

FEE-FOR-SERVICE AGREEMENT

City of Whitewater & Downtown Whitewater, Inc. (DTWW)

This Agreement (“Agreement”) is entered into as of January 1, 2027 (the “Effective Date”), by and between the City of Whitewater, a Wisconsin Municipal Corporation located in the Counties of Walworth and Jefferson, conducting its principal business at 312 W. Whitewater St., P.O. Box, 178 Whitewater, WI 53190 (the “City”) and Downtown Whitewater, Inc., a Wisconsin nonprofit corporation (“DTWW”), each a “Party” and collectively the “Parties.”

WHEREAS, the City has a public interest in promoting the economic vitality, attractiveness, and community use of downtown Whitewater;

WHEREAS, DTWW is a Wisconsin nonprofit corporation organized to support and promote downtown Whitewater through programming, events, promotion, and enhancement activities;

WHEREAS, the City desires to compensate DTWW on a fee-for-service basis for the delivery of defined downtown programming and event-related services that serve this public purpose; and

NOW, THEREFORE, in consideration of the mutual covenants set forth in this Agreement the sufficiency of which is hereby agreed, the Parties agree as follows:

1. PURPOSE

This Agreement establishes a Fee-for-Service (FFS) relationship between the Parties under which DTWW shall deliver the defined downtown programming and event-related services described in Section 3, in exchange for the compensation set forth in Section 2. Funding is tied to specific, measurable activities that provide public benefit and support downtown vitality.

2. TOTAL COMPENSATION

The City agrees to provide DTWW in a total amount not to exceed sixteen thousand dollars (\$16,000) for completion of the services outlined in this Agreement. This not-to-exceed amount is the sum of the category allocations set forth in Section 3: City Market Operations (\$8,000), Signature Downtown Events (\$3,000), Event-Focused Promotions (\$3,000), and Community Enhancements (\$2,000).

Payment is contingent upon completion of the services described in Section 3 and submission of the Annual Summary Report and other documentation required under Section 4, and shall be made in accordance with Section 6.

3. SCOPE OF SERVICES

A. City Market Operations — \$8,000

DTWW shall coordinate and manage the City Market program and, in doing so, shall:

- Plan and execute approximately twenty-six (26) seasonal markets, during the term of this Agreement. Hosting fewer than twenty (20) seasonal markets shall be a material breach of this provision and result in no compensation for the City Market Operations;
- Recruit, coordinate, and communicate with market and maintain accurate records of vendors regarding the seasonal markets;
- Coordinate event logistics and setup, and provide on-site management at each market; and

Performance Measures (to be reported in the Annual Summary Report required by Section 4):

- The number of markets held, with the date of each, measured against the twenty (20) market minimum;
- The number of vendors participating in each market;
- The attendance at each market and the method used to estimate it.

B. Signature Downtown Events — \$3,000

DTWW shall coordinate and support the following community events:

- Parade of Lights within the first two weeks of December

DTWW may undertake additional events; however, any such additional events are not funded under this Agreement and remain subject to the City's standard permitting and approval processes.

Performance Measures (to be reported in the Annual Summary Report required by Section 4):

- Confirmation that each listed event was held, with the date of each event;
- The attendance at each listed event and the method used to estimate it;
- The number of community partners and businesses participating in each listed event, with a list of such participants.

C. Event-Focused Promotions — \$3,000

DTWW shall provide promotional support for the City Market and the Signature Downtown Events described in Sections 3.A and 3.B and, in doing so, shall:

- Coordinate promotion of each such event through social media, newsletter, or an equivalent channel; and
- Maintain a public-facing community events calendar.

Funds allocated under this Section 3.C shall be used solely for promotion of events funded under this Agreement.

Performance Measures (to be reported in the Annual Summary Report required by Section 4):

- The promotional channels used and the number of promotional posts or communications issued for each funded event;
- Confirmation that the community events calendar was maintained and kept current throughout the term, including a link to the calendar.

D. Community Enhancements — \$2,000

DTWW shall coordinate limited volunteer-based downtown enhancement efforts and, in doing so, shall:

- Organize up to two (2) cleanup or seasonal beautification activities annually;
- Retain ownership of, and be responsible for storing, the winter snowflake decorations, which the City shall install and remove each season; and
- Coordinate annual downtown senior graduate photo placements, including identifying downtown photo locations and promoting the opportunity to graduating seniors and participating downtown businesses.

Performance Measures (to be reported in the Annual Summary Report required by Section 4):

- A description of each enhancement activity completed, with the date of each;
- The estimated number of volunteers participating in each activity;
- The estimated number of businesses participating in each activity.

4. REPORTING REQUIREMENTS

To receive full payment, DTWW shall submit an Annual Summary Report to the City liaison designated in Section 7 no later than thirty (30) days after the expiration of the term of this Agreement set forth in Section 9. The Annual Summary Report shall address the performance measures for each service category described in Section 3 and shall include, at a minimum:

- Number of City Market events held, vendor participation levels, and estimated attendance (Section 3.A)
- Signature Downtown Events completed, with estimated attendance and participation by community partners and businesses (Section 3.B)
- Event-focused promotional activities completed and the status of the public-facing community events calendar (Section 3.C)
- Community enhancement activities completed, with estimated volunteer and business participation (Section 3.D)
- General summary of activities

Documentation shall be reasonably sufficient to demonstrate completion of the services and shall be proportional to the scale of services. Upon written request of the City liaison, DTWW shall provide supporting records reasonably necessary to verify the information contained in the Annual Summary Report within fifteen (15) business days after such request.

