

DOWNTOWN DETROIT PARTNERSHIP STREET LIGHTING SERVICE AGREEMENT

This Agreement (the "Agreement") is made this ___ day of _____, 2018, by and between **DETROIT DOWNTOWN, INC.**, a Michigan nonprofit corporation ("DDI"), whose address is One Campus Martius, Suite 380, Detroit, MI 48226 and **INSERT COMPANY NAME** ("Contractor"), whose address is _____, _____. DDI and Contractor are sometimes collectively referred to in this Agreement as the "Parties".

The circumstances underlying the execution of this Agreement are as follows:

- A. DDI is an affiliate of Downtown Detroit Partnership, Inc. ("DDP").
- B. DDI also provides certain services to accomplish the purposes of the Downtown Detroit Business Improvement Zone, a Michigan public body corporate ("BIZ").
- C. On or about _____, 2018, DDI issued a Request for Proposals (the "RFP"), pursuant to which DDI requested proposals for street landscape maintenance (as more particularly described in the RFP, the "Program").
- D. Contractor submitted a Proposal dated _____, 2018 (the "Proposal") pursuant to the RFP, and subject to the terms of this Agreement, DDI has selected Contractor to perform the services and provide the materials and equipment called for in the Program.
- E. The RFP and the Proposal, together with any revisions, exceptions or additions contained in Section 1.2 below, are collectively referred to as the "RFP Documents" and are hereby incorporated herein by reference.
- F. The Parties desire to set forth the terms and provisions which will govern Contractor's work in the Program.

NOW, THEREFORE, the Parties agree as follows:

I. SCOPE OF SERVICES

1.1 Description of Specific Responsibilities. Contractor shall perform for DDI the services and provide the materials and equipment (the "Services") described in **Appendix A** attached hereto and incorporated herein by reference. Any changes to the scope of Services must be in writing and signed by both Parties.

1.2 Mode and Manner of Providing Services. Contractor shall provide all Services in a professional and diligent manner and in accordance with **Appendix A**, subject to the following revisions, exceptions or _____ additions _____ to _____ the _____ RFP _____ Documents:
None _____

_____.

II. PAYMENT

2.1 Compensation. As compensation for the Services, DDI will pay Contractor the amounts as set forth in Exhibit A to **Appendix C**, each attached hereto and incorporated herein by reference. Such amounts shall be payable within thirty (30) days following DDI's receipt of a written invoice stating the Services provided by Contractor. If a time for payment for a particular element of the Services is not specified in Exhibit A, an invoice for such payment shall be submitted to DDI on the first day of the month following completion of such element of the Services.

2.2 Waivers of Lien. At DDI's request and as a prerequisite to payment, Contractor shall submit a sworn statement and construction lien waivers to DDI covering the Services for which Contractor is seeking payment. Final waivers of lien shall be delivered to DDI as a prerequisite to final payment to the Contractor.

III. TERM AND TERMINATION

3.1 Term. This Agreement shall be effective as of _____, 2018 (the "Effective Date"). This Agreement shall be in effect from the Effective Date through and including _____, 2019, unless terminated prior to that date in accordance with Section 3.2 below.

3.2 Termination.

3.2.1 Either Party may terminate this Agreement should the other Party fail substantially to perform in accordance with the terms of this Agreement and such failure shall continue without a cure for a period of seven (7) days after written notice from the Party initiating the termination.

3.2.2 DDI may terminate this Agreement (in whole or in part) upon not less than seven (7) days' written notice to Contractor for DDI's convenience and without cause.

3.2.3 In the event of termination or non-renewal of this Agreement, Contractor, as its sole and exclusive remedy, shall be compensated for Services actually performed prior to termination or non-renewal.

IV. INSURANCE AND INDEMNIFICATION

4.1 Insurance. Contractor shall, at its own expense, beginning no later than the Effective Date, carry and maintain the insurance policies and coverages specified in **Appendix B** to the RFP. Such policies and coverages shall conform and be maintained in accordance with the terms set forth in **Appendix B** to the RFP (with Contractor being the "Vendor" and DDI being the "Client" in such Appendix).

