

**PROFESSIONAL SERVICES CONTRACT**

**DDA ENGAGEMENT OF DEGC**

This AGREEMENT is made this 1st day of July, 2017 by and between the DETROIT ECONOMIC GROWTH CORPORATION (hereinafter "DEGC"), a Michigan non-profit corporation and the CITY OF DETROIT DOWNTOWN DEVELOPMENT AUTHORITY (hereinafter "DDA"), a Michigan public corporation

**WITNESSETH:**

WHEREAS, DDA is a public body corporate established and operated pursuant to Act 197 of the Public Acts of 1975, as it may be amended from time to time, being Sections 125.1651 to 125.1680 of the Michigan Compiled Laws (Act 197), and Ordinance No. 119-H, Chapter 2, Article 7 of the Code of the City of Detroit, effective May 20, 1976 (the "Ordinance"), for the purposes of preventing and correcting deterioration in Detroit's downtown business district (the "Downtown District"), and promoting economic growth in the Downtown District; and

WHEREAS, the City of Detroit (the "City") has levied a one mill tax on the tangible property located within the Downtown District, as shown on Exhibit A attached hereto and incorporated herein by reference, the intended use of the proceeds of which includes the financing of the operations of the DDA; and

WHEREAS, DEGC is a Michigan non-profit corporation organized for the purpose of furthering the economic development of the City, including the Downtown District, and providing services to the City, its agencies and instrumentalities, and others which will assist such economic development; and

WHEREAS, DDA has determined that its operational efficiency can best be maintained by engaging DEGC to perform professional staff and administrative services through DEGC staff, provided that such services will be performed at all times in accordance with the policies and directives of DDA; and

WHEREAS, DEGC has received and may continue to receive grants and contributions from persons, firms, foundations, funds and corporations, and has and may continue to provide services to persons, firms, foundations, funds and corporations similar to those contemplated by this Agreement, all in furtherance of its purposes.

NOW, THEREFORE, in consideration of the mutual undertakings herein set forth, the parties do hereby agree as follows:

## **ARTICLE I**

### **EMPLOYMENT OF DEGC**

1.01 DDA hereby engages DEGC, and DEGC agrees to perform, to the extent of its funding capability as hereinafter provided, certain services, more fully described in Article III of this Agreement, in accordance with the terms and conditions hereinafter contained in this Agreement.

## **ARTICLE II**

### **TERM OF AGREEMENT**

2.01 The term of this Agreement shall commence on July 1, 2017 and shall expire on June 30, 2018 unless sooner terminated as provided for in Article X hereof or unless extended for an additional period in accordance with Section 2.02 and 2.03 hereof.

2.02 This Agreement may be renewed annually for terms commencing July 1, and ending June 30 of the next following year and from year to year thereafter upon the appropriation of continued funding by the DDA.

2.03 Renewal of this Agreement, pursuant to Section 2.02 hereof, shall be made by delivery of written notice by DDA to DEGC not more than ninety (90) days prior to the end of a term of its

intention to renew this Agreement. Such renewal shall be accepted or rejected by DEGC at least thirty (30) days prior to the end of such term.

### **ARTICLE III**

#### **SCOPE OF SERVICES**

3.01 DEGC shall assist in the preparation of DDA development plans and recommendations, including plans for financing same, and shall perform such other services as are necessary and desirable for the proper operation of the DDA, and as may be requested by the DDA during the term of this Agreement and any extensions hereof, all in accordance with Act 197.

3.02 In addition to services designated in Section 3.01 hereof, DEGC shall perform the following services as requested in writing by DDA:

1. Consult with DDA on matters relating to the development of the Downtown District;
2. Assist in the preparation of the DDA operational and capital budgets for consideration and approval by the DDA Board;
3. Assist DDA in coordinating its development activities with the development activities of the Planning and Development Department of the City of Detroit ("P&DD") and the Economic Development Corporation of the City of Detroit ("EDC").
4. Provide all accounting services required of the DDA for its effective operation.
5. Provide project executives and administrative services for the implementation of the Streetscape Improvement and Façade Programs of the Lower Woodward Initiative Project.

