

PURCHASE OF SERVICES AGREEMENT FOR
ECONOMIC DEVELOPMENT SERVICES

This Service Agreement (Agreement) it made and entered into this 1st day of July, 2022 by and between the City of Elgin, an Illinois municipal corporation (City), and the Downtown Neighborhood Association of Elgin, an Illinois not-for-profit corporation (DNA), establishes the terms and conditions under which DNA agrees to perform the economic development and marketing services for the City.

Whereas, the City wishes to enhance the economic development of the City of Elgin's downtown and its individual residents and businesses; and

Whereas, DNA is capable of providing expertise in the matter of marketing and economic development within Elgin's downtown; and

Whereas, DNA is ready, willing and able to provide particular attention and activities for the marketing and economic development of the Elgin's downtown;

WHEREAS, the City Council of the City of Elgin has adopted Ordinance Numbers S6-99, S1- 02, S2-02, S3-02, and S4-02 proposing, approving and creating the Elgin Central Area Tax Increment Financing Redevelopment Plan and Project ("Central Area TIF Plan") pursuant to the Tax Increment Allocation Redevelopment Act ("TIF Act") (65 ILCS 5/11-74.4-1 *et seq.*); and

WHEREAS, Elgin's downtown, central business district is located within the boundaries of the Elgin Central Area Tax Increment Financing Redevelopment Project Area ("Central Area TIF District"); and

WHEREAS, the Central Area TIF Plan includes among its core purposes, the restoration of the downtown central business district as the historic heart and social gathering place of the community; and

WHEREAS, the Central Area TIF Plan encourages and promotes mixed uses in the downtown, for improving and enhancing its image as a safe and attractive place to live, work and recreate; and

WHEREAS, the Central Area TIF Plan is designed to enhance the economic base of the historically significant downtown central business district by facilitating new development and the rehabilitation of existing buildings, and by increasing the sales tax base from new and existing retail development; and

WHEREAS, the Central Area TIF Plan is also designed to increase in construction, business, retail, commercial and other full-time employment opportunities for existing and future City residents; and

WHEREAS, the TIF Act defines and the Central Area TIF Plan identifies redevelopment

project costs as including the sum total of all reasonable or necessary costs incurred, estimated to be incurred, or incidental to the Central Area TIF Plan, including the implementation and administration of the Central Area TIF Plan; and

WHEREAS, the Central Area TIF Plan's estimated redevelopment project costs include costs for planning and other administrative fees and costs for building rehabilitation and facade improvements; and

WHEREAS, the City Council of the City of Elgin has determined DNA will further the aforementioned goals and objectives of the Elgin Central Area TIF Plan; and

Now, therefore, in consideration of the mutual promises by DNA and the City to each other, the parties agree as follows:

SECTION I

Terms and Conditions

1. **Services:** DNA will perform the services specified in Section II and provide the equipment, staff and materials to achieve them. In performing the Services under this Agreement, DNA is an independent contractor and not an employee of the City, and DNA will not hold itself out as any such employee. DNA has no authority to make any agreement or commitment on behalf of the City.
2. **Term:** The term of this Agreement shall commence on July 1, 2022 and end on June 30, 2025.
3. **Compensation:** In consideration of the rendering of services by DNA under this Agreement, the City agrees to pay DNA \$165,000 annually, \$41,250 for each quarter year of service for services provided by DNA for the term this Agreement remains in effect. Payments shall be made by the City to DNA quarterly on quarterly dates as approved by the City. Invoices shall be in a form as approved by the City.

A three percent cost-of-living increase shall be applied in the second and third years of this Agreement so that the annual compensation to DNA from the City shall be \$169,950 for the second year of this Agreement and \$175,049 for the third year of this Agreement.

In addition to the foregoing compensation to be paid by the City to DNA for services rendered during the term of this Agreement, the City also agrees to pay to DNA the additional compensation of \$41,250 for services previously provided by DNA to the City pursuant to the extended term of the prior service agreement between the City and DNA beginning April 1, 2022, through July 1, 2022. Such payment by the City to DNA shall be made within thirty (30) days of the execution of this Agreement.

