewed by Noblesville and IPF to determine whether the provisions of the Agreement require formal modification.

This Agreement shall be construed in accordance with the laws of the State of Indiana, and by all applicable Municipal Ordinances, Resolutions, Rules, Regulations, or Codes of Noblesville. Suit, if any, shall be brought in the State of Indiana, County of Hamilton.

- O. Waiver. Neither party's delay or inaction in pursuing the remedies set forth in this Agreement, or available by law, shall not operate as a waiver of any of Party's rights or remedies.
- P. Severability. If any provision of this Agreement is held to be invalid, illegal, or unenforceable by a court of competent jurisdiction, the provision shall be stricken, and all other provisions of this Agreement which can operate independently of such stricken provisions shall continue in full force and effect.
- Q. Attorneys' Fees. Either party shall be liable to the other for reasonable attorneys' fees incurred by in connection with the collection or attempt to collect, any damages arising from the negligent or wrongful act or omission of the other party from a breach of any provision of this Agreement, from an indemnity obligation, or from a failure to fulfill any provisions or responsibility provided herein. This provision shall survive any termination of this Agreement.
- R. Successors and Assigns. Noblesville and IPF each binds itself and its partners, successors, executors, administrators and assigns to the other party of this Agreement and to the partners, successors, executors, administrators and assigns of such other party, in respect to all covenants of this Agreement; except as otherwise provided herein, neither party shall assign, sublet, or transfer its interest in this Agreement without the written consent of the other. Nothing herein shall be construed as creating any personal liability on the part of any officer or agent of Noblesville or IPF.

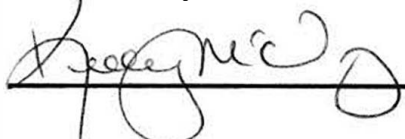
km

8. INTERPRETATION AND INTENT.

- A. This Agreement constitutes the entire agreement between the parties and supersedes all prior agreements, written or verbal, between City and IPF. No statements, promises or agreements whatsoever, in writing or verbal, in conflict with the terms of the Agreement have been made by City or IPF which in any way modify, vary, alter, enlarge or invalidate any of the provisions and obligations herein stated. This Agreement may be amended and modified only in writing signed by both City and IPF.
- B. In resolving conflicts, errors, discrepancies and disputes concerning the scope of the work or services to be performed by IPF or other rights or obligations of City or IPF, the document or provision thereof imposing the greater obligation upon City and affording the greater right or remedy to City, shall govern.
- C. Any interpretation applied to this Agreement, by the parties hereto, by an arbitrator, court of law, or by any other third party, shall not be made against City solely by virtue of City or City's representatives having drafted all or any portion of this Agreement.
- D. This Agreement shall include, and incorporate by reference, any provision, covenant or condition required or provided by law or by regulation of any state or federal regulatory or funding agency.

Entered into this 27 date of Dec , 2024.

Indiana Peony Festival, Inc.



By: Kelly McVey, Executive Director

City of Noblesville



By: Aaron Head
Title: Community Engagement Manager

Kur

EXHIBIT A

1. PURPOSE. IPF shall act to provide cultural and community service programs for Noblesville, promote the Noblesville community and tourism as generally outlined below.

2. DELIVERABLES.

- A. City Common Council Presentation. IPF shall make a presentation at a mutually agreeable date and time once per year, to the City Common Council. IPF shall be available to update the Downtown District Committee and/or Finance Committee at their request but no more than once per quarter. The presentations should include updates regarding all objectives stated in headings C through K.
- B. Monthly Meetings. IPF shall hold monthly collaborative update meetings at a mutually agreeable dates and times with city departments pursuant to event planning and management.
- C. IPF Events.
 - i. IPF shall execute the following in the 2025 calendar year including but not limited to:
 - Peonies in the Park
 - Indiana Peony Festival
 - Brunch and Blooms
 - Noblesville Flower Market
 - Peony Trail Project
 - Fundraising Gala
 - ii. The parties recognize that the items listed are subject to change and should involve conversations with both parties regarding any decisions to modify or cancel the event.
- D. Work to make the Indiana Peony Festival more efficient and self-sustaining to meet the growing demand
 - i. Pursue new and different vendors, exhibits, experiences
 - ii. Continue to highlight the local arts community
 - iii. Investigate various avenues to increase marketing of the Indiana Peony Festival to surrounding communities
- E. Increase efforts of collaboration with other Noblesville Non-Profits and stake holders to create a cohesive thread throughout
 - i. Identify opportunities to work together and share efforts
 - ii. Establish meeting times throughout the year to update each other on current projects

