

RESOLUTION NO. 32204

A RESOLUTION AUTHORIZING THE MAYOR OR HIS DESIGNEE TO ENTER INTO A MEMORANDUM OF UNDERSTANDING WITH THE BESSIE SMITH CULTURAL CENTER, IN SUBSTANTIALLY THE FORM ATTACHED, REGARDING A FEASIBILITY STUDY AND THE POTENTIAL DEVELOPMENT OF THE PROPERTY.

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BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF CHATTANOOGA, TENNESSEE, That it is hereby authorizing the Mayor or his designee to enter into a Memorandum of Understanding with the Bessie Smith Cultural Center, in substantially the form attached, regarding a feasibility study and the potential development of the property.

ADOPTED: August 27, 2024

/mem

## MEMORANDUM OF UNDERSTANDING

This Memorandum of Understanding (“**Memorandum**”) is entered into on this \_\_\_\_ day of \_\_\_\_\_, 2024 (the “**Effective Date**”) by and between the **CITY OF CHATTANOOGA, TENNESSEE**, a municipal corporation (the “**City**”), **HAMILTON COUNTY, TENNESSEE** (the “**County**”) and the **BESSIE SMITH CULTURAL CENTER (AFRICAN AMERICAN MUSEUM & PERFORMANCE HALL)**, a Tennessee nonprofit corporation (“**BSCC**”) (collectively the “**Parties**,” or individually a “**Party**”) to memorialize their understanding pertaining to the lease and development of certain real property in Chattanooga, Tennessee described below.

### RECITALS

WHEREAS, the City and the County jointly own that certain building known as the Heritage Center located at 200 East Martin Luther King, Jr. Boulevard, Chattanooga, Tennessee 37403 (the “**Property**”).

WHEREAS, the City, the County and the Chattanooga African American Museum and Research Center (BSCC’s former name) entered into that certain Lease dated July 20, 2009, as amended by that certain First Amendment to Lease Agreement dated January 6, 2015, that certain Second Amendment to Lease Agreement dated July 19, 2019, and that certain Agreement to Exercise Option to Renew dated July 19, 2019 (collectively, as amended, the “**Lease**”) for the Property.

WHEREAS, the Lease expires on July 1, 2024.

WHEREAS, on December 8, 2022, the Parties discussed a potential ground lease (the “**Ground Lease**”) of the Property to BSCC. During this meeting, BSCC was instructed by the City to contact potential investors and formulate a development plan for the Property with BSCC’s board of directors.

WHEREAS, on January 10, 2023, BSCC met with River Street Architecture (“**River Street**”) regarding the potential development of the Property (the “**Project**”). River Street prepared a proposal for the Project and informed BSCC that a memorandum of understanding from the City and the County pertaining to the Project is required for River Street to proceed with conducting a feasibility study for the Project.

WHEREAS, on January 31, 2023, the Parties discussed executing a memorandum of understanding pertaining to the Ground Lease and the Project.

WHEREAS, once the feasibility study for the Project has been completed by River Street, the Parties shall consider a fifty (50) year Ground Lease.

NOW, THEREFORE, the Parties have determined that it is in the interest of the Parties to memorialize their mutual understandings regarding the Ground Lease and the Project in this

Memorandum. The Parties agree that the following accurately sets forth their current understanding and agreements pertaining to the Property.

