

## **CITY OF AURORA, ILLINOIS SPECIAL SERVICES AGREEMENT**

**THIS AGREEMENT**, is entered between the City of Aurora, Illinois (“City”) an Illinois home rule municipal corporation, with its office of City Clerk located at 44 E Downer Place, Aurora, Illinois and the Aurora Regional Economic Alliance, an Illinois not-for-profit corporation, for the Special Services herein described.

### **RECITALS**

**WHEREAS**, the City of Aurora (“the City”) is an Illinois home rule municipal corporation organized and operating under the authority of the constitution and laws of the State of Illinois; and

**WHEREAS**, Aurora Regional Economic Alliance (“Alliance”) is an assumed corporate name of the Greater Aurora Chamber of Commerce, a duly organized not-for-profit corporation organized and existing pursuant to the Illinois General Not for Profit Corporation Act; and

**WHEREAS**, the Special Service Area Tax Law authorizes municipalities to establish special service areas within their respective corporate limits to provide special governmental services in addition to those services provided generally throughout the municipality, and to levy a tax upon the real properties benefited by such special services within the designated area; and

**WHEREAS**, beginning in 1994, the City has enacted a series of successive special service areas to provide special governmental services in the area generally constituting the downtown area of Aurora, which have been collectively designated as Special Service Area One (“SSA One”); and

**WHEREAS**, the most recent ordinance establishing SSA One was enacted on August 28, 2018, by Ordinance O18-0056; and

**WHEREAS**, Ordinance O18-0056 authorizes the City to levy taxes to provide for special services in the area designated as SSA One, to wit: specifically defined purposes relating to the development, marketing, management, promotion and improvement of the area constituting SSA One through property tax year 2026 (calendar year 2027); and

**WHEREAS**, through 2024, Aurora Downtown, an Illinois not-for-profit corporation provided such special services within SSA One, including the planning and promotion of “First Fridays,” a collective monthly open house with offerings of art, music, and food under an agreement with the City; and

**WHEREAS**, effective in 2025, the City and Aurora Downtown have concluded their relationship; and

**WHEREAS**, the Alliance possesses the capacity to render special services within SSA One; and

**WHEREAS**, the City desires to contract with the Alliance to render such special services within SSA One, including, but not limited to the planning and promotion of First Fridays

**NOW, THEREFORE**, in consideration of the mutual promises set forth herein, the adequacy of which each party hereby acknowledges, the parties agree as follows:

1. **Scope of Special Services.** The Alliance shall plan, promote through social media, printed flyers, and press release, and coordinate First Friday events in collaboration with downtown businesses, and execute a map with coordinated events occurring in downtown to result in the First Fridays Program within SSA One, including but not limited to the Stolp Island Block Party (August); the September First Friday (Fiestas Patrias) with Food Truck Court, the October First Friday, the Dia de los Muertos First Friday (November); and the December First Friday, including the Jolly Trolly, Streetscape Christmas Lights, Cocoa Crawl, Santa at the Plaza, and a window decorating contest.

2. **Term.** This agreement shall commence upon its execution and continue through December 31, 2025.

3. **Standard of Performance.** The Alliance shall perform the Special Services set forth in this Agreement, with the degree, skill, care and diligence customarily required of a professional performing services of comparable scope, purpose and magnitude and in conformance with the applicable professional standards. The Alliance shall, at all times, use its best efforts to assure timely and satisfactory rendering and completion of the Services. The Alliance shall ensure that the Alliance and all of its employees or subcontractors performing Services under this Agreement shall be: (i) qualified and competent in the applicable discipline or industry; (ii) appropriately licensed as required by law; (iii) strictly comply with applicable federal, state, and local laws, regulations or ordinances, including, but not limited to, Chapter 41.5 of the Code of Ordinances of the City titled "Special Events"; and (iv) strictly conform to the terms of this Agreement. The Alliance shall, at all times until the completion of the Special Services, remain solely responsible for the professional and technical accuracy of all Special Services and deliverables furnished, whether such services are rendered by the Alliance or others on its behalf, including, without limitation, its subcontractors. No review, approval, acceptance, nor payment for any and all of the Services by the City shall relieve the Alliance from the responsibilities set forth herein.

4. **Independent Contractor.**

(a) **Relationship of the Parties.** The Alliance is, and shall at all times remain, an independent contractor with respect to the City. Nothing in this Agreement shall be construed to create an employer-employee, joint-venture, fiduciary, or agency relationship between the City and the Alliance or any of its officers, directors, employees, agents, volunteers, or subcontractors ("Personnel").

(b) **Control of Work.** The Alliance shall have exclusive control over the manner, means, and methods of performing the Special Services, subject only to the requirements expressly set forth in this Agreement. The City shall not supervise, direct, or control the Alliance's Personnel with respect to day-to-day or minute-to-minute operations.

- (c) **Taxes and Benefits.** The Alliance acknowledges that it is solely responsible for (i) payment of all federal, state, and local payroll taxes, unemployment insurance, Social Security, and other withholdings for itself and its Personnel, and (ii) providing any workers' compensation, health insurance, retirement benefits, or other fringe benefits to its Personnel. The City shall have no liability or obligation with respect thereto.
- (d) **No Authority to Bind City.** The Alliance and its Personnel have no authority to enter into any contract, agreement, or commitment on behalf of, or otherwise bind, the City unless expressly authorized in writing by the City Council or an authorized City officer.
- (e) **Compliance and Licensure.** The Alliance warrants that it and its Personnel possess all licenses, permits, or other governmental approvals required to perform the Special Services and shall maintain the same in full force and effect throughout the Term.
- (f) **Indemnification of Employment-Related Claims.** The Alliance shall defend, indemnify, and hold harmless the City, its officers, officials, employees, and agents against any and all claims, demands, losses, damages, liabilities, fines, penalties, costs, or expenses (including reasonable attorneys' fees) arising out of or relating to (i) the Alliance's failure to pay taxes or provide benefits described in subsection (c), or (ii) any employment-related claim asserted by the Alliance's Personnel.

