

DRAFT

SECURITY GUARD SERVICES AGREEMENT

This Security Guard Services Agreement (this “**Agreement**”) is made as of this ____ day of _____, 2017 (the “**Effective Date**”), by and between _____, a _____ (the “**Contractor**”), having an address of _____, and Detroit 300 Conservancy, a Michigan nonprofit corporation (the “**Client**”), having an address of One Campus Martius, Suite 380, Detroit, Michigan 48226.

The circumstances underlying the execution of this Agreement are as follows:

A. Pursuant to a Professional Services Agreement with the City of Detroit (the “**City**”) dated as in July 2003, as amended (as so amended, the “**City Park Management Agreement**”), the Client provides management and programming services for four (4) public parks in Downtown Detroit, being Campus Martius Park, Cadillac Square, Grand Circus Park and Capitol Park (each a “**Park**” and collectively, the “**Parks**”).

B. As part of its management of the Parks, the Client wishes to engage a qualified and licensed security guard service to provide certain security and related services for the Parks as more particularly described below.

NOW THEREFORE, the parties agree as follows:

1. SERVICES.

1.1 The Client hereby engages the Contractor, and the Contractor hereby accepts such engagement, to serve as an independent contractor to provide certain security guard and related services to the Client on the terms and conditions set forth in this Agreement.

1.2 The Contractor shall provide to the Client the security guard and related services set forth on Schedule 1 (the “**Services**”). Schedule 1 sets forth a detailed description of the Services that includes specific number of security officers per Park and per shift; the hours of coverage; the number of supervisory or other management personnel deployed to oversee the performance of the Services; and the current hourly rate(s) of the applicable personnel. Schedule 1 is further broken down between charges for standard or regular security guard services, charges for emergency or unscheduled services, and charges for specialized security guards to be used for special events.

1.3 Unless otherwise set forth in Schedule 1, the Contractor shall furnish, at its sole expense, the uniforms, equipment, vehicles, supplies and other materials used by all security officers employed by it to perform the Services. The Client shall provide the Contractor with access to the Parks to the extent necessary for the performance of the Services.

1.4 The Services shall be rendered in a professional manner consistent with first class security services, and in a manner that is courteous and polite to the public to the extent possible under the circumstances. All Services shall be rendered so as to comply with

applicable laws, rules and regulations, including without limitation any rules or regulations promulgated for any of the Parks by the City or other lawful governmental authority.

1.5 In general, all security officers who patrol any of the Parks will be in standard uniforms and will patrol on foot; provided, during certain designated hours or times set forth in Schedule 1, specified personnel may patrol one or more of the Park in vehicles.

1.6 The employees assigned to perform the Services shall be competent, qualified, properly trained and licensed to perform all duties or tasks associated with the Services in a manner consistent with the highest industry practices and standards. Prior to assigning them to perform the Services, the Contractor shall perform a thorough background check on all security officers and shall not assign any security officers to perform the Services if any information disclosed in such background check reveals a criminal conviction or otherwise indicates that such person, in any way, might not perform the Services in accordance with the standards applicable under this Agreement. The Contractor also shall subject all security officers performing the Services to be tested for drugs or other illegal substances prior to their being assigned to any Park, and shall conduct appropriate drug testing periodically thereafter in accordance with prudent industry practices.

1.7 No security officers or other employees shall be armed with firearms or other lethal weapons while performing the Services except with the prior written consent of the Client.

1.8 The Contractor's supervisory personnel shall make periodic (but unannounced) visits to the Parks to ensure compliance by on-site security officers with all requirements relative to the Services.

1.9 The Contractor's security officers shall cooperate with the Detroit Police Department and other law enforcement agencies that have authority to act in any of the Parks. Such cooperation shall include filing reports of incidents and calling in law enforcement officers for incidents or events requiring assistance from or intervention by a law enforcement officer. The Contractor's security officers shall have the transmitters or communications devices specified on Schedule 1.

1.10 Prior to commencing the Services the Contractor shall furnish to the Client copies of all licenses, permits and approvals required by federal, state or local governmental authorities for the performance of the Services by the Contractor. The Contractor shall maintain all such licenses, permits or approvals in full force and effect during the Term (as defined below) at its own expense.

2. TERM. The term of this Agreement shall commence as of the Effective Date and shall continue for a period of _____ (___) years thereafter, unless sooner terminated in accordance with the terms of this Agreement (the "**Term**"). Any extension of the Term will be subject to mutual written agreement of the parties.

3. FEES AND EXPENSES.

3.1 As full compensation for the Services and the rights granted to the Company in this Agreement, the Client shall pay the Contractor the fees at the hourly or other applicable rates set forth on Schedule 2 (the “Fees”). The parties acknowledge that the Fees on Schedule 2 are broken down between various categories, including for: (a) routine or regular security services; (b) emergency or unscheduled services; and (c) specialized security services for special events.

