

**AGREEMENT BETWEEN
HERITAGE LAWN CARE, INC.
AND THE ANN ARBOR DDA
FOR LANDSCAPING & MAINTENANCE SERVICES**

The Ann Arbor DDA, a Michigan municipal corporation, having its offices at 150 S. Fifth Ave., Ann Arbor, Michigan 48104 ("DDA"), and Heritage Lawn Care ("Contractor"), a Michigan Corporation with its address at 408 N. Fourth Street, Saline, Michigan 48176 agree as follows on this 1st day of April, 2022.

The Contractor agrees to provide services to the DDA under the following terms and conditions:

I. DEFINITIONS

Contract Administrator means Amber Miller, acting personally or through any appropriate staff member.

Project means: 2022-2024 Landscaping and Maintenance Services

II. DURATION

The contract term is for the period of April 1, 2022 through June 30, 2024 with a mutual option for two (2) additional one year renewals.

III. SERVICES

- A. The Contractor agrees to furnish all of the materials, equipment and labor necessary; and to abide by all the duties and responsibilities applicable to it for the Project in accordance with the requirements and provisions of Exhibit A, including all written modifications incorporated into any of the documents, which are incorporated as part of this Contract.
- B. The DDA retains the right to make changes to the quantities of service within the general scope of the Agreement at any time by a written order. If the changes add to or deduct from the extent of the services, the contract sum shall be adjusted accordingly. All such changes shall be executed under the conditions of the original Agreement. The intention of the documents is to include all labor and materials, equipment and transportation necessary for the proper execution of the Project. Materials or work described in words that so applied have a well-known technical or trade meaning have the meaning of those recognized standards.
- C. Quality of Services under this Agreement shall be of the level of professional quality performed by experts regularly rendering this type of service. Determination of acceptable quality shall be made solely by the Contract Administrator.
- D. The Contractor shall perform its Services for the Project in compliance with all statutory, regulatory and contractual requirements now or hereafter in effect as may be applicable to the rights and obligations set forth in the Agreement.

- E. The Contractor may rely upon the accuracy of reports and surveys provided to it by the DDA except when defects should have been apparent to a reasonably competent professional or when it has actual notice of any defects in the reports and surveys.

IV. COMPENSATION OF CONTRACTOR

- A. The Contractor shall be paid on the basis of the bid price in the manner set forth in the Exhibit B. The total fee to be paid the Contractor for the services shall not exceed \$37,000. Payment shall be made within 30 days of acceptance of the work by the Contract Administrator. It is understood and agreed between the parties that the compensation stated above is inclusive of any and all remuneration to which the Contractor may be entitled.
- B. The Contractor shall be paid in the manner set forth in Exhibit B. Payment shall be made monthly, unless another payment term is specified in Exhibit B, following receipt of invoices submitted by the Contractor, and approved by the Contract Administrator.
- C. The Contractor will be compensated for Services performed in addition to the Services described in Section III, only when those additional Services have received prior written approval of the Contract Administrator. Compensation will be on the basis of reasonable time spent and reasonable quantities of materials used, according to the schedule of rates in Exhibit B. The Contract Administrator shall be the sole arbitrator of what shall be considered "reasonable" under this provision.
- D. The Contractor shall keep complete records of time spent and materials used on the Project so that the DDA may verify invoices submitted by the Contractor. Such records shall be made available to the DDA upon request and submitted in summary form with each invoice.

V. INSURANCE/INDEMNIFICATION

- A. The Contractor shall procure and maintain during the life of this contract, including the guarantee period and during any warranty work, such insurance policies, including those set forth below, as will protect itself, the City and the Ann Arbor DDA, and their officers, employees, and agents from all claims for bodily injuries, death or property damage which may arise under this contract; whether the acts were made by the Contractor or by any subcontractor or anyone employed by them directly or indirectly. The following insurance policies are required:

- 2. Worker's Compensation Insurance in accordance with all applicable state and federal statutes. Further, Employers Liability Coverage shall be obtained in the following minimum amounts:

Bodily Injury by Accident - \$500,000 each accident

Bodily Injury by Disease - \$500,000 each employee
Bodily Injury by Disease - \$500,000 each policy limit

3. Commercial General Liability Insurance equivalent to, as a minimum, Insurance Services Office form CG 00 01 07 98. The Ann Arbor DDA and City of Ann Arbor shall be added as additional insured. There shall be no added exclusions or limiting endorsements including, but not limited to: Products and Completed Operations, Explosion, Collapse and Underground Coverage or Pollution. Further, the following minimum limits of liability are required:

\$1,000,000	Each occurrence as respect Bodily Injury Liability or Property Damage Liability, or both combined
\$2,000,000	Per Job General Aggregate
\$1,000,000	Personal and Advertising Injury
\$2,000,000	Products and Completed Operations Aggregate

4. Motor Vehicle Liability Insurance, including Michigan No-Fault Coverages, equivalent to, as a minimum, Insurance Services Office form CA 00 01 07 97. Coverage shall include all owned vehicles, all non-owned vehicles and all hired vehicles. Further, the limits of liability shall be \$1,000,000 for each occurrence as respects Bodily Injury Liability or Property Damage Liability, or both combined.

