



**MANAGEMENT AGREEMENT BETWEEN THE  
CITY OF AUSTIN AND AUSTIN DMO, INC.  
RELATING TO THE  
AUSTIN DOWNTOWN PUBLIC IMPROVEMENT DISTRICT**

This Management and Improvement Services Agreement (“Agreement”) is made and entered into by and between the City of Austin (the “City”), a home rule municipal corporation located in Travis, Hays, and Williamson Counties, and Austin DMO, Inc. dba Downtown Austin Alliance, a Texas nonprofit corporation authorized to do business in Texas (“Contractor”).

**RECITALS**

1. Pursuant to Chapter 372 of the Texas Local Government Code (the “Code”) on June 9, 2022, the City Council authorized the Austin Downtown Public Improvement District (the “**District**”) by adopting Resolution No. 20220609-081. The District is effective June 10, 2022, and shall automatically dissolve on June 9, 2032, without further action.
2. On June 9, 2022, the City Council authorized the City Manager to negotiate a management agreement with the Contractor, and on February 23, 2023, to execute the agreement.
3. The City is authorized to levy and collect special assessments on property in the District, based on the special services conferred by the improvements and/or services, to pay the cost of such improvements and services; and
4. The City desires to enter into a written agreement with Contractor for provision of certain improvements and services in the District.

**NOW, THEREFORE**, the City and Contractor agree as follows:

**1. ENGAGEMENT OF CONTRACTOR**

The City agrees to engage with the Contractor, and the Contractor agrees to provide, furnish, oversee, or perform in accordance with this Agreement, the Improvements and Services described in this Agreement and subsequent Service Plans adopted by the City.

## **2. IMPROVEMENTS AND SERVICES FOR THE DISTRICT**

### **2.1 Scope of Contractor's Duties.**

2.1.1. The Contractor will provide or cause to be provided the improvements and services (the "Improvements and Services"), described in the Service and Assessment Plans for the District prepared by Contractor and approved by the City Council for each fiscal year covered by this Agreement (the "Service and Assessment Plans"), and the ordinance adopted by the City Council levying assessments on properties in the District for such Improvements and Services (which ordinance is a public document on file in the City Clerk's Office and is hereby incorporated for all purposes). The Service and Assessment Plan approved by the City Council on June 9, 2022, is for a five-year period and attached hereto as [Exhibit "A."](#) So long as this Agreement is in effect, each time the City Council approves an annual update to the Service and Assessment Plan, that Service and Assessment Plan shall be deemed attached hereto as Exhibit "A" and made a part hereof. Once a Service and Assessment Plan is established and approved, Contractor may modify the proposed expenditures in any given category by no more than 20 percent for the applicable fiscal year; provided, that the total projected assessment revenue and the total projected expenditure will not change. Any other substantive modifications to the Service and Assessment Plan during any particular fiscal year will require approval of City Council.

2.1.2. Contractor will commence, carry on, and provide the Improvements and Services in a commercially reasonable manner, in accordance with this Agreement and its attachments and all applicable laws. Contractor will endeavor to ensure that any work on the Improvements and Services is properly coordinated with related work being performed by the City. Contractor will use the special assessments collected by the City to provide the Improvements and Services. Unless otherwise specifically provided, all the Improvements and Services will be performed by the Contractor or under the Contractor's supervision.

2.1.3. Annual Approved Budget. The Contractor's annual budget shall be set by the annual Service and Assessment Plan, as approved by Austin City Council. Nothing in this Agreement prohibits the City from making

additional contributions to the District, and expenditure of any such funds by the Contractor subject to Council appropriation, District plan and budget amendments approved by the City Council, formal amendment of this Agreement executed by both parties and applicable state law. Funding of this contract through special assessment and revenues will be based only on special assessment revenues collected and upon the Travis Central Appraisal District certified assessment roll.

2.1.4. The Contractor shall use the annual financial contributions provided by the City to supplement security services at Brush Square in recognition of need to protect staff and the historic museum facilities during and after business hours. The total annual financial contributions to be provided by the City for these services will be included in the annual Service and Assessment Plan adopted by Council.

2.1.5. The Contractor will use the annual financial contributions provided by the City to ensure that the three public toilets owned by the City of Austin are open to the public, usable, and stocked for 16 hours per day, 360 days per year. The total annual financial contributions to be provided by the City for these services will be included in the annual Service and Assessment Plan adopted by Council.

