



**City Council Workshop
King Street Business Improvement District
5:00 P.M., July 12, 2022
City Hall, 80 Broad Street**

Conference Call #1-929-205-6099; Access Code: 912096416

https://www.youtube.com/channel/UCxDws_o-1voXBNOAZ17gZxw

1. Introduction – Mayor John J. Tecklenburg
2. Presentation by staff on King Street Business Improvement District concept
3. Discussion of Memorandum of Understanding with the Charleston Downtown Alliance for the Administration of the King Street Business Improvement District (Discussion Only)
4. Executive Session in accordance with Section 30-4-70(a)(2) of the South Carolina Code to receive legal advice regarding the Hearing of Objections on the King Street Business Improvement District. Action may or may not be taken after coming out of Executive Session.
5. Adjourn

Summary of Changes to Memorandum of Understanding with the Charleston Downtown Alliance for the Administration of the King Street Business Improvement District

Categories	May 24, 2022 Version	Proposed Changes (for discussion on July 12, 2022)
Duties, Obligations, and Responsibilities of CDA	<p>1. CDA’s Board of Directors must be composed of:</p> <ul style="list-style-type: none"> a. A majority of property owners within the District, of which a majority must be owner-occupied; b. At least one director who is a commercial tenant; c. At least one director who represents a racial or ethnic minority d. At least one director who represents women; e. One director appointed by each council member whose district is within the District; and f. One authorized representative of the City appointed by the Mayor, which authorized representative shall serve as non-voting, ex officio member of the Board of Directors. 	<p>1. CDA’s Board of Directors shall consist of no more than 9 members. Throughout the Term of this MOU, CDA’s Board of Directors must meet the following composition requirements, and of the following directors, no commercial or residential property owner may be represented in more than one category:</p> <ul style="list-style-type: none"> a. A majority of voting members the CDA’s Board of Directors shall be property owners within the District who shall reside within Charleston, Dorchester, or Berkeley counties; b. One director who is a commercial tenant within the District; c. One non-property-owning director who is a racial or ethnic minority who either works or resides in the District; d. One non-property-owning director who is a woman who either works or resides in the District; e. One City Councilmember nominated by the Mayor and approved by City Council; and f. One authorized representative of the City appointed by the Mayor, which authorized representative shall serve as non-voting, ex officio member of the Board of Directors.
Formulation and Collection of Special Assessments	<p>Special Assessments shall be billed and collected by Charleston County in the same manner as real property taxes, on behalf of the City.</p>	<p>Special Assessments shall be billed and collected by Charleston County in the same manner as real property taxes, on behalf of the City. In accordance with any agreement between the City and a third party for collection of delinquent payments, any fee for collections may be retained out of collected Special Assessments by the third party or the City for payment of the collections.</p>
Exhibit A, Services: Street Beautification	<p>Enhancing aesthetic improvements, including the decoration of any public space or of building facades and exteriors in public view that confer a public benefit.</p>	<p>Enhancing aesthetic improvements, including the decoration of any public space or of building facades and exteriors in public view that confer a public benefit, and only with approval of the City’s Design Review Committee.</p>
Exhibit B, Basic City Services: Parks	<p>Maintain Marion Square as long as lease remains in effect.</p>	<p>Maintain, and decorate for Christmas holiday, Marion Square as long as lease remains in effect.</p>

Summary of Changes to Memorandum of Understanding with the Charleston Downtown Alliance for the Administration of the King Street Business Improvement District

<p>Exhibit B, Basic City Services: Public Service</p>	<ul style="list-style-type: none">● Grounds maintenance (sidewalk litter abatement & litter basket service); schedule as follows.<ul style="list-style-type: none">○ 1st shift 7am -3 pm Everyday○ 2nd Shift 3pm – 11 pm Off Sunday and Monday○ 3rd shift 11 pm -7am Off Mon and Tues<ul style="list-style-type: none">■ 3rd shift pressure washes the sidewalks as needed	<ul style="list-style-type: none">● Grounds maintenance (sidewalk litter abatement & litter basket service; pressure washing sidewalks as needed); schedule as follows:<ul style="list-style-type: none">○ 1st shift 7am -3 pm Everyday○ 2nd Shift 3pm – 11 pm Off Sunday and Monday○ 3rd shift 11 pm -7am Off Mon and Tues
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**AGREEMENT BETWEEN
CITY OF CHARLESTON, SOUTH CAROLINA
&
CHARLESTON DOWNTOWN ALLIANCE, INC.
FOR THE ADMINISTRATION OF THE
KING STREET BUSINESS IMPROVEMENT DISTRICT**

This Agreement is entered into as of the last date signed below, by and between THE CITY OF CHARLESTON, SOUTH CAROLINA ("City"), and CHARLESTON DOWNTOWN ALLIANCE, INC. ("CDA"), a South Carolina not-for-profit corporation.

