

**PROFESSIONAL SERVICES AGREEMENT**

**THIS AGREEMENT** is effective as of this \_\_\_\_\_ day of \_\_\_\_\_ 2024, by and between DOWNTOWN DEVELOPMENT AUTHORITY OF CITY OF STONE MOUNTAIN, a public body corporate of the State of Georgia (“DDA”), and \_\_\_\_\_, a foreign domestic corporation LLC (“Contractor”), collectively referred to as the “Parties.”

**WITNESSETH THAT**

**WHEREAS**, City desires to retain Contractor to provide certain services generally described as landscape maintenance services;

**WHEREAS**, DDA finds that specialized knowledge, skills, and training are necessary to perform the tasks contemplated in the Scope of Project section (the “Work”) in Request for Proposal for Landscape Maintenance services under this Agreement;

**WHEREAS**, Contractor has represented that it is qualified by training experience to perform the Work;

**WHEREAS**, Contractor desires to perform the Work under the terms and conditions set forth in this Agreement; and

**WHEREAS**, the public interest will be served by this Agreement.

**NOW, THEREFORE**, for Contractor’s performance and completion of the Work, DDA shall pay Contractor a fee in accordance with the sum established in Contractor’s bid and, as finally awarded by the DDA, for a total sum not to exceed \_\_\_\_\_.

**I. SCOPE OF SERVICES**

**a. Project Description**

The project is described as Lawn Maintenance Services as outlined in the RFP.

**b. The Work**

The Work to be completed under this Agreement consists of lawn maintenance services as defined in the Scope of Project covered in the RFP dated \_\_\_/\_\_\_/20\_\_\_. A copy of the RFP is attached as Exhibit “A” hereto and is incorporated herein by reference. A copy of the Contractor’s lawn maintenance proposal form is attached hereto as Exhibit \_\_\_ and incorporated herein by reference. The Scope of Work is attached hereto Exhibit \_\_\_ and incorporated herein by reference.

**c. Schedule, Completion Date, and Term of Agreement**

Contractor warrants and represents that it will perform its services in a prompt and timely manner, which shall not impose delays on the progress of the Work. This Agreement shall commence as of the date first written above, and the Work shall be completed on or before \_\_\_\_/\_\_\_\_/2024.

The Agreement may be extended for additional periods predicated on satisfactory performance and appropriation for lawn maintenance services by the DDA.

**II. WORK CHANGES**

**a.** The DDA reserves the right to order changes in the Work to be performed under this Agreement by altering, adding to, or deducting from the Work. All such changes shall be incorporated in written change orders executed by the Contractor and the DDA. Such change orders shall specify the changes ordered and any necessary adjustment of compensation and completion time. If the Parties cannot reach an agreement on the terms for performing the changed work within a reasonable time to avoid delay or other unfavorable impacts as determined by the DDA in its sole discretion, the DDA shall have the right to determine reasonable terms, and the Contractor shall proceed with the changed work.

**b.** Any work added to the scope of this Agreement by a change order shall be executed under all the applicable conditions of this Agreement. No claim for additional compensation or extension of time shall be recognized unless contained in a written change order duly executed on behalf of the DDA and the Contractor.

**III. COMPENSATION AND METHOD OF PAYMENT**

**a.** DDA agrees to pay the Contractor for the Work performed and costs incurred by Contractor upon certification by the DDA that the Work was actually performed and costs actually incurred in accordance with the Agreement. Compensation for Work performed and reimbursement for costs incurred shall be paid to the Contractor upon receipt and approval by the DDA of invoices setting forth in detail the services performed and costs incurred. Invoices shall be submitted on a monthly basis, and such invoices shall reflect charges incurred versus charges budgeted. Any material deviations in tests or inspections performed, or times or locations required to complete such tests or inspections, and like deviations from the Work described in this Agreement shall be clearly communicated to the DDA before charges are incurred and shall be handled through change orders as described in Section II above. The DDA shall pay the Contractor within thirty (30) days after approval of the invoice by DDA staff.

**b.** The total amount paid under this Agreement as compensation for the Work performed and reimbursement for costs incurred shall not, in any case, exceed \_\_\_\_\_. The compensation for Work performed shall be based upon Contractor's proposal form dated \_\_\_\_\_ and attached hereto as Exhibit "\_\_\_."

