



ST. CHARLES  
SINCE 1834

## AGENDA ITEM EXECUTIVE SUMMARY

Title: Recommendation to Consider An Agreement Pertaining to Improvements at the Arcada Theatre

Presenter: Brian Townsend

*Please check appropriate box:*

<input type="checkbox"/>	Government Operations	<input type="checkbox"/>	Government Services
<input type="checkbox"/>	Planning & Development	<input checked="" type="checkbox"/>	City Council (3/7/11)
<input type="checkbox"/>	Public Hearing	<input type="checkbox"/>	

Estimated Cost:	\$65,000	Budgeted:	<input type="checkbox"/> YES	<input type="checkbox"/> NO	<input checked="" type="checkbox"/> XX
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If NO, please explain how item will be funded:

Funds will be reallocated from the General Fund reserves of the City to cover the cost of the grant. Proceeds from the sale of tickets will be used to reimburse the General Fund, as they are received.

**Executive Summary:**

Since the 2/28/11 Government Services Committee meeting, the agreement between the parties has been modified to reflect the building owner's (Scott Price/Arcada BLDG LLC) insistence that he be party to the agreement. As a result, the building owner has been added to the insurance and indemnification provisions. In addition, the owner is being given the ability to review/inspect the work before the final payment/reimbursement is made to HD Ready.

In addition, Exhibit B has been separated into two (2) exhibits – Exhibit B-1 (items to remain with the building upon termination) and B-2 (items to be removed/not remain with the building upon termination).

There are no other substantive changes to the agreement and provisions pertaining to cost, tickets, and scope of work remain the same.

**Attachments:** *(please list)*

Resolution Authorizing the Mayor and Clerk to Execute the Agreement Agreement

**Recommendation / Suggested Action** *(briefly explain):*

Recommend that the City Council approve a Resolution authorizing the Mayor & Clerk to execute the Arcada Theatre Agreement on behalf of the City of St. Charles.

*For office use only:*

*Agenda Item Number:* ITB2

**City of St. Charles, Illinois  
Resolution No. 2011-**

**A Resolution Authorizing the Mayor and City Clerk of the  
City of St. Charles to Execute a Certain Agreement  
Arcada Theatre – 105 E Main Street**

**Presented & Passed by the  
City Council on \_\_\_\_\_**

NOW THEREFORE, be it resolved by the City Council of the City of St. Charles, Kane and DuPage Counties, Illinois, that the Mayor and City Clerk be and the same are hereby authorized to execute that certain Agreement in substantially the form attached hereto and incorporated herein, by and on behalf of the City of St. Charles.

PRESENTED to the City Council of the City of St. Charles, Illinois this \_\_\_ day of March 2011.

PASSED by the City Council of the City of St. Charles, Illinois, this \_\_\_ day of March 2011.

APPROVED by the Mayor of the City of St. Charles, Illinois, this \_\_\_ day of March 2011.

\_\_\_\_\_  
Donald P. DeWitte, Mayor

ATEST:

\_\_\_\_\_  
Nancy Garrison, City Clerk

COUNCIL VOTE:

- Ayes:
- Nays:
- Absent:
- Abstain:

## AGREEMENT

This Agreement ("Agreement") is entered into this \_\_\_\_\_ day of March, 2011, by and among the City of St. Charles, Kane and DuPage Counties, Illinois, an Illinois municipal corporation (the "City"), Onesti Entertainment Corporation, an Illinois corporation ("Onesti"), Arcada BLDG LLC, an Illinois limited liability company (the "Owner") and HD Ready, LLC, an Illinois limited liability company ("HD"). The City, Onesti, the Owner and HD are sometimes hereinafter referred to individually as "Party" and collectively as the "Parties".

