Memorandum of Understanding

This document constitutes a Memorandum of Understanding (hereinafter referred to as "MOU") between Front Porch Music Festival (hereinafter referred to as "FPMF") 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, FPMF has a purpose for creating a unique event celebrating talented musicians and highlighting the beauty of the historic downtown; and

Whereas, FPMF creates an additional event that continues to build on the assets within the Noblesville Cultural Arts District; and

Whereas, FPMF will operate under the umbrella of the Noblesville Creates 501C3 for purposes of grant receipt; and

Whereas, FPMF executes the Front Porch Music Festival during the month of August; and

Whereas, FPMF has created additional events and opportunities to grow the Front Porch Music Festival presence; and

Whereas, FPMF seeks continued growth to highlight downtown Noblesville and promote economic vitality; and

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

Whereas, the City of Noblesville desires to support FPMF 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; FPMF 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 FPMF.**

   A. FPMF shall perform the functions as set forth or described in **Exhibit A,** attached to and made a part of this MOU.

B. FPMF will present to the Downtown District Committee at a meeting following the festival to give an overview of the event and outlook for 2025.

3. TERM AND RENEWAL.

A. The term of this MOU shall begin at execution by the Board of Works and ending on December 31, 2024 unless terminated in accordance with this MOU.

4. COMPENSATION OF FPMF.

A. FPMF 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 $10,000 by May 1 and subject to an invoice being submitted by Noblesville Creates on behalf of the FPMF at least thirty (30) days in advance.

5. TERMINATION FOR CAUSE OR CONVENIENCE.

A. If FPMF 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 FPMF 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 FPMF 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 FPMF's default.

B. This MOU may be terminated in whole or in part in writing by City for City's convenience; provided that FPMF 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, FPMF's compensation shall be equitably adjusted.

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, FPMF 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 FPMF is an independent contractor as that term is commonly used and is not an employee of City. As such, FPMF is solely responsible for all taxes and none shall be withheld from the sums paid to FPMF. FPMF acknowledges that it is not insured in any manner by City for any loss of any kind whatsoever. The FPMF has no authority, express or implied, to bind or obligate City in any way.

C. Subcontracting. The parties agree that FPMF shall not subcontract, assign or delegate any responsibility to perform under this Agreement without prior written approval of City. The parties hereby agree that FPMF will delegate fiscal agent responsibilities associated with this agreement to Noblesville Creates. In the event that City approves of any such subcontracting, assignment or delegation, FPMF 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. FPMF 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 FPMF of any responsibility for performing under this Agreement.

D. Necessary Qualifications. FPMF 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. FPMF 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.

E. Confidentiality of City Information. FPMF 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 FPMF 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 FPMF 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 FPMF; (c) is made known to FPMF by a third person who does not impose any obligation of confidence on FPMF with respect to such information; (d) is required to be disclosed pursuant to governmental authority, law, regulation, duly authorized subpoena, or court order whereupon FPMF shall provide notice and an opportunity to object to City prior to such disclosure; or (e) information that is independently developed by FPMF without references to the confidential information. FPMF 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. FPMF shall maintain books, records, documents and other evidence directly pertinent to performance under this Agreement. FPMF 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. FPMF 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 FPMF 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.

I. Insurance. FPMF 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. FPMF 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 FPMF:

Front Porch Music Festival
c/o Ken Bubp, Executive Director
1276 Division Street
Noblesville, IN 46060

To Noblesville:

City of Noblesville
16 S. 10th Street
Noblesville, IN 46060
Attn: Planning Department

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

K. Non-discrimination. FPMF 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. FPMF 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.

N. Applicable Laws; Forum. FPMF 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 FPMF 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 FPMF 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 FPMF.

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 FPMF. No statements, promises or agreements whatsoever, in writing or verbal, in conflict with the terms of the Agreement have been made by City or FPMF 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 FPMF.

B. In resolving conflicts, errors, discrepancies and disputes concerning the scope of the work or services to be performed by FPMF or other rights or obligations of City or FPMF, 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 02 date of January, 2024.

Front Porch Music Festival

By: Ken Bubp, Executive Director

City of Noblesville

By: Aaron Head
Title: Community Engagement Manager

Fiscal agent responsibilities accepted by:

Noblesville Creates

1/4/24

By: Ailithir McGill, Executive Director

Exhibit A

FRONT PORCH MUSIC FESTIVAL

Noblesville's Front Porch Music Festival
2024 Budget Summary and Planning
2023.11.06

Front Porch Music Festival is preparing for its fourth annual event in 2024, with expanded offerings and more connections to downtown merchants.

We are grateful for the support of the City to make this event the success it is. The Festival is, at its heart, a celebration of what is great about Noblesville.
It demonstrates and celebrates our collective commitment to the arts.
It highlights our historic downtown core.
It shows off the City to visitors and makes it easy for them to spend money at downtown merchants.
And, perhaps most importantly, it builds community with and for our neighbors.
It brings together the best of Noblesville's past and its future.

Our 2023 event drove big impact this year:

- We **doubled attendance** from 4,000 to 8,000 people.
- **Visitors loved their experience** in downtown Noblesville, giving Front Porch Music Festival a 'Net Promoter Score' in the **top 1%** of any company or organization in any industry.
- We invested over **$10,000 directly to local musicians** and artists.
- We drove an estimated **$195,000 in direct, local economic impact**.

