

PUBLIC SERVICE AGREEMENT BETWEEN THE CITY OF LEE’S SUMMIT AND DOWNTOWN LEE’S SUMMIT MAIN STREET, INC. FOR ORGANIZATION, PROMOTION, ECONOMIC VITALITY, AND DESIGN SERVICES FOR THE DOWNTOWN CORE.

THIS Public Service Agreement (“Agreement”) is entered into by and between the City of Lee’s Summit, Missouri (“City”), a Missouri municipal corporation, and Downtown Lee’s Summit Main Street, Inc. (“DLSMS”). The City and DLSMS may be referred to individually as the “Party” and collectively as the “Parties.”

RECITALS

WHEREAS, in 1989, a group of business and civic leaders came together to revitalize downtown Lee’s Summit in which there were over 19 vacant buildings and declining investment due to the growth of sprawl and new auto-dependent shopping centers on the edges of the community nearer the highways and interstate; and

WHEREAS, the business community, in partnership with the City, incorporated the not-for-profit, Downtown Lee’s Summit DLSMS, Inc., obtained its Section 501(c)(3) educational and charitable designation, and engaged to implement the national DLSMS Four-Point Approach to economic revitalization; and

WHEREAS, over the ensuing 34 years, the Downtown Lee’s Summit DLSMS organization has led the successful revitalization of Downtown Lee’s Summit and continues to challenge itself and the community with the continued use of the DLSMS Four-Point Approach to economic revitalization of (i) Organization (encouraging cooperation, recruiting members and building leadership in the business community); (ii) Promotion (creating a positive image for downtown and promoting it as a viable place to live, shop and invest); (iii) Economic Vitality (developing business retention, expansion and recruitment strategies); and (iv) Design (providing design education and assistance to improve the appearance of downtown and promote and foster historic preservation); and

WHEREAS, as a result of the decades of partnership, the national leaders at the DLSMS Center and the American Planning Association have recognized and awarded the work in 2010 with the National DLSMS Center Great American DLSMS award, and the American Planning Association named Downtown Lee’s Summit a 2019 Great Neighborhood; and

WHEREAS, the Mayor and City Council have determined that it is in the best interests of the Lee’s Summit community, and important to the promotion of the general economic welfare of Downtown Lee’s Summit, to continue to financially support the work of DLSMS in its continued focus with the DLSMS Four-Point Approach.

NOW, THEREFORE, the Parties, in consideration of the above recitals and the following mutual covenants and stipulations, agree as follows:

I. DLSMS Scope of Services

DLSMS shall:

- A. Perform the following scope of services for the City:
 1. *Organization*: DLSMS shall provide unified management and coordination for the Downtown Core Area, as depicted in Exhibit A, attached and incorporated herein, through DLSMS's interaction with its investors, volunteers, the City, businesses and property owners in the Downtown Core Area, and community partners to continue to contribute toward the economic revitalization of the Downtown Core Area.
 2. *Promotion*: DLSMS shall continue to develop and regularly review and update a consistent marketing and promotion program for the Downtown Core Area. The marketing and promotion program shall include producing quality marketing pieces, coordinating advertisements, and organizing annual events/activities that attract visitors to the Downtown Core Area. Whenever possible, the marketing and promotion program should be coordinated with the other community marketing partners including, but not limited to Lee's Summit Visitors Bureau, Lee's Summit Chamber of Commerce, and Lee's Summit Economic Development Corporation.
 3. *Economic Vitality*: DLSMS shall continue to strengthen the existing economic assets of the Downtown Core Area while diversifying its economic base, including recruiting new businesses, assisting with expansion of existing businesses, facilitating redevelopment, marketing available or underutilized commercial space, and strengthening the management capabilities and competitiveness of individual businesses. DLSMS shall track key statistics, including job growth and new businesses in the Downtown Core Area, and host business development seminars based on the needs of the downtown business community. DLSMS serves as the key point of contact for interested parties looking to invest in the Downtown Core Area, but will coordinate with and partner with the Lee's Summit Economic Development Council where appropriate.
 4. *Design*. DLSMS shall continue to initiate and develop design proposals for the continued evolution of the overall aesthetic look of the Downtown Core Area. DLSMS will assist City staff with the implementation and education of the City's Design Standards for the Downtown Core Area.
- B. Only use the Funds, as defined below, for the performance of the services set forth in Subsection A of this Section. Any use of the Funds for a purpose other than authorized in this Agreement shall be a material breach of this Agreement, and DLSMS shall return any unspent Funds and an amount equal to the amount used for an unauthorized purpose.
- C. Maintain accurate records of all monies received from the City and the use and disbursement of all such monies. DLSMS shall maintain an accounting system which complies with generally accepted accounting principles, and with the American Institute of Certified Public Accountants Audit Guide for Non-Profit Corporations and shall separately account for the Funds provided by the City pursuant to this Agreement.
- D. On or before July 1 of each year this Agreement is in effect, provide the City with its approved budget for the upcoming fiscal year, the names of the officers or directors of