2.1.6. Reporting.

- i. Quarterly Reporting. On a quarterly schedule agreed to by the Contractor and the City, the Contractor will present to the City's contract manager ("Administrator") a report of the Improvements and Services provided by Contractor. Each report will identify the Improvements and Services provided by the Contractor since (A) the effective date of this Agreement, for the first report, and (B) the date of the most recent previous report, for all subsequent reports. The report will detail all the Contractor's significant work activities in the District, including expenditure reporting. The format of the report shall be mutually agreed upon by the Contractor and the Administrator. Each report, when submitted to the City, shall include a verified statement by the Contractor that all funds received by the Contractor under this Agreement that have been spent, have been spent only for the purposes stated in Section 372.003 of the Texas Local Government Code, as may be subsequently amended, and each District budget approved by the City. Notwithstanding anything to the contrary, the City will not be required to pay the Contractor any amount that exceeds the then-current balance of District revenues, less any City or County administrative fees, or that

is not in accordance with the Service and Assessment Plan for the then-current contract year.

- ii. Annual Reporting. Annually, the Contractor will submit a financial review and audited financial statements, within 120 days of the end of the contract year.
- iii. The annual report shall also include a summary of the Contractor's efforts to provide contracting opportunities per the City's Minority and Women-Owned Business Enterprise Program.

2.1.7. Invoices and Account Reserve. The Contractor shall submit to the City quarterly invoices detailing the actual cost of goods and services and administrative costs encumbered in the previous quarter. Except with the prior approval of the City, the invoice shall not exceed 25% of the total budget approved by City Council. For significant projects or needs, the Contractor may advise the City 30 days in advance of the next quarterly payment date of the need for the payment to exceed 25% of the District budget.

2.1.8. The Contractor is required to have a three month or one quarter operating reserve to satisfy contractual obligations should PID dissolution occur. Reserves that exceed these amounts are subject to City's Council approval.

2.1.9. The Downtown PID and the East Sixth Street PID overlap geographically. During the annual Service and Assessment Plan adoption process, the DAA will provide documentation that these services are not duplicated with services provided by the overlapping PID.

### **3. CITY'S DUTIES AND BUDGETARY RESPONSIBILITIES**

#### **3.1. City's Duties.**

The City will perform or have performed the following duties in connection with operation of the District and the Contractor's performance under this Agreement:

3.1.1. Levy and collect assessments in accordance with State law, the Code, and the approved Service and Assessment Plans for the District (the total collected assessments for any contract year, hereafter "Total Collected Assessments").

3.1.2. Make payments to the Contractor based on the adopted City budget and Service and Assessment Plan.

- 3.1.3. The City reserves the right to retain a reserve, funded by PID assessments in an amount equal to or lesser than 15% of the annual assessment to serve as a refund and delinquency account. Remaining reserves not utilized for refunds or delinquencies will be included in the subsequent annual City budget and Service and Assessment Plan.
- 3.1.4. Maintain throughout the Term of this Agreement the same level of services in the District as the City provides as of the Effective Date of this Agreement, as long as the City's budget permits.
- 3.1.5. Produce an annual assessment roll of property owners and property within the District in accordance with the Code and deliver a copy of the assessment roll to the Contractor within ten business days of the City's production of the assessment roll to be used for the preparation of the City's budget and the Service and Assessment Plan.
- 3.1.6. The assessment roll in 3.1.5 will be prepared using latest information available from Travis County Appraisal District to allow City staff sufficient time to prepare documents for the City's annual budget. The proposed assessments will be considered final for purposes of developing the Service and Assessment Plans. Any variances between the proposed assessments and assessments collected will be trued up in subsequent years as the assessments are collected.
- 3.1.7. Provide totals of the annual City and County Fees to be included in assessment calculations to account for administrative actions and fees and transparency of costs.
- 3.1.8. Consider the Total Collected Assessments and Service and Assessment Plan prior to adoption of the City's annual budget, including required notifications to property owners and stakeholders.
- 3.1.9. To expedite Contractor's requests, the City's Building Services Department ("BSD") will be lead point of contact for issues related to the repair and maintenance of the three public restrooms. In the event a Public Restroom unit is significantly damaged or destroyed, the City shall be responsible for any repairs or the replacement of the unit.
- 3.1.10. Provide the Contractor with an updated list of outstanding tax protests on an annual basis.

