

Professional Services Agreement

Term: (3) years (36 Months)

1. PARTIES: This Agreement is made this 30th day of June 2023 between City of Mount Clemens Downtown Development Authority hereinafter called DDA and DAVIS KIRKSEY ASSOCIATES, INC., hereinafter called CONTRACTOR.

City of Mount Clemens DDA

One Crocker Blvd.
Mount Clemens, MI 48045

DAVIS KIRKSEY ASSOCIATES, INC

1337 North Acre Drive
Rochester Hills, MI 48306
(Hereinafter known as Contractor)
EIN#32-0261015

1. **CONSIDERATION**

In consideration of the mutual promises, obligations, representations, assurances, and agreements in this Agreement, DDA and Contractor agree to be bound by the terms and conditions herein.

2. **SCOPE OF CONTRACTOR'S SERVICES**

The contractor shall perform the work and render services as follows:

- A. All such work and services shall be under the supervision of DDA Executive Director and Chairman of the DDA. Assist in actively pursuing grant opportunities for the DDA in conjunction with goals of DDA and assisting the City of Mount Clemens in the pursuit of grant and funding opportunities as directed.
- B. Assist in forming and maintaining partnerships with other organizations and governmental entities.
- C. Other grant writing support and services, as necessary.

3. **TERM**

The term of this Agreement begins **June 30, 2023**, and unless otherwise terminated, canceled or amended as provided herein ends 11:59:59 PM on **June 30, 2026**, at which time this Agreement expires without any further act or notice of either party being required.

4. **TERM EXTENSIONS**

The parties may mutually agree to renew or extend the term of this Agreement, but the parties are under no obligation to do so.

5. **CONTRACTOR'S REPRESENTATIONS**

Contractor represents and warrants to DDA and DDA relies on, the following facts as material inducement to enter into this Agreement.

- B. Contractor is not related to any employee or elected or appointed official of DDA.
- C. All services performed hereunder will be performed in a manner that complies with all applicable statutes, regulations, ordinances, and professional standards.
- D. Contractor will pay Contractor's own local, state, and federal taxes, including without limitation, social security taxes and unemployment compensation taxes and will file tax return(s) with the proper federal, state, and local authorities.
- E. Contractor maintains a business office at the address listed above.
- F. Contractor will not seek employment as an employee of DDA during the term of the contract.
- G. Nothing in this Agreement is intended to establish an employer-employee relationship with DDA.

6. **CONTRACTOR RELATIONSHIP**

The contractor's relationship to DDA is that of an Independent Contractor. This Agreement shall not cause DDA to be liable for, or Contractor to accrue, employee benefits such as, but not limited to, worker's compensation, retirement, pension, vacation, pay, sick pay, merit increases, annual leave days, promotion, disability pay insurance of any kind or any other right or liabilities that may raise out of an employer-employee relationship.

7. **PAYMENT**

The Contractor's fee for 36 Months (3 years) which encompasses the term of this agreement all is payable as follows:

\$2,250.00 Flat Monthly Rate due on July 15, 2023, for the first payment and due every month thereafter on the 15th of the month with the final payment of **\$2,250.00 due on June 15, 2026**

Contractor shall submit an invoice to DDA for the balance of payment for the work or services performed.

DDA shall have no obligation to remit payment until a proper invoice is submitted. DDA shall provide the Contractor with an appropriate contact to submit invoice to DDA on a scheduled timely basis for a flat professional services rate. DDA shall provide timely payment according to the terms of the Professional Services Agreement as set forth.

8. **IN-KIND SERVICES**

This agreement does not authorize any in-kind services unless previously agreed by DDA and specifically listed herein.

9. **CONTRACTOR'S RESPONSIBILITY FOR COSTS**

Contractor is responsible at Contractor's sole expense for acquiring any necessary equipment and supplies not otherwise provided by DDA. Contractor shall bear and be responsible and liable for all costs and expenses incidental to Contractor's performance of services for DDA, including but not limited to professional dues, association fees, license fees, fines, and penalties. DDA shall not be liable for any expenses incurred by Contractor in performing work or services for HOH unless the parties otherwise agree.

10. **AUDIT**

Contractor shall allow DDA auditors to perform financial and compliance audits as appropriate with the authority to access all pertinent records and interview Contractor throughout the term of the Agreement and for a period of ONE YEAR (1) year after expiration, termination, or cancellation of the Agreement.

11. **DDA RESPONSIBILITY FOR SUPPORT**

DDA shall endeavor to provide reasonable and necessary support including but not limited to required analytical, statistical, or departmental information, resources or any other information deemed appropriate by the parties in the spirit of good faith and cooperation for Contractor to conduct, complete or otherwise perform work or render the services under this Agreement.

12. **ACCESS TO DDA FACILITIES**

While Contractor retains the right to perform services at any time any services require access to DDA facilities may only be performed during the DDA regular business hours.