### W I T N E S S E T H:

**WHEREAS**, the City of St. Charles is a home rule unit of government and a unit of local government within the meaning of the Constitution of the State of Illinois and, pursuant to Section 10 of Article VII thereof, is authorized to contract or otherwise associate with individuals and corporations in any manner not prohibited by law or by ordinance; and

**WHEREAS**, Onesti leases certain real property owned by the Owner and located at 105 E. Main Street, St. Charles, Illinois, legally described on Exhibit "A" attached hereto and made a part hereof, and known as the Arcada Theatre Building (the "Theatre"); and

**WHEREAS**, HD desires to plan, organize and produce certain entertainment performances at the Theatre, as more specifically described herein (the "Performances"); and

**WHEREAS**, the Theatre is a historic building and is in need of various interior infrastructure improvements, as more specifically described herein, in order to enhance the building's technical capabilities so as to allow for expanded entertainment performances (e.g. production of high-definition quality programming), including the Performances; and

**WHEREAS**, Onesti and HD have requested financial assistance from the City in order to design, engineer, construct and install such improvements; and

**WHEREAS**, providing such financial assistance (i) will contribute to the generation of economic activity and an increase in various types of tax revenue for the City (such as sales taxes, hotel taxes and alcoholic beverage taxes), and (ii) is consistent with the goals of the City's 2014 Strategic Plan, including (x) promoting business development and redevelopment, (y) promoting and encouraging an array of arts and culture, in order to contribute an eclectic and lively feel to the downtown area and (z) planning proactively and progressively with community and business partners for a continuing dynamic downtown area; and

**WHEREAS**, the Parties mutually desire to set forth their respective rights and responsibilities with respect to the proposed project.

**NOW, THEREFORE**, in consideration of the mutual promises and covenants hereinafter set forth, and other good and valuable consideration, receipt of which is hereby acknowledged, it is agreed by and between the Parties hereto as follows:

**Section 1. Recitals Incorporated.** The foregoing recitals of fact are incorporated in to this Agreement as though fully set forth in this Section 1.

**Section 2. Definitions.**

"Control Documents" – means any and all federal, state and local laws, statutes, ordinances, rules, regulations and executive orders applicable to the Project as the same may, from time to time, be in force and effect, as well as all of the terms and conditions of this Agreement and the Plans.

"Force Majeure" - means acts of God, strikes, lockouts or other industrial disturbances, acts of the public enemy, orders of any kind of the government of the United States of America, or of any state thereof, or any civil or military authority, insurrections, riots, epidemics, landslides, lighting, earthquakes, fires, hurricanes, tornados, storms or unusually adverse weather conditions, floods, washouts, droughts, arrests, restraining of government and people, civil disturbances, explosions, nuclear accidents, condemnation by the State of Illinois or any political subdivision thereof, wars, or failure of utilities. Force Majeure shall not include economic hardship.

"Performances" – means music concerts produced by HD and performed at the Theatre during the time period set forth in Section 9 hereof by three (3) high-quality musicians or musical groups such as, but not limited to, Foreigner, Richard Marx, Chris Isaak and Josh Groban (each hereinafter referred to as an "Act").

"Plans" – means the lists of improvements included in the Project collectively attached hereto and incorporated herein as Exhibits "B-1" and "B-2".

"Project" - means the design, engineering, construction and installation of the improvements, all in substantial compliance with the Plans.

"Project Costs" – means all costs incurred in connection with the design, engineering, construction and installation of the Project, as set forth in Exhibit "C".

**Section 3. Representations of the City.** The City covenants, represents and warrants as follows:

- (a) The City has the authority to execute and deliver and perform the terms and obligations of this Agreement.
- (b) The execution and delivery of this Agreement by the City, and the performance of this Agreement by the City, have been duly authorized by the corporate authorities of the City, and this Agreement is binding on the City and enforceable against the City in accordance with its terms.
- (c) Neither the execution of this Agreement nor the consummation of the transactions contemplated hereby will (i) result in a breach of, default under, or acceleration of, any agreement to which the City is a party or by which the City is bound, or (ii) violate any restriction, court order or agreement to which the City is subject.