4. **Reporting:** DNA will provide the City with the following reports on a periodic basis, in addition to such other reports as may be requested by the City:
 - a. **Director's Reports:** Written reports describing the activities performed by DNA under the Scope of Services section of this Agreement shall be provided to the city manager or his designee with each quarterly request for payment as set forth in Section I, paragraph 3 of this Agreement. Reports should include consistent key performance indicators determined by the DNA. The DNA's executive director and the city manager may amend the format of this report from time to time as may be mutually agreed by the parties.
 - b. **Annual Work Plan:** An annual work plan outlining marketing campaigns, special events, programs and services and strategic initiatives shall be provided to the city manager or his designee in January of each calendar year of this Agreement.
 - c. **Audit:** DNA shall provide a copy to the City of the auditor's opinion from its most recent audit prepared in accordance with applicable law.
5. **Notice of Claim:** If DNA wishes to make a claim for additional compensation as a result of action taken by the City, DNA shall give written notice of its claim within 15 days after occurrence of such action. No claim for additional compensation shall be valid unless so made. Any changes in DNA's fee shall be valid only to the extent that such changes are included in writing signed by the City and DNA and approved by way of written amendment to this Agreement.
6. **Indemnification:** To the fullest extent permitted by law, DNA agrees to and shall indemnify, defend and hold harmless the City, its officers, employees, agents, boards and commissions from and against any and all claims, suits, judgments, costs, attorney's fees, damages or other relief, including but not limited to workers compensation claims, in any way resulting from or arising out of negligent actions or omissions of the DNA in connection herewith, including negligence or omissions of employees or agents of DNA arising out of the performance of this Agreement. In the event of any action against the City, its officers, employees, agents, boards or commissions, covered by the foregoing duty to indemnify, defend and hold harmless such action shall be defended by legal counsel of the City's choosing. The provisions of this paragraph shall survive any expiration, completion and/or termination of this Agreement.
7. **No Personal Liability:** No official, director, officer, agent or employee of the City shall be charged personally or held contractually liable under any term or provision of this Agreement or because of their execution, approval or attempted execution of this Agreement.
8. **Insurance:** DNA shall provide, pay for and maintain in effect, during the term of this Agreement the following types and amounts of insurance:
 - a. **Comprehensive Liability:** A policy of comprehensive general liability insurance with limits of at least \$1,000,000 aggregate for bodily injury and \$1,000,000 aggregate for

property damage. DNA shall deliver to the City a certificate of insurance naming the City as additional insured. The policy shall not be modified or terminated without thirty (30) days prior written notice to the City. The certificate of insurance that shall include the obligation assumed by the DNA under paragraph 6 of Section I of this Agreement entitled "Indemnification" shall be provided. This insurance shall apply as primary insurance with respect to any other insurance or self-insurance programs afforded to the City. There shall be no endorsement or modification of this insurance to make it excess over other available insurance, alternatively, if the insurance states that it is excess or prorated, it shall be endorsed to be primary.

- b. Comprehensive Automobile Liability: Comprehensive Automobile Liability Insurance covering all owned, non-owned and hired motor vehicles with limits of not less than \$1,000,000 per occurrence for damage to property.
 - c. Combined Single Limit Policy: The requirements for insurance coverage for the general liability and auto exposures may be met with a combined single limit of \$1,000,000 per occurrence subject to a \$1,000,000 aggregate.
 - d. Professional Liability: DNA shall carry, when applicable, professional Liability Insurance covering claims resulting from error, omissions or negligent acts with a combined single limit of not less than \$1,000,000 per occurrence. A certificate of insurance shall be submitted to the City as evidence of insurance protection. The policy shall not be modified or terminated without thirty (30) days prior written notice to the City.
9. **Nondiscrimination:** In all hiring or employment made possible or resulting from this Agreement, there shall be no discrimination against any employee or applicant for employment because of sex, age, race, color, creed, national origin, marital status, of the presence of any sensory, mental or physical handicap, unless based upon a bona fide occupational qualification, and this requirement shall apply to, but not be limited to, the following: employment advertising, layoff or termination, rates of pay or other forms of compensation and selection for training, including apprenticeship.

No person shall be denied or subjected to discrimination in receipt of the benefit of any services or activities made possible by or resulting from this Agreement on the grounds of sex, race, color, creed, national origin, age except minimum age and retirement provisions, marital status or the presence of any sensory, mental or physical handicap. Any violation of this provision shall be considered a violation of a material provision of this Agreement and shall be grounds for cancellation, termination or suspension, in whole or in part, of the Agreement by the City.