- 3.1.11. The City should be the first point of contact for customers inquiring about refunds of PID assessments on their property. Depending on the tax year in question, the refund will come from Travis County or the Contractor. The City will perform the required research and communicate with the customer, Contractor, and Travis County as needed.

### **3.2. City Contributions and Costs.**

- 3.2.1. Invoices. Upon acceptance of the invoice and report, City shall pay Contractor within 30 days.

- 3.2.2. Subject to City Council approval of and appropriation for Service and Assessment Plans as reflected in **Exhibit A**, the City agrees to a fee in lieu of an assessment for the City's property located within the District.

## **4. AMENDMENTS**

No amendment to, or rescission, termination, cancellation, or discharge of this Contract is effective unless it is in writing and signed by each party to this Contract.

## **5. CONTRACT YEAR AND TERM**

The term of this Agreement is five (5) years from the date both parties execute the Agreement through April 30, 2028, unless terminated earlier in accordance with the provisions of Section 16 of this Agreement. The Parties shall amend this Agreement for contract authority to include the most recent Service and Assessment Plans to this Agreement, after approved by the City Council.

## **6. DISCRIMINATION PROHIBITED**

The Contractor, in the execution, performance, or attempted performance of this Agreement, will not discriminate against any person or persons because of sex, race, religion, color, national origin or ancestry, age, sexual orientation, gender identity or familial status, nor will the Contractor permit its officers, agents, employees or subcontractor to engage in such discrimination. This Agreement is made and entered into with reference specifically to the applicable ordinances codified at Title 5, Civil Rights, of the Code of the City of Austin (found at: <http://alturl.com/da4kk>), or as may subsequently be amended. Contractor hereby covenants and agrees that Contractor, and its officers, agents, employees, and subcontractors, have fully complied with all provisions of same and that no employee or applicant for employment has been discriminated against under the terms of such ordinances by either Contractor, or its officers, agents, employees, or subcontractors.

**7. COMPLIANCE WITH LAWS, ORDINANCES, RESOLUTIONS, RULES, AND REGULATIONS**

This Agreement will be subject to all applicable federal, state, and local laws, ordinances, rules, and regulations, including, but not limited to, all applicable provisions of the City's Charter and ordinances, as amended. Further, the Contractor, its contractors and subcontractors must comply as applicable with the following resolutions and state law, or as they may subsequently be amended, in the design and construction of public improvements:

- Resolution No. 20200220-015, which adopts the City of Austin PID Policy;
- Resolution No. 20110728-106 worker safety; and
- Resolution 20080605-047 and/or Chapter 2258 of the Texas Government Code, regarding prevailing wage rates.

Compliance by Contractor with applicable law and above-referenced resolutions is mandatory. Failure by the Contractor to comply with these requirements shall constitute a breach of this Agreement and grounds for termination of this Agreement by the City. Should a change in applicable local, state, or federal law or policy occur during the term of the agreement, the Agreement is automatically updated to incorporate these new legal requirements without written amendment and shall become effective on the date designated by such law or regulation.

**8. CONTRACTOR LIABILITY**

Contractor is legally responsible and liable for all damages to any public or private property due to the negligence of the Contractor, its employees, contractors, subcontractors, agents, or assigns.

**9. LIABILITY OF CITY; PERSONAL LIABILITY OF PUBLIC OFFICIALS**

Neither the City nor any officer (appointed or elected), employee, agent, representative, successor or assign of the City shall be liable for any damages caused by the Contractor, or its officers, agents, servants, employees, contractors, subcontractors, and assigns or any other liabilities of the Contractor under this Agreement or otherwise related to this Agreement. It is further agreed that the City shall not be liable or responsible for any damages caused by Contractor, or its officers, agents, servants, employees, contractors, subcontractors, and assigns or any other liabilities of Contractor under this Agreement or otherwise related to this Agreement, nor shall the City be liable or responsible to Contractor or any other person for or on account of any stoppage or delay in the work herein provided for by injunction or other legal or equitable proceedings, or from or by or on account of any delay for any cause over which the City has no control.