**Section 4. Representations of the Owner.** The Owner covenants, represents and warrants as follows:

- (a) It hereby consents to the construction and installation of the Project and to the use of the Theatre for the Performances. The Owner shall execute any permit applications, consents or such other additional documents as are necessary to consummate the transactions contemplated by this Agreement.
- (b) It hereby agrees to permit the City's authorized agents and employees to, during normal business hours, inspect the Project as it is being constructed.
- (c) It has the authority to execute and deliver and perform the terms and obligations of this Agreement.

- (d) The execution and delivery of this Agreement by the Owner, and the performance of this Agreement by the Owner, have been duly authorized by the Owner, and this Agreement is binding on the Owner and enforceable against the Owner in accordance with its terms.
- (e) No consent of any creditor, investor, judicial or administrative body, governmental authority or other party to such execution, delivery and performance is required.
- (f) Neither the execution of this Agreement nor the consummation of the transactions contemplated hereby will (a) result in a breach of, default under, or acceleration of, any agreement to which the Owner is a party or by which the Owner is bound; or (b) violate any restriction, court order or agreement to which the Owner is subject.

**Section 5. Representations of Onesti.** Onesti covenants, represents and warrants as follows:

- (a) It hereby consents to the construction and installation of the Project and the use of the Theatre for the Performances. Onesti shall execute any permit applications, consents or such other additional documents as are necessary to consummate the transactions contemplated by this Agreement.
- (b) It shall act in good faith and work cooperatively with HD regarding the planning, scheduling and execution of the Performances.
- (c) It hereby agrees to permit the City's authorized agents and employees to, during normal business hours, inspect the Project as it is being constructed.
- (d) Upon completion of the Project, and for as long as it operates the Theatre, it will continue to maintain the Project in good repair and in compliance with all applicable laws, including, but not limited to, all codes and ordinances of the City.
- (e) It has the authority to execute and deliver and perform the terms and obligations of this Agreement.
- (f) The execution and delivery of this Agreement by Onesti, and the performance of this Agreement by Onesti, have been duly authorized by Onesti, and this Agreement is binding on Onesti and enforceable against Onesti in accordance with its terms.
- (g) No consent of any creditor, investor, judicial or administrative body, governmental authority or other Party (other than the Owner, whose consent is given in Section 4 hereof) to such execution, delivery and performance is required.

- (h) Neither the execution of this Agreement nor the consummation of the transactions contemplated hereby will (i) result in a breach of, default under, or acceleration of, any agreement to which Onesti is a party or by which Onesti is bound; or (ii) violate any restriction, court order or agreement to which Onesti is subject.

**Section 6. Representations of HD.** HD covenants, represents and warrants as follows:

- (a) Insofar as it is concerned, it hereby agrees to permit the City's authorized agents and employees to, during normal business hours, inspect the Project as it is being constructed.
- (b) It has the authority to execute and deliver and perform its duties and obligations under this Agreement.
- (c) The execution and delivery of this Agreement by HD, and the performance of this Agreement by HD, have been duly authorized by HD, and this Agreement is binding on HD and enforceable against HD in accordance with its terms.
- (d) No consent of any creditor, investor, judicial or administrative body, governmental authority or other party to such execution, delivery and performance is required.
- (e) No material litigation or proceeding of any nature is now pending or, to its knowledge, threatened, that would restrain or enjoin the execution of this Agreement or the consummation of the transactions contemplated herein, including, but not limited to, planning, organizing and/or producing the Performances.
- (f) Neither the execution of this Agreement nor the consummation of the transactions contemplated hereby will (i) result in a breach of, default under, or acceleration of, any agreement to which HD is a party or by which HD is bound; or (ii) violate any restriction, court order or agreement to which HD is subject.
- (g) It shall proceed with due diligence to oversee the design, engineering, construction and installation of the Project.
- (h) It shall cause the Project to be constructed in conformance with, and, in connection therewith, shall be governed by, adhere to and obey, the Control Documents.
- (i) It shall require its contractors or subcontractors to apply for all required government permits, certificates, consents (including, without limitation, appropriate environmental clearances and approvals) necessary to permit the construction and installation of the Project.

