

**BELLEVILLE DOWNTOWN DISTRICT
MAINTENANCE AND SERVICE PROVIDER AGREEMENT**

This Maintenance and Service Provider Agreement ("Agreement") is made effective this 6 day of November, 2017, by and between the **CITY OF BELLEVILLE**, a Michigan Home Rule City, whose address is 6 Main Street, Belleville, Michigan 48111 ("City") and the **CITY OF BELLEVILLE DOWNTOWN DEVELOPMENT AUTHORITY**, a public body corporate organized pursuant to Act 197 of the Michigan Public Acts of 1976, as amended, whose address is 6 Main Street, Belleville, Michigan 48111 ("DDA"); collectively referred to herein as the "Parties".

RECITALS

WHEREAS, Public Act 197 of 1975, MCL 125.1651, et seq., as amended, authorizes the DDA to improve land and construct, reconstruct, rehabilitate, restore and preserve, equip, improve, maintain, repair, and operate any building and any necessary or desirable appurtenances to that property, within the Downtown District for; and,

WHEREAS, the Parties entered into an agreement for the provision of such services on March 14, 2005, which was further amended by an agreement dated January 18, 2006; and

WHEREAS, the Parties now wish to enter a successor agreement to terminate and replace that amended agreement through the execution of this Agreement; and

WHEREAS, the DDA desires City provided services as further set forth in this Agreement; and,

WHEREAS, the City wishes to provide the services as further set forth in this Agreement for fair and reasonable consideration; and

WHEREAS, the Parties wish to confirm their agreement in writing, and affirm they are duly authorized by their respective party to enter into and execute this Agreement;

NOW, THEREFORE, in consideration of the mutual agreements and covenants herein contained, and for other good and valuable consideration, the receipt and adequacy of which are hereby acknowledged, it is mutually agreed by and between the Parties as follows:

1. Scope of Services

The City agrees to perform for the DDA the services listed in the Scope of Services section of Exhibit A, attached hereto and incorporated herein.

2. Standards of Performance

In undertaking the performance of this Agreement, the City represents that it is qualified to perform all services agreed upon herein, and warrants that it will do so in compliance with standards as may reasonably be expected from a professional private firm in that field. The City agrees it will at all times during this agreement, insure all individuals and equipment performing the work herein.

3. No Inconsistent Restrictions

The City represents and warrants to the DDA that the City is under no contractual or other restrictions or obligations which are inconsistent with the execution of this Agreement. The City represents and warrants that the execution and performance of this Agreement will not violate any policies or procedures of any other person or entity for which the City performs services concurrently with those performed herein.

4. Compliance with Regulations

The City shall comply with all business conduct, regulatory, and health and safety guidelines established by federal, state, or local law, in the performance of this Agreement.

5. Payment and Invoice Process

The DDA shall pay the amounts set forth in Exhibit B hereto, and pursuant to receipt of a proper invoice provided by the City.

6. No Third Party Contractual Obligation to DDA

In the performance of this Agreement, the City may from time to time enter employment or other contractual relationships for the completion of services. Any and all such relationships shall be those of the City, and shall not confer upon any party a contractual, employment, or any other form of relationship with the DDA; further, the City shall, to the extent permitted by law, indemnify and defend the DDA from any and all such claims. If the City executes an employment of other contractual relationship and said employee or contractual services are less than the amount the City has quoted to the DDA, then the cost to the DDA shall be adjusted accordingly.

7. Additional Work Requests and Payment

The DDA may request additional work to be performed on a one-time, time-to-time, or ongoing basis as an additional service under this Agreement. Such requests shall be made in writing to the City. Thereafter, the City may, at its discretion, provide a written estimate for the requested work. The City may only commence said work after written acceptance of the estimate made by the DDA, for which the DDA will remit payment to the City with receipt of a proper invoice and as set forth in Exhibit B.

8. Audit of Insurance and Electricity Cost Sharing

The Parties agree to conduct an audit of the percentage split of Insurance and Electricity as provided for herein, the nature of which will be agreed upon by the Parties. The Parties agree to equally share costs reasonably incurred in obtaining these audits.