DLSMS.

- E. At execution of this Agreement, provide the City a copy of the current DLSMS bylaws, articles of incorporation, and any amendments thereto. In the event of any change of officer and/or director, bylaws, or amendments to the articles of incorporation, during the term of this Agreement, DLSMS shall provide the City a copy of the updated documents and/or information.
- F. Each year this Agreement is in effect, DLSMS shall submit biannual program status reports to the City Manager documenting activities from July 1 to December 31 (“First Report”) and January 1 to June 30 (“Second Report”). The reports shall document the revenue and disbursements of monies received from the City with a level of detail, which may include individual transaction information, to be determined by the City Manager as necessary for his financial review, and shall contain analytical memoranda which:
 - 1. Describes results of activities and expected achievements in line with this agreement and, where applicable, the Ignite Community Strategic Plan; and
 - 2. Describes program effectiveness; and
 - 3. Lists capital expenditures, if applicable.

The First Report shall be submitted to the City Manager on or before January 31 each year this Agreement in effect. The Second Report shall be submitted to the City Manager on or before July 31 each year this Agreement in effect. The City Manager shall review these reports, validate compliance with this agreement, and, if necessary, recommended changes to agreement to the City Council.

The City Manager may also require DLSMS to periodically provide a brief statement or status report City regarding the services under this Agreement in a form most amenable to the subject matter of the report.

DLSMS shall also provide an annual in-person presentation to the City Council. This presentation shall be scheduled for the City Council’s first regular meeting in February each year unless the Mayor determines a different meeting date in February is necessary for agenda management or other circumstances.

DLSMS board members and/or staff will communicate and coordinate with other community partners, including, but not limited to the Lee’s Summit Visitors Bureau, Lee’s Summit Chamber of Commerce, and Lee’s Summit Economic Development Corporation, and applicable boards and commission of the City, in order to foster cooperation and encourage partnerships that will benefit the community.

II. FINANCIAL SUPPORT AND TERM OF AGREEMENT

- A. The initial term of this Agreement shall be for nine months commencing on October 1, 2024, and ending on June 30, 2025 (“Initial Term”). Upon expiration of the Initial Term, this Agreement shall automatically renew for a one-year period unless notification is given

of intent to not renew by either party in writing, no less than thirty (30) days, prior to the date of automatic renewal. Upon expiration of the first renewal term the Agreement shall renew for a second one-year term on the same conditions. This Agreement is subject to annual appropriation by the City Council as contemplated herein, or otherwise terminated by the City as set forth herein.

- B. The City agrees to pay to DLSMS \$105,000 for the initial term of the agreement with the first payment being \$25,000 in the month of October 2024 and thereafter in monthly payments of \$10,000. The City agrees to pay to DLSMS \$140,000 for the first renewal term if utilized in monthly payments of \$11,666.67. The City agrees to pay to DLSMS \$180,000 for the second renewal term if utilized in monthly payments of \$15,000. During the Initial Term and any renewal terms, the City shall distribute the Funds in monthly installments on or before the 15th day of each month.