#### IV. COVENANTS OF CONTRACTOR

**a. Expertise of Contractor**

Contractor accepts the relationship of trust and confidence established between it and the DDA, recognizing that the DDA's intention and purpose in entering into this Agreement is to engage an entity with the requisite capacity, experience, and professional skill and judgment to provide the Work in pursuit of the timely and competent completion of the Work undertaken by Contractor under this Agreement.

**b. Budgetary Limitations**

Contractor agrees and acknowledges that budgetary limitations are not a justification for breach of sound principles of Contractor's profession and industry. Contractor shall take no calculated risk in the performance of the Work. Specifically, Contractor agrees that, in the event it cannot perform the Work within the budgetary limitations established without disregarding sound principles of Contractor's profession and industry, Contractor will give written notice immediately to the DDA.

**c. DDA's Reliance on the Work**

The Contractor acknowledges and agrees that the DDA does not undertake to approve or pass upon matters of expertise of the Contractor and that, therefore, the DDA bears no responsibility for the Contractor's Work under this Agreement. The Contractor acknowledges and agrees that the acceptance of designs, plans, and specifications by the DDA is limited to the function of determining whether there has been compliance with what is required to be produced under this Agreement. The DDA will not, and need not, inquire into the adequacy, fitness, suitability, or correctness of the Contractor's performance. Contractor further agrees that no approval of designs, plans, or specifications by any person, body, or agency shall relieve Contractor of the responsibility for adequacy, fitness, suitability, and correctness of Contractor's Work under professional and industry standards or for performing services under this Agreement in accordance with sound and accepted professional and industry principals.

**d. Contractor's Reliance on Submissions by the DDA**

Contractor must have timely information and input from the DDA in order to perform the Work required under this Agreement. Contractor is entitled to rely upon information provided by the DDA, but Contractor shall be required to provide immediate written notice to the DDA if Contractor knows or reasonably should know that any information provided by the DDA is erroneous, inconsistent, or otherwise problematic.

**e. Contractor's Representative**

\_\_\_\_\_ shall be authorized to act on Contractor's behalf with respect to the Work as Contractor's designated representative.

**f. Assignment of Agreement**

The Contractor covenants and agrees not to assign or transfer any interest in, nor delegate any duties of this Agreement, without the prior express written consent of the DDA. As to any approved subcontractors, the Contractor shall be solely responsible for reimbursing them, and the DDA shall have no obligation to them.

**g. Responsibility of Contractor and Indemnification of DDA**

The Contractor covenants and agrees to take and assume all responsibility for the Work rendered in connection with this Agreement. The Contractor shall bear all losses and damages directly or indirectly resulting to it and/or the DDA on account of the performance or character of the Work rendered pursuant to this Agreement. Contractor shall defend, indemnify, and hold harmless the DDA, its officers, boards, directors, commissions, appointed officials, employees, servants, volunteers, and agents (hereinafter referred to as “DDA Parties”) from and against any claims, injuries, suits, actions, judgments, damages, losses, costs, expenses and liability of any kind whatsoever, including but not limited to, attorney’s fees and costs of defense, (hereinafter “Liabilities”) which may be the result of willful, negligent or tortious conduct arising out of the Work, performance of contracted services, or operations by the Contractor, any subcontractor, anyone directly or indirectly employed by the Contractor or subcontractor or anyone for whose acts the Contractor or subcontractor may be liable, regardless of whether or not the negligent act is caused in part by a party indemnified hereunder. This indemnity obligation does not include Liabilities caused by or resulting from the sole negligence of the DDA or DDA Parties. Such obligation shall not be construed to negate, abridge, or otherwise reduce any other right or obligation of indemnity which would otherwise exist as to any party or person described in this provision. In any claims against the DDA or DDA Parties by any employee of the Contractor, any subcontractor, anyone directly or indirectly employed by the Contractor or subcontractor, or anyone for whose acts the Contractor or subcontractor may be liable, the indemnification obligation set forth in this provision shall not be limited in any way by any limitation on the amount or type of damages, compensation or benefits payable by or for the Contractor or any subcontractor under workers’ or workmen’s compensation acts, disability benefit acts or other employee benefit acts. This obligation to indemnify, defend, and hold harmless the DDA and DDA Parties shall survive expiration or termination of this Agreement, provided that the claims are based upon or arising out of actions that occurred during the performance of this Agreement.

