

September 24, 2024

via Electronic Delivery to: jstrickland@jarrard-davis.com

The Honorable Mayor, Mayor Pro Tem, and City Council
City of Stone Mountain, Georgia
c/o Jeffrey M. Strickland, City Attorney
Jarrad & Davis, LLP
222 Webb Street
Cumming, Georgia 30040

Re: The Downtown Development Authority of the City of Stone Mountain, Georgia
(the "DDA")

Dear Honorable Mayor, Mayor Pro Tem, and City Council:

On August 12, 2024, the Directors of the DDA voted to engage me and this law firm to provide independent legal counsel and representation to them to respond to continuing and unfounded challenges to their independent powers and authority and their integrity. I am excited to join the dedicated Directors of the DDA to work with and for them and Maggie Dimov, Director of Economic Development & DDA to create a better and more sustainable partnership with you for the common good of the City and specifically its businesses in the downtown development area.

As I am sure you appreciate, the DDA was activated and established by the Resolution 2006-26 adopted by the City on September 5, 2006 (the "Resolution"). However, the DDA is an independent public body corporate and politic of the State duly created and validly existing pursuant to the Downtown Development Authorities Law (O.C.G.A. § 36-42-1 *et seq.*, as amended)(the "Act").

The statutory purpose of the DDA under the Act is to develop, pursue, and promote the furtherance of existing and new trade, commerce, industry, and employment opportunities through revitalization and redevelopment within the downtown development area for the public good and general welfare of the City. See, O.C.G.A. § 36-42-2. The DDA possesses unique powers and authority under the Act distinct from those of the City, which include in relevant part:

- (1) To make and execute contracts, agreements, and other instruments necessary or convenient to exercise the powers of the DDA or to further the public purpose for which it is created, including, but not limited to, contracts for construction of projects, leases of projects, contracts for sale of projects, agreements for loans to finance projects, contracts with respect to the use of projects, and agreements with the City in the issuance of revenue bonds, notes, or other such obligations;

- (2) To acquire by purchase, lease, or otherwise and to hold, lease, and dispose of real and personal property of every kind and character, or any interest therein, in furtherance of the public purpose of the DDA;
- (3) To finance (by loan, grant, lease, or otherwise), refinance, construct, erect, assemble, purchase, acquire, own, repair, remodel, renovate, rehabilitate, modify, maintain, extend, improve, install, sell, equip, expand, add to, operate, or manage projects and to pay the cost of any project from the proceeds of revenue bonds, notes, or other obligations of the authority or any other funds of the authority, or from any contributions or loans by persons, corporations, partnerships (whether limited or general), or other entities, all of which the DDA is authorized to receive, accept, and use;
- (4) To borrow money to further or carry out the public purpose of the DDA and to execute revenue bonds, notes, other obligations, leases, trust indentures, trust agreements, agreements for the sale of its revenue bonds, notes, or other obligations, loan agreements, mortgages, deeds to secure debt, trust deeds, security agreements, assignments, and such other agreements or instruments as may be necessary or desirable, in the judgment of the authority, to evidence and to provide security for such borrowing;
- (5) To issue revenue bonds, notes, or other obligations of the authority and use the proceeds thereof for the purpose of paying, or loaning the proceeds thereof to pay, all or any part of the cost of any project and otherwise to further or carry out the public purpose of the DDA and to pay all costs of the DDA incidental to, or necessary and appropriate to, furthering or carrying out such purpose;
- (6) To make application directly or indirectly to any federal, state, county, or City government or agency or to any other source, whether public or private, for loans, grants, guarantees, or other financial assistance in furtherance of the public purpose of the DDA and to accept and use the same upon such terms and conditions as are prescribed by such federal, state, county, or City government or agency or other source;
- (7) To extend credit or make loans to any person, corporation, partnership (whether limited or general), or other entity for the costs of any project or any part of the costs of any project, which credit or loans may be evidenced or secured by loan agreements, notes, mortgages, deeds to secure debt, trust deeds, security agreements, assignments, or such other instruments, or by rentals, revenues, fees, or charges;
- (8) To receive and use the proceeds of any tax levied by the City to pay the costs of any project or for any other purpose for which the DDA may use its own funds pursuant to the Act;