1. The Parties acknowledge that the Recitals are true and correct and incorporate the Recitals into this Memorandum.
2. The Property, as more particularly described on *Exhibit A* attached hereto and made a part hereof, is identified as Tax Map No. 145D-Y-008 and 145D-Y-010. The Property includes one building containing approximately 17,116 square feet.
3. To facilitate the Project, following the Effective Date, BSCC will secure all necessary funding and agreements to complete the development, financing, construction and operation of the Project, including a feasibility study, which shall include, but not be limited to, affordable housing, retail and commercial components. River Street may reach out to the Urban Design Center for input on the feasibility study. After BSCC secures such financing and agreements and the Parties have analyzed the feasibility study and confirmed their agreement to move forward with the Project, the Parties will execute the Ground Lease in a form reasonably acceptable to the parties. If the Ground Lease is entered into, the City and the County shall authorize BSCC to record a memorandum of ground lease evidencing the material terms of the Ground Lease. The Ground Lease shall set forth the terms upon which BSCC shall develop the Project and for which BSCC shall own the improvements at the Property. Notwithstanding the foregoing, if the Project contains an affordable housing component, the City and the County shall be solely responsible for the development and associated costs of developing such component of the Project. The Ground Lease shall not be subordinate to any other lease, mortgage, or security instrument. The Ground Lease shall permit BSCC to encumber all or any portion of its interest in the Ground Lease or in the Property, including the leasehold estate and all appurtenant rights thereto by mortgage or other security interest. Notwithstanding the foregoing, in no event shall BSCC's lender(s) have the ability to foreclose on the City and the County's fee interest if BSCC defaults on its loan(s).
4. As of the Effective Date, BSCC, its employees, agents, accountants, architects, attorneys, engineers, contractors and other representatives shall have the right to access the Property to inspect, measure, appraise, test, and make surveys of the Property, including, but not limited to, all activities necessary to evaluate the feasibility of the Project. BSCC agrees to restore any area on the Property disturbed in the course of BSCC's testing to the conditions existing prior to any tests conducted by BSCC. BSCC agrees to indemnify, defend and hold the City and the County harmless from any actual costs, damages, liabilities, claims and other expenses of every nature whatsoever, including without limitation reasonable attorneys' fees, arising out of property damage or bodily injury caused by such inspections and investigations by BSCC or its agents or independent contractors.
5. The City and the County shall not enter into any new contracts or agreements relating to the Property that cannot be terminated by the City and the County while this Memorandum is in effect, including, without limitation, any mortgages or other instruments that

encumber the Property, without BSCC's prior written consent, which shall not be unreasonably withheld, conditioned, or delayed.

6. The Parties agree and acknowledge that the agreements referred to herein are intended to be relied upon by the Parties in their pursuit of the Ground Lease and the Project. In the event any Party hereto defaults in any of its obligations hereunder, the non-defaulting Party shall have the right to recover from the defaulting Party its actual out-of-pocket costs spent evaluating and pursuing the transactions described herein. The City and the County may not market, solicit offers, or otherwise present the Property for sale or lease while this Memorandum is in effect.
7. The term of this Memorandum and the obligations hereunder shall commence on the Effective Date and shall continue for a period of two (2) years (the "**Term**"). At the expiration of the Term, this Memorandum shall automatically terminate without any further action required of the Parties.
8. This Memorandum is intended to guide the Parties in the execution of the Ground Lease and operation of the Project and shall not operate to amend or incorporate the terms of any of the agreements referred to herein.
9. This Memorandum may be executed in any number of counterparts, all of which taken together shall constitute one and the same instrument, and any of the parties hereto may execute this Memorandum by signing any such counterpart. Signatures received by email or facsimile shall be deemed to be original signatures.
10. This Memorandum shall inure to the benefit of the Parties and their respective successors and assigns. Any amendment of this Memorandum shall be null and void unless it is in writing and signed by all Parties. This Memorandum shall be governed and construed under the laws of the State of Tennessee without regard to conflicts of law rules.
11. This Memorandum constitutes the Parties' entire agreement with respect to matters referenced in this Memorandum and shall supersede any prior or contemporaneous agreement as to such subject matter. If any provision or portion thereof is found to be illegal, invalid or unenforceable, then such offending provision or portion shall be severed from this Memorandum and the remainder shall remain in full force and effect.
12. Each Party to this Memorandum shall be solely responsible for any and all actions, suits, damages, liability, or other proceedings brought against it as a result of the alleged negligence, misconduct, error, or omission of any of its officers, agents or employees. No Party is obligated to indemnify any other Party or to hold any other Party harmless from costs or expenses incurred as a result of such claims. Nothing in this Memorandum shall be construed as an indemnification by any Party for liabilities of a party or third persons for property or any other loss, damage, death, or personal injury arising out of the performance of this Memorandum. Any liabilities or claims for property or other loss, damage, death, or personal injury by a Party or its agents, employees, contractors, or

assigns or by third persons arising out of and during the performance of this Memorandum shall be determined according to applicable law.