WITNESSTH:

WHEREAS, South Carolina Code 5-37-10, et seq., authorizes the municipal government to create by ordinance a business improvement district; and,

WHEREAS, City Ordinance No. 2022-008 authorized the creation of the King Street Business Improvement District ("BID") to implement Improvements within the District, each as defined in the BID,

WHEREAS, the BID budgeted BID funds for a Management Firm with the necessary powers and authority to carry out the purposes and intent of the BID; and,

WHEREAS, South Carolina Code 5-37-10, et seq., authorizes the City to collect special assessments ("Special Assessments") from all eligible property owners ("Owners") within the BID; and,

WHEREAS, CDA is a South Carolina not-for-profit corporation that is vested with the necessary powers and authority to carry out the purposes and intent of the BID; and,

WHEREAS, CDA, on behalf of at least fifty-one percent of the owners of real property (except owner-occupied residential tax parcels) with frontage on King Street between Line and Broad Streets, assisted and facilitated the creation of a BID with the City; and,

WHEREAS, the City desires to hire CDA to administer and manage the King Street Business Improvement District as defined in the Improvement Plan approved by City Council (the "Plan") and this Agreement, in accordance with South Carolina Code 5-37-10, et seq., ("Work"); and

WHEREAS, CDA represents and warrants that it has the experience, skill, and desire to perform the Work;

NOW, THEREFORE, for the mutual promises and other good and valuable consideration, the receipt and adequacy of which is hereby acknowledged, the parties hereto agree as follows:

1. Principles of Agreement

- a. The parties agree that the primary purposes of this Agreement are to (i) ensure that the District, as defined in the BID, continues to receive the type, level, quality, and frequency of City services subsequent to the establishment of the BID as it would otherwise receive if the BID were not established ("Basic City Services"), and (ii) describe the relationship and mutual responsibilities of the City and CDA. The City understands that providing the Work described in this Agreement is critical to the success of the BID. CDA understands that the City is relying on CDA to perform the functions called for under this Agreement in fulfillment of the Improvement Plan, in furtherance of an important public purpose, and in the public interest.
- b. The parties agree that the success of the BID depends on the strength of the partnership between the City and CDA. The City and CDA agree to cooperate in the implementation and management of the BID, and to take all actions reasonably necessary to facilitate the operation of the BID.
- c. The parties recognize that this Agreement cannot resolve all issues arising out of the establishment of the BID and the implementation of the Improvement Plan. Accordingly, the City and CDA agree to take such other actions as may be necessary or desirable to accomplish the purposes and intent of the BID.
- d. The City and CDA shall strive to cultivate a partnership that:
 - i. Features transparency with regard to roles and expectations;
 - ii. Is built on foundations of trust, respect, and an understanding of one another's unique strengths;
 - iii. Identifies mutual goals and opportunities for collaborative problem solving; and

- iv. Enables each party to remain proactively involved in projects and initiatives that impact downtown.
- e. The parties shall responsively communicate and coordinate on an as needed basis to enable the parties to speak with one voice and remain in lockstep on key issues related to the District and shall consult one another during the ideation and decision making processes on major projects related to the District.

2. Agreement Documents. This Agreement is comprised of the following documents:

- a. this Agreement; and
- b. any written amendment duly authorized and executed by the authorized representatives of the parties hereto and filed in the office of the City Clerk.

3. Duties, Obligations, and Responsibilities of CDA.

a. Organization

- i. CDA shall maintain its status as a duly formed South Carolina Nonprofit Corporation in good standing;
- ii. CDA has the legal powers of a South Carolina Nonprofit Corporation, including but not limited to those outlined in S.C. Code 33-31-302(1) through (18);
- iii. CDA shall be governed by a Board of Directors in accordance with the South Carolina Nonprofit Corporation Act, S.C. Code § 33-31-801, et seq., excepting §33-31-812, and such officers as are appointed by the Board of Directors of CDA in its discretion;

1. CDA'S Board of Directors.

- a. CDA's Board of Directors shall consist of no more than 9 members. Throughout the Term of this MOU, CDA's Board of Directors must meet the following composition requirements, and of the following directors, no commercial or residential property owner may be represented in more than one category:

- i. A majority of voting members the CDA's Board of Directors shall be property owners within the District who shall reside

