

**PUBLIC SERVICE AGREEMENT
BETWEEN
THE DOWNTOWN LEE’S SUMMIT COMMUNITY IMPROVEMENT DISTRICT AND
THE CITY OF LEE’S SUMMIT, MISSOURI**

This Agreement, made and entered into this _____ day of _____, 20__, (“Effective Date”) is by and between The Downtown Lee’s Summit Community Improvement, a Missouri Community Improvement District (“District”) and the City of Lee’s Summit, Missouri, a Missouri municipal corporation (“City”), also sometimes collectively referenced as “parties”.

WITNESSETH:

WHEREAS, the District was established by the City Council of the City of Lee’s Summit, Missouri through the passage of Ordinance No. 7478 on June 19, 2014; and

WHEREAS, the Five-Year District Management Plan set forth as Exhibit B in the District Petition, provided for an annual contribution from the District to the City for the performance of certain public services; and

WHEREAS, the District has determined that it is in the best interests of the District, and important to the successful completion of the public services and improvements set forth for the District, to enter into a public service agreement with the City to provide those certain public services; and

WHEREAS, the District and City desire to enter into an agreement to provide for the scope of work, and compensation to be paid for such work; and

WHEREAS, the District and City have the authority to enter into this Agreement pursuant to the provisions of Section 70.210, et. seq. R.S.Mo.

NOW, THEREFORE, in consideration of mutual undertakings and mutual benefits from the services set forth herein, the District and City agree as follows:

I. SCOPE OF SERVICES

A. City will provide the following services:

1. **Trash removal** from regular, public receptacles approved and placed by the City, at the City’s discretion, within the boundaries of the District by the City or the City’s selected contractors.
2. **Landscape materials and maintenance of the plant materials** placed in the planters approved and placed by the City, at the City’s discretion, located within the boundaries of the District, excluding planters that are part of any other agreement, by the City or the City’s selected contractors.

3. To provide **streetlight electricity and regular maintenance for the decorative, public streetlights** located within the boundaries of the District with work to be performed by the City or the City's selected contractors.
4. **Maintenance of other streetscape improvements** including, but not limited to, pavers, trees, tree grates, benches, waste and recycling receptacles, and permanent electrical outlets located within the boundaries of the District with work to be performed by the City or the City's selected contractors
5. Review and comment on the District's annual budget and other reports to be filed with the City.

The services outlined in this Section I(A) shall be referred to as the "City Provided Public Services".

- B. The City Provided Public Services may be provided either directly by the City, or at the City's sole discretion by third party service providers and vendors pursuant to City contracts. The level of service for the City Provided Public Services are as determined by the City in its sole discretion, or in the case of services provided through a third-party contract, as provided in the respective contract. Nothing in this Agreement shall serve to create any third-party right in favor of the District in any such contracts. The District acknowledges and agrees that no warranty or guarantee, express or implied, is made by the City with respect to the City Provided Public Services. Any complaint or concern by the District regarding the City Provided Public Services shall be directed to the City Manager or his designee, and to the extent deemed necessary by the City Manager or his designee, be addressed by the City with City staff responsible for the services, or in the manner provided for in the contract with the respective third-party vendor.
- C. Any additional services not set forth in this Section I. herein shall be at the sole cost of the District, except as otherwise provided in Section III herein.

II. **TERM AND TIME OF PERFORMANCE**

This Agreement shall effective as of the Effective Date set forth above and shall remain in full force and effect for six months beginning January 1, 2021 through June 30, 2021 (the "Initial Term"), unless terminated as provided for in this Agreement. After the expiration of the Initial Term, this Agreement shall automatically renew for up to four (4) successive one year terms, unless terminated as provided for this in Agreement.

III. **CAPITAL CONTRIBUTION AND METHOD OF PAYMENT**

- A. In consideration for providing the City Provided Public Services, the District agrees to pay the City an amount equal to seventy-five percent (75%) of the City's annual cost for the City Provided Services, except that said annual payment shall not exceed ten percent (10%) of the District's annual sales tax revenue from July 1 through June 30 of each year this Agreement is in effect (the "Capital Contribution"). The District shall

pay the Capital Contribution within thirty (30) days of receipt of an annual City Provided Public Services invoice from the City.

- B. In addition to paying the Capital Contribution, the District shall pay the City a separate fee for the City Provided Public Services outlined in Section I(A)(5) in the amount of \$250.00 per year (the “Budget Review Fee”). The Budget Review Fee shall be due within thirty (30) days after receipt of invoice from the CITY.
- C. All compensation for the Services is subject to annual appropriation by the District. With the adoption of the annual District budget, the compensation for each fiscal year provided for in the Agreement is subject to appropriation, or non-appropriation, at the time.

IV. NON-DISCRIMINATION PROVISIONS

City will not discriminate against any employee or applicant for employment because of race, color, creed, religion, ancestry, national origin, sex, disability or other handicap, or age.

V. COMPLIANCE WITH THE LAW

All parties shall comply with all applicable federal, state and local laws, ordinances, codes and regulations.

VI. CONFLICT OF INTEREST\POLITICAL ACTIVITY

The elected officials, public officials, employees and agents of the District shall comply with all applicable laws and regulations relating to conflicts of interest with regard to the work and compensation covered by this Agreement.