4.2 Indemnification. Contractor shall indemnify, defend, and hold harmless DDI, DDP, the BIZ and other parties as set forth in **Appendix B** to the RFP (with Contractor being the "Vendor" and DDI being the "Client" in such Appendix).

V. GENERAL PROVISIONS

5.1 Independent Contractor Status. Within the meaning of all applicable federal, state and municipal laws, rules and regulations, the relationship of Contractor to DDI shall be deemed to be that of independent contractor and nothing herein shall be construed as creating any employment relationship. Contractor acknowledges that neither Contractor nor any of its employees are

employees of DDI. Further, it is expressly understood and agreed by the Parties that nothing contained in this Agreement shall be construed to create a joint venture, partnership, association, or other affiliation or like relationship between the Parties, it being specifically agreed that their relationship was and shall remain that of independent parties to a contractual relationship as set forth in this Agreement. In no event shall either Party be liable for the debts or obligations of the other of them except as otherwise specifically provided in this Agreement. The terms of this Section 5.1 shall survive the termination of this Agreement.

5.2 Taxes and Withholding. As an independent contractor, Contractor shall be solely responsible for complying with all federal, state and municipal laws, rules and regulations, including, without limitation, reporting the compensation described in this Section II to applicable taxing authorities, withholding of federal income taxes, state income taxes, FICA and FUTA taxes and other payroll deductions, and all premiums or payments made for workmen's compensation coverage, overtime, unemployment benefits or any other payments required by law to be made by Contractor. Contractor shall timely file all applicable state, federal or local tax returns.

5.3 Governing Law; Venue. This Agreement is deemed to be made under and shall be construed according to the laws of the State of Michigan without regard to provisions relating to conflict of laws. Any action involving this Agreement shall be brought and maintained solely in Wayne County circuit court or a Federal court sitting in Detroit, Michigan.

5.4 Assignment. Neither Party shall assign this Agreement or any part thereof without the written consent of the other, such consent not to be unreasonably withheld, conditioned or delayed; provided, however, that DDI may collaterally assign this Agreement to an affiliate, including DDP, without first obtaining such consent.

5.5 Waiver. A waiver by either Party of any term or condition of this Agreement in any instance shall not be deemed or construed to be a waiver of such term or condition for the future, or of any subsequent breach thereof. All rights, remedies, undertakings or obligations contained in this Agreement shall be cumulative and none of them shall be in limitation of any other right, remedy, undertaking or obligation of either Party.

5.6 Severability. If and to the extent that any court of competent jurisdiction holds any provision or part thereof of this Agreement to be invalid or unenforceable in a final non-appealable order, such holding shall in no way affect the validity of the remainder of this Agreement.

5.7 Entire Agreement; Amendments. This Agreement, including the RFP Documents, exhibits and appendixes incorporated herein, contains the entire agreement between Contractor and DDI with respect to the transactions contemplated herein, and supersedes all previous written and oral negotiations, commitments and understandings. Its terms shall not be altered or otherwise amended except pursuant to an instrument in writing signed by each of the Parties and making specific reference to this Agreement.

5.8 Compliance with Law. Contractor shall comply with all applicable local, state and federal laws, and with all applicable court, government agency and other orders, that govern Contractor's performance of the Services.

5.9 Notices. All notices, requests, demands and other communications hereunder shall be in writing and shall be deemed to have been duly given when hand delivered, mailed by first class mail or

registered overnight courier to the addresses listed on the first page of this Agreement.

[Signature page follows]

IN WITNESS WHEREOF, the Parties have caused this Service Agreement to be executed on the dates indicated below.