**10. INDEMNIFICATION**

*CONTRACTOR AGREES TO ,INDEMNIFY AND HOW HARMLESS AND DEFEND THE CITY, ITS OFFICERS AND EMPLOYEES, FROM AND AGAINST ANY AND ALL SUITS OR CLAIMS FOR DAMAGES OR INJURIES, INCLUDING DEATH, TO ANY AND ALL PERSONS OR PROPERTY, WHETHER REAL OR ASSERTED, ARISING OUT OF OR IN CONNECTION WITH ANY NEGLIGENT ACT OR OMISSION ON THE PART OF THE CONTRACTOR, ITS OFFICERS, AGENTS, SERVANTS, EMPLOYEES OR SUBCONTRACTORS, AND THE CONTRACTOR HEREBY ASSUME ALL LIABILITY AND RESPONSIBILITY FOR INJURIES, CLAIMS OR SUITS FOR THE DAMAGES TO PERSONS OR PROPERTY, OF WHATSOEVER KIND OR CHARACTER, WHETHER REAL OR ASSERTED, OCCURRING DURING OR ARISING OUT OF THE PERFORMANCE OF THIS AGREEMENT AS A RESULT OF ANY NEGLIGENT ACT OR OMISSION ON THE PART OF THE CONTRACTOR, ITS OFFICERS, AGENTS, SERVANTS, EMPLOYEES OR SUBCONTRACTORS. SUCH INDEMNIFICATION SHALL INCLUDE WORKERS' COMPENSATION CLAIMS OF OR BY ANYONE WHOMSOEVER IN ANY WAY RESULTING FROM OR ARISING OUT OF THE CONTRACTOR'S WORK, SERVICES AND OPERATIONS IN CONNECTION WITH THIS AGREEMENT, INCLUDING OPERATIONS OF SUBCONTRACTORS.*

**11. INDEPENDENT CONTRACTOR**

It is expressly understood and agreed that Contractor will perform all work and services described herein as an independent contractor and not as an officer, agent, servant, or employee of the City; that Contractor will have exclusive control of the details of the services and work performed, and all persons performing the same; that Contractor will be solely responsible for the negligent acts omissions, and more culpable actions of its officers, agents, employees, contractors, and subcontractors; that the doctrine of respondeat superior will not apply as between City and Contractor, its officers, agents, employees, contractors, and subcontractors; and that nothing herein will be construed as creating a partnership or joint enterprise between City and Contractor. No person performing any of the work and services described in this Agreement will be considered an officer, agent, servant, or employee of the City.

**12. INSURANCE**

12.1. Contractor, consistent with its status as an independent contractor, will carry and will cause its subcontractors to carry, at least the following insurance coverages, with companies licensed to do business in the State of Texas and have an A.M. Best Rating of B+, VII, or better:



12.1.1. Workers' Compensation and Employers' Liability coverage with limits consistent with statutory benefits outlined in the Texas Workers' Compensation Act (Section 401) and minimum policy limits for Employers' Liability of \$100,000 bodily injury per accident \$500,000 bodily injury by disease policy limit and \$100,000 bodily injury by disease each employee.

12.1.1.1. The following endorsements shall be added in favor of the City of Austin:

- Waiver of Subrogation, WC 420304, or equivalent coverage.
- Thirty (30) Day Notice of Cancellation, WC 420601, or equivalent coverage.

12.1.2. Commercial General Liability Insurance coverage with minimum bodily injury and property damage per occurrence limits of \$1,000,000 for coverages A (Bodily Injury and Property Damage) and B (Personal and Advertising Injury) and annual aggregate of not less than \$2,000,000.

12.1.2.1. The policy shall contain the following provisions:

- Contractual liability coverage for liability assumed under the Contract and all other Contracts related to the project.
- Independent Contractors coverage (Contractor/ Subcontracted work).
- Products/Completed Operations Liability for the duration of the warranty period.
- If the project involves digging or drilling, provide Explosion, Collapse, and Underground (X, C, & U) Coverage.

12.1.2.2 The policy shall also include these endorsements in favor of the City of Austin:

- Waiver of Subrogation, Endorsement CG 2404, or equivalent coverage.
- 30 Days' Notice of Cancellation, Endorsement CG 0205, or equivalent coverage.
- The City of Austin listed as an additional insured, Endorsement CG 2010, or equivalent coverage.

12.1.3. Business Automobile Liability Insurance coverage for all owned, non-owned and hired vehicles with a minimum combined single limit of \$500,000 per occurrence for bodily injury and property damage. Alternate acceptable limits are \$250,000 bodily injury per person, \$500,000 bodily injury per occurrence and at least \$100,000 property damage liability per accident.