**h. Independent Contractor**

Contractor hereby covenants and declares that it is engaged in an independent business and agrees to perform the Work as an independent contractor and not as the agent or employee of the DDA. The Contractor agrees to be solely responsible for its own matters relating to the time and place the services are performed; the instrumentalities, tools, supplies, and/or materials necessary to complete the Work; hiring of Contractors, agents, or employees to complete the Work; and the payment of employees, including compliance with Social Security, withholding and all other regulations governing such matters. The Contractor agrees to be solely responsible for its own acts and those of its subordinates, employees, and subcontractors during the life of this Agreement.

Any provisions of this Agreement that may appear to give the DDA the right to direct Contractor as to the details of the services to be performed by Contractor or to exercise a measure of control over such services will be deemed to mean that Contractor shall follow the directions of the DDA with regard to the results of such services only.

**i. Insurance**

i. Requirements:

The Contractor shall have and maintain, in full force and effect for the duration of this Agreement, insurance insuring against claims for injuries to persons or damages to property that may arise from or in connection with the performance of the Work by the Contractor, its agents, representatives, employees, or subcontractors. All policies shall be subject to approval by the DDA to form and content. These requirements are subject to amendment or waiver if so approved in writing by the DDA.

ii. Minimum Limits of Insurance:

Contractor shall maintain the following insurance policies with limits no less than:

1. Comprehensive General Liability of \$1,000,000 (one million dollars) combined single limit per occurrence for bodily and personal injury, sickness, disease or death, injury to or destruction of property, including loss of use resulting therefrom.
2. Comprehensive Automobile Liability (owned, non-owned, hired) of \$1,000,000 (one million dollars) combined single limit per occurrence for bodily and personal injury, sickness, disease or death, injury to or destruction of property, including loss of use resulting therefrom.
3. Professional Liability of \$1,000,000 (one million dollars) for claims arising from professional services and caused by the Contractor's errors, omissions, or negligent acts.
4. Workers' Compensation limits as required by the State of Georgia and Employers Liability limits of \$1,000,000 (one million dollars) per accident.

iii. Deductibles and Self-Insured Retentions:

Any deductibles or self-insured retentions must be declared to and approved by the DDA in writing.

iv. Other Insurance Provisions:

The policy is to contain, or be endorsed to contain, the following provisions:

1. General Liability and Automobile Liability Coverage.

- a. The DDA and DDA Parties are to be covered as insureds as respects: liability arising out of activities performed by or on behalf of the Contractor; products and completed operations of the Contractor; premises owned, leased, or used by the Contractor; automobiles owned, leased, hired, or borrowed by the Contractor. The coverage shall contain no special limitations on the scope of protection afforded to the DDA or DDA Parties.
- b. The Contractor's insurance coverage shall be primary noncontributing insurance with respect to any other insurance or self-insurance available to the DDA or DDA Parties. Any insurance or self-insurance maintained by the DDA or DDA Parties shall be in excess of the Contractor's insurance and shall not contribute to it.
- c. Any failure to comply with reporting provisions of the policies shall not affect coverage provided to the DDA and DDA Parties.
- d. Coverage shall state that the Contractor's insurance shall apply separately to each insured against whom claim is made or suit is brought.

2. Worker's Compensation Coverage.

The insurer providing Worker's Compensation Coverage will agree to waive all rights of subrogation against the DDA and DDA Parties for losses arising from work performed by Contractor for the DDA.