- (9) To receive and administer gifts, grants, and devises of money and property of any kind and to administer trusts;
- (10) To use any real property, personal property, or fixtures or any interest therein or to rent or lease such property to or from others or make contracts with respect to the use thereof, or to sell, lease, exchange, transfer, assign, pledge, or otherwise dispose of or grant options for any such property in any manner as it deems to the best advantage of the DDA and the public purpose thereof;
- (11) To acquire, accept, or retain equitable interests, security interests, or other interests in any real property, personal property, or fixtures by loan agreement, note, mortgage, deed to secure debt, trust deed, security agreement, assignment, pledge, conveyance, contract, lien, loan agreement, or other consensual transfer in order to secure the repayment of any moneys loaned or credit extended by the DDA;
- (12) To encourage and promote the improvement and revitalization of the downtown development area and to make, contract for, or otherwise cause to be made long-range plans or proposals for the downtown development area in cooperation with the City;
- (13) To do all things necessary or convenient to carry out the powers conferred by the Act; and,
- (14) To contract with the City to carry out supplemental services in the downtown development area.

See, O.C.G.A. § 36-42-8.

As you can see, the DDA is vested with broad powers and independent authority to develop, pursue, and promote the furtherance of existing and new trade, commerce, industry, and employment opportunities through revitalization and redevelopment within the downtown development area for the public good and general welfare of the City. The Directors of the DDA are unified in their pursuit to undertake their powers and authority under the Act where appropriate and, hopefully, in full concert and cooperation with you for the public good and welfare of the City.

Recently, there have been attempts by some to challenge the independent powers and authority of the DDA, to impeach the commitment or integrity of the Directors of the DDA, and to distract the DDA from its necessary and vital work. These attempts are not justified and waste precious time and financial resources of both the DDA and the City. I am hopeful that recent and continuing efforts by the Directors, including, but not limited to those outlined in this correspondence, will correct lingering misinformation and answer outstanding questions to ensure that the DDA and its volunteer Directors are equal partners with you for the public good and general welfare of the City.

Annual Intergovernmental Contract with the City

There is no requirement under the Resolution, Act, or applicable law for the DDA to execute an annual intergovernmental agreement, intergovernmental contract, or memorandum of understanding with the City as a prerequisite for the DDA to exist or exercise any available powers or authority it possesses under the Act. However, the DDA is unique in that it does not have a designated source of funding and is instead dependent upon the City for staff support costs and annual disbursement of its funding. For contrast, the Downtown Development Authority of the City of Decatur is funded by line-item ad valorem property tax assessment equal to a millage rate of 0.35 for fiscal year 2024. Other downtown development authorities secure independent funding from the sale or lease of real properties they own.

The DDA's unique lack of consistent year over year funding revenue necessitates the need for an annual intergovernmental agreement, intergovernmental contract, or memorandum of understanding with the City to provide for payment for staff support costs and annual funding. This need also presents an invaluable opportunity for the DDA and you to set priorities, align goals, and establish accountability.

While there may have been delay in the City's presentation of a proposed *Intergovernmental Contract* for fiscal year 2024, and in its execution by the DDA, the agreement has been fully executed as of July 20, 2024 and is effective until December 31, 2024 (the "Intergovernmental Contract"). The DDA hopes to avoid any such delays for fiscal year 2025 and has already set to work to finalize its proposed budget and priorities with the intention of presenting you a draft agreement for discussion at a joint work session later this fall.

Completion of Training Requirements of the Department of Community Affairs

As previously reported to you by Ms. Dimov, all Directors have completed or are in the process of completing all necessary training requirements for the Department of Community Affairs of the State of Georgia ("Department of Community Affairs"), including Downtown Development Authority Training – 101 and Georgia Main Street Training. The DDA is diligently working in good faith to complete and satisfy compliance with all training requirements for its Directors.