12.1.3.1. The following endorsements shall be added in favor of the City of Austin:

- Waiver of Subrogation, Endorsement CA 0444, or equivalent coverage.
- Thirty (30) Day Notice of Cancellation, Endorsement CA 0244, or equivalent coverage.
- The City of Austin listed as an additional insured, Endorsement CA 2048, or equivalent coverage.

12.1.4. Professional Liability Insurance: Contractor providing professional services, shall provide coverage, at a minimum limit of \$1,000,000 per occurrence, to pay on behalf of the assured all sums which the assured shall become legally obligated to pay as damages by reason of any negligent act, error, or omission arising out of the performance of professional services under this Agreement.

12.1.5. Contractor shall not commence work until the required insurance is obtained and has been reviewed by the City. Approval of insurance by the City shall not relieve or decrease the liability of the Contractor hereunder. The insurance coverages required under this Agreement are required minimums and are not intended to limit the responsibility or liability of the Contractor.

12.2. The Contractor shall not cause any insurance to be cancelled, nor permit any insurance to lapse during the term of this Agreement.

12.3. All endorsements naming the City of Austin such as additional insured, waivers, and notices of cancellation endorsements as well as the attached certificate shall indicate: City of Austin, Downtown PID Administrator, Economic Development Dept. Suite 400, P.O. Box 1088, Austin, Texas 78767.

12.4. The “other” insurance clause shall not apply to the City where the City is an additional insured on any policy. Policies required in the Contract shall be considered primary coverage as applicable.

12.5. The Contractor shall be responsible for premiums, deductibles, and self-insured retentions, if any, stated in policies.

12.6. The City reserves the right to review the insurance requirements set forth during the effective period of this Agreement and to make reasonable adjustments to insurance coverage and limits when deemed necessary based upon changes in statutory law, court decisions, scope of work, or financial condition of the insurance company.

### **13. TAXES**

Contractor will pay all federal, state, and local taxes that may be chargeable on any Improvements and Services provided hereunder or otherwise in relation to Contractor's duties and obligations hereunder.

**14. PERMITS**

Contractor will cause any of its contractors and subcontractors to obtain and pay for any necessary permits and licenses, whether issued by the state, county, or City, before proceeding with any work that required any such permits.

**15. ASSIGNMENT AND SUBCONTRACTING**

Contractor has the right to subcontract for the provision of any Improvements and Services authorized hereunder. The Contractor is strongly encouraged to comply with the City's Minority Business Enterprise/Women's Business Enterprise (MBE/WBE) procurement program, in City Code Chapters 2-9A, 2-9B, 2-9C, and 2-9D, when contracting for work paid for with funds provided through this Agreement. The existence of a subcontract will not relieve Contractor of any responsibility or liability to the City under this Agreement. Otherwise, Contractor may not assign, transfer, or convey any of its duties and responsibilities under this Agreement without the advance written approval of the City and execution by such part of a written agreement with the City under which such party agrees to be bound by the duties and obligations of Contractor under this Agreement. Efforts to meet the City's MBE/WBE procurement program shall be summarized in the annual Service and Assessment Plan.

**16. DEFAULT, REMEDIES AND TERMINATION RIGHTS; EVENTS OF DEFAULTS**

**16.1. EVENTS OF DEFAULT**

16.1.1 Contractor will be deemed to be in default of this Agreement upon the occurrence of any of the following:

The failure or omission by Contractor to perform its obligations under this Agreement or the breach of any terms, conditions and covenants required herein unless cured within fourteen (14) calendar days after receipt of written notice of the default (or, if Contractor has diligently commenced and continuously attempts to cure the default within such time as may be reasonably necessary to fully cure the default). In the event any Material Default (as defined below) that is not cured within the cure period, the City may in addition to any other remedies available to it under law or in equity, terminate this Agreement by providing written notice to Contractor. A Material Defaults under the terms of this Agreement means:

16.1.1.1 The appointment of a Trustee, custodian, or receiver of all or a substantial portion of Contractor's assets and failure to discharge such trustee within 60 days.

16.1.1.2 The insolvency of Contractor; or if Contractor will take the benefit of any present or future insolvency statute, will make a general assignment for the benefit of creditors, or will seek a reorganization or the readjustment of its indebtedness under any law or statute of the United States or of any state thereof including the filing by Contractor of a voluntary petition of bankruptcy or the institution of proceedings against Contractor for the adjudication of Contractor as bankrupt pursuant thereto.