9. Force Majeure

Neither party shall be liable for damages hereunder for any delay or failure to perform pursuant to this Agreement if such delay or failure arose out of causes beyond the respective party's reasonable control and without their fault or negligence.

10. DDA Covenant

The DDA agrees not to recommend any amendment to the DDA Plan that would diminish the DDA's responsibility to render payment to the City for Reimbursements owed pursuant to Section 8 of this Agreement and City Advances owed pursuant to Section 6 of this Agreement without the prior consent of the City.

11. City Covenant

The City agrees that pursuant to Section 15(2) of Act 197 of the Michigan Public Acts of 1975, as amended, MCL 125.1665(2), the City will not abolish Ordinance 86-245, as amended, which was subsequently codified at Section 38 "DEVELOPMENT PLAN AND TAX INCREMENT FINANCING PLAN" in Article II "DOWNTOWN DEVELOPMENT AUTHORITY" in Chapter 22 "COMMUNITY DEVELOPMENT" in the Code of Ordinances of the City of Belleville, until the principal of, and interest on, the bonds issued have been paid or fund sufficient to make the payment have been segregated.

12. Term

This Agreement shall be for a term of five (5) years that begins on July 1, 2017, and will expire on June 30, 2022. Thereafter, this Agreement shall extend for an additional period of five (5) years, from July 1, 2022 to June 30, 2027, unless either party gives written notice to the other party of their intent to terminate said extension no later than January 1, 2022. Additionally, either

party may terminate this Agreement by giving written notice to the other party not less than one (1) year from the intended date of termination.

13. Governing Law and Venue

This Agreement and any disputes hereunder shall be construed in accordance with the laws of the State of Michigan, unless such laws would direct the application of the laws of a different jurisdiction. Venue for any suit hereunder shall be a court of competent jurisdiction located within the State of Michigan.

14. Indemnity

In addition to any other indemnity set forth herein, the City shall, to the extent permitted by law, indemnify and hold harmless the DDA from and against all injuries, liabilities, losses, damages, costs and expenses directly or indirectly incurred or suffered by the DDA, its officers, employees or authorized agents as a result of any and all actions, proceedings, claims or demands brought or made against the DDA that relate to work performed by the City pursuant to this Agreement.

15. Attorney Fees

The DDA and the City shall be responsible for their own attorney fees in reviewing this Agreement before it is executed and enforcement of this Agreement after it is executed.

16. Assignment

This Agreement shall not be assigned by the City or the DDA.

17. Binding Effect

This Agreement shall be binding upon the City and the DDA and all successors and assigns.

18. Severability

If any provision of this Agreement for any reason and to any extent be invalid or unenforceable, neither the remainder of this Agreement nor the application of the provision to other persons, entities or circumstances shall be affected thereby, but instead shall be enforced to the maximum extent permitted by law.

19. Construction

This Agreement has been prepared and negotiations have occurred regarding said preparation pursuant to the joint efforts of the parties hereto. This Agreement therefore shall not be construed against any party to this Agreement.

20. Non-Waiver

No waiver of any of the obligations contained herein shall be effective for any purpose unless the same shall be in writing signed by the City and the DDA.

21. Integration

This Agreement sets forth the entire agreement and understanding between the parties as to the subject matter hereof, and supersedes all prior and/ or contemporaneous discussions, representations, amendments, or understandings of every kind and nature between the parties.

22. Modification

This Agreement shall not be modified, altered, or amended except through a written amendment signed by the City and DDA.

23. Notice

Any notice, except invoices that are required or permitted herein, under this Agreement or under state law shall be deemed sufficiently given or served the next business day if sent by United States certified mail, return receipt requested or by overnight courier, addressed as follows:

If to City:

City of Belleville
Attn: City Manager
City Clerk
6 Main Street
Belleville, Michigan 48111

If to DDA:

City of Belleville DDA
Attn: DDA Administrator
DDA Chairperson
6 Main Street
Belleville, Michigan 48111

24. Counterparts

This Agreement may be executed in several counterparts each of which shall be deemed one and the same agreement. It shall be binding upon and inure to the benefit of the parties to it and their respective successors and assigns.