10. **Assignment and Successors:** This Agreement and each and every portion thereof shall be binding upon the successors and the assigns of the parties hereto; provided, however, that no assignment shall be made without the prior written consent of the City which consent may be withheld at the sole discretion of the City.
11. **Delegations and Subcontractors:** Any assignment, delegation or subcontracting shall be

subject to all the terms, conditions and other provisions of this Agreement and DNA shall remain liable to the City with respect to each and every item, condition and other provision hereof to the same extent that the DNA would have been obligated if it had done the work itself and no assignment, delegation or subcontract had been made. Any proposed subcontractor shall require the City's advanced written approval.

12. **Cooperation with Other Economic Development-Related Boards and Agencies:** DNA shall cooperate with any other economic development-related boards and agencies under the City's employ, including but not limited to the Elgin Area Chamber of Commerce and Elgin Area Convention and Visitor's Bureau, or with any economic development-related board, agency or professional performing work associated with this Agreement.
13. **No Co-Partnership or Agency:** This Agreement shall not be construed so as to create a partnership, joint venture, employment or other agency relationship between the parties hereto.
14. **Severability:** The parties intend and agreed that, if any paragraph, sub-paragraph, phrase, clause or other provision of this Agreement, or any portion thereof, shall be held to be void or otherwise unenforceable, all other portions of this Agreement shall remain in full force and effect.
15. **Headings:** The headings of the several paragraphs of this Agreement are inserted only as a matter of convenience and for reference and in no way are they intended to define, limit or describe the scope of intent of any provision of this Agreement, nor shall they be construed to affect in any manner the terms and provisions hereof or the interpretation or construction thereof.
16. **Modification or Amendment:** This Agreement and its attachments constitutes the entire Agreement of the parties on the subject matter hereof and may not be changed, modified, discharged or extended except by written amendment duly executed by the parties. Each party agrees that no representations or warranties shall be binding upon the other party unless expressed in writing herein or in a duly executed amendment hereof, or change or order as herein provided.
17. **Notices:** The City and DNA shall each appoint a contact for all written communications between the parties. For the City, all notices shall be sent to: City Manager, City of Elgin, 150 Dexter Court, Elgin, Illinois, 60120. For DNA, all notices shall be sent to: Executive Director, Downtown Neighborhood Association of Elgin, 31 S. Grove Avenue, Suite 100, Elgin, IL, 60120. The parties shall apprise each other of changes in contact information as may occur from time to time. All notices, reports and documents sent pursuant to this Agreement shall be mailed to the above addresses by First Class Mail, postage prepaid.
18. **Confidentiality:** It is recognized that the handling of prospect information requires access to confidential information. As such, DNA shall maintain all prospect information in confidence. DNA shall provide confidential prospect information solely to the mayor and city manager as representatives of the City, who to the extent permitted by law shall attempt

to maintain such information in strict confidence. All other prospect information shall be so coded, organized or structured to prevent the identity of the prospect from being publicly known until such time that the prospect may deem it appropriate.

19. **Funding Opportunities:** It is recognized that DNA may wish to access certain grant funding pools whereby the City must act as a “pass through” or coordinating agency. In such cases, the city manager shall be authorized by the city council to execute, administer and manage such grants on behalf of the City and DNA, provided that such grant does not necessitate an appropriation of funds by the municipality.
20. **Applicable Law:** This Agreement shall be deemed to have been made in, and shall be construed in accordance with the laws of the State of Illinois. Venue for the resolution of any disputes or the enforcement of any rights pursuant to this Agreement shall be in the Circuit Court of Kane County, Illinois.
21. **Cooperation with Other Consultants:** DNA shall cooperate with any other consultants in the City's employ or any work associated with this Agreement.
22. **Sexual Harassment Policies:** As a condition of this Agreement, DNA shall have written sexual harassment policies that include, at a minimum, the following information:
 - a. The illegality of sexual harassment;
 - b. The definition of sexual harassment under state law;
 - c. A description of sexual harassment, utilizing examples;
 - d. The vendor's internal complaint process including penalties;
 - e. The legal recourse, investigative and complaint process available through the Illinois Department of Human Rights, and the Illinois Human Rights Commission;
 - f. Directions on how to contact the department and commission;
 - g. Protection against retaliation as provided by Section 6-101 of the Human Rights Act.