3. All Coverages.

- a. Each insurance policy required by this clause shall be endorsed to state that coverage shall not be suspended, voided, canceled, reduced in coverage, or in limits except after thirty (30) days prior written notice by certified mail, return receipt requested, has been given to the DDA.
- b. Policies shall have concurrent starting and ending dates.

v. Acceptability of Insurers:

Insurance is to be placed with an insurer with an A.M. Best rating of no less than A.

vi. Verification of Coverage:

Contractor shall furnish the DDA with certificates of insurance and endorsements to the policies evidencing coverage required by this Article prior to the start of work. The certificate of insurance and endorsements shall be on a form utilized by Contractor's insurer in its normal course of business and shall be received and approved by the DDA prior to execution of this Agreement by the DDA. The DDA reserves the right to require complete, certified copies of all required insurance policies at any time. The Contractor shall provide proof that any expiring coverage has been renewed or replaced at least two (2) weeks prior to the expiration of the coverage.

vii. Subcontractors:

Contractor shall include all subcontractors as insureds under its policies or shall furnish separate certificates and endorsements for each subcontractor. All coverage for subcontractors shall be subject to all of the requirements stated in this Agreement, including but not limited to naming the parties as additional insureds.

viii. Claims-Made Policies:

Contractor shall extend any claims-made insurance policy for at least six years after termination or final payment under the agreement, whichever is later.

ix. DDA as Additional Insured and Loss Payee:

The DDA shall be named as an additional insured and loss payee on all policies required by this Agreement, except the DDA need not be named as an additional insured and loss payee on any Professional Liability policy or Workers' Compensation policy.

**j. Employment of Unauthorized Aliens Prohibited – E-Verify Affidavit**

It is the policy of DDA that unauthorized aliens shall not be employed to perform work on DDA contracts involving the physical performance of services. Therefore, the DDA shall not enter into a contract for the physical performance of services within the State of Georgia unless:

- i. the Contractor shall provide evidence on DDA-provided forms, attached hereto as Exhibits “\_\_\_” and “\_\_\_” (affidavits regarding compliance with

the E-Verify program to be sworn under oath under criminal penalty of false swearing pursuant to O.C.G.A. § 16-10-71), that it and Contractor's subcontractors have conducted a verification, under the federal Employment Eligibility Verification ("EEV" or "E-Verify") program, of the social security numbers, or other identifying information now or hereafter accepted by the E-Verify program, of all employees who will perform work on the DDA contract to ensure that no unauthorized aliens will be employed, or

- ii. the Contractor provides evidence that it is not required to provide an affidavit because it is licensed pursuant to Title 26 or Title 43 or by the State Bar of Georgia and is in good standing as of the date when the contract for services is to be rendered.

The Contractor hereby verifies that it has, prior to executing this Agreement, executed a notarized affidavit, the form of which is provided in Exhibit "\_\_\_\_\_", and submitted such affidavit to DDA or provided the DDA with evidence that it is not required to provide such an affidavit because it is licensed and in good standing as noted in subsection (2) above. Further, Contractor hereby agrees to comply with the requirements of the federal Immigration Reform and Control Act of 1986 (IRCA), P.L. 99-603, O.C.G.A. § 13-10-91 and Rule 300-10-1-.02.

In the event the Contractor employs or contracts with any subcontractor(s) in connection with the covered contract, the Contractor agrees to secure from such subcontractor(s) attestation of the subcontractor's compliance with O.C.G.A. § 13-10-91 and Rule 300-10-1-.02 by the subcontractor's execution of the subcontractor affidavit, the form of which is attached hereto as Exhibit "\_\_\_\_\_", which subcontractor affidavit shall become part of the contractor/subcontractor agreement, or evidence that the subcontractor is not required to provide such an affidavit because it is licensed and in good standing as noted in subsection (2) above. If a subcontractor affidavit is obtained, Contractor agrees to provide a completed copy to the DDA within five (5) business days of receipt from any subcontractor. Where Contractor is required to provide an affidavit pursuant to O.C.G.A. § 13-10-91, the DDA Representative or his/her designee shall be authorized to conduct an inspection of the Contractor's and Contractor's subcontractors' verification process at any time to determine that the verification was correct and complete. The Contractor and Contractor's subcontractors shall retain all documents and records of their respective verification process for a period of three (3) years following completion of the contract, further, where Contractor is required to provide an affidavit pursuant to O.C.G.A. § 13-10-91, an authorized DDA representative or his/her designee shall further be authorized to conduct periodic inspections to ensure that no DDA Contractor or Contractor's subcontractors employ unauthorized aliens on DDA contracts. By entering into a contract with the DDA, the Contractor and Contractor's subcontractors agree to cooperate with any such investigation by making their records and personnel available upon reasonable notice for inspection and questioning. Where a Contractor or Contractor's subcontractors are found to have employed an unauthorized alien, the DDA Representative or his/her designee may report same to the Department of Homeland Security. The Contractor's failure to cooperate with the investigation may be sanctioned by termination of the contract, and



the Contractor shall be liable for all damages and delays occasioned by the DDA thereby. Contractor agrees that the employee-number category designated below is applicable to the Contractor. [Information only required if a contractor affidavit is required pursuant to O.C.G.A. § 13-10-91.]