Notwithstanding anything to the contrary in this Agreement, the Funds are subject to the annual appropriation by the City Council and if the Funds are not appropriated or only partially appropriated, DLSMS agrees the City shall not be required or liable to provide the unappropriated amount.

- C. Nothing in this Agreement shall preclude the City from contracting separately with DLSMS for services upon terms and conditions agreed to by the City and DLSMS.

III. TERMINATION

- A. The City may terminate the Agreement immediately if funds are not appropriated for the Services described herein. The City shall have the right to terminate this Agreement in the event that DLSMS is in default or violation of the terms or provisions of this Agreement and fails to cure such default or violation in the manner specified in Subsection B below.
- B. In the event of a default or violation by DLSMS, the City shall send to DLSMS a notice demand to cure default, explaining the specific nature and extent of the default or violation. DLSMS shall cure or remedy said violation or default within twenty (20) working days after receipt of said Notice, unless a longer time is agreed upon by both parties in writing. In case the default is not cured or remedied within twenty (20) working days or a longer period of time if agreed upon, the City may exercise its option to terminate this Agreement upon five (5) days written notice thereafter. DLSMS shall not be relieved of liability to the City for damages sustained by the City by virtue of any breach of this Agreement by DLSMS.
- C. In the event of termination, DLSMS shall refund to the City a pro-rated portion of the compensation paid pursuant to Section II above. The pro-rated amount shall be determined by dividing the monthly payment recited in Section II by 30 (“Daily Amount”), and multiplying the Daily Amount by the number of days remaining in the month from and after the effective date of termination. DLSMS shall refund the pro-rated amount to the City within 30 days of the effective date of termination.

IV. INDEMNIFICATION

To the fullest extent permitted by law, DLSMS shall defend, indemnify and hold harmless the City, and the City's council member, officer, director, employee or agent thereof (the City and any such person being herein called an "Indemnified Party") for, from, and against all claims, liabilities, demands, damages, losses, fines, penalties, injuries to property or persons (including death), and expenses (including attorney fees and litigation expenses, and the cost of appellate proceedings) (collectively "Claims") to the extent that such Claims relate to, result from and/or arise out of DLSMS's acts, errors, directives, or omissions, in performance of this Agreement. The obligations of this Section include the acts, errors, mistakes, directives, or omissions of DLSMS's employees, agents, advertisers, contractors, subcontractors, or any other person for which DLSMS may be legally liable, in the performance of this Agreement, provided that this obligation shall not apply to the City's negligence in the performance of this Agreement.

The amount and type of insurance coverage requirements set forth in this Agreement will in no way be construed as limiting the scope of the indemnity in this Section. The indemnity requirements set forth in this Agreement will in no way be construed as limiting the insurance required in this Agreement or waiving the City's sovereign immunity.

V. **INSURANCE**

A. General.

1. *Insurer Qualifications.* Without limiting any obligations or liabilities of Contractor, Contractor shall purchase and maintain, at its own expense, hereinafter stipulated minimum insurance with insurance companies authorized to do business in the State of Missouri, with an AM Best, Inc. rating of A- or above with policies and forms satisfactory to the City. Failure to maintain insurance as specified herein may result in termination of this Agreement at the City's option.
2. *No Representation of Coverage Adequacy.* The City shall have the right to review any and all of the insurance policies and/or endorsements cited in this Agreement, but has no obligation to do so. Failure to demand such evidence of full compliance with the insurance requirements set forth in this Agreement or failure to identify any insurance deficiency shall not relieve DLSMS from, nor be construed or deemed a waiver of, its obligation to maintain the required insurance at all times during the performance of this Agreement.
3. *Coverage Term.* All required insurance shall be maintained in full force and effect until all work or services required to be performed under the terms of this Agreement are satisfactorily performed, completed and formally accepted by the City, unless specified otherwise in this Agreement.
4. *Primary Insurance.* DLSMS's insurance shall be, or endorsed to be, primary, non-contributory insurance with respect to performance of this Agreement and in the protection of the City as an Additional Insured.
5. *Claims Made.* The parties agree that no policies required under this Section shall be made in a claims made basis.
6. *Policy Deductibles and/or Self-Insured Retentions.* The policies set forth in these

