

ORDINANCE #66770
Board Bill No. 136

An Ordinance authorizing and directing the Director of Parks, Recreation and Forestry, on behalf of the City of St. Louis, to enter into and execute an Agreement with the Downtown St. Louis Community Improvement District for a landscaping maintenance and beautification services; appropriating said funds received pursuant to said Agreement and authorizing the Director of Parks, Recreation and Forestry on behalf of the City, upon approval of the Board of Estimate and Apportionment, to expend the funds as required under said Agreement and containing an Emergency clause.

BE IT ORDAINED BY THE CITY OF ST. LOUIS AS FOLLOWS:

SECTION ONE. The Director of Parks, Recreation and Forestry is hereby authorized and directed, on behalf of the City of St. Louis, to enter into and execute an Agreement with the Downtown St. Louis Community Improvement District for landscaping maintenance and beautification services. Said Agreement shall substantially be in words and figures as the attached Agreement, which is made part of this Ordinance and is on file in the Register's Office.

SECTION TWO. The Director of Parks, Recreation and Forestry is hereby authorized and directed, upon approval of the Board of Estimate and Apportionment, to expend the funds, which are hereby appropriated for said purpose, by entering into contracts or otherwise pursuant to the requirements of the Agreement in a manner that is consistent with the provisions of said Agreement.

SECTION THREE. A special account will be created by the City of St. Louis whereby the funds paid to the Department by virtue of this Agreement will be deposited. The funds deposited to this special account will be used to pay salaries, materials and equipment for the services performed within the CID, as described in the Agreement.

SECTION FOUR. Emergency Clause. This being an Ordinance for the immediate preservation of public peace, health and safety, it is hereby declared to be an immediate measure within the meaning of Sections 19 and 20 of Article IV of the Charter of the City of St. Louis and therefore this Ordinance shall become effective immediately upon its passage and approval by the Mayor.

City of St. Louis, Department of Parks, Recreation and Forestry
Downtown St. Louis Community Improvement District
Landscaping Agreement

THIS AGREEMENT, made this _____ day of _____, 2005, by and between the Downtown St. Louis Community Improvement District (hereinafter "the CID"), a Missouri nonprofit corporation and the Department of Parks, Recreation and Forestry, City of St. Louis (hereinafter "Department"). The CID is authorized pursuant to section 67.1400 et seq. of the Revised Statutes of Missouri and upon a petition of property owners in certain areas of downtown St. Louis whereby the CID has contracted to provide certain services as set forth in the CID's "Management Plan".

WHEREAS, an integral component of the CID's Management Plan is the provision of enhanced maintenance and beautification programs within the certain areas of downtown St. Louis as hereinafter set forth;

WHEREAS, the CID and the Department desire to enter into this Agreement for the provision of the services on the terms and conditions as hereinafter set forth;

NOW THEREFORE, in consideration of these presents and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged each to the other, the CID and the Department agree as follows:

1. Services
 - A. The Department shall assign one (1) full time (52 weeks per year) employee of the Department and two (2) part time (April 1 through September 30) employees of the Department for landscaping maintenance and beautification duties as outlined in Exhibit A to the area defined as the Downtown St. Louis Community Improvement District as outlined in Exhibit B. Such deployment shall be in addition to the appropriate and customary level of employees of the Department assigned to the CID.
 - B. Subject to the Department's right to temporarily assign these employees to other details as may be necessary, the Department shall use its best efforts to restrict normal assignments and duties of these employees to the CID.

- C. The Department shall make available the full time employee, or their designee, for weekly and other periodic meetings with the Manager, Clean and Safe Programs of The Downtown St. Louis Partnership (“Partnership”) or designee, and the bi-monthly meetings of the Partnership’s Maintenance and Beautification Committee for the purpose of facilitating communication and collaboration between the Department and the CID.
- D. The Department shall make available the Director of Parks, Recreation and Forestry or his designee for bi-monthly or other periodic meetings with the CID’s Manager, Clean and Safe Programs for the purpose of reviewing events or circumstances in the upcoming months which are appropriate for the use of the funds set forth in Section 2.A.
- E. Upon request of the CID prior to the expiration of the CID, the Department shall assist the CID with identifying landscaping priorities, programs and initiatives, together with related budget projections, for use in renewing and/or extending the CID.
- F. The Department shall procure those uniforms, equipment and supplies as needed to perform such services as outlined in Exhibit A.