\_\_\_\_\_ 500 or more employees

\_\_\_\_\_ 100 or more employees

\_\_\_\_\_ fewer than 100 employees

Contractor hereby agrees that in the event Contractor employs or contracts with any subcontractor(s) in connection with this Agreement and where the subcontractor is required to provide an affidavit pursuant to O.C.G.A. § 13-10-91, the Contractor will secure from the subcontractor(s) such subcontractor(s)' indication of the above employee-number category that is applicable to the subcontractor.

The above requirements shall be in addition to the requirements of State and federal law and shall be construed to conform with those laws.

**k. Records, Reports, and Audits**

i. Records:

1. Records shall be established and maintained by the Contractor in accordance with requirements prescribed by the DDA with respect to all matters covered by this Agreement. Except as otherwise authorized, such records shall be maintained for a period of three years from the date that final payment is made under this Agreement. Furthermore, records that are the subject of audit findings shall be retained for three years or until such audit findings have been resolved, whichever is later.
2. All costs shall be supported by properly executed payrolls, time records, invoices, contracts, vouchers, or other official documentation evidencing the nature and propriety of the charges in proper detail. All checks, payrolls, invoices, contracts, vouchers, orders, or other accounting documents pertaining in whole or in part to this Agreement shall be clearly identified and readily accessible.

ii. Reports and Information:

Upon request, the Contractor shall furnish to the DDA any statements, records, reports, data, and information related to matters covered by this Agreement in the form requested by the DDA.

iii. Audits and Inspections:

At any time during normal business hours and as often as the DDA may deem necessary, there shall be made available to the DDA for examination all records with respect to all matters covered by this Agreement. The Contractor will permit the DDA to audit, examine, and make excerpts or transcripts from such records and to audit all contracts, invoices, materials, payrolls, records of personnel, conditions of employment, and or data relating to all matters covered by this Agreement.

### **I. Confidentiality**

Contractor acknowledges that it may receive confidential information of the DDA and that it will protect the confidentiality of any such confidential information and will require any of its subcontractors, Contractors, and staff to likewise safeguard such confidential information. The Contractor agrees that confidential information it receives or such reports, information, opinions, or conclusions that Contractor creates under this Agreement shall not be made available to, or discussed with, any individual or organization, including the news media, without prior written approval of the DDA. The Contractor shall exercise reasonable precautions to prevent the unauthorized disclosure and use of DDA information, whether specifically deemed confidential or not.

Contractor acknowledges that the DDA's disclosure of documentation is governed by Georgia's Open Record's Act, and Contractor further acknowledges that if Contractor submits records containing trade secret information, and if Contractor wishes to keep such records confidential, Contractor must submit and attach to such records an affidavit affirmatively declaring that specific information in the records constitutes trade secrets pursuant to Article 27 of Chapter 1 of Title 10, and the Parties shall follow the requirements of O.C.G.A. § 50-18-72(a)(34) related thereto.

### **m. Licenses, Certifications, and Permits**

The Contractor covenants and declares that it has obtained all diplomas, certificates, licenses, permits, or the like required of the Contractor by any national, state, regional, DDA, local boards, agencies, commissions, committees, or other regulatory bodies in order to perform the Work contracted for under this Agreement. All work performed by Contractor under this Agreement shall be in accordance with applicable legal requirements and shall meet the standard of quality ordinarily expected of competent professionals.

### **n. Authority to Contract**

The Contractor covenants and declares that it has obtained all necessary approvals of its board of directors, stockholders, general partners, limited partners, or similar authorities to simultaneously execute and bind the Contractor to the terms of this Agreement, if applicable.