requirements may provide coverage that contains deductibles or self-insured retention amounts. Such deductibles or self-insured retention shall not be applicable with respect to the policy limits provided to the City. DLSMS shall be solely responsible for any such deductible or self-insured retention amount.

7. *Use of Subcontractors.* If any of the services under this Agreement is subcontracted in any way, DLSMS shall execute written agreements with its subcontractors containing the indemnification provisions set forth in this Section and insurance requirements set forth herein protecting the City and DLSMS. DLSMS shall be responsible for executing any agreements with its subcontractors and obtaining certificates of insurance verifying the insurance requirements.

8. *Evidence of Insurance.* Prior to receiving any Funds, or commencing any work or services under this Agreement, DLSMS will provide the City with suitable evidence of insurance in the form of certificates of insurance, endorsements, and a copy of the declaration page(s) of the insurance policies as required by this Agreement, issued by DLSMS's insurance insurer(s) as evidence that policies are placed with acceptable insurers as specified herein and provide the required coverages, conditions and limits of coverage specified in this Agreement and that such coverage and provisions are in full force and effect. The City may reasonably rely upon the certificates of insurance, endorsements, and declaration page(s) of the insurance policies as evidence of coverage but such acceptance and reliance shall not waive or alter in any way the insurance requirements or obligations of this Agreement. If any of the policies required by this Agreement expire during the life of this Agreement, DLSMS shall forward renewal certificates and declaration page(s) to the City thirty (30) days prior to the expiration date. All certificates of insurance and declarations required by this Agreement shall be identified by referencing the title or this Agreement. Certificates of insurance and declaration page(s) shall specifically include the following provisions:
 - a. The City, its agents, representatives, officers, directors, officials and employees are Additional Insureds for commercial general liability under Insurance Services Office, Inc., ("ISO") Form CG 20 10 03 97 or equivalent.
 - b. DLSMS's insurance shall be primary, non-contributory insurance with respect to performance of the Agreement.
 - c. All policies, except for Professional Liability, including Workers' Compensation, waive rights of recovery (subrogation) against City, its agents, representatives, officers, officials and employees for any claims arising out of work or services performed by DLSMS under this Agreement.

All Certificates of Insurance shall name the City of Lee's Summit as the certificate holder and send the certificate and any endorsements to:

City of Lee's Summit
Attn: City Administration
220 S.E. Green Street
Lee's Summit, MO 64063

9. *Endorsements.* DLSMS shall provide the City with the necessary endorsements to ensure City is provided the insurance coverage set forth in this Section.
- B. Required Insurance Coverage. DLSMS shall maintain “occurrence” form Commercial General Liability insurance with an unimpaired limit of not less than \$1,000,000 for each occurrence, \$2,000,000 Products and Completed Operations Annual Aggregate and a \$2,000,000 General Aggregate Limit. The policy shall cover liability arising from premises, operations, independent contractors, products-completed operations, bodily injury, personal injury and advertising injury. Coverage under the policy will be at least as broad as ISO policy form CG 00 01 93 or equivalent thereof, including but not limited to, separation of insured’s clause. To the fullest extent allowed by law, for claims arising out of the performance of this Agreement, the City, its agents, representatives, officers, officials and employees shall be endorsed as an Additional Insured under ISO, Commercial General Liability Additional Insured Endorsement form CG 20 10 03 97, or equivalent. The policy shall contain an endorsement waiving rights of recovery (subrogation) against the City, its agents, representatives, officials, officers and employees. If any Excess insurance is utilized to fulfill the requirements of this subsection, such Excess insurance shall be “follow form” equal or broader in coverage scope than underlying insurance.
- C. Cancellation and Expiration Notice. Insurance required herein shall not expire, be canceled, or be materially changed without thirty (30) days’ prior written notice to the City.
- D. Workers Compensation: DLSMS understands and agrees that DLSMS’s employees, agents, contractors, volunteers, and directors, are not serving as an employee of the City in any manner and therefore are not entitled to any of the City’s industrial benefit coverages, including Workers’ Compensation coverages. DLSMS acknowledges that any injury its employees sustain in the performance of this Agreement will be not be eligible for industrial benefits through the City and any necessary treatment will be DLSMS, or DLSMS’s insurer’s, sole responsibility.