- (j) Upon the receipt of the payments specified in Section 8, it shall pay promptly all Project Costs arising or incurred from and after the date hereof, subject to the terms and conditions set forth herein. It shall not allow any liens to be filed against the Theatre for any of the work contemplated hereunder.
- (k) It shall act in good faith and work cooperatively with Onesti regarding the planning, scheduling and execution of the Performances.
- (l) Subject to the cooperation of the Parties, it shall obtain all consents, licenses, and other approvals required by law to produce the Performances and to allow the City to advertise and sell tickets to the Performances.

**Section 7. Construction of the Project.** HD shall require the Project to be constructed in accordance with the Control Documents, together with such building permits as may be approved by the City. Subject to Force Majeure events, HD shall cause the complete construction of the Project no later than March 19, 2011. HD shall enter into all necessary agreements and contracts for the design, engineering, construction and installation of the Project.

The improvements listed on Exhibit B-1 and constructed as part of the Project shall be considered permanent fixtures of the Theatre and shall remain there upon termination of this Agreement and shall be the property of the Owner. Improvements listed on Exhibit B-2 shall not be considered permanent improvements (herein collectively the "Special Items"). The Special Items may be removed from the Theatre for safe-keeping and storage, and shall be utilized in as determined by HD; provided, however, that for so long as this Agreement is in effect, the Special Items shall be used only in connection with the Performances. The Special Items (other than the generators, which are rental equipment) shall be the property of the City, and upon the termination of this Agreement the Special Items (other than the generators) shall be provided to the City to be disposed of in its sole and absolute discretion and its sole cost and expense. Notwithstanding the foregoing, it shall be the responsibility of HD and Onesti, during the term of

this Agreement, to adequately safeguard the Special Items and to insure such items against theft, damage, destruction and other casualty.

**Section 8. Financing the Project.** HD's best estimate of the total Project Costs is attached hereto and incorporated herein as Exhibit "C". The City agrees to pay for the Project Costs, up to a maximum of \$65,000. HD shall be responsible for any Project Costs that exceed \$65,000.

To establish a right of payment from the City, HD shall submit to the City a written statement setting forth the amount requested and the specific costs for which payment is sought. The request shall be accompanied by lien waivers from HD and all subcontractors for all improvements listed on Exhibit B-1. In addition, the request shall be accompanied by such bills, contracts, invoices or other evidence as the City reasonably shall require evidencing the right of HD to payment under this Agreement. The City reserves the right to examine all records relating to all costs paid and/or incurred by HD and to obtain from such consultants or experts as the City reasonably determines to be appropriate such other information as is reasonably necessary for the City to evaluate compliance by HD with the terms hereof. Any such consultants or experts retained by the City shall be retained at the City's expense.

The appropriate City employee or department shall have three (3) working days after receipt of any request for payment from HD to recommend approval or disapproval of such request to the corporate authorities of the City and, if disapproved, to provide HD in writing and in detail, with an explanation as to why such City employee or department is not prepared to recommend such payment. Payment to HD shall be made within three (3) working days of approval thereof by the corporate authorities. HD shall directly apply any and all payments received from the City hereunder to payment of Project Costs without reduction or offset.

The City shall not unreasonably withhold its approval of a given request for payment; provided, however, that the City may withhold its approval of a given request for payment if, and for so long as, HD is in default of this Agreement.

Prior to making application for the final payment for the improvements listed on Exhibit B-1, HD and Onesti shall notify the Owner of such application and permit the Owner to inspect the improvements. The City shall not approve such final payment until the Owner has notified the City in writing that the Owner is satisfied with the condition of the improvements.

The City shall provide copies of all applications for payment and supporting documentation submitted to the City and the documentation of the City's payments for the improvements listed on Exhibit B-1 to the Owner prior to City approval for final payment for the improvements listed on Exhibit B-1. Further, HD and/or Onesti shall provide copies of all applicable warranties for all improvements to the City (for the Special Items) and the Owner (for the improvements listed on Exhibit B-1).