Compliance with Registration and Filing Requirements of the Department of Community Affairs

The DDA is fully compliant with applicable registration and filing requirements of the Department of Community Affairs for its fiscal years of 2021 – 2023. The registration and filing requirements for fiscal year 2024 are not due to be submitted to the Department of Community Affairs until June 30, 2025. The DDA will timely submit these registrations and filing requirements to ensure compliance for fiscal year 2024 and for future years.

Conflict of Interest and Financial Disclosures

Without any justification, allegations of a potential “conflict of interest that could compromise the integrity of both the DDA and the funded projects” have been made against the DDA and certain Directors. The Directors of the DDA deny these allegations as they are simply not based on the facts or actions of individual Directors.

The Conflict of Interest policy of the DDA is found in Section 7 of the *By-Laws of The Downtown Development Authority of the City of Stone Mountain* and states as follows:

Directors of the DDA shall not use their position to influence the DDA’s decisions or discussions where they have a material financial interest; or where there is an organizational responsibility or personal relationship interest which may result in a real or apparent conflict of interest. Directors shall disclose investments, interest in real property or businesses, and sources of income or gifts that may present a conflict.

The Directors of the DDA have fully complied with this policy, including, but not limited to any consideration, discussion, or action upon façade grants, mural projects, Tunes by the Tracks, vendor agreements, and other such programs. Directors who have had a real or perceived financial interest or other benefit in such have made known their potential conflict and have not participated in any consideration, discussion, or action upon such matters.

Notwithstanding and as evidence of the Directors’ commitment to best practices, the Directors have under consideration enacting the enclosed additional procedures and forms concerning Conflicts of Interest and Financial Disclosures.

Tunes by the Tracks

There has been a suggestion of some unspecified issue or financial impropriety associated with the Tunes by the Tracks concert series because no financial reports have been provided by Main Street Stone Mountain, Inc. (“MSSM”) to the City. Under the Intergovernmental Contract, Tunes by the Tracks is a City approved project and receives budgeting thereunder for contract labor up to Seven Thousand Five Hundred and No/100 Dollars (\$7,500.00) from the City. However, the Intergovernmental Contract makes clear that Tunes by the Tracks is to be “operated and maintained by the DDA in collaboration with the City’s Economic Development Director.” Additionally, neither MSSM, nor the DDA have any mid-year or periodic reporting obligation or a requirement to provide financial reports for Tunes by the Tracks to the City. The DDA is only required under the Intergovernmental Contract to provide the City with an annual report and fully intends to do so upon the conclusion and assessment of its programs, projects, and achievements for fiscal year 2024.

Notwithstanding, the DDA received and reviewed the enclosed Profit & Loss Financial Statement from MSSM for the Tunes by the Tracks concert series on August 12, 2024. The DDA also approved an agreement with MSSM to continue these community concerts through 2024 based upon these financials. I enclose a copy of the approved agreement. Director Thom DeLoach did not attend this meeting of the DDA and did not participate in consideration, discussion, or action upon the agreement with MSSM for 2024.

BOOST Program

The DDA applauds the BOOST Program as it is an example of our citizens pulling together to support our businesses and strengthen the downtown development area towards the betterment of the City. However, the BOOST Program is not a project of the DDA, but is the sole work of the non-profit Stone Mountain Main Street, Inc. The DDA does not manage, supervise, or otherwise administer in any way the BOOST Program. Notwithstanding, there may have been confusion in the past creating the impression that the DDA was involved in the BOOST Program. The current DDA has endeavored to correct any such misimpressions and will continue to draw distinctions between its work and that of the BOOST Program.

As I hope you can see, the Directors of the DDA remain committed to the City and revitalization and redevelopment within the downtown development area for the public good and welfare of the City. They commit to working in good faith to fulfill their obligations and duties under the Resolution and Intergovernmental Contract and in exercising their independent powers and authority under the Act to develop, pursue, and promote the furtherance of existing and new trade, commerce, industry, and employment opportunities. The Directors desire to move past unfounded attacks and distractions that waste time and money and to instead work in partnership with you for the betterment of the downtown businesses and expansion of employment opportunities in the City. There is much work to be done and the Directors invite you to partner with them to support their work.