**o. Nondiscrimination**

In accordance with Title VI of the Civil Rights Act, as amended, 42 U.S.C. § 2000d, section 303 of the Age Discrimination Act of 1975, as amended, 42 U.S.C. § 6102, section 202 of the Americans with Disabilities Act of 1990, 42 U.S.C. § 12132, and all other provisions of Federal law, the Contractor agrees that, during performance of this Agreement, Contractor, for itself, its assignees and successors in interest, will not discriminate against any employee or applicant for employment, any subcontractor, or any supplier because of race, color, creed, national origin, gender, age or disability. In addition, Contractor agrees to comply with all applicable implementing regulations and shall include the provisions of this Section IV(R) in every subcontract for services contemplated under this Agreement.

**V. COVENANTS OF THE DDA**

**a. Right of Entry**

The DDA shall provide for right of entry for Contractor and all necessary equipment to all DDA facilities, in order for Contractor to complete the Work.

**b. DDA's Representative**

\_\_\_\_\_ shall be authorized to act on the DDA's behalf with respect to the Work as the DDA's designated representative, provided that any changes to the Work or the terms of this Agreement must be approved as provided in Section II above.

**VI. TERMINATION**

**a.** The DDA shall have the right to terminate this Agreement for convenience by providing written notice at least five (5) calendar days before the termination date. The Contractor shall have no right to terminate this Agreement prior to completion of the Work, except in the event of the DDA's failure to pay the Contractor within thirty (30) days of Contractor providing the DDA with notice of a delinquent payment and an opportunity to cure.

**b.** Upon termination, DDA shall provide for payment to Contractor for services rendered and expenses incurred prior to the termination date.

**c.** Upon termination, the Contractor shall: (1) promptly discontinue all services affected, unless the notice directs otherwise; and (2) promptly deliver to the DDA all data, drawings, reports, summaries, and such other information and materials as may have been generated or used by the Contractor in performing this Agreement, whether completed or in process, in the form specified by the DDA.

**d.** The rights and remedies of the DDA and the Contractor provided in this Article are in addition to any other rights and remedies provided under this Agreement, at law, or in equity.

## **VII. NO PERSONAL LIABILITY**

Nothing herein shall be construed as creating any individual or personal liability on the part of any DDA Party. No DDA Party shall be personally liable to the Contractor or any successor in interest in the event of any default or breach by the DDA or for any amount which may become due to the Contractor or successor or on any obligation under the terms of this Agreement. Likewise, Contractor's performance of services under this Agreement shall not subject Contractor's individual employees, officers or directors to any personal liability. The Parties agree that their sole and exclusive remedy, claim, demand or suit shall be directed and/or asserted only against Contractor or the DDA, respectively, and not against any employee, officer, director, or elected or appointed official.

## **VIII. ENTIRE AGREEMENT**

This Agreement constitutes the complete agreement between the Parties and supersedes any other agreements, either oral or in writing, between the Parties with respect to the subject matter of this Agreement. No other agreement, statement, or promise relating to the subject matter of this Agreement not contained in this Agreement shall be valid or binding. This Agreement may be modified or amended only by a written document signed by representatives of both Parties with appropriate authorization.

## **IX. SUCCESSORS AND ASSIGNS**

Subject to the provision of this Agreement regarding assignment, this Agreement shall be binding on the heirs, executors, administrators, successors, and assigns of the respective Parties, provided that no party may assign this Agreement without the prior written approval of the other party.

## **X. APPLICABLE LAW**

If any action at law or in equity is brought to enforce or interpret the provisions of this Agreement, the rules, regulations, statutes, and laws of the State of Georgia will control. Any action or suit related to this Agreement shall be brought in the Superior Court of DeKalb County, Georgia.

## **XI. CAPTIONS AND SEVERABILITY**

The caption or headnote on articles or sections of this Agreement are intended for convenience and reference purposes only and in no way define, limit, or describe the scope or intent thereof, or of this Agreement, nor in any way affect this Agreement. Should any article(s) or section(s), or any part thereof, later be deemed unenforceable by a court of competent jurisdiction, the offending portion of the Agreement should be severed, and the remainder of this Agreement shall remain in full force and effect to the extent possible.