## **16.2. CONTRACTOR REMEDIES**

Upon 30 days' written notice to City, Contractor may terminate this Agreement for convenience. Contractor and City will remain liable for all payments or other sums and services due and undisputed under this Agreement. Upon 30 days' written notice to City, Contractor may terminate this Agreement and all of its obligations hereunder, if Contractor is not in default of any term, provision, or covenant of this Agreement and cannot operate its business for a period longer than 90 consecutive days due to war, terrorism, or the issuance of any order, rule or regulation by a competent governmental authority or court having jurisdiction over City' provided, however, that such inability or such order, rule or regulation is not due to any fault or negligence of Contractor.

## **16.3. CITY REMEDIES.**

16.3.1 In the event of any foregoing events of default of Contractor, and following 30 days' notice by City, or a reasonable time period depending on the type of default, and Contractor's failure to cure, City, at its election, may exercise any one or more of the following options or remedies, the exercise of any of which will not be deemed to preclude the exercise of any other remedy herein listed or otherwise provided by statute or general law.

16.3.2 Terminate Contractor's rights under this Agreement. Contractor and City will remain liable for all payments and sums due under this Agreement and Contractor will remain liable for all damages suffered by City because of Contractor's breach of any of the covenants of this Agreement:

- 16.3.2.1 Treat the Agreement as remaining in existence, and cure Contractor's default by performing or paying the obligation which Contractor has breached to the extent permitted in the district budget and available District funds paid to the Contractor, if any. In such event all sums paid or expenses incurred by City directly or indirectly in curing Contractor's default will become immediately due and payable from District Assessments; or
- 16.3.2.2 Declare Agreement to be terminated, ended, null and void.
- 16.3.3 Upon 30 days' written notice to Contractor, City may terminate this Agreement hereunder for convenience. Contractor and City will remain liable for all payments or other sums and services due and undisputed under this Agreement.
- 16.3.4 City or Contractor may terminate this Agreement without notice due to a Force Majeure event. Any delay or failure in the performance by either Party under this Agreement shall be excused if and to the extent caused by the occurrence of a Force Majeure event. For purposes of this Agreement, Force Majeure event means a cause or event that is not reasonably foreseeable or otherwise caused by or under the control of the Party claiming Force Majeure, including without limitation acts of God, fires, floods, explosions, riots, wars, hurricane, terrorism, governmental acts, injunctions, labor strikes, pandemics and epidemics that prevent a Party from performing under the terms of this Agreement; and other like events that are beyond the reasonable anticipation and control of a Party affected thereby, despite such Party's reasonable efforts to prevent, avoid, delay, or mitigate the effect of such acts, events or occurrences and which events or the effects thereof are not attributable to a Party's failure to perform its duties and obligations under this Agreement. In the event of a Force Majeure which prevents the City or Contractor from performing its duties and obligations under this Agreement for more than thirty (30) days, the City or the Contractor have the option to terminate the Agreement due to the Force Majeure event.
- 16.3.5 No delay, failure, or omission or City or Contractor to exercise any right, power, privilege, or option arising from any default will impair any such right, power, privilege, or option, or be construed to be a waiver of any such default. No option, right, power, remedy, or privilege of City or Contractor will be construed as being exhausted or discharged by the exercise thereof in one or more instances. It is agreed that each and all

the rights, powers, options, or remedies given to the parties by this Agreement are cumulative and that the exercise of one right, power, option, or remedy by either party will not impair its rights to any other right, power, option, or remedy available under this Agreement of provided by law.

**17. COOPERATION**

Contractor will, at such time and as the City may require, furnish periodic information concerning the Improvements and Services and other statements, certificates, and approvals relative to the Improvements and Services as requested by the City. Contractor and the Administrator or other City officials will meet as requested to discuss any aspect of this Agreement.