3.03 Pursuant only to written agreement executed by and between DEGC and DDA, DEGC shall perform services in connection with land and property development and management (both real and personal), including but not limited to granting and/or acquiring licenses, easements or options;

construction and renovation of public and private buildings and facilities; and management and operation of buildings and properties within the Downtown District, all as shall be necessary to assist DDA in achieving the purposes of Act 197.

3.04 The normal scope of services as understood and agreed to by the parties hereto expressly excludes extensive research and studies related to projects designed by the Board of DDA.

3.05 The Board of DDA shall, for proposed activities not included in the normal scope of services, present to the President of DEGC, by resolution or otherwise, a written outline of the scope of such additional new services to be performed, the proposed time frame for their performance, the details for financing such activities and such other matters as DDA shall deem to be appropriate. DEGC shall have the right to reject the undertaking of any such activities or any part thereof. If accepted, however, the President of DEGC may delegate appropriate duties to the DEGC staff for the carrying out of such activities.

3.06 DEGC shall provide such other services as may be agreed upon from time to time by the parties hereto.

3.07 The responsibility for supervising the performance by DEGC of its obligations under this Agreement shall reside with the President of DEGC, and he shall report regularly to the Board of Directors of DDA, provided, however, that the following is understood and agreed:

1. The President of DEGC may designate and shall identify in writing to the DDA such employees of DEGC as he deems appropriate to work with DDA and assist the DEGC President in keeping DDA informed of DEGC's performance (the "Designated Staff"). The President of DEGC or her designated staff person shall execute such documents on behalf of the DDA, as its "duly authorized agent."

2. DEGC shall generally make available to DDA all of its management resources, including but not limited to those of its President, its Vice Presidents, Commercial Development staff, accounting services to the extent possible, and public relations services. In addition, DEGC shall

generally make any in-house legal staff available to DDA, provide that in addition to any other fees and expenses payable by DDA under this Agreement, DDA shall pay DEGC for services performed for or on behalf of DDA by any in-house attorney employed by the DEGC at a rate of \$200.00 per hour for the DEGC's General Counsel and a rate not to exceed \$175.00 per hour for any other in-house attorney employed by the DEGC.

3. DEGC may, with the approval of the DDA, retain the services of such outside professionals, consultants and other persons who possess expertise or skills deemed necessary to further the purposes and objectives of this Agreement, which outside professional consultants and other persons will be compensated as mutually agreed to by the parties hereto.

4. Appearances before the DDA, with regard to reporting on any project authorized by DDA and accepted by DEGC, may be made from time to time by any DEGC staff person designated by the President of DEGC.

#### **ARTICLE IV**

##### **COMPENSATION**

4.01 DDA agrees to pay DEGC an amount equal to ONE MILLION NINE HUNDRED THOUSAND DOLLARS (\$1,900,000.00) for the performance of services hereunder, together with such additional sums for any services referenced in Article 3.05, 3.06 and 3.07(2) hereof, in accordance with Section 5.02 hereof.

4.02 If this Agreement shall be extended as provided for in Article II hereof, DDA shall agree to pay to DEGC for each renewal term, such amount, and in such a manner or method, as the DDA and the authorized representative(s) of DEGC shall mutually agree to in writing.

#### **ARTICLE V**

##### **FUNDING AND METHOD OF PAYMENT**

5.01 The cost of services described in Article III hereof shall be funded from one or more of the following sources:

1. Funds available to DDA for its operations, subject to the express understanding that DDA shall at no time be obligated to expend more funds, in respect of payment for services described in Article III hereof, than are available to DDA for its operations.