## **5. Payment.**

- (a) The Alliance shall invoice the City monthly for reimbursement for the actual cost of the materials, supplies, staff overtime, and contracted services necessary and directly related to its obligations to perform the Special Services. All invoices shall be accompanied by itemized receipts and a description of the expenses incurred or the work performed. It is expressly agreed by the Parties that the Alliance is not entitled to, and shall not seek, reimbursement for regular staff salaries or time or for overhead costs associated with the scope of work, including but not limited to finance, human resources, legal or information technology expenses, even if such expenses can be directly apportioned or attributable the Alliance's performance of the Special Services.
- (b) Upon receipt, the City shall review and process such invoices for payment in accordance with the procedures and the time limitations provided by the Local Government Prompt Payment Act. Approved but unpaid amounts shall accrue interest and penalties in the amount and to the extent authorized the Act.
- (c) The Alliance expressly agrees that prior to incurring or contracting for the obligation to incur any expense in excess of \$1,000, or aggregate expenses in excess of \$5,000 for a single event, the Alliance shall provide the proposed expense to the Mayor's Office for review and approval by the Mayor's Chief of Staff. The Alliance agrees that the City shall have no obligation to reimburse the Alliance for expenses over \$1,000 incurred without the approval of the Mayor's Chief of Staff. The City reserves the right to reject any proposed cost that is outside of the scope of this Agreement.

- (d) No reimbursement shall be made for any expense prohibited by law, including the Special Service Area Tax Law.

**6. Termination.**

- (a) **Termination for Convenience.** Either party may terminate this Agreement on thirty days written notice to the other for any reason or for no reason at all.
- (b) **Termination for Cause.** The City may terminate this Agreement upon immediate notice for misappropriation or misapplication of funds, breach of law, insolvency, or failure to maintain insurance.
- (c) **Effect of Termination.** If this Agreement is terminated by the City, as provided herein, the City shall reimburse the Alliance only for the properly-incurred expenses up the date of termination. After the termination date, the Alliance has no further contractual claim against the City based upon this Agreement and any payment so made to the Alliance upon termination shall be in full satisfaction for Services rendered.

**7. Indemnification and Insurance**

- (a) **Insurance.** The Alliance shall provide to the City evidence that it has obtained and maintains the insurance coverage set forth in Exhibit A. In all cases, the Alliance shall provide the City with a certificate naming the City as an additional insured party and shall not cancel such insurance without prior notice to the City.
- (b) **Indemnification.** The Alliance shall indemnify, defend, and hold harmless the City, its elected officials, officers, and employees from and against all claims, losses, damages, costs and expenses, including without limitation, reasonable attorney's fees arising from or out of the Alliance's performance of its obligations under this Agreement, and including specifically claims brought by third parties for any allegation of infringement of intellectual property rights.
- (c) **Non-Waiver.** Neither by the insurance or indemnifications requirements of this Agreement does the City waive any privilege, defense, or immunity, which may be available to it, its elected officials, officers, or employees by law, including, but not limited to those set forth in the Local Governmental and Governmental Employees Tort Immunity Act.

**8. Miscellaneous Provisions.**

- (a) **Illinois Freedom of Information Act.** The Alliance acknowledges the requirements of the Illinois Freedom of Information Act (FOIA) and agrees to comply with all requests made by the City for public records (as that term is defined by Section 2(c) of FOIA in the Alliance's possession and to provide the requested public records to the City within two (2) business days of the request being made by the City. The Alliance agrees to indemnify and hold harmless the City from all claims, costs, penalty, losses

and injuries (including but not limited to, attorney's fees, other professional fees, court costs and/or arbitration or other dispute resolution costs) arising out of or relating to its failure to provide the public records to the City under this Agreement.

- (b) **Entire Agreement.** This Agreement, along with the documents set forth in Section 1 and incorporated by reference elsewhere in this Agreement, with consent of the parties, represents the entire agreement between the parties with respect to the performance of the Services. No other contracts, representations, warranties or statements, written or verbal, are binding on the parties. This Agreement may only be amended as provided herein.
- (c) **Consents and Approvals.** The Parties represent and warrant to each other that each has obtained all the requisite consents and approvals, whether required by internal operating procedures or otherwise, for entering into this Agreement and the undertakings contemplated herein.
- (d) **Counterparts.** This Agreement may be executed in one or more counterparts, each of which shall be an original, but all of which shall constitute one and the same instrument.
- (e) **Jurisdiction and Venue.** The Parties agree that in the event of litigation arising from this Agreement, the exclusive venue for the adjudication of such disputes shall be the Circuit Court of the Sixteenth Judicial Circuit, Kane County and that the Illinois law shall apply to such disputes without regard to its choice of law principles.
- (f) **Construction of Contract Provisions.** The Parties acknowledge that this Agreement and all the terms and conditions contained herein have been fully reviewed and negotiated by the Parties. Having acknowledged the foregoing, the Parties agree that any principle of construction or rule of law that provides that, in the event of any inconsistency or ambiguity, an agreement shall be construed against the drafter of the agreement shall have no application to the terms and conditions of this Agreement.
- (g) **Non-Assignment.** The Alliance shall not assign this Agreement or its duties hereunder without the prior consent of the Mayor.

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

FOR: CITY OF AURORA, ILLINOIS

By: \_\_\_\_\_

Jolene Coulter

Director of Purchasing

FOR: THE ALLIANCE

By: \_\_\_\_\_

Print: \_\_\_\_\_

Title: \_\_\_\_\_