**Section 9. Performances.** HD agrees to plan, organize and produce the Performances, which shall be known as the Spotlight Concert Series. The Performances shall take place between March 1, 2011 and October 1, 2011. In addition to the concerts, the tickets sold by the City, as described below, shall include a "meet and greet" session with the artist and a viewing of the stage rehearsal. The Parties understand and agree that HD shall have the right to sell tickets and retain the proceeds therefrom. Notwithstanding the foregoing, prior to selling any tickets, HD shall consult with the City with respect to such sale, the pricing of the tickets and the potential impact of such sale on the City's sale of tickets.

**Section 10. Tickets for the City.** HD shall provide at least 400 tickets for each Act (regardless of the number of Performances by each Act) to the City. The City shall be permitted

to sell the tickets to the general public at a price not to exceed \$200 per ticket. At its option, the City may utilize a third party to provide ticketing services. If there is more than one Performance by an Act, the City, in its sole discretion, shall determine how many tickets it will sell for each Performance. HD and Onesti shall ensure that the City's tickets are for best in the house seating for each Performance for which the City sells tickets, as compared to tickets that may be sold or given away by any other party.

The City shall retain the proceeds of the ticket sales as reimbursement for monies paid to HD under this Agreement. To the extent that sale proceeds exceed the amount paid out by the City hereunder, such excess proceeds shall be used as follows: (a) to reduce the amount due to the City from Arcada Theatre Community Legacy Program ("Arcada") under the terms of the Façade Rehabilitation Agreement dated April 19, 2010 by and among the City, Arcada and other parties, and (b) to the extent excess proceeds remain after such reduction, such excess proceeds shall be deposited into an account established by the City to further the purposes of the Downtown Revitalization and Modernization of the Arts (DRAMA) program.

To the extent the City sells any of the improvements that become its property pursuant to this Agreement, the proceeds of such sale shall be deposited into the City's general corporate fund and shall not be subject to the provisions of the preceding paragraph.

**Section 11. Advertising Limitations.** The City shall be permitted to advertise the Performances and sale of the tickets via any electronic or on-line methods, including, but not limited to social media such as Facebook and Twitter. Newspaper and print advertising by the City is prohibited.

HD shall provide approved photos, logos, insignias or other information requested by the City to promote or advertise the Performances; provided, however, that approval of HD shall be required for all advertising that includes the artist's name and/or likeness.

**Section 12. Breach and Remedies.** Upon the breach of this Agreement, any of the Parties hereto may, exclusively in the Circuit Court of the Sixteenth Judicial Circuit, Kane County, Illinois, by action or proceeding at law or in equity, secure termination of this Agreement, secure the specific performance of the covenants and agreements herein contained or recover damages for the failure of performance of any of the above. Notwithstanding the foregoing, no Party shall be liable for consequential damages.

In addition, should HD default in its obligation to produce the Performances or construct and install the Project within the time frame provided herein, it shall repay all amounts paid to it by the City hereunder. If said amount is not repaid in full, the City shall have the right to take possession of all of the Special Items (other than rental equipment).

In the event any Party shall institute legal action because of breach of any agreement or obligation contained in this Agreement, on the part of any Party to be kept or performed, the prevailing Party shall be entitled to recover all damages (except consequential damages), costs and expenses, including reasonable attorneys' fees and expenses incurred therefore. The rights and remedies of the Parties are cumulative, and the exercise by either Party of one or more of such rights or remedies shall not preclude the exercise of it, at the same time or different times, of any rights or remedies for the same default or for any other default by the other Party, as provided herein.

Subject to provisions for notice and cure as provided herein, failure or delay by any Party to perform any term or provisions of this Agreement shall constitute a default under this

Agreement. The Party claiming such default shall give written notice of the alleged default to the Party alleged to be in default, specifying the default(s) complained of by the injured Party. Failure or delay in giving such notice shall not constitute a waiver of any default, nor shall it change the time of default.