2. Consideration

- A. The CID shall reimburse the Department a total of \$86,045.68 per year for service performed as outlined in Exhibit A.
- B. This consideration will be paid in monthly payments of seven thousand one hundred seventy dollars and forty-seven cents (\$7,170.47).
- C. Consideration for payment for service performed as outlined in Exhibit C (those outside of those duties outlined in Exhibit A) will be paid on a monthly basis upon the Department’s submission of invoices with proper authorizations (Purchase Order number) at the rate outlined in Exhibit C.
- D. In lieu of partial payment for services performed by the Department during the first year of this agreement (2005), the “CID” will purchase a 2005 John Deere HPX 4x4 “Gator” and a trailer with attached water tank and pump from Art’s Lawn Mower Shop in the amount of \$19,296.00 for use by the Department in the performance of the agreed upon services in the CID. This equipment will become the property of the Department and the \$19,296.00 will be deducted from the year 2005 annual payment of \$86,045.68. The balance of the year 2005 payments (\$66,749.68) made to the Department will be made in accordance with the monthly payment schedule listed above in Section B.
- E. A special account will be created by the City of St. Louis whereby the funds paid from this agreement will be deposited. The funds deposited to this special account will be used to pay salaries, materials and equipment for the services performed within the CID, as described in this agreement.

3. Areas Outside the Community Improvement District

- A. The CID may include additional obligations in areas outside of the CID by mutual agreement with the Department with appropriate adjustment to the per annum as described above in Section 2.A and 2.C. above and outlined in Exhibit A and C.

4. Employees not the CID Employees or Contractors

- A. The employees of the Department performing services under the terms of this Agreement shall, at all times, report to and be subject to the supervision of the Department. These employees are not subordinates of, and shall not be subject to the control or direction of the CID or the Partnership.
- B. The employees of the Department performing service under this Agreement shall, for all purposes, be considered employees of the Department and neither employees or independent contractors of the CID or the Partnership.
- C. No joint venture shall be deemed created by or under the terms of this agreement.

5. Indemnification and Insurance

- A. To the extent permitted by law, the Department shall indemnify and hold harmless the CID, and their respective agents, successors, assigns, board members, participation institutions, officers, and employees from and against all actions, causes of action, claims, liabilities, judgments, fines, penalties, loss, arbitration, awards and demands whatsoever, and from all costs, damages, expenses, charges, debts and liabilities whatsoever (including attorney's fees) for personal injuries and property damage that arise from or are connected with the provision of services by the Department and its officers or any other person under the Department's control when such services have been provided in a willful, intentional or negligent manner, excepting wherefrom only such liability arising from the negligent or intentional acts of the CID or the Partnership.
- B. Such obligations shall not be construed to waive, negate, abridge, or reduce, other rights or obligations of indemnity which would otherwise exist as to the Department, the CID or the Partnership, nor shall this provision be construed or interpreted to waive, negate, abridge or reduce the sovereign immunity of the State of Missouri, the City of St. Louis or the Department, and the immunity of its agents, officers and employees.
- C. The City shall procure and maintain for the life of this agreement, including extensions thereof, insurance coverage or be self insured concerning liability, property damage and vehicles/equipment and workers' compensation.

6. Payment Terms; Conditions

- A. Not more frequently than monthly, the Department shall invoice the CID for the actual costs incurred by the Department for the permitted expenses as set forth in this Agreement, provided that such actual costs shall not exceed the permitted maximum amounts set forth in this Agreement without the CID's written agreement. The Department shall provide such detail and supporting documentation as may be requested by the CID from time-to-time.
- B. The CID shall, within thirty (30) days of receipt, remit payment to the Department for each properly submitted invoice.
- C. Notwithstanding anything herein to the contrary, the CID shall not be under any obligation to either provide services or facilities, or pay amounts otherwise herein authorized, unless and until the CID has received sufficient sums from the CID in accordance with its funding mechanism and annual budget approval process.
- D. In the event that the CID shall fail to pay any properly submitted invoice, the Department shall have the right to suspend services to the CID until such payment is made to the Department.