City shall not use the compensation paid through this Agreement for political activities or legislative activities. For the purpose of this Agreement, the terms “political activities” and “legislative activities” shall have the meanings ascribed to them by the Internal Revenue Service.

VII. INDEPENDENT CONTRACTOR

City is not authorized or empowered to make any commitments or incur any obligation on behalf of the District, but merely to provide the Services provided for herein as an independent contractor.

VIII. INDEMNIFICATION

City shall cause its contractors and/or subcontractors performing any of the services set forth in Section I of this Agreement to indemnify, defend, and hold harmless the District, its officers, agents, employees, and elected officials, each in their official and individual capacities, from and against all lawsuits, actions, costs, claims, demands, damages, disability, losses, expenses, including reasonable attorney’s fees and other defense costs or

liabilities (collectively referred to as "Claims"), of any character and from any cause whatsoever, brought because of bodily injury or death received or sustained, or loss or damage received or sustained, by any person, persons, or property arising out of or resulting from any negligent act, error, or omission of the City's contractors or subcontractors as arising out of the work or operations expressly authorized in this Agreement; provided, however, that this indemnification section shall not apply for Claims arising out of the sole negligence of the District, its employees, officers, elected officials, or agents.

Nothing in this indemnification section is intended to waive and shall waive the City's sovereign immunity.

IX. CANCELLED, TERMINATION OR SUSPENSION

Either party may terminate the provision of any component of the City Provided Public Services by giving at least sixty (60) days written notice to the other party as provided in Section XI of this Agreement. The District may terminate this Agreement in its entirety immediately if funds are not appropriated for the City Provided Services described herein. Notice of the immediate termination of this Agreement shall be given as provided in Section XI of this Agreement.

X. NOTICE

Any notice required by this Agreement is deemed to be given if it is mailed by United States certified mail, postage prepaid, and addressed as hereinafter specified.

Notice to the District shall be addressed to:

Attn: Chairman
The Downtown Lee's Summit Community Improvement District
13 SE Third Street
Lee's Summit, Missouri 64063

Notice to City shall be addressed to:

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

XI. AMENDMENTS

This Agreement may be modified only by a written amendment signed by persons duly authorized to enter into contracts on behalf of the City and the District.

XII. SEVERABILITY

It is mutually agreed that in case any provision of this Agreement is determined by a court of law to be unconstitutional, illegal, or unenforceable, it is the intention of the parties that all the other provisions of this Agreement shall remain in full force and effect.

XIII. ENTIRE AGREEMENT

This Agreement constitutes the entire agreement between the parties with respect to its subject matter and any prior agreements, understandings, or other matters, whether oral or written, are hereby merged into and made a part hereof, and are of no further force or effect. The parties acknowledge and agree that each has had the opportunity to seek and utilize legal counsel in the drafting of, review of, and entry into this Agreement.

XIV. MISCELLANEOUS

- A. Assignment; Delegation.** No right or interest in this Agreement shall be assigned or delegated by the District without prior, written permission of the either party, signed by their authorized representative. . The requirements of this Agreement are binding upon the heirs, executors, administrators, successors, and assigns of both parties.
- B. Rights and Remedies.** No provision in this Agreement shall be construed, expressly or by implication, as waiver by the either party of any existing or future right and/or remedy available by law in the event of any claim of default or breach of this Agreement. The failure of a party to insist upon the strict performance of any term or condition of this Agreement or to exercise or delay the exercise of any right or remedy provided in this Agreement, or by law, or the City's acceptance of payment shall not release the District from any responsibilities or obligations imposed by this Agreement or by law, and shall not be deemed a waiver of any right of a party to insist upon the strict performance of this Agreement.
- C. Waiver of Breach.** No waiver of any breach of any covenant or agreement herein contained shall operate as a waiver of any subsequent breach of the same covenant or agreement or as a waiver of any breach of any other covenant or agreement.
- D. E-Signature and Counterparts.** The parties agree that this Agreement may be signed in two or more counterparts each of which shall be deemed to be an original, but all of which together shall constitute one and the same instrument. ..
- E. Force Majeure.** The parties shall be excused from performance during the time and to the extent that they are prevented from obtaining, delivering, or performing for reasons beyond the parties' reasonable control, including without limitation, by act of God, public health emergency, natural disaster fire, strike, loss or shortage of transportation facilities, lock-out, commandeering of materials, products, plants or facilities by the government, and any other events or circumstances beyond the reasonable control of the party, when satisfactory evidence is presented to the affected party.
- F. Applicable Law; Venue.** This Agreement shall be governed by and construed in accordance with the laws of the State of Missouri and any suit pertaining to this Agreement may be brought in the Circuit Court of Jackson County, Missouri. The parties expressly and irrevocably consent to the exclusive jurisdiction and venue of such courts and expressly waive the right to transfer or remove any such action.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement as of the date and year first above written.

CITY OF LEE'S SUMMIT

**THE DOWNTOWN LEE'S COMMUNITY
IMPROVEMENT DISTRICT**

William A. Baird, Mayor Date

Brad Culbertson, Chairman

ATTEST:

Date _____

Trisha Fowler Arcuri, City Clerk

APPROVED AS TO FORM:

Daniel R. White,
Chief Counsel of Management and Operations