2. Such other funds as DDA may, in its sole discretion, make available for the purposes of this Agreement.

5.02 Payment to DEGC for performance of its obligations under this Agreement shall be made on the first day of each month during the term hereof, commencing August 1, 2017, in an amount equal to \$158,333.33

5.03 DEGC shall submit to DDA no later than the tenth day following each calendar quarter, a report of all work performed on DDA's behalf for the preceding quarter. All of DEGC's records, documents, and other papers, including financial records, shall be made available for inspection by the DDA and its agents at any reasonable time, upon forty-eight (48) hours written notice.

## **ARTICLE VI**

### **RELATIONSHIP OF PARTIES**

6.01 The relationship of DEGC to DDA in the performance of the services hereunder is that of an independent contractor and no liabilities or benefits whatsoever that arise from a contract for hire or any employer/employee relationship shall accrue to either DDA or DEGC as a result of this Agreement.

## **ARTICLE VII**

### **INDEMNIFICATION**

7.01 The DEGC agrees to save harmless DDA against and from any and all liabilities, obligations, damages, penalties, claims, costs, charges and expenses (including without limitation, fees and expenses of attorneys, expert witnesses and other consultants) which may be imposed upon, incurred by or asserted against DDA by reason of the occurrence of any of the following during the term of this Agreement:

(a) Any negligent or tortious acts of the DEGC or any of its personnel, employees, consultants or subcontractors; and

(b) Any failure of the DEGC or any of its personnel, employees, consultants or subcontractors to perform its obligations either express or implied under this Agreement.

7.02 In the event any action or proceeding shall be commenced against DDA by reason of any claim covered under Section 7.01 hereof, the DEGC, upon notice from DDA, will, at its sole cost and expense, resist and defend said claim, unless said claim is directly attributable to the gross negligence of DDA or employees of DDA acting within the scope of their employment.

## **ARTICLE VIII**

### **AMENDMENTS**

8.01 Any change, addition, deletion, extension or modification of this Agreement which is mutually agreed upon by and between the parties shall be incorporated by written amendment (herein called "Amendment" or "Amendments") to this Agreement. Such Amendment shall not invalidate this Agreement, nor relieve or release DEGC or DDA of any of its respective obligations under this Agreement unless so stated herein or unless so stated in the Amendment.

8.02 An Amendment to this Agreement shall not be effective and binding upon the parties hereto unless it expressly makes reference to this Agreement, is in writing and is signed and acknowledged by a duly authorized representative of both parties hereto.

8.03 All Amendments to this Agreement must be authorized respectively by the Board of Directors of DEGC and DDA before execution by the parties.

## **ARTICLE IX**

### **WAIVER**

9.01 Each party hereby reserves and shall have the exclusive right to waive, at its sole discretion and to the extent permitted by law, any requirement or provision of this Agreement. No

act by or on behalf of any party hereto shall be, or be deemed or construed to be, a waiver of any such requirement or provision, unless the same be in writing, signed by an authorized representative of the party and expressly state by its terms that it constitutes such waiver.

9.02 No failure by either party to insist upon the strict performance of any covenant, agreement, term or condition of this Agreement, or to exercise any right, term or remedy consequent to a breach hereof, shall constitute a waiver of any such breach or such covenant, agreement, term or condition. No waiver of any breach shall affect or alter this Agreement, but each and every covenant, agreement, term and condition of this Agreement shall continue in full force and effect with respect to any other then existing or subsequent breach hereof.

## **ARTICLE X**

### **TERMINATION**

10.01 Either party hereto may terminate this Agreement with or without cause upon ninety (90) days prior written notice to the other party.

10.02 If on the effective date of termination of this Agreement, DEGC shall have rendered services or entered into binding obligations for the purpose of rendering services, hereunder, and DEGC shall not have been compensated for the same, DDA shall pay to DEGC the amounts due therefor within a reasonable time after termination of this Agreement.

## **ARTICLE XI**

### **CONFLICT OF INTEREST**

11.01 DEGC warrants that it presently has no interest nor shall it acquire any interest, directly or indirectly, which would conflict in any manner or degree with the performance by it of the services required under this Agreement.