- within Charleston, Dorchester, or Berkeley counties;
 - ii. One director who is a commercial tenant within the District;
 - iii. One non-property-owning director who is a racial or ethnic minority who either works or resides in the District;
 - iv. One non-property-owning director who is a woman who either works or resides in the District;
 - v. One City Councilmember nominated by the Mayor and approved by City Council; and
 - vi. One authorized representative of the City appointed by the Mayor, which authorized representative shall serve as non-voting, ex officio member of the Board of Directors.
2. The Board is in charge of hiring CDA's Executive Director or similar position.
3. Neither CDA's articles nor bylaws may allow for compensation of the directors.
- iv. CDA shall be governed in accordance with CDA's written Bylaws, as they may be amended from time to time. CDA shall update its bylaws prior to commencing Work to reflect the duties and obligations under this Agreement and shall provide a copy to file with the City Clerk.
- b. CDA shall implement, administer, and manage the BID as set forth in this Agreement ("Duties"), which shall include:
- i. Providing the Services as set forth in **Exhibit A**, in coordination with the City, and which are services provided to the City in addition to the Basic City Services;
 - ii. Diligently seeking BID Funds other than Special Assessments;
 - iii. Managing BID Funds; and
 - iv. Reporting to City Council.
- c. The CDA may accomplish the Duties by:

- i. Entering into contracts and agreements with other persons or entities, but any such contract shall not bind the City in any manner; and
 - ii. Hiring employees or retaining agents, engineers, architects, planners, consultants, attorneys, and accountants.
 - d. Record-keeping and Audit.
 - i. CDA shall establish and maintain books, records, and systems of account, in accordance with generally accepted accounting principles, reflecting all business operations of CDA transacted under this Agreement. CDA shall retain these books, records, and systems of account during the Term of this Agreement and for five (5) years thereafter. CDA shall permit the City, its agent, other representatives, or an independent auditor to audit, examine, and make excerpts, copies, and transcripts from all books and records, and to make audit(s) of all billing statements, invoices, records, and other data related to the Work covered by this Agreement.
 - ii. CDA shall retain an independent certified public accountant responsible for the Annual Audit. The auditor must be approved by the City and will submit the audit directly to the City to ensure third party impartiality. The auditor will be paid for by the CDA with Special Assessment dollars. The Annual Audit must be submitted to the City as part of the Annual Report. The Annual Audit will include true, correct, and complete annual financial statements setting forth the amount of public and private revenues received by the CDA and the amount of expenses paid for the immediately preceding fiscal year.
 - e. CDA shall at all times during the Term and any Renewals be a federal and state non-profit corporation.
 - f. To the extent required by law, CDA will comply with South Carolina's Freedom of Information Act, S.C. Code Ann. 30-4-10, et. seq.

4. Performance Measurements. CDA's performance shall be annually measured based on year over year improvements in the following factors within the District:

- a. Occupancy Rate
- b. Citizen Attitude Survey
- c. Crime Rates
- d. Taxable Retail Sales
- e. Number of jobs created
- f. Pedestrian/visitor counts
- g. Business license revenues

5. Funding Sources.

- a. Due to the interrelationships of the City and CDA, the annual budget of CDA shall be on the same fiscal year as the City.
- b. Public funds shall be kept in separate general ledger accounts, reported on in public sessions on an annual basis, and audited each year by an independent accounting firm.
- c. Information of spending BID Funds, including specifically identifying Special Assessments and other public funds, shall be readily available to the public on the CDA's website.
- d. Anticipated initial sources of BID funding.
 - i. Private funding sources:
 - 1. Contributions from individuals and corporations.
 - 2. Grants from private foundations.
 - 3. Earned income through program services.
 - ii. Public funding sources:
 - 1. BID Special Assessments
 - 2. Other government contributions, whether a contribution from a grant, tax revenue, or other source

6. Formulation and Collection of Special Assessments.

- a. The Special Assessments shall be used to supplement the existing level of services provided by the City and used to provide additional services within the BID.
- b. The Special Assessments shall be determined annually as provided in the BID based on the use and assessed value of each tax parcel located in the District.
- c. Administration of Assessment Roll. The City, or its designee, shall be responsible for the annual administration of the assessment roll ("Administrator"). The City shall retain the cost of the Administrator prior to distributing the Special Assessments collected to CDA.
- d. The Administrator shall, on an annual basis, determine the Special Assessment for each parcel.
- e. The Administrator will submit the assessment roll directly to the City to ensure third party impartiality.
- f. The Administrator shall annually notify all Owners of the amount of the Owner's Special Assessment by sending a notification letter.
- g. Special Assessments shall be billed and collected by Charleston County in the same manner as real property taxes, on behalf of the City. In accordance with any agreement between the City and a third party for collection of delinquent payments, any fee for collections may be retained out of collected Special Assessments by the third party or the City for payment of the collections.
- h. By March 15 of each year, the City shall pay over to CDA the amount equal to the aggregate of all payments of Special Assessments received for the preceding tax year, and any interest or other charges thereon for such assessment period, exempting any funds retained by the City for administrative expenses. Thereafter, the City shall pay over to CDA monthly the amount equal to any additional Special Assessments received by the City the preceding month.
- i. The assessment and collection of Special Assessments on behalf of the BID, the provision of Basic City Services, and the other transactions or activities authorized by the Improvement Plan shall not be deemed to constitute assistance by the City or the Administrator or services by the CDA or the participating property

owners located within the District to or for the City for the purposes of any City ordinance or regulation.