3.2 The Contractor is solely responsible for any travel or other costs or expenses incurred by it or any of its employees in connection with the performance of the Services, and in no event shall the Client be obligated to reimburse the Contractor for any such costs or expenses.

3.3 The Client shall pay all undisputed Fees within thirty (30) days after the Client’s receipt of a properly submitted and documented invoice.

3.4 All invoices submitted for any Fees shall set forth the hours and personnel reflected in the invoice in reasonable detail that allows the Client to verify the basis for and accuracy of the charges reflected in the invoice. The Contractor shall keep and make available for inspection or examination by the Client all records maintained by the Contractor in connection with furnishing the Services hereunder.

4. RELATIONSHIP OF THE PARTIES.

4.1 The Contractor is an independent contractor of the Client, and this Agreement shall not be construed to create any association, partnership, joint venture, employee, or agency relationship between the Contractor and the Client for any purpose. The Contractor shall have no authority (and shall not hold itself out as having authority) to bind the Client in any manner, and the Contractor shall not make any agreements or representations on the Client’s behalf without the Client’s prior written consent.

4.2 Without limiting Section 4.1 above, neither the Contractor nor any of its employees shall be eligible to participate in any vacation, group medical or life insurance, disability, profit sharing or retirement benefits, or any other fringe benefits or benefit plans offered by the Client to its employees. The Client shall not be responsible for withholding or paying any income, payroll, Social Security, or other federal, state, or local taxes, making any insurance contributions, including for unemployment or disability, or obtaining worker’s compensation insurance on the Contractor’s behalf. The Contractor shall be responsible for, and shall indemnify the Client against, all such taxes or contributions, including penalties and interest, as well as for minimum wage, overtime or other requirements relative to its employees. Any persons employed or engaged by the Contractor in connection with the performance of the Services shall be the Contractor’s employees and the Contractor shall be fully responsible for them and indemnify the Client against any claims made by or on behalf of any such employee.

4.3 In hiring, retaining, compensating or disciplining security guards or other personnel who perform or are to perform the Services, the Contractor shall conform with all laws, rules, regulations, executive orders or other legal requirements relative to employment

that are imposed by any applicable federal, state or local governmental authority. Without limiting the generality of the foregoing, the Contractor shall comply with the Federal Civil Rights Act, the Fair Labor Standards Act, the Americans with Disabilities Act and the Labor Management Relations Act.

4.4 The Contractor shall have the right to select the security officers or other employees who perform the Services. The Contractor shall be solely responsible for issuing instructions to, training and supervising its security officers or other employees, and to control the method or means by which they perform the duties assigned to them by the Contractor. The Client reserves the right to require the Contractor to remove or transfer to a location other than the Parks any security officer or employee whom the Client has determined in good faith to have engaged in improper conduct, to be unqualified, or to otherwise impose a hazard or threat.

4.5 In executing this Agreement the Contractor acknowledges that it has received a copy of the City Park Management Agreement; that the provisions of the City Park Management Agreement shall apply to the Contractor; and that the Contractor agrees to be bound by the terms of the City Park Management Agreement insofar as such terms are applicable to the Services or the Contractor.

5. CONFIDENTIALITY.

5.1 The Contractor acknowledges that it may have access to information that is treated as confidential and proprietary by the Client, its affiliates (including Downtown Detroit Partnership, Inc.) or the City, including, without limitation, the existence and terms of this Agreement and information pertaining to operations of the Client or the City, and information regarding donors, sponsors and financial information with respect to the Client or the Parks, in each case whether spoken, written, printed, electronic or in any other form or medium (collectively, the “**Confidential Information**”). The Contractor agrees to: (a) treat all Confidential Information as strictly confidential; (b) to not disclose Confidential Information or permit it to be disclosed, in whole or part, to any third party without the prior written consent of the Client in each instance; and (c) to not use any Confidential Information for any purpose except as required in the performance of the Services. The Contractor shall notify the Client immediately in the event it becomes aware of any loss or disclosure of any Confidential Information or other breach of its obligations under this Section.

5.2 Confidential Information shall not include information that: (a) is or becomes generally available to the public other than through the Contractor’s breach of this Agreement; or (b) is communicated to the Contractor by a third party that had no confidentiality obligations with respect to such information.

5.3 Nothing herein shall be construed to prevent disclosure of Confidential Information as may be required by applicable law or regulation, or pursuant to the valid order of a court of competent jurisdiction or an authorized government agency, provided that the disclosure does not exceed the extent of disclosure required by such law, regulation or order. The Contractor agrees to provide written notice of any such order to an authorized

officer of the Client within twenty-four (24) hours of receiving such order, but in any event sufficiently in advance of making any disclosure to permit the Client to contest the order or seek confidentiality protections, as determined in the Client's sole discretion.