*[The remainder of the page is intentionally left blank; signature page follows.]*

IN WITNESS WHEREOF, the Parties have executed this Memorandum as of the day and year first above written.

**CITY OF CHATTANOOGA, TENNESSEE**

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

**HAMILTON COUNTY, TENNESSEE**

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

**BESSIE SMITH CULTURAL CENTER**

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

**Exhibit A**  
**Legal Description of the Property**

**Tax Map No. 145D-Y-008:**

BEGINNING at a point at the intersection of the Southern right-of-way of East Ninth Street (Martin Luther King Boulevard) with the Eastern right-of-way of Lindsay Street; thence Southerly along said Eastern right-of-way of Lindsay Street, 250 feet, more or less, to a point marking the Northwest corner of property conveyed by Times Printing Company to the City of Chattanooga, by deed recorded at Book 3169, page 988, in the Register's Office of Hamilton County, Tennessee; thence South 65 degrees 38 minutes East, along the severance line of the above described tract, 396 feet to a point 4 feet West of the Western right-of-way of Houston Street; thence North 24 degrees 7 minutes East, along another severance line of the above described tract, 250 feet to the Southern right-of-way line of East Ninth Street (Martin Luther King Boulevard); thence Westerly along the Southern right-of-way of East Ninth Street (Martin Luther King Boulevard), 41 feet to a point at the corner of the property now or formerly owned by William E. Kinsey, by deed recorded in Book 1887, page 568, in the said Register's Office; thence Southerly, along the Eastern boundary line of said Kinsey property, 100 feet to a point; thence Westerly, along the Southern boundary of said Kinsey property, 25 feet to a point on the Eastern boundary of property now or formerly owned by Richard Huskey, by deed recorded in Book 2180, page 406, in the said Register's Office; thence Southerly, along the Eastern boundary of said Huskey property, 14 feet to a point; thence Westerly, along the Southern boundary of said Huskey property, 68 feet to a point; thence Northerly, along the Western boundary of said Huskey property, 114 feet to a point on said Southern right-of-way of East Ninth Street (Martin Luther King Boulevard); thence Westerly, along said Southern right-of-way of East Ninth Street (Martin Luther King Boulevard), 262 feet, more or less, to the point of beginning.

For prior title, see Warranty Deed recorded in Book GI 5420, Page 41, in the said Register's Office.

**Tax Map No. 145D-Y-010:**

All that tract or parcel of land lying and being in the City of Chattanooga, Hamilton County, Tennessee, being more particularly described as follows: Beginning at the intersection of the Northern right of way line of 10th Street and the Eastern right of way line of Lindsay Street; thence North 24 degrees 07 minutes East along said Eastern right of way 120.0 feet to a point; thence South 65 degrees 38 minutes East along a severance line 396.0 feet to a point 4 feet West of the Western right of way of Houston Street; thence North 24 degrees 07 minutes East 250 feet to the Southern right of way line of Martin Luther King Boulevard; thence South 65 degrees 38 minutes East along said Southern right of way 4 feet to the Western right of way line of Houston Street; thence South 24 degrees 07 minutes West along said Western right of way 370 feet to the Northern right of way line of 10th Street; thence North 65 degrees 38 minutes West along said Northern right of way 400 feet to the point of beginning.

For prior title, see Warranty Deed recorded in Book 3169, Page 988, in the said Register's Office.