7. Issue Alignment/Budget Process.

- a. The CDA, with consultation from City Council, will determine the priorities for improvements and activities to be delivered by CDA.
- b. Five-Year Implementation Plan
 - i. Within 120 days after CDA's Executive Director commences work, the CDA shall present to the City Council a Five-year Implementation Plan that:
 1. Outlines how the organization will execute the priorities within the Plan, including approval of CDA's By-Laws;
 2. How the CDA will manage the Services as set forth in Exhibit A, including the day-to-day operations of the Plan;
 3. Metrics and protocols for monitoring and evaluation of the Work, which shall include Performance Measurements as set forth in this Agreement.
 - ii. The City Council will review and make recommendations for refining the Five-year Implementation Plan to ensure that it is consistent with the goals for the District, subsequently modifying or approving it.
 - iii. Any further changes to the Implementation Plan during the 5-year term must be submitted to City Council for review and recommendations.
- c. Annual Reports. CDA shall prepare an Annual Report as set forth below.
 - i. The Annual Report shall include:
 1. Narrative material and quantitative information that identifies accomplishments and achieved goals and metrics of the preceding calendar year.

2. A report of the financial activities of CDA that utilized public funding in the preceding calendar year;
 3. Statement of Revenues and Expenditures of the preceding calendar year;
 4. Report of Performance Measurements of the preceding calendar year.
- ii. CDA will submit to the City Council each Annual Report by March 15 of each year.
 - iii. CDA and City Council will review the Annual Report during a joint workshop (“planning workshop”) held between April 15 and May 15 to ensure City Council has meaningful input into the formulation of an Annual Work Plan, as defined below, and to ensure the plan’s initiatives and activities and associated allocations are consistent with the Implementation Plan.
- d. Planning Reports. CDA shall prepare a Planning Report as set forth below, which shall include narrative material and quantitative information that:
1. The Planning Report shall:
 2. Describe in detail the Annual Work Plan, which shall identify the strategic initiatives and activities for the coming year; and
 3. Set forth a proposed allocation of the BID assessments and other CDA funds that will support the Annual Work Plan;
 4. Contain a budget for the upcoming year; and
 5. Include the Annual Audit
- ii. CDA will submit each Planning Report to the City Council by September 30 of each year.

8. Duties and Responsibilities of the City. During the Term of this Agreement, the City shall have the following duties and responsibilities:

- a. **Basic City Services.** The City agrees to provide, at a minimum, the same level of City services to the properties located within the improvement district that existed prior to the establishment and subsequent renewals of the improvement district, as more fully defined in Exhibit B. The City also agrees that the level of urban services provided to the District will not be decreased as a result of the enhanced level of services provided through the Special Assessments; provided, however, the level of urban services may be decreased for other reasons that include, without limitation, budgeting and decreases in funding which are applied equitably to all property within the City. The City agrees that each department shall use reasonable efforts to notify CDA in advance concerning any proposed decrease, increase, extension, or augmentation in City services. The City and CDA further agree to work cooperatively to maximize the efficacy of all City services and general BID operations.
- b. Adherence with the requirements of all nondelegable duties and responsibilities under the Municipal Improvements Act of 1999, S.C. Code 5-37-10, et seq.
- c. In cooperation and collaboration with Charleston County, South Carolina, the calculation, billing and collection of the Special Assessments, as set forth in Section 6 of this Agreement; and
- d. The remittance of the collected Special Assessments to CDA, as set forth in Section 6 of this Agreement.

9. Term and Termination.

- a. **Term.** The Term of this Agreement shall commence on _____ 2022, (hereinafter "Commencement Date") and expire on January 31, 2032, which is ten years after the date on which the City ordinance created the District, or unless earlier terminated as provided in this Agreement ("Expiration Date").
- b. **Renewal.** At the conclusion of the initial and any subsequent term, this Agreement may be automatically renewed for an additional term if the District is extended in accordance with State law, and at terms mutually agreeable to both parties.
- c. **Termination.**