**XII. BUSINESS LICENSE**

Contractor must provide a current business license prior to commencement of the services to be provided hereunder. If a current business license is unavailable, Contractor shall apply to the DDA for a business license, pay the applicable business license fee, maintain said business license during the term of this Agreement.

**XIII. NOTICES**

**a. Communications Relating to Day-to-Day Activities**

All communications relating to the day-to-day activities of the Work shall be exchanged between \_\_\_\_\_ for the DDA and \_\_\_\_\_ for the Contractor.

**b. Official Notices**

All other notices, requests, demands, writings, or correspondence, as required by this Agreement, shall be in writing and shall be deemed received, and shall be effective, when: (1) personally delivered, or (2) on the third day after the postmark date when mailed by certified mail, postage prepaid, return receipt requested, or (3) upon actual delivery when sent via national overnight commercial carrier to the Parties at the addresses given below, or at a substitute address previously furnished to the other Parties by written notice in accordance herewith:

**NOTICES TO THE DDA** shall be sent to:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

**NOTICES TO THE CONTRACTOR** shall be sent to:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

Future changes in address shall be effective only upon written notice being given by the DDA to the Contractor or by Contractor to DDA via one of the delivery methods described in this Section.

#### **XIV. WAIVER OF AGREEMENT**

No failure by the DDA to enforce any right or power granted under this Agreement, or to insist upon strict compliance by Contractor with this Agreement, and no custom or practice of the DDA at variance with the terms and conditions of this Agreement shall constitute a general waiver of any future breach or default or affect the DDA's right to demand exact and strict compliance by Contractor with the terms and conditions of this Agreement.

#### **XV. NO THIRD PARTY RIGHTS**

This Agreement shall be exclusively for the benefit of the Parties and shall not provide any third parties with any remedy, claim, liability, reimbursement, cause of action, or other right.

#### **XVI. SOVEREIGN IMMUNITY**

Nothing contained in this Agreement shall be construed to be a waiver of the DDA's sovereign immunity or any individual's qualified good faith or official immunities.

#### **XVII. FORCE MAJEURE**

Neither the DDA nor Contractor shall be liable for their respective non-negligent or non-willful failure to perform or shall be deemed in default with respect to the failure to perform (or cure a failure to perform) any of their respective duties or obligations under this Agreement or for any delay in such performance due to: (a) any cause beyond their respective reasonable control; (b) any act of God; (c) any change in applicable governmental rules or regulations rendering the performance of any portion of this Agreement legally impossible; (d) earthquake, fire, explosion or flood; (e) strike or labor dispute, excluding strikes or labor disputes by employees and/or agents of Contractor; (f) delay or failure to act by any governmental or military authority; or (g) any war, hostility, embargo, sabotage, civil disturbance, riot, insurrection or invasion. In such event, the time for performance shall be extended by an amount of time equal to the period of delay caused by such acts, and all other obligations shall remain intact.

(Signatures on following page)

**IN WITNESS WITNESS WHEREOF**, DDA and Contractor have executed this Agreement effective as of the date the last Party executes this Agreement.

\_\_\_\_\_  
\_\_\_\_\_,  
**a** \_\_\_\_\_

By: \_\_\_\_\_  
Name (printed): \_\_\_\_\_  
Title (printed): \_\_\_\_\_

ATTEST:

[AFFIX CORPORATE SEAL]

By: \_\_\_\_\_  
Name (printed): \_\_\_\_\_  
Title (printed): \_\_\_\_\_

**DOWNTON DEVELOPMENT AUTHORITY OF  
CITY OF STONE MOUNTAIN**

By: \_\_\_\_\_  
Name (printed): \_\_\_\_\_  
Title (printed): \_\_\_\_\_

ATTEST:

By: \_\_\_\_\_  
Name (printed): \_\_\_\_\_  
Title (printed): \_\_\_\_\_

[AFFIX SEAL]

**EXHIBIT**

**STATE OF GEORGIA**

**COUNTY OF \_\_\_\_\_**

**CONTRACTOR AFFIDAVIT AND AGREEMENT**

By executing this affidavit, the undersigned Contractor verifies its compliance with O.C.G.A. § 13-10-91, stating affirmatively that the individual, firm, or corporation which is engaged in the physical performance of services on behalf of the **DOWNTOWN DEVELOPMENT AUTHORITY OF CITY OF STONE MOUNTAIN**, has registered with, is authorized to use, and uses the federal work authorization program commonly known as E-Verify, or any subsequent replacement program, in accordance with the applicable provisions and deadlines established in O.C.G.A. § 13-10-91.