5. Umbrella/Excess Liability Insurance shall be provided to apply in excess of the Commercial General Liability, Employers Liability and the Motor Vehicle coverage enumerated above, for each occurrence and for aggregate in the amount of \$1,000,000.

B. Insurance required under V.A.3 and V.A.4 of this contract shall be considered primary as respects any other valid or collectible insurance that the City or DDA may possess, including any self-insured retentions the City or DDA may have; and any other insurance the City or DDA does possess shall be considered excess insurance only and shall not be required to contribute with this insurance. Further, the Contractor agrees to waive any right of recovery by its insurer against the City or DDA.

C. In the case of all contracts involving on-site work, the Contractor shall provide to the DDA, before the commencement of any work under this contract, documentation demonstrating it has obtained the above mentioned policies. Documentation must provide and demonstrate an unconditional 30 day written notice of cancellation in favor of the Ann Arbor DDA. Further, the documentation must explicitly state the following: (a) the policy number; name of insurance company; name and address of the agent or authorized representative; name and address of insured; project name; policy expiration date; and specific coverage

amounts; (b) any deductibles or self-insured retentions which shall be approved by the DDA, in its sole discretion; (c) that the policy conforms to the requirements specified. An original certificate of insurance may be provided as an initial indication of the required insurance, provided that no later than 21 calendar days after commencement of any work the Contractor supplies a copy of the endorsements required on the policies. Upon request, the Contractor shall provide within 30 days a copy of the policy(ies) to the DDA. If any of the above coverages expire by their terms during the term of this contract, the Contractor shall deliver proof of renewal and/or new policies to the Administering Service Area/Unit at least ten days prior to the expiration date.

- D. Any insurance provider of Contractor shall be admitted and authorized to do business in the State of Michigan and shall carry and maintain a minimum rating assigned by A.M. Best & Company's Key Rating Guide of "A-" Overall and a minimum Financial Size Category of "V". Insurance policies and certificates issued by non-admitted insurance companies are not acceptable unless approved in writing by the DDA.
- E. To the fullest extent permitted by law, for any loss not covered by insurance under this contract, the Contractor shall indemnify, defend and hold the the City, DDA, its officers, employees and agents harmless from all suits, claims, judgments and expenses including attorney's fees resulting or alleged to result, to its proportionate extent, from any negligent, grossly negligent, reckless and/or intentional wrongful or tortious acts or omissions by the Contractor or its employees and agents occurring in the performance of this Agreement.

VI. COMPLIANCE REQUIREMENTS

- A. Nondiscrimination. The Contractor agrees to comply with the nondiscrimination provisions of Chapter 112 of the Ann Arbor City Code.
- B. Living Wage. The Contractor agrees to comply with the living wage provisions of Chapter 23 of the Ann Arbor City Code.

VII. WARRANTIES BY THE CONTRACTOR

- A. The Contractor warrants that the quality of its Services under this Agreement shall conform to the level of professional quality performed by businesses regularly rendering this type of service. The Contractor warrants that the work performed shall be free of defects and guaranteed for a period of one year.
- B. The Contractor warrants that it has all the skills, experience, and professional licenses necessary to perform the Services specified in this Agreement.
- C. The Contractor warrants that it has available, or will engage, at its own expense,

sufficient trained employees to provide the Services specified in this Agreement.

- D. The Contractor warrants that it is not, and shall not become overdue or in default to the DDA for any contract, debt, or any other obligation to the DDA.