25. (Eliminate Contingency, insert: Amendments

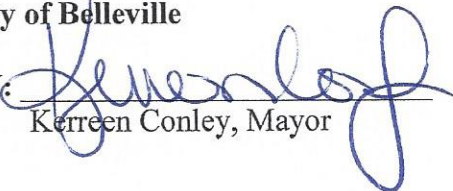
This agreement may be amended in writing at any time by the parties hereto, with approval by both City Council and the DDA.

26. Captions and Bylines

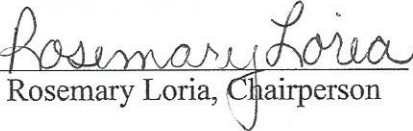
The captions and bylines used in this Agreement are for the convenience of reference only and in no way define, limit or describe the scope of intent of any provision of this Agreement.


IN WITNESS WHEREOF, the parties have executed this Agreement with all necessary approval(s) on the date first above written.

City of Belleville

BY: 
Kerreen Conley, Mayor

City of Belleville DDA

BY: 
Rosemary Loria, Chairperson

BY: 
Sherri Scharf, Clerk

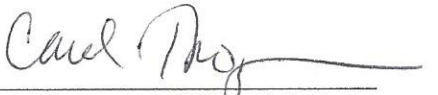
BY: 
Carol Thompson, DDA Administrator

EXHIBIT A

Only the following services will be performed for the DDA by the City in the DDA District.

1. Street sweeping in accordance with the City's operating policy.
2. Snow removal of public streets, public park sidewalks and municipal parking areas as negotiated by the parties, as needed.
3. Removal of litter, garbage, rubbish containers, and other debris from public areas (weather permitting).
4. Streetscape weed prevention treatments and weed pulling, as needed.
5. Street light preventative maintenance, operation, and repair, as needed.
6. Watering of flowers, as needed.
7. Hanging banners and seasonal decorations.
8. Horizon Park maintenance including the waterfront, canoe/ kayak launch and slide, gangways, and dock.
9. Other maintenance and repairs which are incidental to the performance of the above services.
10. Pond maintenance, which shall be done at the discretion of the DDA.

EXHIBIT B
BASIS AND RATE OF PAYMENT FOR CITY SERVICES PAID BY DDA

1. Routine Maintenance and Operation Services as Set Forth in Exhibit A
BASIS: Pursuant to estimates for staff hours, supervision and goods and equipment, related to the services as set forth in the Agreement, a quarterly payment of \$15,000.
The City agrees not to include capital equipment purchase without prior DDA approval.
If circumstances require additional services, the City will notify the DDA and an appropriate payment amount will need to be mutually agreed upon.
PAYMENT: Invoiced Quarterly, with payment 30 days thereafter.
2. Other Maintenance and/or operations services requested by the DDA
BASIS: Pursuant to estimates provided by City and fully set forth in Section 7 of the Agreement.
PAYMENT: Detailed Invoice Quarterly, with payment 30 days thereafter.
3. Administrative Services by City
BASIS: 3% of costs incurred for annual wages and benefits to City Manager, City Clerk, and two clerical staff; current employees' annual wages and benefits only, in the year in which the service is provided.
PAYMENT: Detailed Invoice Quarterly, with payment 30 days thereafter.
4. Tax Roll Assessment Services
BASIS: 30% of costs incurred, based upon percentage of City taxes captured.
PAYMENT: Detailed Invoice Annually, with payment 30 days thereafter.
5. Annual Audit
BASIS: 15% of actual costs incurred per year.
PAYMENT: Detailed Invoice Annually, with payment 30 days thereafter.
6. Liability and Property Insurance Coverage
BASIS: 22% of costs incurred by City for policy.
PAYMENT: Detailed Invoice Annually, with payment 30 days thereafter.
7. Finance Director Services
BASIS: 3% of actual costs incurred for City-contracted finance director services.
PAYMENT: Detailed Invoice Quarterly, with payment 30 days thereafter.
8. Office Space Rental
BASIS: City-provided office space, inclusive of costs, and as agreed upon by the parties, at a rate of \$200 per month.
PAYMENT: Invoiced Quarterly, with payment 30 days thereafter.

9. Police and Fire Services

BASIS: Payment equivalent to the return of City taxes captured by the DDA for the Columbia Court development.

PAYMENT: Payment Annually, with City providing detail of Columbia Court City taxes to DDA.