7. Term of Agreement; Termination of Prior Agreements

- A. This Agreement shall commence as of the date first written above, and shall continue until June 30, 2008, unless sooner terminated in accordance with this Agreement. This Agreement may be extended upon the same terms and conditions contained herein upon the mutual written consent of the Partnership and the Department.
- B. Not sooner than ninety (90) days after the date first written above, either the CID or the Department may terminate this Agreement by providing the other party with not less than thirty (30) days written notice of such termination.
- C. The CID and the Department agree that upon the effective date of the this Agreement, all prior agreements addressing this same subject matter shall terminate without any further act on the part of either of the parties hereto, provided that any obligations have arisen prior to the termination of any such agreements shall be satisfied by the appropriate party in accordance with such agreements.

8. Equal Employment Opportunity Policy Statement

- A. In all its relations with employees and contractors, the Department shall treat each person equally as an individual regardless of race, color, religion, national origin, sex, age, handicap or sexual preference. Equal

opportunity shall be fundamental to the Department’s personnel policy. Discrimination in employment, training, promotion or in any other aspect of employee relations on the basis of race, color, religion, national origin, sex, age, handicap or sexual preference will be prohibited by the Department.

B. In order implement the goals set forth in the foregoing section, the Department shall:

- 1) Adhere to all current St. Louis Department of Personnel administrative regulations and St. Louis City ordinances with regard to all employee issues.
- 2) Recruit, hire, train and promote persons in all job classifications without regard to race, color, religion, national origin, sex, age or handicap;
- 3) Base decisions on employment so as to further the principle of equal employment opportunity;
- 4) Insure that promotion decisions are in accordance with principles of equal employment opportunity by imposing all valid requirements for promotional opportunities; and
- 5) Insure that all personnel actions such as compensation, benefits, transfers, layoffs, return from layoff, company-sponsored training, education, tuition assistance, social or recreational programs will be administered without regard to race, color, religion, national origin, sex, age, handicap or sexual preference.

9. Party Representatives

- A. The Department hereby designates the Director of Parks, Recreation and Forestry, as the Agreement Liaison to whom all inquiries, correspondence or other communications shall be addressed, provided, however, that the Department reserves the right to authorize any change, amendment or interpretation of this Agreement or its terms on behalf of the Department.
- B. The CID hereby designates the Manager, Clean and Safe Programs, as the Agreement Liaison to whom all inquiries, correspondence or other communications shall be addressed, provided, however, that the CID reserves the right to authorize any change, amendment or interpretation of this Agreement or its terms on its behalf.
- C. Either party may designate another representative to act in its behalf by serving written notice to the other party.

10. Notice

- A. A notice, demand or other communication under this Agreement from one party to the other shall be sufficiently given or delivered (i) on the date of deposit in the United States mail registered or certified mail, postage prepaid, return receipt requested, provided however, in the event of service as provided herein by this subsection, the recipient shall have an additional two (2) days from the date of postmark to respond or otherwise take action as permitted under this Agreement; or (ii) on the date of facsimile transmission from one party to the other, provided that such notice, demand or other communication is also deposited in the United States mail, as registered or certified mail, postage prepaid the same date as facsimile transmission; or (iii) the date of personal service.

In the case of Department, to:

Mayor, City of St. Louis
 City of St. Louis
 City Hall
 1200 Market St.
 St. Louis, MO 63103

with a copy to:

Director, Department of Parks, Recreation and Forestry
 5600 Clayton Road

St. Louis, MO 63110
314-289-5300

In the case of the CID, to:

Downtown St. Louis Partnership
Attn: President & CEO
906 Olive Street, Suite 200
St. Louis, MO 63101
Fax No.: 314/436-1646

with a copy to:

Downtown St. Louis Partnership
Attn: Manager, Clean and Safe Programs
906 Olive Street, Suite 200
St. Louis, MO 63101
Fax No.: 314/436-1646

or to such other address or person as wither party may hereafter designate in writing to the other party.