DDI:

DOWNTOWN DETROIT, INC.,
a Michigan nonprofit corporation

By: _____

Name: _____

Its: _____

CONTRACTOR:

INSERT COMPANY NAME

By: _____

Name: _____

Its: _____

Appendix A

Exhibit 1

Scope of Services

The Vendor shall provide the following Services (the “Services”), which shall include, but may not be limited to, the tasks more fully described below (each, a “Task,” and collectively, the “Tasks”). Although the Vendor is expected to provide pricing and deliver the Services as outlined below, the Vendor may suggest alternative appropriate and additional Tasks if they would more effectively achieve the Program Outcomes identified in Part 1. If an alternative approach is accepted, the Scope of Services will be amended to reflect such changes.

This Scope of Services details the tasks anticipated in the Downtown Detroit Landscape Project description in the Downtown Detroit Business Improvement Zone Plan approved by Downtown Detroit property owners on April 15, 2014 (collectively the “Tasks”).

Under the Michigan law providing for the formation of business improvement zones (Chapter 2 of 1961 PA 120, as amended, the “**BIZ Act**”), the Downtown Detroit Business Improvement Zone (the “**Zone**”) is authorized to engage in activities for the benefit of owners of assessable property to enhance the business environment within the Zone’s area. Each of these activities under the law is a “**Project**.” Projects of the Zone supplement projects of and services provided by the city of Detroit.

The plan approved for the Zone (the “**Zone Plan**”) includes a description of Projects planned during the Zone’s initial 10-year period, including the scope, nature, and duration of the Projects and the sources of financing for the Projects. Under the BIZ Act, the Zone’s board of directors is responsible for establishing administrative procedures relating to the implementation of the Zone Plan and management of the Zone and the Zone Plan.

Among the Projects authorized by the Zone Plan is the provision to provide landscape services within public rights-of-way including, but not limited to, mowing, fertilization, annual flower planting, mulching, edging, vegetation control, pruning and trimming, integrated pest management, dormant oil spray/summer foliage spray, start-up/shut down and inspection of irrigation systems, supplemental freeway ramp mowing, weed abatement, holiday lighting, electrical and irrigation repairs, and capital improvements.

Deployment criteria

Tasks

4. Other

Photos, reports and records. At DDP's request, the Contractor shall take photos during its normal course of business. Photo subjects may include Ambassadors delivering services, photos of sites within the BIZ Area or within Contract Areas, or deploying Services during events. Such photos may be used for public awareness or marketing purposes and shall become the property of DDP which shall have sole discretion over its use.

Attendance and materials production for meetings of DDP Board of Directors, BIZ Board of Directors, and other organizations. If requested by DDP, the Contractor shall attend meetings of the DDP Board of Directors, the BIZ Board of Directors or other organizations. At the direction of DDP, the Contractor shall also prepare landscape service performance related materials in anticipation of these meetings. Such materials may be required to inform board members about challenges in deploying services so that solutions can be identified collaboratively.

Annual audit participation. If requested by DDP, the Vendor shall prepare materials and data related to annual audits prepared by DDP, DDI and the BIZ.

Appendix B: Insurance and Indemnification

Insurance.

The Vendor and all Approved Subcontractors shall carry and maintain, during the Term, the following insurance issued by insurance companies authorized to provide insurance and in good standing in the State of Michigan:

<u>TYPE</u>	<u>AMOUNT</u>
A. Workers' Compensation	Statutory
Employers' Liability	\$500,000/\$500,000/\$500,000
B. Commercial General (public) Liability Insurance	
a. General Aggregate limit	\$2,000,000
b. Products & Completed Operations limit	\$2,000,000
c. Personal & Advertising Injury limit	\$1,000,000
d. Each Occurrence limit	\$1,000,000
<i>The above insurance to include coverage for the following: Premises/Operations, Independent Contractors, Products/Completed Operations, Personal Injury and Contractual liability</i>	
C. Broad form property damage, to include fire legal liability	\$50,000 per occurrence
D. Business Automobile Liability	
a. Owned/leased vehicles	Combined Single Limit (CSL) of \$1,000,000
b. Non-owned vehicles	
c. Hired vehicles	
E. Umbrella Coverage	\$5,000,000

Vendor shall provide Certificates of Insurance evidencing such insurance and proof of payment of insurance premiums. Vendor must notify the Client within 24 hours of any cancellations of such insurance policies. In addition, the Vendor's insurance companies must have an A.M. Best rating of "A" or better.