6. REPRESENTATIONS AND WARRANTIES.

6.1 The Contractor represents and warrants to the Client that:

(a) The Contractor has the right to enter into this Agreement, to grant the rights granted herein and to perform fully all of its obligations in this Agreement;

(b) The Contractor's entering into this Agreement with the Client and its performance of the Services do not and will not conflict with, or result in any breach or default under, any other agreement to which the Contractor is subject;

(c) The Contractor has the required skill, experience and qualifications to perform the Services in accordance to the standards set forth in this Agreement, and shall perform the Services in accordance with the standards set forth in this Agreement. The Contractor shall devote sufficient resources to ensure that the Services are performed in a timely and reliable manner; and

(d) All Services shall be performed by the Contractor in compliance with all applicable federal, state, and local laws, rules and regulations.

6.2 The Client hereby represents and warrants to the Contractor that:

(a) it has the full right, power, and authority to enter into this Agreement and to perform its obligations hereunder; and

(b) the execution of this Agreement by its representative whose signature is set forth at the end hereof has been duly authorized by all necessary corporate action.

7. INDEMNIFICATION.

7.1 The Contractor shall defend, indemnify and hold harmless the Client, its affiliates (including Downtown Detroit Partnership, Inc. and the Downtown Detroit Business Improvement Zone) and the City, and their respective officers, directors, departments, employees, representatives, agents, successors and assigns (each an "**Indemnified Party**" and collectively, the "**Indemnified Parties**"), from and against all claims, demands, suits, actions, expenses, judgments, obligations, damages, charges, losses and liabilities, deficiencies, actions, judgments, interest, awards, penalties, fines, costs, or expenses of whatever kind (including without limitation the fees and expenses for attorneys, expert witnesses and consultants) that may be imposed upon, incurred by or asserted against arising out of or resulting from:

(a) any negligent or tortious act, error or omission attributable in whole or in part to the Contractor; and

(b) any failure by the Contractor to perform its obligations, either express or implied, under this Agreement; and

(c) bodily injury, death of any person, or damage to real or tangible, personal or intellectual property resulting from the Contractor's negligence or wrongful acts or omissions;

(d) any breach of any of the Contractor's representations, warranties or obligations under this Agreement.

Notwithstanding the foregoing, the indemnification obligation set forth above shall not include any claims, demands, judgments, suits, actions, expenses, losses or liabilities, including costs and attorney's fees, which are caused solely by the negligence of the Indemnified Party (other than the City) seeking to enforce such obligation.

7.2 The Client may satisfy any obligation under such indemnity (in whole or in part) by way of deduction from any payment due to the Contractor.

8. INSURANCE. The Contractor shall maintain or cause to be maintained, the following insurance coverages at its sole expense:

(a) Commercial General Liability Insurance with minimum limits of:

\$1,000,000 per occurrence for Bodily Injury and Property Damage
\$2,000,000 General Aggregate - other than Products/Completed Operations
\$2,000,000 Products/Completed Operations Aggregate
\$100,000 Fire Damage Liability
\$10,000 medical expense per person

This coverage shall be written on an Occurrence form basis including coverage for Blanket Contractual Liability, terrorism and provide for severability of interest between insureds. This coverage should include a law enforcement or security services endorsement. The Client, the City and their designated affiliates, shall be named as additional insureds. The policy shall provide that the coverage is primary and non-contributory with any self-insurance or other insurance available to Client.

(b) Security Guard Errors or Omissions Insurance with minimum limits of:

\$5,000,000 each occurrence
\$10,000,000 aggregate

This insurance shall include coverage for false arrest, discrimination, humiliation, assault and battery, terrorism, first aid errors and omissions. The Client, the City and their respective designated affiliates shall be named as additional insureds. The policy shall provide that the coverage is primary and non-contributory with any self-insurance or other insurance or self-insurance available to the Client, the City or their respective affiliates.

(c) Workers' Compensation with Michigan Statutory limits

The policy shall apply to all Conservancy's employees and persons employed or hired to perform or provide Services and/or Additional Services.

(d) Employers' Liability with minimum limits of:

\$500,000.00 minimum each person
\$500,000.00 minimum each accident

(e) Auto Liability Insurance with minimum limits of:

\$1,000,000 each accident

Coverage shall apply to all owned, hired and non-owned vehicles and provide personal and property protection insurance, including residual liability insurance under Michigan no fault insurance law. Such insurance shall provide contractual liability coverage, apply on a primary and non-contributory basis with any self-insurance or other insurance available to the Client, the City or their respective affiliates. The Client, the City and their designated affiliates shall be included as named insureds.