Kan

iii. Classify prospective cross promotion ideas

F. Identify, establish and maintain relationships with merchants and businesses

- i. Continue to involve the local merchants with the Brunch and Blooms promotion and as vendors at various IPF events to provide positive economic impact to the small business community
- ii. Increase communication in person and through email

G. Subsequent Year Funding Request. IPF shall submit its funding request and supporting documentation, as required by the City, for 2026 by July 1st.

All of which is approved by the Board of Public Works and Safety of the City of Noblesville this
_____ day of _____ 2025.

JACK MARTIN, PRESIDENT

JOHN DITSLEAR, MEMBER

LAURIE DYER, MEMBER

ROBERT J. ELMER, MEMBER

RICK L. TAYLOR, MEMBER

ATTEST:

EVELYN L. LEES, CLERK
CITY OF NOBLESVILLE, INDIANA

E-Verify Affidavit

Pursuant to Indiana Code 22-5-1.7-11, the Contractor entering into a contract with the City is required to enroll in and verify the work eligibility status of all its newly hired employees through the E-Verify program. The Contractor is not required to verify the work eligibility status of all its newly hired employees through the E-Verify program if the E-Verify program no longer exists.

The undersigned, on behalf of the Contractor, being first duly sworn, deposes and states that the Contractor does not knowingly employ an unauthorized alien. The undersigned further affirms that, prior to entering into its contract with the City, the undersigned Contractor will enroll in and agrees to verify the work eligibility status of all its newly hired employees through the E-Verify program.

(Contractor): Indiana Peony Festival Inc.
By (Written Signature): [Signature]
(Printed Name): Kelly McJoy
(Title): CEO President

Important - Notary Signature and Seal Required in the Space Below

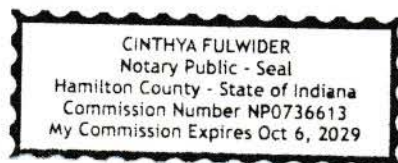
STATE OF Indiana
COUNTY OF Hamilton

SS:

Subscribed and sworn to before me this 31st day of December,
20 24.

My commission expires: Oct 6, 2029 (Signed) [Signature]

a. Residing in Hamilton County County, State of Indiana





CERTIFICATE OF LIABILITY INSURANCE

DATE (MM/DD/YYYY)

01/22/2025

THIS CERTIFICATE IS ISSUED AS A MATTER OF INFORMATION ONLY AND CONFERS NO RIGHTS UPON THE CERTIFICATE HOLDER. THIS CERTIFICATE DOES NOT AFFIRMATIVELY OR NEGATIVELY AMEND, EXTEND OR ALTER THE COVERAGE AFFORDED BY THE POLICIES BELOW. THIS CERTIFICATE OF INSURANCE DOES NOT CONSTITUTE A CONTRACT BETWEEN THE ISSUING INSURER(S), AUTHORIZED REPRESENTATIVE OR PRODUCER, AND THE CERTIFICATE HOLDER.

IMPORTANT: If the certificate holder is an ADDITIONAL INSURED, the policy(ies) must have ADDITIONAL INSURED provisions or be endorsed. If SUBROGATION IS WAIVED, subject to the terms and conditions of the policy, certain policies may require an endorsement. A statement on this certificate does not confer rights to the certificate holder in lieu of such endorsement(s).