13. **CONFIDENTIALITY**

Contractor agrees that except for Contractor's personal data, resources and information, all data, documentation, software, and information, in whatever form, produced, created, disclosed to, or received by Contractor in connection with the performance of work, or the rendition of services under this Agreement shall be the sole and exclusive property of DDA. Contractor shall treat such data, documentation, software and information on a confidential basis and Contractor shall not, without DDA's consent, disclose the same to any third party or use it for the benefit of anyone other than DDA. Contractor's responsibility to maintain confidentiality benefit of anyone other than DDA. Contractor's responsibility is to maintain confidentiality of information shall survive and continue beyond any termination, cancellation, amendment, or expiration of this Agreement.

14. **INDEMNIFICATION**

Contractor shall indemnify, defend and hold DDA harmless from any and all actions, liabilities, claims, loss and damage (including costs of litigation and actual attorney fees) alleged to have been caused by, or to have arisen, directly or indirectly, from the acts, performances, negligence, malpractice, errors or omissions of Contractor or Contractor's assistants, employees or agents, including without limitation, all claims relating to injury or death of any person or damages to any property. DDA shall also indemnify and hold Contractor harmless from any and all actions, liabilities, claims, loss and damage (including costs of litigation and actual attorney fees) alleged to have been caused by, or have arisen, directly or indirectly, from the acts, performances, negligence, malpractice, errors or omissions of DDA officials, employees, or agents, including without limitation all claims relating to injury or death of any person or damages to any property.

15. **NON-EXCLUSIVITY**

Nothing contained in this Agreement is intended to prevent Contractor from offering or providing services to the public or other business entities, municipalities, or governmental agencies, during or after the term of this Agreement, or from working for more than one firm, entity or agency during the term of this Agreement. Contractor may provide services to others during the periods when Contractor is not engaged in performing services for DDA. This Agreement is a non-exclusive agreement and DDA may engage other contractors, consultants, or employees to perform the same services Contractor performs.

16. **PERSONAL SERVICE NON-ASSIGNABILITY**

This Agreement is intended to be a professional service contract with Contractor, personally based on Contractor's unique skill, talent, ability, and experience. The work performed and the services to be rendered hereunder shall be performed by the Contractor personally and such work or services may not be assigned, delegated, subcontracted, or otherwise performed or rendered by third parties on behalf of the Contractor without the prior, express permission of DDA

17. **CONTRACTOR'S INABILITY TO PERFORM**

In the event Contractor is unable to perform the services required under this Agreement within the time or in the manner which performance is due. Contractor remains solely responsible for complete performance, which includes but is not limited to, the retention of an assistant who is satisfactory to DDA in the event Contractor foresees that she will be unable to perform such services when due. All assistants employed by the Contractor are employed at the Contractor's own expense (including taxes and insurance) and Contractor remains solely responsible for and fully liable for the conduct and supervision of any assistant it employs. Contractor warrants that any services performed by Contractor's assistants shall fully comply with the terms of this Agreement and shall not be of the same quality of service as Contractor has customarily provided to DDA. All assistants employed by the Contractor shall be deemed employees of the Contractor and not employees, agents, or sub-contractors of DDA.

18. **TERMINATION**

This Agreement may be terminated or canceled by either party upon the occurrence of any of the following events and the terminating/canceling party shall have no liability to the other party in the exercise of such right:

- A. By either party, if the other party has breached a covenant, obligation or warranty under this Agreement and such breach, remains uncured for a period of ten (10) days after notice thereof is sent to such other party.
- B. By either party if Contractor ceases to conduct business or.
- C. By DDA, if Contractor fails to correct or resubmit previously rejected work, service or deliverable that Contractor is responsible for under the Agreement.

This Agreement may be terminated or canceled by either party for convenience on thirty (30) days prior written notice to the other party.

In the event either party terminates, cancels or this agreement expires. DDA shall have no further liability to Contractor, except to pay Contractor for the works or services performed by Contractor before the notice of termination, cancellation or expiration and pay for any work or services performed by Contractor after the notice of termination, cancellation or expiration of this agreement has been sent.

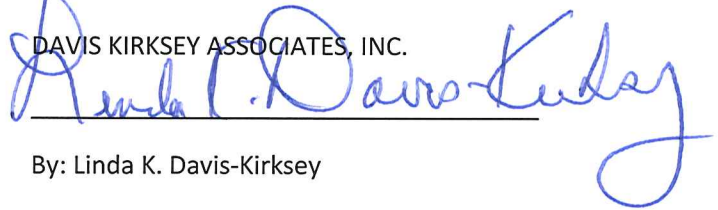
19. **ENTIRE AGREEMENT AMENDMENT**

This Agreement is the sole and entire agreement between the parties relating to the subject matter hereof and supersedes any prior understanding or agreements. Any amendment to the Agreement must be in writing, signed, dated, and agreed to by both parties.

Dated: 5/3/2023

CONTRACTOR:

DAVIS KIRKSEY ASSOCIATES, INC.

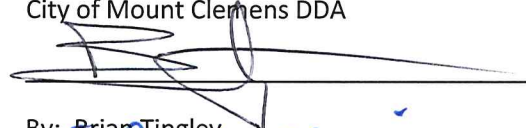


By: Linda K. Davis-Kirksey

President

City of Mount Clemens DDA

Dated: 5-3-23



By: Brian Tingley

Dated: 5/3/23



By: Phil Gilchrist