The Vendor shall cause the Client, the BIZ, DDP and such other parties as the Client may reasonable request to be named as additional insured parties under all insurance policies purchased and maintained by the Vendor and/or Approved Subcontractors under this Contract.

The Vendor waives all of its rights against the Client for damages covered by property insurance. The Vendor shall obtain a similar waiver from all members of the Vendor Team and the Approved Subcontractors and all other parties engaged by the Vendor. The Vendor waives all of its rights of recovery against the Client because of deductible clauses in, or inadequacy of limits in, any policies of insurance that are in any way related to the

work and that are secured and maintained by the Vendor. The Vendor waives any of its rights of recovery against the Client because of a lack of insurance coverage. The Vendor shall obtain similar waivers from all members of the Vendor Team and the Approved Subcontractors and all other parties engaged by the Vendor.

Not less than thirty (30) days prior to the expiration or renewal date of any insurance required under this Contract, the Vendor shall furnish to the Client updated replacement certificates of insurance evidencing the continuation of all coverage.

Indemnification.

The Vendor shall indemnify, defend and hold the Client, the BIZ and DDP and their respective officers, directors, trustees, members, employees and agents (collectively, the “**Client Group**”) harmless from and against any and all liability, claims, damages, losses and expenses, including without limitation, attorneys’ fees and costs whether or not attributable to bodily injury, sickness, disease or death, or injury to or destruction of tangible property:

- (i) to the extent Vendor’s actions are not in conformity with the reasonable directions of Client;
- (ii) to the extent Vendor takes an action on behalf of Client which is negligent, constitutes willful misconduct, is not in good faith, or is otherwise unreasonable under the circumstances;
- (iii) arising out of the Vendor’s breach of this Contract; or
- (iv) arising directly out of the negligence or willful misconduct of the Vendor, the Vendor Team or the Vendor Affiliates. The term “**Vendor Affiliates**” shall include, but is not limited to, Vendor’s officers, directors, shareholders, employees, contractors, subcontractors and agents. The terms of this Section shall survive the expiration or earlier termination of this Contract.

In claims against any person or entity indemnified under this Section by an employee of the Vendor, any Approved Subcontractor, or anyone directly or indirectly employed by them or anyone for whose acts they may be liable, the indemnification obligation under 8.1 shall not be limited by a limitation on amount or type of damages, compensation or benefits payable by or for the Vendor or an Approved Subcontractor under workers’ compensation acts, disability benefit acts or other employee benefit acts.

The Vendor shall promptly advise the Client in writing of any action, administrative or legal proceeding or investigation as to which this indemnification may apply, and the Vendor, at the Vendor’s sole cost and expense, shall assume on behalf of the parties indemnified hereunder and conduct with due diligence and good faith the defense thereof; provided, that the Client shall have the right to be represented therein by advisory counsel of its own selection and at its own expense; and provided further, that if the defendants in any such action include both the Vendor and any member of the Client Group and the Client Group shall have reasonably concluded that there may be legal defenses available to it which are different from or additional to, or inconsistent with, those available to the Vendor, the Client Group shall have the right to select separate counsel to participate in the defense of such action on the Client Group’s behalf and at the Vendor’s expense. To the extent that the Vendor fails to fully perform in accordance with this Section, the Client, at its option, and without relieving the Vendor of its obligations hereunder, may so perform, but all costs and expenses so incurred by the Client in that event shall be reimbursed by the Vendor to the Client.

Appendix C: Sample Fee and Cost Schedules

Exhibit A Vendor Cost Schedule

[See attached]