11.02 DEGC further covenants that in the performance of this Agreement, no person having any such interest shall be employed by DEGC and DEGC agrees to take such steps as are necessary



to permit full disclosure by all of its employees concerning any conflicts of interest with respect to matters involving services rendered under this Agreement.

11.03 DEGC also warrants that it will not and has not employed any person to solicit or secure this Agreement upon any agreement or arrangement for payment of a commission, percentage, brokerage or contingent fee, either directly or indirectly, and that if this warranty is breached, DDA may, at its option, terminate this Agreement without penalty, liability or obligations, or may, at its election, deduct the amount of any such payment from any amounts owed to the DEGC hereunder.

11.04 No member of the Board of Directors of DDA and no other officer, employee or agent of DDA who exercises any function or responsibility in connection with the carrying out of this Agreement, shall have any personal interest, direct or indirect, in this Agreement.

**ARTICLE XII**  
**CONFIDENTIALITY**

12.01 In order for the DEGC to effectively fulfill its covenants and obligations to DDA under this Agreement, it may be necessary or desirable for DDA to disclose confidential and proprietary information to the President of DEGC and the Designated Staff pertaining to DDA's past, present and future activities. Since it is difficult to separate confidential and proprietary information from that which is not, the DEGC shall instruct its President and Designated Staff to regard all information gained by each such person as a result of the services to be performed hereunder, as information which is proprietary to DDA and not to be disclosed to any other organization or individual without the prior consent of DDA.

12.02 The DEGC agrees to take appropriate action with respect to its personnel to insure that the obligations of non-use and non-disclosure of confidential information as stated in this Article XII are enforced.

12.03 All of the reports, information, data, etc., prepared or assembled by the DEGC under this Agreement shall be confidential and the DEGC agrees that such reports, information, data, etc.,

shall not be made available to any individual or organization without the prior written consent of DDA.

## **ARTICLE XIII**

### **FAIR EMPLOYMENT PRACTICES**

13.01 In accordance with the United States Constitution and all Federal legislation and regulations governing fair employment practices and equal employment opportunity, including but not limited to the Civil Rights Act of 1964 (P.L. 88-352, 78 stat. 252) and in accordance with the Michigan Constitution and all State laws and regulations governing fair employment practices and equal employment opportunity, including but not limited to the Michigan Civil Rights Act (P.A. 1976 No. 453) and the Michigan Handicappers Civil Rights Act (P.A. 1976 No. 220), the DEGC agrees that it will not discriminate against any person, employee, consultant or applicant for employment with respect to his or her hire, tenure, terms, conditions or privileges of employment because of his or her religion, race, color, national origin, age, sex, height, weight, marital status or handicap that is unrelated to the individual's ability to perform the duties of a particular job or position.

13.02 DEGC further agrees to take affirmative action to achieve reasonable representation of minority groups and women in its work force. Such affirmative action shall include, but shall not be limited to, the following areas: employment, promotion, demotion or transfer, recruiting or recruitment, advertising, layoff or termination, rates of pay or other forms of compensation, and selection for training or education, including apprenticeships.

13.03 DEGC shall not discriminate against any employee or applicant for employment, training, education or apprenticeship connected directly or indirectly with the performance of this Agreement, with respect to his or her hire, promotion, job assignment, tenure or terms, conditions or privileges of employment because of race, color, creed, national origin, age, marital status, handicap, sex or sexual orientation.

13.04 In the event DEGC fails to comply with the provisions of this Article, DDA may impose such contract sanctions as it may deem appropriate, including but not limited to cancellation, termination or suspension of this Agreement in whole or in part.