We have bigger and better plans for the year ahead. We respectfully request a $10,000 commitment from the City in order to grow the impact of this event.

As requested, below you will find our budget and a brief description of expanded plans for the coming year, with an emphasis on increasing spending at downtown merchants.

1. Summary budget

Expenses

Budget	Item
$13,500	Musician stipends, including expanded offerings on the day of the event
$3,500	Logistics (portolets, supplies, misc.)

$3,250	Signage
$2,500	Marketing and promotion
$3,100	Design
$1,000	Printing
$2,500	Tshirts, posters, prizes for contest
$3,000	Spring Event with Downtown Merchants
$32,350	Total

Fundraising targets

Donor / Donor Type	Amount	Percentage of total
City	$10,000	31%
Other grants	$4,000	12%
Corporate sponsorships	$15,350	47%
On site sales - FPMF merch	$3,000	9%
	$32,350	100%

2. Expanded offerings 2024

In addition to our signature event, we are exploring two significant additions - both focused on driving more business to downtown merchants. One thing we learned from this year's market research is that out of region visitors, especially those from nearby zip codes, are attracted to the historic square and more willing than locals to visit multiple businesses. Both of these events are targeted at driving 'in region tourism' visits while encouraging more Noblesville residents to spend time and money in downtown businesses.

Morning event the day of the Festival

Imagine musicians playing throughout the downtown business district, on the morning of the event - in alleys, on sidewalks, and in some cases inside businesses. As musicians 'busk', shoppers visit downtown businesses and enter to win a Front Porch Music Festival prize drawing.

We have already begun conversations with several downtown businesses to design a program that encourages guests to visit.

Spring live music weekend on the Square

We would coordinate a series of live music performances in every participating bar or restaurant, venues like the Lacy Arts Building and/or Preservation Hall, and in multiple alleys. We would develop a digital marketing campaign to drive additional participation. 100% of revenues would go to downtown businesses.

Again, several downtown businesses have affirmed this concept and encouraged us to continue developing it. We will do so over the next few months.

We would be delighted to answer any questions. We are grateful for the City's support and are hopeful for an expanded partnership.

All of which is approved by the Board of Public Works and Safety of the City of Noblesville this 23rd day of January 2024.

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

CERTIFICATE OF LIABILITY INSURANCE

DATE (MM/DD/YYYY): 3/23/2023

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

StateFarm

Ryan Barclay State Farm
50 Airport Pkwy, Suite R
Greenwood IN 46143

CONTACT NAME: Lori Rollins
PHONE (A/C, No, Ext): 317-215-0060 FAX (A/C, No): 317-865-7272
E-MAIL ADDRESS: lori.j.rollins.tpem@statefarm.com

INSURER(S) AFFORDING COVERAGE	NAIC #
INSURER A :	25143
INSURER B :	
INSURER C :	
INSURER D :	
INSURER E :	
INSURER F :	

INSURED

Carpenter Properties Inc & Carpenter Company
8901 S Meridian
Indianapolis, IN 46217-5030

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	
	X COMMERCIAL GENERAL LIABILITY X CLAIMS-MADE ☐ OCCUR GEN'L AGGREGATE LIMIT APPLIES PER: ☐ POLICY ☐ PRO-JECT ☐ LOC OTHER:	Y		94-AP-C244-5	08/19/2023	08/19/2024	EACH OCCURRENCE	$ 1,000,000
							DAMAGE TO RENTED PREMISES (Ea occurrence)	$
							MED EXP (Any one person)	$ 5,000
							PERSONAL & ADV INJURY	$
							GENERAL AGGREGATE	$ 2,000,000
							PRODUCTS - COMP/OP AGG	$ 2,000,000
								$
	AUTOMOBILE LIABILITY ☐ ANY AUTO ☐ OWNED AUTOS ONLY ☐ SCHEDULED AUTOS ☐ HIRED AUTOS ONLY ☐ NON-OWNED AUTOS ONLY						COMBINED SINGLE LIMIT (Ea accident)	$
							BODILY INJURY (Per person)	$
							BODILY INJURY (Per accident)	$
							PROPERTY DAMAGE (Per accident)	$
								$
	☐ UMBRELLA LIAB ☐ OCCUR ☐ EXCESS LIAB ☐ CLAIMS-MADE ☐ DED ☐ RETENTION $						EACH OCCURRENCE	$
							AGGREGATE	$
								$
	WORKERS COMPENSATION AND EMPLOYERS' LIABILITY ANY PROPRIETOR/PARTNER/EXECUTIVE OFFICER/MEMBER EXCLUDED? Y / N ☐ (Mandatory in NH) If yes, describe under DESCRIPTION OF OPERATIONS below	N / A					☐ 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)

Front Porch Music Festival
August 26, 2023

CERTIFICATE HOLDER

City of Noblesville
16 South 10th St.
Noblesville, IN 46060

CANCELLATION

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

Lori Rollins

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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): Front Porch Music Festival

By (Written Signature): _____

(Printed Name): Ken Bubp

(Title): Co-Founder

Important - Notary Signature and Seal Required in the Space Below

STATE OF Indiana

COUNTY OF Hamilton SS:

NOTARY PUBLIC SEAL INDIANA

Subscribed and sworn to before me this 27 day of December, 2023.

My commission expires: 5-31-2021 (Signed) _____

a. Residing in Hamilton County, State of Indiana