The Party alleged to be in default shall, within thirty (30) days of receipt of the notice of default, cure, correct or remedy such alleged event of default. The injured Party may not institute proceedings against the Party in default until the end of the cure period. If such default is cured within such cure period, the default shall be deemed cured.

Any failure or delay by any Party in asserting any of its rights or remedies as to any default or alleged default shall not operate as a waiver of any such default or of any rights or remedies it may have as a result of such default, nor shall it deprive any such Party of its rights to institute and maintain any actions or proceedings which it may have hereunder.

**Section 13. Indemnification.** To the fullest extent permitted by law, HD and Onesti each hereby agree to indemnify, defend and hold harmless the City, and its officials, agents and employees, and the Owner, and its members, agents and employees, from and against all injuries, loss, damages, claims, patent claims, trademark infringement claims, suits, liabilities, judgments, costs and expenses (including without limitation, attorney's fees and court costs) which may in anywise accrue against the City, and its officials, agents and employees, or the Owner and its members, agents and employees, arising in whole or in part or in consequence of their performance under this Agreement, including, but not limited to, the failure of HD or any of its contractors to pay contractors, subcontractors or materialmen in connection with the Project.

**Section 14. Insurance and Destruction of Project.** Prior to HD commencing construction of the Project, HD shall provide, or cause its contractors or subcontractors to

provide, the City with evidence of all policies of insurance which the City may reasonably require in forms and coverages, issued by companies and in amounts reasonably satisfactory to the City, including without limitation, comprehensive liability, workmen's compensation and builder's risk insurance coverage.

HD and/or Onesti shall furnish or cause to be furnished to the City duplicate originals, if requested, or appropriate certificates of insurance evidencing that there shall be in effect on a per project limit basis, comprehensive bodily injury and property damage liability insurance in the amount of at least Two Million and no/100ths Dollars (\$2,000,000) combined single limit, per occurrence.

Prior and subsequent to the completion of the Project, the Owner shall maintain insurance on the Theatre in an amount equal to the full replacement value thereof, such that should any portion thereof be damaged or destroyed by fire or other insurable casualty, sufficient funds shall be available to permit the reconstruction thereof. Onesti and/or HD shall maintain insurance on the interior of the Theatre in an amount to provide sufficient coverage in the event of any damage or destruction to the Project. Should the Project be damaged or destroyed either prior to or subsequent to completion, any and all insurance proceeds identified and allocated for the replacement of the Project shall be used to either rebuild the Project or repay to the City all moneys paid to HD from the City under the provisions of this Agreement and for no other purpose.

**Section 15. Prevailing Wage.** This Agreement calls for the construction of a “public work” within the meaning of the Illinois Prevailing Wage Act, 820 ILCS 130/.01 *et seq.* (the “Act”). The Act requires contractors and subcontractors to pay laborers, workers and mechanics performing services on public works projects no less than the “prevailing rate of wages” (hourly

cash wages plus fringe benefits) in the county where the work is performed. For information regarding current prevailing wage rates, please refer to the Illinois Department of Labor's website at: <http://www.state.il.us/agency/idol/rates/rates.HTM>. All contractors and subcontractors rendering services under this contract must comply with all requirements of the Act, including but not limited to, all wage, notice and record keeping duties.

**Section 16. HD's Books and Records.** HD agrees that the City shall have the right and authority to review and audit, from time to time, HD's books and records relating to this Agreement, including, but not limited to, it's obligations regarding the Project set forth herein.

**Section 17. Miscellaneous Provisions.**

**A. Time of the Essence.** Time is of the essence of this Agreement.

**B. Mutual Assistance.** The Parties agree to execute all documents, including permit applications, and to take all appropriate or necessary measures as required by this Agreement, the statutes of the State of Illinois or of any other governmental agencies as may be applicable thereto in order to properly effectuate the implementation, purpose, intent and spirit of this Agreement and the completion of the Project in accordance with the Control Documents.