VI. GENERAL CONDITIONS

- A. Non-Discrimination Laws. DLSMS shall not discriminate against any person on the basis of race, religion, color, age, sex, disability, or national origin in the performance of this Agreement, and shall comply with the terms and intent of Title VII of the Civil Rights Act of 1964, as amended, the Rehabilitation Act of 1973, as amended, which prohibits discrimination in the employment or advancement in employment of qualified persons because of physical or mental disability, and with the Americans with Disability Act of 1990. In addition, DLSMS shall include similar requirements of subcontractors in any written contracts entered into for performance of DLSMS’s obligations under this Agreement.
- B. Financial Review. DLSMS shall make all of its financial records related to the Funds available for inspection by the City, or its designee, upon reasonable notice during normal business hours of the City. If the City desires a financial audit by an independent certified public accountant of the DLSMS’s financial records to verify use of the Funds according to the terms and conditions of this Agreement, DLSMS shall cooperate fully in the

performance of such audit. If the audit reveals that DLSMS misappropriated the Funds received from the City, the City may require DLSMS to cover the cost of such an audit. DLSMS is entitled to a copy of any resulting reports that are received by the City.

- C. Compliance with Laws. DLSMS shall comply with all federal, state, and local laws and ordinances applicable to its performance under this Agreement. In addition, DLSMS shall include similar requirements of its contractors in any written contracts entered into for performance of DLSMS obligations under this Agreement.
- D. Successors and Assigns. This Agreement is not assignable unless both Parties mutually consent otherwise in writing and signed by both Parties. The requirements of this Agreement are binding upon the successors, and assigns of both Parties.
- E. Laws Governing/Venue. This Agreement shall be governed by the laws of the State of Missouri, as to validity, interpretation and performance. Any and all suits for any and every breach of this Agreement, or other judicial proceeding for the enforcement or interpretation of this Agreement shall be instituted and maintained in State Court in eastern Jackson County, Missouri.
- F. Non-Waiver. The failure or delay of either Party to insist upon strict performance of any of the provisions of this Agreement, or to exercise any of the rights or remedies provided by this Agreement, shall not release either Party from any of the responsibilities or obligations imposed by law or by this Agreement, and shall not be deemed a waiver of any right of either Party to insist upon strict performance of this Agreement.
- G. Severability. If any part, term or provision of this Agreement is by the courts held to be illegal or in conflict with any law of the State of Missouri, the validity of the remaining portions or provisions shall not be affected, and the rights and obligations of the parties shall be construed and enforced as if the Agreement did not contain the particular part, term, or provision held to be invalid.
- H. Entire Agreement and Amendments. This instrument contains the entire Agreement between the Parties, and no oral or written statement, promises, or inducements made by either Party or agent of either Party that is not contained in this written Agreement, or specifically referred to in this written Agreement shall be valid or binding; and this Agreement may not be enlarged, modified, or altered except in writing signed by both Parties.
- I. Relationship of Parties. The Parties understand and expressly agree that DLSMS is an independent contractor and is not an employee of the City. Nothing in this Agreement constitutes a partnership or joint venture between the Parties and neither Party is the principal or agent of the other.
- J. Rights/Obligations of Parties Only. The terms of this Agreement are intended only to define the respective rights and obligations of the Parties. Nothing in this Agreement shall create any rights or duties in favor of any potential third-party beneficiary or other person, agency or organization.