Furthermore, the undersigned contractor will continue to use the federal work authorization program throughout the contract period, and the undersigned Contractor will contract for the physical performance of services in satisfaction of such contract only with subcontractors who present an affidavit to the contractor with the information required by O.C.G.A. § 13-10-91(b).

Contractor hereby attests that its federal work authorization user identification number and date of authorization are as follows:

\_\_\_\_\_  
Federal Work Authorization User Identification  
Number

I hereby declare under penalty of perjury that the foregoing is true and correct.

\_\_\_\_\_  
Date of Authorization

Executed on \_\_\_\_\_, 2024 in \_\_\_\_\_  
(city), \_\_\_\_\_ (state).

**ESRI, INC.**  
Name of Contractor

\_\_\_\_\_  
Signature of Authorized Officer or Agent

\_\_\_\_\_  
Name of Project

\_\_\_\_\_  
Printed Name and Title of Authorized Officer or Agent

**DOWNTON DEVELOPMENT AUTHORITY  
OF CITY OF STONE MOUNTAIN**  
Name of Public Employer

SUBSCRIBED AND SWORN BEFORE ME ON  
THIS THE \_\_\_\_\_ DAY OF \_\_\_\_\_, 2024.

\_\_\_\_\_  
Notary Public

My Commission Expires: \_\_\_\_\_

[NOTARY SEAL]



**EXHIBIT**

STATE OF GEORGIA

COUNTY OF \_\_\_\_\_

**SUBCONTRACTOR AFFIDAVIT**

By executing this affidavit, the undersigned subcontractor verifies its compliance with O.C.G.A. § 13-10-91, stating affirmatively that the individual, firm or corporation which is engaged in the physical performance of services under a contract with \_\_\_\_\_, on behalf of the **DOWNTOWN DEVELOPMENT AUTHORITY OF CITY OF STONE MOUNTAIN** has registered with, is authorized to use, and uses the federal work authorization program commonly known as E-Verify, or any subsequent replacement program, in accordance with the applicable provisions and deadlines established in O.C.G.A. § 13-10-91. Furthermore, the undersigned subcontractor will continue to use the federal work authorization program throughout the contract period, and the undersigned subcontractor will contract for the physical performance of services in satisfaction of such contract only with sub-subcontractors who present an affidavit to the subcontractor with the information required by O.C.G.A. § 13-10-91(b). Additionally, the undersigned subcontractor will forward notice of the receipt of an affidavit from a sub-subcontractor to the contractor within five (5) business days of receipt. If the undersigned subcontractor receives notice that a sub-subcontractor has received an affidavit from any other contracted sub-subcontractor, the undersigned subcontractor must forward, within five (5) business days of receipt, a copy of the notice to the contractor.

Subcontractor hereby attests that its federal work authorization user identification number and date of authorization are as follows:

\_\_\_\_\_  
Federal Work Authorization User Identification  
Number

\_\_\_\_\_  
Date of Authorization

\_\_\_\_\_  
Name of Subcontractor

\_\_\_\_\_  
Name of Project

**DOWNTOWN DEVELOPMENT**  
**AUTHORITY OF CITY OF STONE**  
**MOUNTAIN**

\_\_\_\_\_  
Name of Public Employer

I hereby declare under penalty of perjury that the foregoing is true and correct.

Executed on \_\_\_\_\_, 2024 in \_\_\_\_\_  
(city), \_\_\_\_\_ (state).

\_\_\_\_\_  
Signature of Authorized Officer or Agent

\_\_\_\_\_  
Printed Name and Title of Authorized Officer or  
Agent

SUBSCRIBED AND SWORN BEFORE ME ON  
THIS THE \_\_\_\_\_ DAY OF \_\_\_\_\_, 2024.

\_\_\_\_\_  
Notary Public

My Commission Expires: \_\_\_\_\_

[NOTARY SEAL]