VIII. TERMINATION OF AGREEMENT

- A. If either party is in breach of this Agreement for a period of fifteen (15) days following receipt of notice from the non-breaching party with respect to a breach, the non-breaching party may pursue any remedies available to it against the breaching party under applicable law, including but not limited to, the right to terminate this Agreement without further notice. Breach under the terms of this Agreement shall include but not be limited to the failure to deliver service on time, poor quality materials or workmanship, failure to follow specifications identified in Article III above, or the unauthorized substitution of articles other than those quoted and specified in the bid documents.
- B. The DDA may terminate this Agreement if it decides not to proceed with the Project by notice pursuant to Article XII. If the Project is terminated for reasons other than the breach of the Agreement by the Contractor, the Contractor shall be compensated for reasonable time spent and reasonable quantities of materials used prior to notification of termination.
- C. Contractor acknowledges that, if this Agreement extends for several fiscal years, continuation of this Agreement is subject to appropriation of funds for this Project. If funds to enable the DDA to effect continued payment under this Agreement are not appropriated or otherwise made available, the DDA shall have the right to terminate this Agreement without penalty at the end of the last period for which funds have been appropriated or otherwise made available by giving written notice of termination to the Contractor. The Contract Administrator shall give the Contractor written notice of such non-appropriation within thirty (30) days after it receives notice of such non-appropriation.
- D. The remedies provided in this Agreement will be cumulative, and the assertion by a party of any right or remedy will not preclude the assertion by such party of any other rights or the seeking of any other remedies.

IX. OBLIGATIONS OF THE DDA

- A. The DDA shall notify the Contractor of any defects in the Services of which the Contract Administrator has actual notice.

X. ASSIGNMENT

- A. The Contractor shall not subcontract or assign any portion of any right or obligation under this Agreement without prior written consent from the DDA. Notwithstanding any consent by the DDA to any assignment, Contractor shall at all times remain bound to all warranties, certifications, indemnifications, promises and performances, however described, as are required of it under the Agreement unless specifically released from the requirement, in writing, by the DDA.
- B. The Contractor shall retain the right to pledge payment(s) due and payable under this Agreement to third parties.

XI. NOTICE

All notices and submissions required under this Agreement shall be by personal delivery or by first-class mail, postage prepaid, to the address stated in this Agreement or such other address as either party may designate by prior written notice to the other. Notice shall be considered delivered under this Agreement when personally delivered to the Contract Administrator or placed in the U.S. mail, postage prepaid to the Administering Service Area/Unit, care of the Contract Administrator.

XII. CHOICE OF LAW

This Agreement will be governed and controlled in all respects by the laws of the State of Michigan, including interpretation, enforceability, validity and construction. The parties submit to the jurisdiction and venue of the Circuit Court for Washtenaw County, State of Michigan, or, if original jurisdiction can be established, the United States District Court for the Eastern District of Michigan, Southern Division, with respect to any action arising, directly or indirectly, out of this Agreement or the performance or breach of this Agreement. The parties stipulate that the venues referenced in this Agreement are convenient and waive any claim of non-convenience.

XIV. CONFLICT OF INTEREST

Contractor certifies it has no financial interest in the Services to be provided under this Agreement other than the compensation specified herein. Contractor further certifies that it presently has no personal or financial interest, and shall not acquire any such interest, direct or indirect, which would conflict in any manner with its performance of the Services under this Agreement.

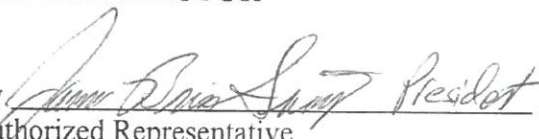
XV. SEVERABILITY OF PROVISIONS

Whenever possible, each provision of this Agreement will be interpreted in a manner as to be effective and valid under applicable law. However, if any provision of this Agreement or the application of any provision to any party or circumstance will be prohibited by or invalid under applicable law, that provision will be ineffective to the extent of the prohibition or invalidity without invalidating the remainder of the provisions of this Agreement or the application of the provision to other parties and circumstances.

XVI. EXTENT OF AGREEMENT

This Agreement, together with any affixed exhibits, schedules or other documentation, constitutes the entire understanding between the DDA and the Contractor with respect to the subject matter of the Agreement and it supersedes, unless otherwise incorporated by reference herein, all prior representations, negotiations, agreements or understandings whether written or oral. Neither party has relied on any prior representations, of any kind or nature, in entering into this Agreement. This Agreement may be altered, amended or modified only by written amendment signed by the Contractor and the DDA.

FOR CONTRACTOR

By  President
Authorized Representative

FOR THE ANN ARBOR DDA

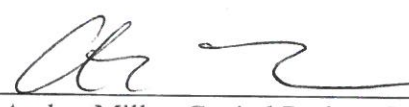
By 
Amber Miller, Capital Projects Manager

EXHIBIT A - SCOPE OF WORK

General

Work to be done under this Contract is generally described through the scope of work. All work to be done under this Contract is located in the Ann Arbor DDA District.