A copy of the policies shall be provided by DNA to the Department of Human Rights upon request 775 ILCS 5/2-105.

23. **Compliance with Laws:** Notwithstanding any other provision of this Agreement it is expressly agreed and understood that in connection with the performance of this Agreement that DNA shall comply with all applicable federal, state, City and other requirements of law, including, but not limited to, any applicable requirements regarding prevailing wages, minimum wage, workplace safety and legal status of employees. Without limiting the foregoing, DNA hereby certifies, represents and warrants to the City that all DNA's employees

and/or agents who will be providing products and/or services with respect to this Agreement shall be legal residents of the United States. DNA shall also at its expense secure all permits and licenses, pay all charges and fees and give all notices necessary and incident to the due and lawful prosecution of the work, and/or the products and/or services to be provided for in this Agreement. The City shall have the right to audit any records in the possession or control of the DNA to determine DNA's compliance with the provisions of this section. In the event the City proceeds with such an audit the DNA shall make available to the City the DNA'S relevant records at no cost to the City. DNA shall pay any and all costs associated with any such audit.

24. **Work Products:** All Work Products prepared by DNA pursuant hereto, including, but not limited to, reports, studies, plans and recommendations shall be the property of the City and shall be delivered to the City upon request of the City provided, however, that DNA may retain copies of such Work Products for its records.
25. **Breach of Agreement:** If either party violates or breaches any term of this Agreement, such violation or breach shall be deemed to constitute a default, and the other party has the right to seek administrative, contractual or legal remedies as may be available to the violation or breach; and in addition, if either party by reason of any default fails to within fifteen (15) days after notice thereof by the other party to comply with the conditions of this Agreement, the other party may terminate this Agreement. Notwithstanding the foregoing, or anything else to the contrary in this Agreement, with the sole exception of an action to recover the monies the City has agreed to pay to DNA pursuant to Section 3 hereof, no action shall be commenced by DNA against the City for monetary damages.
26. **Termination:** Notwithstanding any other provision hereof, the City may terminate this Agreement at any time upon thirty (30) days prior written notice to DNA. In the event this Agreement is so terminated, DNA shall be paid for services actually performed, and reimbursable expenses actually incurred prior to termination, except that reimbursement shall not exceed the quarterly amount set forth under paragraph 3 above. Additionally, in the event this Agreement is so terminated, DNA shall immediately cease the expenditure of any funds paid to DNA by the City and shall refund to the City any unearned or unexpended funds.
27. **News Releases:** DNA shall not issue any economic development news releases without prior approval from the City, nor shall DNA make public proposals developed under this Agreement without prior written approval from the City prior to said documentation becoming matters of public record.
28. **Interference with Public Contracting:** DNA certifies hereby that it is not barred from bidding or submitting a proposal for this Agreement as a result of violation of 725 ILCS 5/33E et seq. or any similar state or federal statute regarding bid rigging.
29. **Invoices:** DNA shall submit invoices to the City for the payments to be made by the City to DNA pursuant to Section 3 of this Agreement. Such invoices shall be in a format approved by the City. DNA shall maintain records showing actual time devoted and costs incurred

pursuant to this Agreement. DNA shall permit an authorized representative of the City to inspect and audit all data and records of DNA for work done under this Agreement. DNA shall make these records available at reasonable times during the Agreement term and for one (1) year after termination of this Agreement.

30. **Budget Appropriation:** Notwithstanding anything else to the contrary in this Agreement, the parties understand and agree that the fiscal year of the City is the twelve-month period ending December 31 of each year. The obligations of the City under any contract for any fiscal year are subject to and contingent upon the appropriation of funds sufficient to discharge the obligations that accrue in that fiscal year and authorization to spend such funds for the purposes of the contract. If, for any fiscal year during the term of this Agreement, sufficient funds for the discharge of the City's obligations under the Agreement are not appropriated and authorized, then this Agreement shall terminate as of the last day of the preceding year, or when such appropriated and authorized funds are exhausted, whichever is later, without liability to the City for damages, penalties or other charges or any other relief whatsoever on account of such termination.