- i. This Agreement shall continue in full force and effect during the Term unless (i) the Agreement expires or is sooner terminated by its terms, (ii) the City and CDA mutually agree to modify or terminate the Agreement, (iii) the BID is dissolved or terminated, (iv) the City is unable to collect the Special Assessments to fund the BID; (v) CDA misappropriates BID Funds; (vi) if the City determines it is in the City's best interest to terminate this Agreement; or (vii) CDA determines it is in its best interest to terminate this Agreement, but only with six months advance notice to the City.
- ii. **Remedies for Default.** Should either party fail to fulfill in a timely and proper manner its obligations or if either party should default or breach any of the terms of this Agreement and such shall not be cured within 30 days after written notice by the non-defaulting party, the non-defaulting party shall have the right to terminate this Agreement immediately.
- iii. Upon termination, the City shall assume all assets of the corporation that directly result from the performance of this Agreement provided that such assets were purchased with Special Assessment funds or are otherwise required by law to be assumed by the City. Any other assets will remain with CDA.
- d. **Effective Date of Termination.** This Agreement shall terminate effective upon CDA's actual receipt of written notice from the City, if the same is hand-delivered or if sent via first class U.S. Mail or via a nationally recognized commercial delivery service, the date when notice was actually sent.

10. Overhead Costs of CDA.

- a. Overhead Costs of CDA shall include: payroll, benefits, office space, insurance expenses, and audit expenditures of the CDA. Overhead Costs shall not include in-kind donations.
- b. Any funds CDA receives from the City other than Special Assessments shall be used in accordance with the terms of the disbursement of such funds.

11. Taxes. It is specifically agreed and understood by the parties hereto that the City shall not be responsible for any taxes that are imposed on CDA. Furthermore, CDA understands that it cannot claim exemption from taxes by virtue of any exemption that is provided to the City.

12. Compliance with laws and private property. In carrying out this Agreement, CDA must comply with all applicable provisions of law, including, without limitation, South Carolina Code 5-37-10, et seq., the South Carolina Freedom of Information Act, all city resolutions and ordinances and all regulations lawfully imposed by the Treasurer of the State of South Carolina and other state agencies. CDA shall comply with all City's procurement regulations and Minority and Women-owned Business Enterprise guidelines and reporting requirements. Prior to performing work on any privately-owned or leased property, CDA shall obtain the appropriate authorization from the owner or leaseholder to perform such work.

13. Notices.

To the City of Charleston:

City of Charleston
Mayor
80 Broad Street
Charleston, SC 29401

To CDA:

Charleston Downtown Alliance, Inc.
c/o Christopher Price
The Prime South Group, LLC
418 King Street, Suite 201
Charleston, SC 29403

14. City Property; Compliance with S.C. Code § 5-37-90. Any property loaned, provided or leased to CDA, and any improvements or equipment purchased with Special Assessment funds shall be the property of the City in compliance with S.C. Code § 5-37-90, which improvements or property shall be deemed under lease and right of use by CDA for the duration of this Agreement. Such improvements, equipment, or property in possession of CDA shall be maintained by CDA in good condition and repair, and shall be returned to the City by CDA upon termination of this Agreement or upon the expiration of the BID, and in the event of termination of this Agreement prior to the end of the BID, assumption of all contracts, obligations and leases as are in place at the time of termination. For purposes of clarification, this Section shall not apply to any improvements, equipment, property, or services that CDA purchases with funds other than the Special Assessments, which improvements, equipment, property, or services shall be the property of CDA.

- 15. Modification of Agreement.** This Agreement may be modified only by written amendment executed by all parties and their signatories hereto.
- 16. No Partnership/Joint Venture.** Nothing herein shall in any way be construed or intended to create a partnership or joint venture between the parties or to create the relationship of principal and agent between or among any of the parties. None of the parties hereto shall hold itself out in a manner contrary to the terms of this paragraph. No party shall become liable for any representation, act or omission of any other party the provisions of this Agreement, it is specifically agreed and understood that the City has no financial interest in the business of CDA, and shall not be liable for any debts or obligations incurred by CDA. The status of the parties is not that of agent and servant, but rather, an independent contractor relationship. CDA shall not, at any time or times, use the name or credit of the City in entering into contracts, applying for credit or purchasing or attempting to purchase any equipment, supplies or property of any type whatsoever.
- 17. Waiver.** No waiver of any provision of this Agreement shall affect the right of any party thereafter to enforce such provision or to exercise any right or remedy available to it in the event of the other party's default.
- 18. Employment.** CDA shall not subscribe to any personnel policy that permits or allows for the promotion, demotion, employment, dismissal or laying off of any individual due to race, creed, color, national origin, age, sex, or that is in violation of applicable laws concerning the employment of individuals with disabilities.
- 19. Fidelity Bond.** Provided that it is commercially feasible to do so, CDA shall provide a fidelity bond to insure the good and faithful handling of money for the protection of the City in the amount of One Hundred Thousand Dollars (\$100,000) by a company licensed to do business in the State of South Carolina with a financial rating of at least A/VIII as rated in the most recent edition of Best's Insurance Reports and approved by the City. The fidelity bond so provided shall cover all employees of CDA who handle any funds received from the City relating to the Program.
- 20. Contingent Fees.** CDA hereby represents that CDA has not been retained or retained any persons to solicit or secure a City contract or agreement upon an agreement or understanding for a contingent commission, percentage, or brokerage fee, except for retention of bona

vide established commercial selling agencies for the purpose of securing business. Breach of the provisions of this paragraph is, in addition to a breach of this Agreement, a breach of ethical standards that may result in civil or criminal sanction and/or debarment or suspension from being a contractor or subcontractor under City contracts.