**18. BOOKS AND RECORDS; AUDITING RIGHTS**

Contractor will maintain complete and accurate records with respect to all expenditures and costs incurred for all Improvements and Services provided under in accordance with the Service and Assessment Plans. All such records will be maintained based upon generally accepted accounting principles and will be clearly identified and readily accessible to the City. After reasonable notice, Contractor will provide representatives of City or its appointees access to such books and records, during regular business hours, in order that they may examine and audit the same and make copies. Contractor will further after reasonable notice, allow the City and its representatives to make inspections of all work data, documents, proceedings, and activities related to this Agreement. Such right of access and audit will continue for a period of 3 years from the date of final payment under this Agreement. The City will also have the right to conduct a performance audit and evaluation of Contractor at such times as the City deems necessary after reasonable notice is provided to the Contractor. Contractor will fully cooperate with any such performance audit. The City may employ consultants at the City's expense to assist the City in such performance audit. Contractor agrees to give the city access to all reports, data, schedules, and other relevant information related to this Agreement which may be required to conduct a performance audit.

**19. NOTICES**

Any notices, bills, invoices, or reports required by this Agreement will be conclusively determined to have been delivered: (i) 3 business days after deposit into the United States mail, in a sealed envelope with sufficient postage attached or (ii) via hand delivery, to the addresses listed below or such other addresses as may from time to time be provided to the other party:

Downtown PID Administrator  
City of Austin



Economic Development Dept. Suite 400  
PO Box 1088  
Austin, TX 78767

Contractor:  
Downtown Austin Alliance  
515 Congress Ave  
Suite 2150  
Austin, TX 78701

**20. PUBLIC INFORMATION ACT**

Further, Contractor acknowledges that City is required to comply with Chapter 552 of the Texas Government Code (Public Information Act or Act). Under the Public Information Act, this Agreement, and documents related to this Agreement, which are in the City's possession, or to which the City has access, are presumed to be public and the City may release these records to the public unless an exception described in the Act applies to a document. Contractor agrees it will cooperate fully with the City as needed for the City to comply with the requirements of the Act. Contractor agrees that it will exercise professional judgment and care when creating documents or other media intended to be confidential that may be subject disclosure under the Public Information Act. Contractor will mark documents or media it considers to be confidential as "confidential". Contractor understands that such marking is merely Contractor's assertion of the information as confidential and such marking is not binding on the City and that the parties must still comply with the Public Information Act requirements should the marked documents not be determined to meet the confidentiality standards under the Act or pursuant to a decision or opinion by any applicable court, other governmental authority, or the Texas Attorney General.

**21. GOVERNMENTAL POWERS**

It is understood that by execution of this Agreement, the city does not waive or surrender any of its governmental powers or immunities.

**22. NO WAIVER**

The failure of either party to insist upon the performance of any term or provision of this Agreement or to exercise any right granted hereunder will not constitute a waiver of that party's right to insist upon appropriate performance or to assert any such right on any future occasion.

**23. VENUE AND JURISDICTION**

If any action, whether real or asserted, at law or in equity, arises on the basis of any provision of this Agreement, venue for such action will lie in state courts located in Travis County, Texas. This Agreement will be constructed in accordance with the laws of the State of Texas.

**24. NO THIRD-PARTY RIGHTS**

The provisions and conditions of this Agreement are solely for the benefit of the City and Contractor and are not intended to create any rights, contractual or otherwise, to any other person or entity.

**25. SURVIVAL OF TERMS**

All provisions of this Agreement that impose continuing obligations on the parties, including but not limited to warranty, indemnification, limitation of liability, and confidentiality, shall survive the expiration or termination of this Agreement.

**26. INTERPRETATION.**

In the event of any dispute over the meaning or application of any provision of this Agreement, this Agreement will be interpreted fairly and reasonably, and neither more strongly for nor against any party, regardless of the actual drafter of this Agreement.

**27. CAPTIONS**

Captions and headings used in this Agreement are for reference purposes only and shall not be deemed a part of this Agreement.

**28. ENTIRETY OF AGREEMENT**

This Agreement, including any exhibits attached hereto and any documents incorporated herein by reference, contains the entire understanding and agreement between the City and Contractor as to the matters contained herein. Any prior or

contemporaneous oral or written agreement is hereby declared void to the extent in conflict with any provision of this Agreement.

**29. COUNTERPARTS**

This Agreement may be executed in multiple counterparts, each of which shall be considered an original, but all of which shall constitute one instrument.

EXECUTED as of the last date indicated below:

**CITY OF AUSTIN:**

**DOWNTOWN AUSTIN ALLIANCE**

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

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

Date: \_\_\_\_\_

Date: \_\_\_\_\_

APPROVED AS TO FORM:

\_\_\_\_\_

EXHIBIT A – 2023-28 Service and Assessment Plan