(f) Excess/Umbrella Liability Policy with minimum limits of:

\$5,000,000 each occurrence for Bodily Injury and Property Damage
\$5,000,000 General Aggregate- other than Products/Completed Operations
\$5,000,000 Products/Completed Operations Aggregate

The policy shall apply excess of and be no less broad than coverage provided by Commercial General Liability, required herein, and the Client, the City and their designated affiliates shall be named as additional insureds.

All insurance policies shall be issued by insurers with a Best's Rating of A- or above unless otherwise approved by the Client.

To the extent available on commercially reasonable terms, all insurance policies shall provide that they may not be canceled or materially changed without at least thirty (30) days' prior written notice to the Client. Certificates of insurance evidencing such coverage shall be in a form reasonably acceptable to the Client.

The Contractor shall be responsible for payment of all deductibles or self-insured retentions contained in any insurance required of the Contractor under this Agreement.

The Contractor shall cause the insurers of coverages required herein to waive any rights of subrogation against the Client, the City and their respective affiliates.

9. TERMINATION.

9.1 The Client may terminate this Agreement without cause or reason upon thirty 30 days' written notice to the Contractor. In the event of termination pursuant to this Section, the Client shall pay the Contractor on a pro-rata basis any Fees then due and payable for any Services completed up to and including the effective date of such termination.

9.2 The Client may terminate this Agreement, effective immediately upon written notice to the Contractor, if the Contractor materially breaches this Agreement, and such breach is incapable of cure, or with respect to a material breach capable of cure, the Contractor does not cure such breach within ten (10) days after receipt of written notice of such breach.

9.3 Upon expiration or termination of this Agreement for any reason, or at any other time upon the Client's written request, the Contractor shall promptly after such expiration or termination:

- (a) deliver to the Client all tangible documents and materials (and any copies) containing, reflecting, incorporating, or based on the Confidential Information;
- (b) permanently erase all of the Confidential Information from its computer systems; and
- (c) certify in writing to the Client that it has complied with the requirements of this Section.

9.4 The terms and conditions of Sections 7.1, 9.1, 9.2, 9.3 and this 9.4 shall survive the expiration or termination of this Agreement.

10. ASSIGNMENT. The Contractor shall not assign any rights, or delegate or subcontract any obligations, under this Agreement without the Client's prior written consent. Any assignment in violation of the foregoing shall be null and void. The Client may assign its rights and obligations under this Agreement at any time. Subject to the limits on assignment stated above, this Agreement will inure to the benefit of, be binding on, and be enforceable against each of the parties hereto and their respective successors and assigns.

11. MISCELLANEOUS.

11.1 All notices, requests, consents, claims, demands, waivers, and other communications hereunder (each, a "**Notice**") shall be in writing and addressed to the party at the addresses set forth on the first page of this Agreement (or to such other address that may be designated by the receiving party from time to time in accordance with this Section). All Notices shall be delivered by personal delivery, nationally recognized overnight courier (with all fees prepaid), facsimile or email (with confirmation of transmission) to the facsimile number or e-mail address of the person executing this Agreement on behalf of the party to which notice is being given, or certified or registered mail (in each case, return receipt requested, postage prepaid). Except as otherwise provided in this Agreement, a Notice is effective only if (a) the receiving party has received the Notice, or (b) the party giving the Notice has complied with the requirements of this Section.

11.2 This Agreement, together with any other documents incorporated herein by reference and related Schedules, along with the Request for Proposals dated as of _____, 2017 (which is hereby incorporated herein by reference), constitute the sole and entire agreement of the parties to this Agreement with respect to the subject matter contained herein, and supersedes all prior and contemporaneous understandings, agreements, representations, and warranties, both written and oral, with respect to such subject matter.

11.3 This Agreement may only be amended, modified or supplemented by an agreement in writing signed by each party. Any of the terms hereof may be waived only by a written document signed by the party waiving compliance with the term.

11.4 This Agreement shall be governed by and construed in accordance with the internal laws of the State of Michigan without giving effect to any choice or conflict of law provision or rule. Each party irrevocably submits to the exclusive jurisdiction and venue of the federal and state courts located in the County of Wayne in any legal suit, action, or proceeding arising out of or based upon this Agreement or the Services provided hereunder.

11.5 The failure of the Client to enforce any provision of this Agreement on one or more occasions shall not be construed as a waiver of the right of the Client to enforce such provision in the future.

11.6 If any term or provision of this Agreement is invalid, illegal or unenforceable in any jurisdiction, such invalidity, illegality or unenforceability shall not affect any other term or provision of this Agreement or invalidate or render unenforceable such term or provision in any other jurisdiction.

11.7 This Agreement may be executed in multiple counterparts and by facsimile signature, each of which shall be deemed an original and all of which together shall constitute one instrument.

[Signature Page Follows]

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

“CONTRACTOR”

By: _____

“CLIENT”

DETROIT 300 CONSERVANCY

By: _____

Schedule 1
(Description of Services)

Schedule 2
(Fees)

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