PRODUCER Martin & Martin Insurance Agency 62 S 9th Street Noblesville IN 46060		CONTACT NAME: Jenna Romens PHONE (A/C. No. Ext): E-MAIL ADDRESS: FAX (A/C. No): (317)703-1115	
		INSURER(S) AFFORDING COVERAGE	
		INSURER A: ERIE INS CO	
		INSURER B:	
		INSURER C:	
		INSURER D:	
		INSURER E:	
		INSURER F:	

COVERAGES**CERTIFICATE NUMBER:****REVISION NUMBER:**

THIS IS TO CERTIFY THAT THE POLICIES OF INSURANCE LISTED BELOW HAVE BEEN ISSUED TO THE INSURED NAMED ABOVE FOR THE POLICY PERIOD INDICATED. NOTWITHSTANDING ANY REQUIREMENT, TERM OR CONDITION OF ANY CONTRACT OR OTHER DOCUMENT WITH RESPECT TO WHICH THIS CERTIFICATE MAY BE ISSUED OR MAY PERTAIN, THE INSURANCE AFFORDED BY THE POLICIES DESCRIBED HEREIN IS SUBJECT TO ALL THE TERMS, EXCLUSIONS AND CONDITIONS OF SUCH POLICIES. LIMITS SHOWN MAY HAVE BEEN REDUCED BY PAID CLAIMS.

INSR LTR	TYPE OF INSURANCE	ADDL INSD	SUBR WVD	POLICY NUMBER	POLICY EFF (MM/DD/YYYY)	POLICY EXP (MM/DD/YYYY)	LIMITS
A	<input checked="" type="checkbox"/> COMMERCIAL GENERAL LIABILITY <input type="checkbox"/> CLAIMS-MADE <input checked="" type="checkbox"/> OCCUR GEN'L AGGREGATE LIMIT APPLIES PER: <input checked="" type="checkbox"/> POLICY <input type="checkbox"/> PRO-JECT <input type="checkbox"/> LOC OTHER:			Q61-0151002	12/01/2024	12/01/2025	EACH OCCURRENCE \$ 1000000
			DAMAGE TO RENTED PREMISES (Ea occurrence) \$ 1000000				
			MED EXP (Any one person) \$ 5000				
			PERSONAL & ADV INJURY \$ 1000000				
						GENERAL AGGREGATE \$ 2000000	
						PRODUCTS - COMP/OP AGG \$ 2000000	
							\$
	AUTOMOBILE LIABILITY <input type="checkbox"/> ANY AUTO <input type="checkbox"/> OWNED AUTOS ONLY <input type="checkbox"/> SCHEDULED AUTOS <input type="checkbox"/> HIRED AUTOS ONLY <input type="checkbox"/> NON-OWNED AUTOS ONLY						COMBINED SINGLE LIMIT (Ea accident) \$
							BODILY INJURY (Per person) \$
							BODILY INJURY (Per accident) \$
							PROPERTY DAMAGE (Per accident) \$
							\$
	UMBRELLA LIAB <input type="checkbox"/> OCCUR EXCESS LIAB <input type="checkbox"/> CLAIMS-MADE DED RETENTION \$						EACH OCCURRENCE \$
							AGGREGATE \$
							\$
	WORKERS COMPENSATION AND EMPLOYERS' LIABILITY ANY PROPRIETOR/PARTNER/EXECUTIVE OFFICER/MEMBER EXCLUDED? <input type="checkbox"/> Y / N <input checked="" type="checkbox"/> N / A (Mandatory in NH) If yes, describe under DESCRIPTION OF OPERATIONS below						PER STATUTE OTH-ER E.L. EACH ACCIDENT \$ E.L. DISEASE - EA EMPLOYEE \$ E.L. DISEASE - POLICY LIMIT \$

DESCRIPTION OF OPERATIONS / LOCATIONS / VEHICLES (ACORD 101, Additional Remarks Schedule, may be attached if more space is required)

CERTIFICATE HOLDER**CANCELLATION**

City Of Noblesville 16 South 10th Street Noblesville IN 46060	SHOULD ANY OF THE ABOVE DESCRIBED POLICIES BE CANCELLED BEFORE THE EXPIRATION DATE THEREOF, NOTICE WILL BE DELIVERED IN ACCORDANCE WITH THE POLICY PROVISIONS.
	AUTHORIZED REPRESENTATIVE

Fax:

Email:

© 1988-2015 ACORD CORPORATION. All rights reserved.

ACORD 25 (2016/03)

The ACORD name and logo are registered marks of ACORD