**C. Disclaimer.** Nothing contained in this Agreement, nor any act of the City, shall be deemed or construed by any of the Parties, or by third persons, to create any relationship of third party beneficiary, or of principal or agent, or of limited or general partnership, or of joint venture, or of any association or relationship involving the City or the other Parties.

**D. Paragraph Headings.** The paragraph headings and references are for the convenience of the Parties and are not intended to limit, vary, define or expand the terms and provisions contained in this Agreement and shall not be used to interpret or construe the terms and provisions of this Agreement.

**E. Counterparts.** This Agreement may be executed in several counterparts, each of which shall be an original and all of which shall constitute but one and the same Agreement.

**F. Notices.** Notices herein required shall be in writing and shall be served upon the Parties, either personally or mailed by certified or registered mail, return receipt requested:

If to the City:	City of St. Charles 2 East Main Street St. Charles, Illinois 60174 Attn: City Administrator
with a copy to:	Gorski & Good, LLP 211 South Wheaton Avenue Suite 305 Wheaton, Illinois 60187 Attn: Ms. Robin Jones
If to Onesti:	Onesti Entertainment Corporation 105 E. Main Street St. Charles, Illinois 60174 Attn: Mr. Ron Onesti
If to the Owner:	Arcada BLDG LLC Mr. Scott Price 5464 174 <sup>th</sup> PL SE Bellevue, Washington 98006
If to HD:	Mr. Joe Thomas 505 Tyler Road St. Charles, Illinois 60174

A Party's address may be changed from time to time by such Party giving notice as provided above to the other Parties noted above.

**G. Integration.** This Agreement together with all Exhibits and attachments thereto, constitute the entire understanding and agreement of the Parties. This Agreement integrates all of the terms and conditions mentioned herein or incidental hereto, and supersedes all negotiations or previous agreements between the Parties with respect to all or any part of the

subject matter hereof. All waivers of the provisions of this Agreement must be in writing and signed by the appropriate authorities of the Parties.

**H. Amendment.** This Agreement, and any Exhibit attached hereto, may be amended only by written instrument properly executed by the Parties or their successors in interest. Execution of any such amendment by the City shall first have been authorized by an ordinance or resolution duly adopted by the corporate authorities of the City.

**I. Successors and Assignees.** The terms and conditions of this Agreement are to apply to and bind and inure to the benefit of the Parties and their successors and assignees.

**J. Severability.** If any provision of this Agreement, or any paragraph, sentence, clause, phrase or word, or the application thereof, in any circumstances, is held invalid, the remainder of the Agreement shall be construed as if such invalid part were never included herein and the Agreement shall be and remain valid and enforceable to the fullest extent permitted by law.

**K. Governing Law.** The laws of the State of Illinois shall govern the interpretation and enforcement of this Agreement.

**L. Recordation of Agreement.** The Parties agree to execute and deliver the original of this Agreement in proper form for recording in the office of the Recorder of Deeds, Kane County, Illinois.

**M. Term.** This Agreement shall be in full force and effect from and after the execution hereof by the last Party to execute the same and shall remain in full force and effect, unless earlier terminated pursuant to any of the terms or provisions of this Agreement, until two (2) years from the effective date hereof or until all of the duties and responsibilities of the Parties shall have been performed, whichever is earlier. This Agreement may be extended by mutual written agreement of the Parties.

IN WITNESS WHEREOF, the Parties hereto have hereunto set their hands and the City its seal on the day and year first above written.