11. Miscellaneous Terms

- A. No Impediment to the Department’s Performance: The Department represents and warrants that its performance under this Agreement will not violate any agreement, regulation, judgment, order, decree or other lawful or contractual provision and that the Department has, or will obtain within the time necessary to fulfill its obligations hereunder the resources to fully perform its duties under this agreement.
- B. Records: The Department shall maintain full, complete and accurate books of account in accordance with generally accepted accounting principles consistently applied with respect to the services to be provided hereunder, including expenses associated therewith, such as invoices for materials, as well as employee time records, payroll records, evidence of payment and remittance of all employment, including withholding, taxes. The CID shall have the right, through its agents, accountants and attorneys, to review all of the Department’s books of account, records, vouchers and other data and information in connection with the Department’s provision of services with respect to this Agreement to confirm the correctness and accuracy of any invoice furnished to the CID, including after the payment of any such invoice.
- C. Entire Agreement: This agreement constitutes the entire understanding between the CID and the Department and may only be modified by a written instrument signed by both the CID and the Department. There are no promises, terms, conditions or obligations other than those contained herein. This Agreement shall supersede all previous communications, representations or agreements, either oral or written, between parties hereto.
- D. Assignability: This Agreement may not be assigned by either party without the written consent of the other party.
- E. No Waiver: The failure of either party to give notice of default or to enforce the terms of this Agreement, or the granting of an extension of the performance of any obligations hereunder, shall not constitute the waiver of future compliance with the terms and conditions of this Agreement, whether the same or different, in the future by either party.
- F. Severability: The invalidity or unenforceability of any particular provision of this Agreement shall not affect the other provisions hereof, and this Agreement shall be severable and shall be construed in all respects as if such invalid and unenforceable provisions are omitted.
- G. Counterparts: This Agreement may be executed in several counterparts, each of which so executed shall be deemed to be an original and such counterparts shall together constitute and be one and the same instrument.
- H. Headings: The headings set forth at the beginning of each Article, Paragraph or Section hereof are for reference

only and are not part of this Agreement.

- I. Binding Effect: This Agreement shall be binding upon, and shall inure to the benefit of, the parties hereto and their respective successors and assigns.

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

“The Department”
The City of St. Louis

By: _____
Name: _____
Title: _____

APPROVED AS TO FORM:

St. Louis City Counselor

Comptroller, City of St. Louis

Register, City of St. Louis

“The CID”
DOWNTOWN St. Louis Community Improvement District
A Missouri Nonprofit Corporation

By: _____
Name: _____
Title: _____

Exhibit A

The following is the current count of items requiring maintenance within the CID District:

- 267 concrete planters
- 128 Washington Ave planters
- 46 hanging baskets
- 139 tree wells

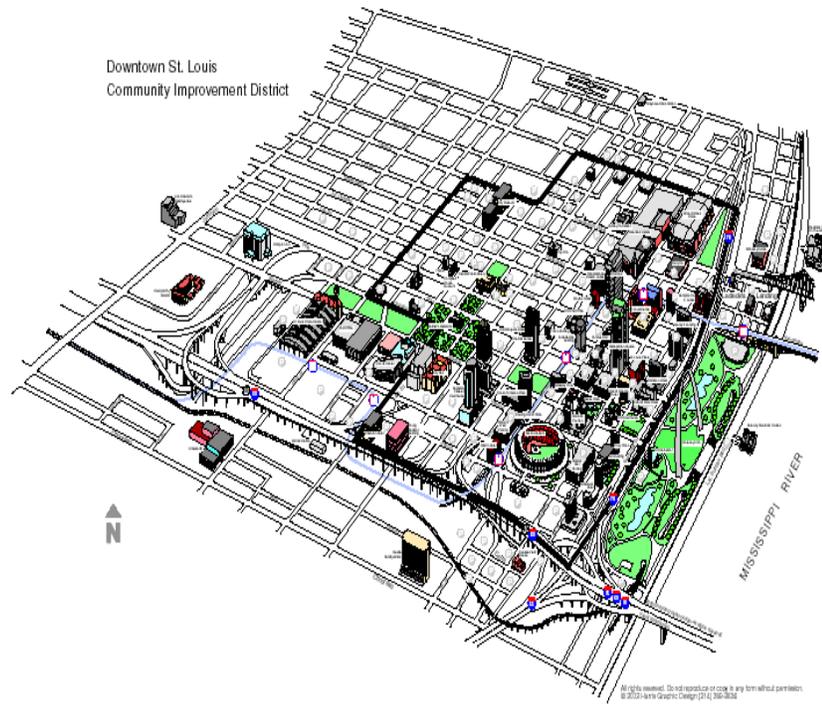
Maintenance task for these items:

- 1) 267 Concrete Planters
 - A. Trim shrubs and trees to proper size and shape once per year. Haul off debris
 - B. Spray insecticide to control insects once per year
 - C. Watering of planters 3 times per week or more as needed
 - D. Install proper flowers, annuals/perennials into 100 concrete planters for summer display once per year.
 - E. Install 12 tulips into 20 planters in spring and 6 mums into 20 planters in fall
 - F. Mulch planters once per year

- 2) 128 Washington Ave Planters
 - A. Trim shrubs and trees to proper size and shape once per year. Haul off debris
 - B. Spray insecticide to control insects once per year
 - C. Watering of planters 3 times per week or more as needed
 - D. Mulch planters once per year
- 3) 46 Hanging Baskets
 - A. Install proper flowers, annuals and perennials into the 46 hanging baskets for summer display once per year.
 - B. Daily watering and fertilizing of all 46 hanging baskets from April through September
- 4) 139 tree wells
 - A. Trim trees and ground cover to proper size and shape once per year. Haul off debris
 - B. Spray insecticide to control insects once per year
 - C. Watering of tree well 3 times per week or more as needed.
 - D. Mulch tree wells once per year

Exhibit B

BOUNDARIES AND MAP OF THE COMMUNITY IMPROVEMENT DISTRICT



District Boundaries

The district boundaries are as follows:
18th Street from Chestnut, north to Delmar;
Delmar, east to 14th Street;
14th Street north to Cole;
Cole east to Tucker
Tucker south to Pine;
Pine heading west to 14th Street;
14th Street south to Chestnut; and
Chestnut west to 18th Street.

The boundaries continue to
Interstate 70 to the east;
Cole west Tucker south to Pine;
West on Pine to 14th Street;
14th Street south to Interstate 64/40; and
South on Interstate 64/40 to intersection of Interstate 70

Exhibit COptional services to be provided to the Partnership as requested:

- 1) Planter and trash receptacle moving:
 - \$43.00 per container/planter. If there are multiple “containers” at one location that are to be moved to a single source, the price per container will be \$38.00 per “container”. If the multiple containers at a single location are to be moved to more than one site, the \$43.00 fee will apply.
- 2) Large debris removal/general labor or clean-up:
 - \$28.50 per person/hour.
- 3) Additional or replacement shrub and tree planting:

Newly installed shrubs and trees will have one year warranty from the date of installation unless damaged by vandalism or accidents.

 - Tree installation will be \$150.00 per tree (1.5 – 2.0 inch caliper) unless a specifically requested tree is of a variety or caliper size that is more expensive to acquire from the City’s contracted tree vendor. In this event, the Downtown Partnership will be additionally charged for the price difference that must be paid to the tree vendor for that specific tree.
 - Shrubs will be replaced at a cost of \$45.00 per shrub. These shrubs are generally 18-24 inch plants. In the event a specifically requested shrub is more expensive than this installed price, the Partnership will be additionally charged for the price difference that must be paid to the shrub vendor for that specific shrub.
- 4) New hanging basket installation:
 - This would include the bracket, baskets, plantings, and installation: \$165.00/basket

Approved: July 18, 2005