PROFESSIONAL SERVICES AGREEMENT
AGREEMENT BETWEEN
FAITH LAWN PROPERTY MAINTENANCE
AND THE ANN ARBOR DDA
FOR HOLIDAY LIGHTING SERVICES

The Ann Arbor DDA, a Michigan municipal corporation, having its offices at 150 S. Fifth Ave., Ann Arbor, Michigan 48104 ("DDA"), and Faith Lawn LLC ("Contractor"), a Corporation with its address at 75th Street, Champaign, IL 61820, agree as follows on this day of November, 2022.

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

I. DEFINITIONS

Contract Administrator means DDA Capital Projects and Planning Manager, acting personally or through any appropriate staff member.

Project means DDA Holiday Lighting Services

II. DURATION

The contract term is for the period of November 1, 2022 through June 30, 2023, 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 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 are 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 to the Contractor for the services shall not exceed $124,000 ($98,800 base contract + $25,200 contingency). 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. This contingency amount should not exceed $25,200.

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:
1. 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

2. 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

3. 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.

4. 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 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, the 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: 

[Signature]
Authorized Representative

FOR THE ANN ARBOR DDA
By: 

[Signature]
Jeffrey Watson, DDA Executive Director

[Signature]
Amber Miller, Capital Projects Manager

[Signature]
Kelley Graves, Board Secretary
EXHIBIT B – FEE SCHEDULE

The Contractor shall be paid for those Services performed pursuant to this Agreement, inclusive of all reimbursable expenses (if applicable), in accordance with the terms and conditions herein. The attached Compensation Schedule states the nature and amount of compensation the Contractor may charge the DDA. Total compensation payable for all Services performed during the term of this Agreement shall not exceed $124,000.

The Contractor shall submit each month an invoice covering work performed for which it believes payment, under the Contract terms, is due.
Exhibit B

For work under this contract, we propose the following:

<table>
<thead>
<tr>
<th>Description of Service Item</th>
<th>Unit</th>
<th>Unit Price</th>
</tr>
</thead>
<tbody>
<tr>
<td>Light Removal, Installation, and furnishing of lights</td>
<td>LS</td>
<td>98,800</td>
</tr>
<tr>
<td>On-call Removal, Repair, or Maintenance (2-person with Lift Truck)</td>
<td>Hour</td>
<td>185</td>
</tr>
<tr>
<td>On-call Removal, Repair, or Maintenance (per person)</td>
<td>Hour</td>
<td>75</td>
</tr>
<tr>
<td>Additional Costs to provide timer features for each tree</td>
<td>Ea</td>
<td>29</td>
</tr>
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Notes:

(1) Unit prices shall include all labor costs, vehicle costs, equipment costs, project management, office support costs, and permitting costs for the entire DDA District tree light system.

(2) Unit prices shall include all labor costs, vehicle costs, equipment costs, project management, office support costs, and permitting costs.

(3) Please propose an estimate of costs for furnishing lights for the entire system. Actual material costs shall be reimbursed by the DDA following submission of receipts. A Contractor markup of 5% on direct purchases will be allowed. Contractors who acquire materials, equipment, supplies, etc. for incorporation in DDA projects are not exempt from State Sales Tax.
EXHIBIT A - SCOPE OF SERVICES

Provide removal, installation, maintenance, and repair services of the Ann Arbor DDA's downtown holiday street tree lighting system. The term of the contract will be through June 30, 2023, with two (2) one-year optional extensions available at the DDA's discretion. It is understood that requirements on ITB 2022-07 and the submitted rate proposals are to be honored over the term of the contract.

Scope of Work

Light Removal and Installation: The Contractor is responsible to remove all of the existing light strings from downtown (DDA District) trees and either reinstall the lights that are in good working order or installing newly furnished lights. This work shall begin ten (10) days following the Notice to Proceed and shall be completed by June 30, 2023. Any light strings determined to be removed shall become the property of the contractor. The map in Appendix C is provided as DDA's best information on the light locations as indicated with red lines; "As of 06/02/2022 Holiday Lights on Trees". Lights are to be placed in all trees where existing lights have been removed (not including trees less than two years old). Light strings need to be wrapped loosely so that the tree has room to grow and blow in the wind without the strings rubbing into the bark, restricting tree movement, or causing the tree to lean/be pulled.

Furnish New Holiday Lights: The Contractor is responsible to furnish new light strings where the existing lights are not in good working order or for trees newly in the DDA District tree light system.

On-call Removal: The Contractor will provide on-call removal of string lights to allow for tree trimming by the City's Forestry Unit or other as-needed maintenance. String lights should be removed within 10 days of notification. In the event of an emergency, Forestry staff may have to cut the lights. They will do this as a last resort and will call the contractor contact ahead of time if conditions allow.

On-call Repair and Maintenance: The Contractor must maintain the lights throughout the display period to ensure all lights are on and functioning. All malfunctioning lights that occur during the period must be repaired within a reasonable time, not to exceed five (5) days from the notice of malfunctions. Please provide your maintenance staff contact information, telephone number, and email address to facilitate contact regarding any display problem as required.
Exhibit B
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