We look forward to scheduling a joint work session this fall.

Sincerely,


R. Kyle Williams

RKW/jaw

Encl.

cc: Board of Directors
Maggie Dimov

**THE DOWNTOWN DEVELOPMENT AUTHORITY OF
THE CITY OF STONE MOUNTAIN**

CONFLICTS OF INTEREST AND FINANCIAL DISCLOSURES

The Downtown Development Authority of Stone Mountain (the "DDA") is governed by its bylaws and subject to the Downtown Development Authorities Law (O.C.G.A. Section 36-42-1 et seq.), as amended, and O.C.G.A. § 45-10-3.

Pursuant Section 7 of the *By-Laws of the Downtown Development Authority of the City of Stone Mountain*, Directors of the DDA shall not use their position to influence the DDA's decisions or discussions where they have a material financial interest; or where there is an organizational responsibility or personal relationship interest which may result in a real or apparent conflict of interest. Directors shall disclose investments, interest in real property or businesses, and sources of income or gifts that may present a conflict.

Accordingly, each Director of the DDA must submit upon appointment and maintain throughout his or her appointment a current *Conflicts of Interest and Financial Disclosure* filing with the Chairperson of the Authority.

Specifically, each Director of the DDA shall:

- (1) Uphold the Constitution, laws, and regulations of the United States, the State of Georgia, and all governments therein and never be a party to their evasion;
- (2) Never discriminate by the dispensing of special favors or privileges to anyone, whether or not for remuneration;
- (3) Not engage in any business with the government, either directly or indirectly, which is inconsistent with the conscientious performance of his governmental duties;
- (4) Never use any information coming to him or her confidentially in the performance of governmental duties as a means for making private profit;
- (5) Expose corruption wherever discovered;
- (6) Never solicit, accept, or agree to accept gifts, loans, gratuities, discounts, favors, hospitality, or services from any person, association, or corporation under circumstances from which it could reasonably be inferred that a major purpose of the donor is to influence the performance of the member's official duties;
- (7) Never accept any economic opportunity under circumstances where he or she knows or should know that there is a substantial possibility that the opportunity is being afforded him or her with intent to influence his or her conduct in the performance of his official duties;
- (8) Never engage in other conduct which is unbecoming to a member or which constitutes a breach of public trust; and,

(9) Never take any official action with regard to any matter under circumstances in which he or she knows or should know that he or she has a direct or indirect monetary interest in the subject matter of such matter or in the outcome of such official action.

DIRECTOR'S PLEDGE TO DISCLOSE CONFLICTS OF INTEREST

Each Director of the DDA shall self-report any and all actual or perceived conflicts of interest before an official DDA action or transaction is taken where the Director has "substantial interest or involvement" (defined as any interest or involvement which reasonably may be expected to result in a direct financial benefit to such Member as determined by the DDA) by the Director undertaking the following:

(a) disclosure of any substantial interest or involvement in advance to the other Directors in an open meeting that is recorded in the minutes of the DDA;

(b) absenting himself or herself from such portions of any meeting, including executive sessions, of the DDA during which discussion is conducted involving the matter where the Director has disclosed any substantial interest or involvement; and,

(d) refraining from participating, voting, or otherwise in any decision by the DDA relating to any matter where the Member has disclosed any substantial interest or involvement.

CONFLICTS OF INTEREST AND FINANCIAL DISCLOSURE

Name of Member: _____

Residential Address: _____

Employment, including position and title: _____

Length of Employment in current position: _____

Business Address: _____

Description of Employment Business: _____

Relationship, if any, to the staff and elected officials of the City of Stone Mountain:

Description of any ownership or economic interests in businesses physically located within the city limits of the Stone Mountain:

Description of any ownership or economic interests in for-profit or non-profits organizations providing services within the city limits of the Stone Mountain:

Identification of each property (residential and commercial) you own or have an economic interest in within the city limits of the City of Stone Mountain:

Date Completed: _____

I swear and affirm that the information set forth in this *Conflict of Interest and Financial Disclosure* is true and accurate as of the date completed. I acknowledge receipt of and stipulate that I understand and agree to the terms and obligations imposed upon me as a Member of the Downtown Development Authority of the City of Stone Mountain.