21. Gratuities and Kickbacks. It shall be a breach of ethical standards for any person to offer, give or agree to give any employee or former employee, or for any employee or former employee to solicit, demand, accept or agree to accept from another person, a gratuity or an offer of employment in connection with any decision, approval, disapproval, recommendation, preparation of any part of a program requirement or a purchase request, influencing the content of any specification or procurement standard, rendering of advice, investigation, auditing or in any other advisory capacity in any proceeding or application, request for ruling, determination, claim or controversy or other particular matter, pertaining to any program requirement of a contract or subcontract or to any solicitation or proposal therefor. It shall be a breach of ethical standards for any payment, gratuity, or offer of employment to be made by or on behalf of a subcontractor under a contract or the prime contractor or higher tier subcontractor or a person associated therewith, as an inducement for the award of a subcontract or order. Breach of the provisions of this paragraph is, in addition to a breach of this Agreement, a breach of ethical standards that may result in civil or criminal sanction and/or debarment or suspension from being a contractor or subcontractor under City contracts.

22. Insurance, Indemnification and Hold Harmless.

- a. CDA shall maintain the Insurance Requirements as set forth in **Exhibit C.**
- b. CDA shall indemnify and hold harmless the City, its officers, agents and employees from:
 - i. Any claims, damages, costs and attorney fees for injuries or damages arising, in part or in whole, from the negligent or intentional acts or omissions of CDA, its officers, employees and/or agents, including its sub or independent contractors, in connection with the performance of this Agreement; and,
 - ii. Any claims, damages, penalties, costs and attorney fees arising from any failure of CDA, its officers, employees and/or agents, including its sub or independent contractors,

to observe applicable laws, including, but not limited to, labor laws and minimum wage laws.

- c. CDA shall require each vendor and contractor engaged by CDA to provide services or improvements in the public areas of the District to indemnify the City and provide commercial general liability insurance covering liability and casualty, property damage, and injury to persons (including wrongful death) in forms and amounts customarily required by the City of vendors and contractors engaged by the City under similar circumstances.
- d. The City will not indemnify, defend or hold harmless in any fashion CDA from any claims, whether arising from this Agreement or any understanding between the parties, regardless of any language in any attachment or other document that CDA may provide. The City shall be responsible only for the acts/omissions of its officers, employees, and/or agents.
- e. CDA shall pay the City its expenses incurred as a result of CDA's failure to fulfill its obligations in a professional and timely manner under this Agreement.

23. Assignment--Consent Required. The provisions of this Agreement shall inure to the benefit of and shall be binding upon the respective successors and assignees of the parties hereto. Neither this Agreement nor any of the rights and obligations of CDA hereunder shall be assigned or transferred in whole or in part without the prior written consent of the City. Any such assignment or transfer shall not release CDA from its obligations hereunder.

24. Entire Agreement. This Agreement sets forth the entire agreement between the parties with respect to the subject matter hereof and shall govern the respective duties and obligations of the parties. The parties hereto warrant and represent that there are no prior or contemporaneous oral or written understandings that contradict, modify or supplement this Agreement, it being the intent of the parties hereto that the Agreement Documents comprise the entire intent of the parties hereto.

25. Force Majeure. No party shall have any liability to the other hereunder by reason of any delay or failure to perform any obligation or covenant if the delay or failure to perform is occasioned by force majeure, meaning any act of God, storm, fire, casualty, unanticipated work stoppage, strike, lockout, labor dispute, civil disturbance, riot, war,

national emergency, act of government, act of public enemy, or other cause of similar or dissimilar nature beyond its control.

26. Governing Law. The validity, construction and effect of this Agreement and any and all extensions and/or modifications thereof shall be governed by the laws of the State of South Carolina. South Carolina law shall govern regardless of any language in any attachment or other document that CDA may provide.

27. Venue. Any action between the parties arising in connection with this Agreement shall be maintained in the courts of Charleston County, South Carolina.

28. Severability. Should any provision of this Agreement be declared to be invalid by any court of competent jurisdiction, such provision shall be severed and shall not affect the validity of the remaining provisions of this Agreement.

29. Effective Date. This Agreement shall not be binding upon the parties until it has been signed first by CDA and then by the authorized City representatives and filed in the office of the City Clerk. When it has been so signed and filed, this Agreement shall be effective as of the Effective Date.