SECTION II

DNA Duties, Services and Deliverables

1. DNA shall develop programs and services that are in alignment with the Central Area TIF Plan's purpose of enhancing the economic vitality of the downtown consistent with the Central Area TIF Plan. These include:
 - Executing marketing and public relations programs relating to the downtown consistent with the Central Area TIF Plan
 - Providing ongoing economic development services
 - Providing assistance to businesses located in or seeking to locate in downtown
2. DNA shall work collaboratively with the Elgin Development Group and Elgin Area Convention and Visitors Bureau to strengthen existing businesses, recruit new business and enhance the economic vitality of businesses located within the Central Area TIF District.
3. DNA shall manage constituent communications, media relations and public meetings to facilitate major redevelopment projects as assigned by the city manager.
4. DNA shall execute the downtown component of the Central Area TIF Plan to recruit new businesses to downtown and to retain existing businesses. DNA shall:
 - Serve as first point of contact for all new business inquiries in downtown

- Serve as City's liaison to walk business owners through City permitting and licensing processes and facilitate communication between owners and City on issues affecting their business
 - Track all new business inquiries and recruitment visits
 - Provide regular communications to existing businesses and retention visits by staff and/or volunteers
5. DNA shall market the downtown economic development systems created in accord with the Central Area TIF Plan, recruit qualified applicants for these systems and serve as liaison to walk applicants through the business development process.
 6. DNA shall serve as the City's downtown development agency and shall work closely with City staff to bring downtown development opportunities forward for city council consideration. DNA staff and volunteer resources shall be utilized for this purpose as needed.
 7. DNA shall serve as a downtown neighborhood advocate for issues that affect quality of life and economic vitality in the neighborhood; and, host neighborhood meetings as needed.
 8. DNA shall advocate for the use of appropriate historic preservation practices to maintain downtown's historic heritage and architectural fabric. This includes the research and potential implementation of a National Register District to provide property owners access to state and federal historic tax credits and grants to further the purposes and objectives of the Central Area TIF Plan.
 9. DNA shall manage general communications on issues and policies affecting downtown constituents, such as snow removal services, parking enforcement policies, changes in City ordinances, etc.
 10. DNA shall prepare update reports and make presentations at city council meetings in accordance with this Agreement and as necessary.
 11. DNA shall maintain an up-to-date downtown property and business inventory and database.
 12. DNA shall work to restore the downtown as a historic heart and social gathering place of the community as part of the Central Area TIF Plan. DNA shall work collaboratively with the City to promote DNA events and promotions featuring the downtown central business district that encourage and promote mixed uses in the downtown, improving and enhancing its image as a safe and attractive place to live, work and recreate. Such events and promotions may coincide with scheduled City special events, including but not limited to Nightmare on Chicago Street, seasonal celebrations and other similar functions featuring the downtown. DNA shall maintain a master calendar of downtown events to assist in the planning process.

13. General information (such as contact/address information) on the City's civic campus, as defined by City Hall, the Centre of Elgin, Hemmens Cultural Center, Art Showcase and Police Department shall be included in informational pieces created by DNA. DNA will provide City the opportunity to participate in marketing materials as developed throughout the year at the level of marketing investment required for production from all other participants.
14. DNA shall maintain a physical office presence in the downtown with regular office hours, and shall provide meeting space to downtown constituents, neighborhood groups and other not-for-profit partners during or after office hours when available.
15. DNA shall maintain membership with necessary economic development professional associations that the organization deems appropriate for downtown and further the purposes and goals of the Central Area TIF Plan.
16. DNA shall send its executive director or board representative to local, regional and/or national meetings and conferences to make contacts with brokers, developers and other economic development professionals to present downtown development opportunities in accordance with the purposes and goals of the Central Area TIF Plan.
17. DNA shall manage the City's affiliation with the National Main Street program.

IN WITNESS WHEREOF, the parties hereto have entered into and executed this agreement effective as of the date and year first written above.

CITY OF ELGIN:

DOWNTOWN NEIGHBORHOOD ASSOCIATION OF ELGIN, INC.

By: _____
City Manager

By: Jennifer Fukala
Executive Director

Attest:

City Clerk