Signature of Member

Received and Attested to by:

Carl Wright, Chair
Downtown Development Authority of the City of Stone Mountain

7:09 PM
08/05/24
Accrual Basis

Main Street Stone Mountain, Inc.
Profit & Loss
January through December 2023

 **COPY**

	Tunes by the Tracks	TOTAL
Ordinary Income/Expense		
Income		
5000 Special Events Income		
5800 Tunes/Tracks		
5810 Contributions Restricted	24,295.27	24,295.27
5820 Concession Sales	6,599.57	6,599.57
Total 5800 Tunes/Tracks	<u>30,894.84</u>	<u>30,894.84</u>
Total 5000 Special Events Income	<u>30,894.84</u>	<u>30,894.84</u>
Total Income	30,894.84	30,894.84
Cost of Goods Sold		
Cost of Goods Sold		
5822 Tunes by the Tracks	1,794.70	1,794.70
Total Cost of Goods Sold	<u>1,794.70</u>	<u>1,794.70</u>
Total COGS	<u>1,794.70</u>	<u>1,794.70</u>
Gross Profit	29,100.14	29,100.14
Expense		
7000 Special Events Expense		
7300 Mardi Gras Parade		
7350 Sanitation Service	620.00	620.00
Total 7300 Mardi Gras Parade	<u>620.00</u>	<u>620.00</u>
7900 Tunes by the Tracks		
7910 Security Officer	3,840.00	3,840.00
7920 Alcoholic Beverage License	1,300.00	1,300.00
7922 Fees for CC Contributions	122.63	122.63
7940 Musicians	13,800.00	13,800.00
7950 Sound & Stage	3,900.00	3,900.00
7960 Sanitation Services	355.00	355.00
Total 7900 Tunes by the Tracks	<u>23,317.63</u>	<u>23,317.63</u>
Total 7000 Special Events Expense	<u>23,937.63</u>	<u>23,937.63</u>
Total Expense	<u>23,937.63</u>	<u>23,937.63</u>
Net Ordinary Income	<u>5,162.51</u>	<u>5,162.51</u>
Net Income	<u><u>5,162.51</u></u>	<u><u>5,162.51</u></u>

STATE OF GEORGIA
DEKALB COUNTY

A CONTRACT AGREEMENT BETWEEN THE DOWNTOWN DEVELOPMENT AUTHORITY OF STONE MOUNTAIN, GEORGIA AND MAIN STREET STONE MOUNTAIN, INC. FOR THE PRODUCTION AND MANAGEMENT OF THE DDA CONCERT SERIES KNOWN AS TUNES BY THE TRACKS

This Agreement is made this 11th day of December, 2023, between the DOWNTOWN DEVELOPMENT AUTHORITY OF STONE MOUNTAIN, GEORGIA (DDA), a municipality incorporated and chartered under the Constitution and Laws of the State of Georgia, with a principal place of business at 875 Main Street, Stone Mountain, Georgia, 30083, and MAIN STREET STONE MOUNTAIN, INC. (MSSM), with a principal place of business at 5495 East Mountain Street, Stone Mountain, Georgia, 30083.

MSSM agrees to produce and oversee, on behalf of the DDA, seventeen musical concerts at no charge to the general public that will promote local artists and draw people to the downtown business district in the City of Stone Mountain, Georgia.

Spring Dates	Fall Dates
05/04/2024	09/06/2024
05/10/2024	09/13/2024
05/17/2024	09/20/2024
05/24/2024	09/27/2024
05/31/2024	10/04/2024
06/07/2024	10/11/2024
06/14/2024	10/18/2024
06/21/2024	10/25/2024

1. MSSM will obtain permits from the City of Stone Mountain, on behalf of the DDA, to hold the concerts at the municipal parking lot located at 922 Main Street - or, if due to incimate weather, the East Mountain Street rain venue - from 2:00 PM to 10:30 PM for setup and take down. Take down may be extended by 30 minutes if weather or other circumstances delay the scheduled finish time of the concert at 9:00 PM.