DRAFT

IN WITNESS WHEREOF, the City of Charleston, South Carolina, and Charleston Downtown Alliance have executed their signatures as of the date first above-written.

CITY OF CHARLESTON

By: _____
John J. Tecklenburg
Its: Mayor

ATTEST:

City Clerk

Date: _____, 2022

DRAFT

IN WITNESS WHEREOF, the City of Charleston, South Carolina, and Charleston Downtown Alliance have executed their signatures as of the date first above-written.

CHARLESTON DOWNTOWN ALLIANCE, INC.

By: _____
Christopher Price
Its: Board Chair

Sworn to (or affirmed) and subscribed before me
this the _____ day of _____, 2022.

Official Signature of Notary

(Official Seal)

_____, Notary Public
Notary's printed or typed name

My commission expires: _____

Exhibit A

SERVICES

- A. CDA shall perform Citizen Attitude Survey within the first year of this Agreement and annually thereafter.
- B. CDA shall perform a Pedestrian/Visitor Count within first six months of this Agreement and annually thereafter.
- C. As manager of the BID, CDA must provide certain public improvements, including services that will serve the real property in the District, that address the Improvements as outlined in Table 1 of the BID. To provide such improvements, CDA is authorized to provide the following Services to supplement those Basic City Services provided by the City:
 - 1. Street Services / Ambassador Program, which may include:
 - a. Maintain the District's public realm via a team of ambassadors who shall assist visitors, business, residents, workers, and homeless individuals through:
 - i. Maintaining a visible presence on the street;
 - ii. Customer service and wayfinding;
 - iii. Transit and parking information;
 - iv. Safety escorts;
 - v. Referrals to human services;
 - vi. Business check-ins and outreach; and
 - vii. Welcome new businesses.
 - b. Direct the City's attention to particular needs or challenges being reported by District stakeholders (restrictive ordinances, capital project needs, unaddressed social issues, etc.).
 - 2. Street Beautification services, which may include:
 - a. Supplementing the City's Basic Services, as set forth in Exhibit B;
 - b. Enhancing aesthetic improvements, including the decoration of any public space or of building facades and exteriors in public view

that confer a public benefit, and only with approval of the City's Design Review Committee.

- i. Work with City staff to coordinate on the proper hanging of baskets and vertical banners; and
- ii. Notifying the City of streetlights in need of repair and of roadway or sidewalk issues.

3. Program / Destination Management services, which may include:

- a. Organize events and programming that seek to create continuous opportunities for residents, workers, students, and visitors to spend time and engage with the District, as permitted by the Special Events Committee, to include music, recreation and cultural activities;
- b. Grow the base of private and nongovernmental organizations who are involved in the District's activities.
- c. Utilization of vacant storefronts.

4. Marketing / Promotion services, which may include:

- a. Expand the base of support for the District and stimulate individuals and businesses to visit, invest, patronize, support, and reside in the Downtown area.
- b. Partner with the City on long-range visioning and planning exercises for the District, providing a regional and multisectoral perspective on key issues.
- c. Issue special publications such as newspapers, calendars, or promotional inserts.
- d. Periodic compilation of BID District statistics as a marketing tool designed to assist property owners in their leasing of available rental and office space.

5. Economic Development services, which may include:

- a. Develop programming and activation strategies for the District that are focused on the future growth and diversification of the District's economy.
- b. Leverage its knowledge of the District's stakeholders to assist in project- or program-specific capacity assessments and partnership structuring to attract investment.
- c. Advocate for and support plans to advance the objectives of equitable economic development and diversification in the District.
- d. Provide activities to support business recruitment, retention, and development in the District.
- e. Cooperate with the City to incentivize women and minority owned businesses in establishing a business in the District.

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Exhibit B

BASIC CITY SERVICES

Fire

- Fire and Emergency Response
- Hydrant testing and inspections
- Routine fire safety inspections

Housing & Community Development

- Provide outreach to individuals and families experiencing homelessness
- Connect unsheltered individuals to agencies that provide shelter and social services

Livability & Tourism

- Graffiti, flyer, and sticker removal from public property
- Enforcement of ordinances applicable to commercial businesses
- Special Events Permitting
- Tour Guide Regulations & Tour Bus Permitting
- Enforce pedi cab/rickshaw ordinances

Parks

- Palm Tree Pruning – Annual seed pod removal and lower frond removal late June early July. Troubleshoot tree pruning as needed through the year.
- Maintain, and decorate for Christmas holiday, Marion Square as long as lease remains in effect.

Police

- Central Business District Patrol Team (*Team 9*) consists of four patrol squads to provide day and night coverage to patrol the areas in and around King Street from US 17 Overpass near Columbus Street to Horlbeck Alley. Due to the daily high volume of citizens in this area, Team 9 deploys a variety of resources to include foot patrol, bicycle patrol, traffic diversion and/or road closures and the use of the City's safety and security camera system.