Scope of Work

1. 5th Avenue Median Planting:

The Contractor will re-plant the 5th Ave median in accordance with the attached planting plan. The work is to be completed as soon as the weather allows in 2022. Prior to installation of the plants, the DDA will be given the opportunity to inspect the plant material. This work will include labor and materials for weed removal, soil amendment, and plantings. The Contractor shall be responsible to repair or replace all defects to plant material due to poor workmanship, poor planting materials, or through improper care for 2-years from the date of installation.

The Contractor is responsible for implementing proper traffic control and obtaining all necessary permits from the City of Ann Arbor.

2. Hourly As-Needed Services:

The Contractor will provide installation, maintenance, and repair of downtown streetscape amenities, such as benches and bike hoops.

The Contractor will provide miscellaneous landscaping services such as weeding, mulching, watering, litter/debris removal and leaf clean-up.

Work will be completed on an as-needed basis with the requirement that DDA requests be addressed within 2 business days once the material is available. In most cases, the DDA will provide the benches and bike hoops to the Contractor, but not the installation hardware.

The contract term is for the period of April 1, 2022 through June 30, 2024 with a mutual option for two (2) additional one year renewals.

Scope of Services

The Contractor must select the most appropriate and cost effective method and parts for each task. The bulk of the services will take place during the construction season; some months may include multiple requests and other months may include none. All work is to conform to the Manufacturer's specifications.

Conditions of the Work

Prior to beginning work, it is advised that the contractor record any sidewalk, drive, curb, landscaping or other defects on the property prior to performing the work. Photos should accompany written documentation of such defects.

Public communications: It is expected that the Contractor's employees will at all times be courteous and professional when interacting with the Ann Arbor public – residents, pedestrians, business owners, motorists and visitors. The Contractor is to forward questions not directly dealing with the contractor's installation or maintenance to the Ann Arbor DDA.

Specifications – All Operations

The Contractor(s) will perform the work with due care taking precautions against injury to persons, damage to public/private property and interference with vehicular or pedestrian traffic. The Contractor(s) shall take necessary precautions to ensure the safety of all persons engaged in the work of this Contract.

All equipment to be used and all work to be performed must be in full compliance with provisions outlined in all applicable industry standards and regulations. Equipment and tools must not be left unsecured at any time. All equipment and tools must be stored in such manner to ensure that residents and the public do not have access to them.

Contractor is responsible for contacting Miss Dig/local utility for verification of all underground utility lines in the area of the work prior to any underground work. Contractor shall be responsible for all damage resulting from neglect from operations associated with this contract or failure to comply with this requirement.

Where work is conducted in streets or other public thoroughfares, the Contractor(s) shall so plan and schedule work as to cause as little interference as possible with general public traffic, both vehicular and pedestrian. Street surfaces shall be maintained and kept clean. Access to Fire, Police, ambulance and other emergency vehicles shall be maintained at all times.

Blocking of public streets shall not be permitted unless prior arrangements have been made with the City of Ann Arbor by submitting an Application for Traffic Detour or Lane Closure for each job.

A City of Ann Arbor right-of-way permit must be obtained prior to working within the City's right-of-way.

The inspection or lack of inspection of any material or work pertaining to this Contract shall not relieve the Contractor of its obligation to fulfill this Contract and defective work shall be made good. If the work or any part shall be found defective at any time before the final acceptance, the Contractor shall forthwith make good

the defect in a manner satisfactory to the Contract Administrator. The judgment and the decision of the Contract Administrator as to whether the materials supplied and the work done under this Contract comply with the requirements of the Contract shall be conclusive and final.

EXHIBIT B – FEE SCHEDULE

The Contractor shall be paid on the basis of unit prices and reimbursement for purchased materials. The total fee to be paid the Contractor for the services will be a not to exceed dollar amount. The Contractor shall submit each month an invoice covering work performed for which it believes payment, under the Contract terms, is due.

Description of Service Item	Unit	Unit Price
5 th Ave Median	LS	\$9,369.00
Bench Installation ⁽¹⁾	Each	\$285.00
Bike Hoop Installation ⁽¹⁾	Each	\$195.00
Hourly Labor Rate for other ⁽²⁾	Hour	\$75.00

Notes:

⁽¹⁾ Unit prices shall include all labor costs, vehicle costs, equipment costs, project management, office support costs and costs associated with obtaining City right-of-way permit as required for the work

⁽²⁾ To complete all other tasks such as *repair* of benches, bike hoops, landscape fencing, brick edging, etc.

Material costs shall be reimbursed by the DDA following submission of receipts