CITY OF ST. CHARLES, an Illinois municipal corporation,

By: \_\_\_\_\_  
Mayor

ATTEST:

\_\_\_\_\_  
City Clerk

ONESTI ENTERTAINMENT CORPORATION,  
an Illinois corporation,

By: \_\_\_\_\_  
\_\_\_\_\_

ATTEST:

\_\_\_\_\_  
\_\_\_\_\_

HD READY, LLC, an Illinois limited liability company,

By: \_\_\_\_\_  
\_\_\_\_\_

[ADDITIONAL SIGNATURE PAGE FOLLOWS]

ARCADA BLDG, LLC, an Illinois limited liability company,

By: \_\_\_\_\_  
Scott Price

STATE OF WASHINGTON            )  
  ) SS.  
COUNTY OF KING                )

I, the undersigned, a Notary Public in and for said County, in the State aforesaid, DO HEREBY CERTIFY that Scott Price, Managing Member of Arcada BLDG LLC, personally known to me to be the same person whose name is subscribed to the foregoing instrument as such Managing Member, appeared before me this day in person and acknowledged that he signed and delivered said instrument as his own free and voluntary act, and as the free and voluntary act of said company, for the uses and purposes therein set forth.

Given under my hand and Notarial Seal this \_\_\_\_ day of \_\_\_\_\_, 2011.

\_\_\_\_\_  
Notary Public

STATE OF ILLINOIS     )  
  ) SS.  
COUNTY OF KANE        )

I, the undersigned, a Notary Public in and for said County, in the State aforesaid, DO HEREBY CERTIFY that Donald P. DeWitte, Mayor of the City of St. Charles, and Nancy Garrison, City Clerk of said City, personally known to me to be the same persons whose names are subscribed to the foregoing instrument as such Mayor and City Clerk, respectively appeared before me this day in person and acknowledged that they signed and delivered the said instrument, as their own free and voluntary act and as the free and voluntary act of said City, for the uses and purposes therein set forth; and the said City Clerk then and there acknowledged that she, as custodian of the corporate seal of said City, did affix the corporate seal of said City to said instrument, as her own free and voluntary act and as the free and voluntary act of said City, for the uses and purposes therein set forth.

GIVEN under my hand and Notarial Seal this \_\_\_\_ day of \_\_\_\_\_, 2011.

\_\_\_\_\_  
Notary Public

STATE OF ILLINOIS                    )  
  ) SS.  
COUNTY OF KANE                    )

I, the undersigned, a Notary Public in and for said County, in the State aforesaid, DO HEREBY CERTIFY that \_\_\_\_\_, \_\_\_\_\_ of Onesti Entertainment Corporation, and \_\_\_\_\_, \_\_\_\_\_ of said corporation, personally known to me to be the same persons whose names are subscribed to the foregoing instrument as such \_\_\_\_\_, appeared before me this day in person and acknowledged that they signed and delivered said instrument as their own free and voluntary act, and as the free and voluntary act of said corporation, for the uses and purposes therein set forth.

Given under my hand and Notarial Seal this \_\_\_\_ day of \_\_\_\_\_, 2011.

\_\_\_\_\_  
Notary Public

STATE OF ILLINOIS                    )  
  ) SS.  
COUNTY OF KANE                    )

I, the undersigned, a Notary Public in and for said County, in the State aforesaid, DO HEREBY CERTIFY that \_\_\_\_\_, \_\_\_\_\_ of HD Ready, LLC, personally known to me to be the same person whose name is subscribed to the foregoing instrument as such \_\_\_\_\_, appeared before me this day in person and acknowledged that he/she signed and delivered said instrument as his/her own free and voluntary act, and as the free and voluntary act of said company, for the uses and purposes therein set forth.

Given under my hand and Notarial Seal this \_\_\_\_ day of \_\_\_\_\_, 2011.

\_\_\_\_\_  
Notary Public

EXHIBIT "A"

LEGAL DESCRIPTION

EXHIBIT "B-1"

PROJECT IMPROVEMENTS NOT CONSTITUTING SPECIAL ITEMS

EXHIBIT "B-2"

PROJECT IMPROVEMENTS CONSTITUTING SPECIAL ITEMS

EXHIBIT "C"

LIST OF PROJECT COSTS

Rigging equipment/installation	\$32,000
Staging equipment/installation	\$14,400
Rental of generators/electrical equipment	\$9,000
Sandblasting of brick	\$3,000
Flooring	\$3,000
Relocation of ventilation duct	\$1,250
Contingency	\$2,350
Total:	\$65,000