2. MSSM will curate the series and contract with the musical acts appearing at the concerts.
3. MSSM will organize and conduct concerts, on behalf of the DDA, on the above listed Spring and Fall dates: from 2:00 PM to 7:00 PM for setup, 7:00 PM to 9:00 PM for the concert and 9:00 PM to 10:00 PM for take down.
4. MSSM will obtain, on behalf of the DDA, relevant licenses from the City of Stone Mountain, as well as, recruit and schedule DDA community volunteers for the sale of non-alcoholic and alcoholic beverages at the concerts.
5. MSSM will certify, on behalf of the DDA and City, that all volunteers serving beverages are 21 years old or older and instruct volunteers that all people who want to purchase or consume alcohol to show proper ID confirming they are 21 years old or older before serving. MSSM will instruct and confirm that volunteers are well versed in the monitoring of drinkers, how to properly identify someone who is intoxicated and techniques to cease serving alcohol to a person who has - or appears to have- had too much to drink.
6. MSSM will recruit and schedule the needed DDA community volunteers and supervisors, as needed, for set up and take down of the concert event.
7. MSSM will provide one portable toilet at the concerts.
8. MSSM will provide, on behalf of the DDA, one POST certified police officer on duty for each concert date between the hours of 6:30 PM and 9:30 PM.
9. MSSM will file a report with the DDA of revenues and expenditures for the concert series no later than December 31, 2024 and allow at the request of the DDA an audit of financial records related to the concert series to be performed by the City's auditor at no expense to MSSM.

As consideration for the services to be performed, MSSM is entitled to a fee of Seven Thousand Five Hundred Dollars (\$7,500.00) payable in two installments. The first installment of Three Thousand Seven Hundred and Fifty Dollars (\$3,750.00) will be due on or before April 30, 2024 and the second installment of Three Thousand Seven Hundred and Fifty Dollars (\$3,750.00) will be due on or before July 31, 2024.

MSSM will make every effort to reschedule concerts that are canceled due to weather conditions, public safety emergencies or acts of God, including, but not limited to wind, rain, hail, lightning or fire. If a concert cannot be rescheduled and the performance agreement between MSSM and a musical act does not allow for refunds, then the DDA agrees that no refund to the DDA of compensation paid to MSSM will be required.

This Agreement shall commence on the date stated above and shall continue in effect through December 31, 2024. This contract may be terminated by mutual consent of the parties. This

Agreement may be modified from time to time as deemed necessary by written consent of the parties hereto. Such modifications may include but are not limited to the rate of compensation.

Any notices to be given under this Agreement by either party shall be in writing and effected by certified mail with return receipt requested. Each party may change the address for receipt of notice by giving written notice in accordance with this paragraph. Mailed notices shall be addressed to the parties at the following addresses:

DDA of Stone Mountain
875 Main Street
Stone Mountain, GA 30083

Main Street Stone Mountain, Inc.
P. O. Box 2406
Stone Mountain, GA 30086

This Agreement shall be governed by and construed and enforced in accordance with the laws of the State of Georgia. This Agreement shall be deemed to have been made and performed in DeKalb County, Georgia. For the purpose of venue, all suits or causes of actions arising out of this Agreement shall be brought in the courts of DeKalb County, Georgia.

SIGNED FOR THE DDA OF STONE MOUNTAIN ON _____(DATE):

BY: _____ (SEAL)
Carl Wright, Chairperson

ATTEST: _____
Denise Phillips, Treasurer

SIGNED FOR MAIN STREET STONE MOUNTAIN, INC. ON _____(DATE):

BY: _____ (SEAL) ATTEST: _____
Thom DeLoach, President Carmen Malizia, Secretary