13.05 Breach of the terms of this Article may be regarded as a material breach of this Agreement.

**ARTICLE XIV**

**COMPLIANCE WITH APPLICABLE LAWS**

14.01 This Agreement shall be governed by and construed in accordance with the laws of the State of Michigan.

**ARTICLE XV**

**NOTICES**

15.01 All notices, consents, approvals, requests and other communications (herein collectively called "Notices"), required or permitted under this Agreement shall be given in writing, signed by an authorized representative of the DEGC or DDA, mailed by first class mail and addressed as follows:

If to the DDA: Vice Chairperson  
Downtown Development Authority  
500 Griswold, Suite 2200  
Detroit, Michigan 48226

If to the DEGC: President  
Detroit Economic Growth Corporation  
500 Griswold, Suite 2200  
Detroit, Michigan 48226

15.02 All notices shall be deemed given on the day of mailing. Either party to this Agreement may change its address for the receipt of notices at any time by giving notice thereof to the other as herein provided. Any notice given by a party hereunder must be signed by an authorized representative of such party.

15.03 Notwithstanding the requirement above as to the use of first class mail, termination notices shall be sent by registered mail, postage prepaid, return receipt requested.

## **ARTICLE XVI**

### **ASSIGNMENT**

16.06 Neither party shall assign or encumber directly or indirectly any interest whatsoever in this Agreement, nor shall either party transfer any interest in the same without prior written approval of the other party.

## **ARTICLE XVII**

### **DEFAULT**

17.01 In the event of any default by either party to this Agreement with regard to any provision hereof, the non-defaulting party shall notify the other in writing. The defaulting party shall have thirty (30) days after delivery of said written notice of default to cure said default. Non-compliance or non-curing of said default or absence of a good faith attempt to so cure said default within the thirty (30) days provided herein, shall be considered a material breach of this Agreement.

## **ARTICLE XVIII**

### **REMEDIES**

18.01 Either party to this Agreement shall have the right to protect and enforce all rights available to it by suite in equity, action at law or by any other appropriate proceedings, whether for specific performance of any covenant or covenants contained in this Agreement, or damages, or other relief, or proceed to take any action authorized or permitted under applicable laws or regulations.

18.02 Except as otherwise specifically provided in this Agreement, all rights and remedies of the parties under this Agreement shall be cumulative.

## ARTICLE XIX

### MISCELLANEOUS

19.01 Upon the request of DDA, DEGC shall promptly make available to DDA any documents in DEGC's possession relating to matters with respect to which DEGC has rendered services under this Agreement.

19.02 This document contains the entire agreement between the parties and all prior negotiations and agreements are merged herein. Neither DDA, DEGC, nor their agents have made any representations except those expressly set forth herein, and no additional rights or remedies shall accrue to either party by implication or otherwise unless expressly set forth herein.

19.03 If any provision of this Agreement or the application thereof to any person or circumstance shall, to any extent, be invalid or unenforceable, the remainder of this Agreement, or the application of such provision to persons or circumstances other than those as to which it is invalid or unenforceable, shall not be affected thereby, and each provision of this Agreement shall be valid and enforceable to the fullest extent permitted by law.

19.04 The captions and headings of this Agreement are inserted for convenience only, and shall not modify or affect the intent or operative paragraphs or provisions of this Agreement, and shall be disregarded in construction or interpretation thereof.

19.05 This Agreement shall bind, and the rights, benefits and advantages shall inure to the successors of DDA and DEGC.

19.06 Each party to this Agreement hereby represents and warrants to the other party that it has full right, power and authority to enter into and perform this Agreement; that the execution and delivery of this Agreement have been duly authorized by all necessary action; and that this Agreement constitutes respectively its valid, binding and enforceable obligation.

IN WITNESS WHEREOF, the CITY OF DETROIT DOWNTOWN DEVELOPMENT AUTHORITY and the DETROIT ECONOMIC GROWTH CORPORATION, by and through their duly authorized representatives, have executed this Agreement as of the year and date first written above.

CITY OF DETROIT  
DOWNTOWN DEVELOPMENT AUTHORITY

By: Jenni C. Karalos  
Its: Authorized Agent

By: Melinda Jensen  
Its: Authorized Agent

DETROIT ECONOMIC GROWTH CORPORATION

By: [Signature]  
Its: Interim President and CEO

APPROVED AS TO FORM:

[Signature]  
Rebecca A. Navin, Esq.  
Counsel to the DDA