Public Service, as staff levels permit

- Grounds maintenance (sidewalk litter abatement & litter basket service; pressure washing sidewalks as needed); schedule as follows:
 - 1st shift 7am -3 pm Everyday
 - 2nd Shift 3pm – 11pm Off Sunday and Monday
 - 3rd shift 11pm -7am Off Mon and Tues
- Garbage & Trash Pickup 7 days/week. *Recycling is done by Charleston County.*
- Sidewalk repairs as needed and funded.
- Street sweeping occurs daily.

Traffic & Transportation

- Responsible for the maintenance of over 1,650 parking meters
- Responsible for the enforcement of parking violations

Exhibit C

INSURANCE REQUIREMENTS

CDA shall be required to procure and maintain for the duration of its contract with the City insurance against claims for injuries to persons or damages to property which may arise from or in connection with work performed by CDA, its agents, representatives, employees or Subcontractors. The cost of such insurance shall be the responsibility of CDA.

- A. CDA shall carry liability insurance with a reliable company licensed to do business in South Carolina. Coverage shall be at least broad as:
1. Insurance Services Office Commercial General Liability Coverage Form ("occurrence") CG 00 01 10 93.
 2. Insurance Services Office Business Auto Coverage Form CA 00 01 6 92 covering automobile liability, code 1 "any auto".
- B. CDA shall carry workers' compensation as required by the State of South Carolina and Employers Liability insurance (including applicable occupation disease provisions and all state endorsements.)
- C. CDA shall maintain limits no less than the following:
1. **GENERAL LIABILITY:** \$1,000,000 combined single limit per occurrence for bodily injury, property damage, and personal injury with a \$2,000,000 general aggregate limit.
 2. **AUTOMOBILE LIABILITY:** \$1,000,000 combined single limit per accident for bodily injury and property damage.
 3. **WORKERS' COMPENSATION:** Statutory limits as required by South Carolina state law, and employer's liability limits of \$100,000 per accident.
 - 4.
- D. Required policies are to contain, or be endorsed to contain, the following provisions:
1. **General Liability and Automobile Liability Coverages**
The City of Charleston, its officials, employees and volunteers are to be covered as additional insureds as respects: Liability arising out of activities performed by or on behalf of the Contractors; premises owned, occupied or used by CDA; or automobiles owned, leased, hired or borrowed by CDA. The coverage shall contain no special limitations on the scope of protection afforded to the City of Charleston, its officials, employees or volunteers. To accomplish this objective, the City of Charleston shall be named as an additional insured under the Contractor's general liability policy by attaching Insurance Services Office Commercial General Liability Endorsement CG2010 10 93 (Additional Insured - Owners, Lessees or Contractors - Form B) or its equivalent. CDA's insurance coverage shall be

primary insurance as respects the City of Charleston, its officials, employees and volunteers. Any insurance or self-insurance maintained by the City of Charleston, its officials, employees, or volunteers shall be in excess of the Contractor's insurance and shall not be required to contribute. To accomplish this objective, the following wording should be incorporated in the previously referenced additional insured endorsement.

Other Insurance: This insurance is primary, and our obligations are not affected by any other insurance carried by the additional insured whether primary, excess, contingent or on any other basis.

Any failure to comply with reporting provisions of the CDA's policies shall not affect coverage provided to the City of Charleston, its officials, employees or volunteers.

2. Workers' Compensation

CDA shall agree to waive all rights of subrogation against the City of Charleston, its officials, employees and volunteers for losses arising from work performed by the Contractor for the City of Charleston.

- E. Any deductibles or self-insured retentions shall be the responsibility of CDA.
- F. Each insured policy required by the City of Charleston shall be endorsed to state that coverage shall not be suspended, voided, canceled by either party, reduced in coverage or in limits except after thirty (30) days prior written notice has been given to the City of Charleston.
- G. All coverages for Subcontractors shall be subject to all the requirements stated herein.
- H. Insurance must be placed with an approved insurance company with current Best's rating of A+, A, or A-. Exceptions to this requirement must be approved in writing by the Department of Risk Management.
- I. CDA shall furnish the City of Charleston with Certificates of Insurance noting the endorsements. The Certificates and endorsements for each insurance policy are to be signed by a person authorized by that insurer to bind coverage on its behalf. All certificates and endorsements are to be received and approved by the City of Charleston, Procurement Division, before work commences. The City of Charleston reserves the right to require complete, certified copies of all required insurance policies, at any time.

Required certificates should be mailed to:

City of Charleston
Procurement Division
75 Calhoun Street, Suite 3500
Charleston, SC 29401