- K. Time of the Essence. Time is of the essence in this Agreement. Unless otherwise specifically provided in this Agreement, any consent to delay in the performance of DLSMS of any obligation shall be applicable only to the particular transaction to which it relates, and it shall not be applicable to any other obligation or transaction.
- L. Work Authorization/E-verify. Pursuant § 285.530, RSMo., if Agreement exceeds five thousand dollars (\$5,000.00), DLSMS warrants and affirms to the City that (i) DLSMS is enrolled and participates in a federal work authorization program with respect to the employees working in connection with the contracted services and (ii) DLSMS does not knowingly employ any person who is an unauthorized alien in connection with the contracted services.

DLSMS shall swear to and sign an affidavit declaring such affirmation, and provide the City with supporting documentation of its enrollment and participation in a federal work authorization program with respect to the employees working in connection with this Agreement.

- M. Political Activities. DLSMS shall not use the compensation paid through this Agreement for political activities. For the purpose of this Agreement, the term “political activities” shall have the meaning ascribed to it by the Internal Revenue Service.
- N. Anti-Discrimination Against Israel Act. Pursuant to Section 34.600, RSMo and to the fullest extent permitted by law, if this Agreement has a total potential value of \$100,000 or more and DLSMS has 10 or more employees, DLSMS certifies that DLSMS is not engaged in a boycott of Israel as of the Effective Date of this Agreement, and agrees for the duration of this Agreement to not engage in a boycott of Israel as defined in Section 34.600, RSMo.

O. Notices. Unless otherwise provided in this Agreement, all notices, demands, requests, consents, approvals and other communications (collectively “Notices”) required or permitted hereunder shall be in writing and delivered by registered or certified U.S. mail, postage prepaid, or personally delivered, at the address shown below. Notices shall be deemed received at the time of actual receipt, which shall be evidenced by a copy of receipt (in the case of notices that are personally delivered), or as evidenced by the United States Postal Service receipt; or five (5) calendar days after mailing, whichever comes first, in the case of notices that are mailed.:

To City:

City of Lee’s Summit
Attn: City Manager
220 SE Green Street
Lee’s Summit, Missouri 64063

To DLSMS:

Downtown DLSMS Lee’s Summit
Attn: Executive Director
13 SE 3rd Street
Lee’s Summit, Missouri 64063

P. Provisions Required by Law. Each and every provision of law and any clause required by law to be in this Agreement will be read and enforced as though it were included herein and, if through mistake or otherwise any such provision is not inserted, or is not correctly inserted, then upon the application of either Party, this Agreement will promptly be physically amended to make such insertion or correction.

Q. E-Signature and Counterparts. The Parties agree that this Agreement may be signed in two or more counterparts and/or signed electronically, and all such counterparts together shall constitute one and the same contract; such signatures shall bind the signing party in the same manner as if a handwritten signature had been delivered.

IN WITNESS WHEREOF, the Parties have executed this Agreement this _____ day of _____, 2024 (“Effective Date”).

[signatures on next page]

City of Lee's Summit

Downtown Lee's Summit DLSMS, Inc.

Mark Dunning
City Manager

Name:
President

ATTEST:

Trisha Fowler-Arcuri
City Clerk

Name:
Secretary

APPROVED AS TO FORM:

City Attorney

Exhibit A



Map of Downtown Core Area

[see following page]

MAPIV.3 :PREFERRED ILLUSTRATIVE PLAN

DOWNTOWN CORE



-  Existing Buildings
-  Proposed Buildings



