

## DOWNTOWN STREET LIGHTING REPLACEMENT AGREEMENT

THIS AGREEMENT (hereinafter "Agreement") is by and between the **City of Columbia, Missouri** (hereinafter "City"), a municipal corporation whose address is 701 E. Broadway, Columbia, MO 65201 and the **Downtown Community Improvement District** (hereinafter "CID"), a political subdivision of the State of Missouri whose address is 11 S. Tenth St, Top Floor, Columbia, MO 65201, and is entered into on the date of the last signatory below (hereinafter "Effective Date"). City and CID are each individually referred to herein as a Party and collectively as the Parties.

WHEREAS, both Parties wish for streetlights in downtown Columbia to be replaced; and

WHEREAS, City agrees to manage the project, and CID agrees to partner in funding in the amount of \$30,000, pursuant to the terms and conditions set forth herein;

NOW, THEREFORE, in consideration of the mutual covenants set out in this Agreement and for other good and valuable consideration (the receipt and sufficiency of which is hereby acknowledged), the Parties agree as follows:

### 1. RESPONSIBILITIES.

1.1. **Project Definition.** "Project" shall mean the replacement of a number of street lights located in downtown Columbia, Missouri, with the new street lights to include an advanced photocell controller attached to the luminaire on the lower sidewalk arm with the ability to be dimmed and brightened on a separate schedule from the upper street side luminaire.

1.2. **Project Performance.** City agrees to perform all services related to Project within the term of this Agreement. City shall be responsible for the purchase, installation and management of all equipment related to Project and shall keep title of all equipment purchased and installed for Project. CID agrees and understands that the number of streetlights to be replaced in Project will be dependent on appropriated funds dedicated by City Council and the costs of the necessary equipment and installation. For this reason, the total number of street light replacements to be completed is not defined but City agrees to dedicate up to Two Hundred Seventy Thousand Dollars (\$270,000) of its own funds towards the Project. Both Parties agree the obligations of City under this Agreement which require the expenditure of funds shall be conditional obligations, subject to the availability of the funds appropriated.

1.3. **CID Payment.** Upon City's receipt of materials for the advanced photocell controllers, City will submit an invoice in writing to CID for the amount of Thirty Thousand Dollars (\$30,000). CID agrees to pay this amount within thirty (30) days of receipt of the invoice from City.

### 2. TERM AND TERMINATION

2.1. **Term.** The term of this Agreement shall commence on the Effective Date and terminate upon the earlier to occur of the following events: (a) CID's receipt of written notice of

completion of the Project from City, or (b) five (5) years. The completion of Project shall be at the discretion of the City in a manner not inconsistent with the terms of this Agreement.

**2.2. Termination for Default.** If either Party fails to perform its duties and obligations provided for herein, then that Party shall be in default. The non-defaulting Party may provide notice of the default in writing with reasoning provided. If the default is not cured within thirty (30) days from receipt of the written notice of default, then the non-defaulting Party may terminate this Agreement in whole or in part for failure to perform by providing written notice of termination. The written notice of termination will be effective immediately upon its receipt.

**2.3. Termination for Convenience.** City may terminate this Agreement for convenience at any time by providing written notice of termination for convenience to CID. This termination goes into effect upon CID's receipt of written notice. If the City terminates this Agreement for convenience, then CID shall not be responsible for, or otherwise will be fully refunded, its Thirty Thousand Dollar (\$30,000) payment.

### 3. MISCELLANEOUS

**3.1. Governing Law and Venue.** This Agreement shall be governed, interpreted, and enforced in accordance with the laws of the State of Missouri and/or the laws of the United States, as applicable. The venue for all litigation arising out of, or relating to this Agreement, shall be in Boone County, Missouri, or the United States Western District of Missouri. The Parties hereto irrevocably agree to submit to the exclusive jurisdiction of such courts in the State of Missouri.

**3.2. No Waiver of Immunities.** In no event shall the language of this Agreement constitute or be construed as a waiver or limitation for either Party's rights or defenses with regard to each Party's applicable sovereign, governmental or official immunities and protections as provided by federal and state constitution or laws.

**3.3. No Third-Party Beneficiary.** No provision of this Agreement is intended to, nor shall it in any way, inure to the benefit of any third party, so as to constitute any such person a third-party beneficiary under this Agreement.

**3.4. Amendment.** No amendment, addition to, or modification of any provision hereof shall be binding upon the Parties, and neither Party shall be deemed to have waived any provision or any remedy available to it, unless such amendment, addition, modification or waiver is in writing and signed by a duly authorized officer or representative of the applicable Party or Parties.

**3.5. Entire Agreement.** This Agreement represents the entire and integrated agreement between the Parties relative to the Project described herein. All previous or contemporaneous contracts, representations, promises and conditions relating to the contracted services herein are superseded.

[SIGNATURES ON FOLLOWING PAGE]

IN WITNESS WHEREOF, the Parties hereto have executed this Agreement by their duly authorized representatives as of the date of the last signatory to this Agreement.

CITY OF COLUMBIA, MISSOURI

By: \_\_\_\_\_  
John Glascock, City Manager

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

ATTEST

By: \_\_\_\_\_  
Sheela Amin, City Clerk

APPROVED AS TO FORM:

By: \_\_\_\_\_  
Nancy Thompson, City Counselor *AK*

DOWNTOWN COMMUNITY  
IMPROVEMENT DISTRICT

By: 

Printed  
Name: DEBBIE SWITALS

Title: CID CHAIR

Date: 6/27/19