5. ELIGIBILITY REQUIREMENTS

As a condition of receiving funding under this Agreement, DTWW shall satisfy each of the following eligibility requirements throughout the term of this Agreement:

1. Providing the City liaison with an annual financial summary of DTWW's revenues and expenditures, submitted no later than the date the Annual Summary Report is due under Section 4;
2. Providing public notice of all board meetings in accordance with Section 8 and making approved board meetings and minutes publicly available;

3. Maintaining an active City staff liaison designated in accordance with Section 7 and coordinating with such liaison regarding service delivery and reporting under this Agreement; and
4. Maintaining DTWW's status as a Wisconsin nonprofit corporation in good standing with the Wisconsin Department of Financial Institutions, and providing evidence of such good standing upon request of the City.

6. PAYMENT TERMS

Payment may be made in installments or upon completion, as determined by the City. To request payment, DTWW shall submit to the City liaison designated in Section 7 a written invoice or request for payment identifying the service category or categories under Section 3 for which payment is requested. Each request shall include supporting documentation reasonably demonstrating completion of those services and, for the final payment, the Annual Summary Report required under Section 4. The City shall pay each approved request within thirty (30) days after the City accepts the invoice and supporting documentation as complete and satisfactory.

Failure to complete agreed-upon services shall result in a reduction of payment proportional to the services not completed, determined separately for each service category against its allocation in Section 3. In no event shall total payments exceed the not-to-exceed amount stated in Section 2.

7. CITY LIAISON

The Community Development Director, or such designee as the Director identifies to DTWW in writing, shall serve as the City's primary point of contact and liaison to DTWW for purposes of this Agreement. The liaison shall be responsible for coordinating with DTWW on service delivery, reviewing required documentation and deliverables, and communicating with DTWW regarding performance under this Agreement. The liaison shall have no authority to amend this Agreement or waive any of its terms except by a written amendment executed in accordance with Section 9.

8. PUBLIC MEETINGS

DTWW shall cause notice of each of its board meetings to be posted on the City's official website at least Seventy-two (72) hours in advance of the meeting, consistent with Wisconsin open meetings practice under Wis. Stat. § 19.84, by delivering the notice to the City liaison identified in Section 7 (or such City staff as the liaison designates) in sufficient time to permit timely posting. Each notice shall state the date, time, place, and subject matter of the meeting. All DTWW board meetings shall be open to the public.

9. TERM & AMENDMENTS

This Agreement shall be effective January 1, 2027, and shall remain in effect through December 31, 2027, unless earlier terminated in accordance with Section 15 (Termination). No amendment or modification of this Agreement shall be effective unless set forth in a written instrument signed by the authorized representatives of both Parties.

10. INDEPENDENT CONTRACTOR STATUS

This Agreement does not establish an employment, partnership, or agency relationship between the City and DTWW. DTWW operates as an independent entity responsible for its own operations, staffing, and compliance with applicable laws. DTWW's directors, officers, employees, volunteers, and agents are not employees of the City and shall not be entitled to any City wages, benefits, worker's compensation coverage, or other rights or privileges of City employment. DTWW shall be solely responsible for all federal, state, and local taxes, withholdings, and contributions arising from amounts paid to DTWW under this Agreement or from compensation DTWW pays to its personnel.

11. NON-ASSIGNMENT

DTWW's rights and obligations under this Agreement are personal to DTWW and shall not be assigned, delegated, or otherwise transferred, in whole or in part, by operation of law or otherwise, without the prior written consent of the City. Any purported assignment, delegation, or transfer made without such consent shall be null and void.

12. INSURANCE

DTWW shall maintain, at its own expense and for the duration of this Agreement, commercial general liability insurance with limits of not less than \$500,000 per occurrence, or such other limits as are acceptable to the City, and in a form acceptable to the City. The City, its officers, employees, and agents shall be named as additional insureds under such policy, and such coverage shall be primary and non-contributory with respect to any insurance or self-insurance maintained by the City. Before commencing any services under this Agreement, and thereafter upon request, DTWW shall furnish the City with a certificate of insurance evidencing such coverage and the City's additional insured status. DTWW shall provide the City at least thirty (30) days' prior written notice of any cancellation, non-renewal, or material reduction in such coverage.

13. INDEMNIFICATION

DTWW agrees to indemnify, defend, and hold harmless the City, its officers, employees, and agents from and against any and all claims, damages, losses, and expenses arising out of or resulting from DTWW's performance under this Agreement, except to the extent caused by the negligence or willful misconduct of the City. DTWW's obligations under this Section shall survive the expiration or earlier termination of this Agreement.

14. NON-DISCRIMINATION

DTWW shall comply with all applicable federal, state, and local laws prohibiting discrimination and shall not discriminate against any person on the basis of age, race, creed, religion, color, disability, marital status, sex, sexual orientation, national origin, ancestry, arrest record, conviction record, military service, use or nonuse of lawful products off the employer's premises during nonworking hours, or any

other basis protected under Wis. Stat. § 111.321 or other applicable federal, state, or local law, in employment or in connection with the services provided under this Agreement.

15. TERMINATION

Either Party may terminate this Agreement for convenience upon thirty (30) days' written notice to the other Party. The City may terminate this Agreement immediately for cause in the event of a material breach by DTWW, including failure to meet the performance measures or eligibility requirements described herein. Upon any termination, the City shall pay DTWW only for services satisfactorily performed in accordance with this Agreement through the effective date of termination, prorated as reasonably determined by the City, and shall have no obligation to pay for services not performed. Within thirty (30) days after the effective date of termination, DTWW shall return to the City any funds paid in advance for services not performed or not satisfactorily performed.

16. FORCE MAJEURE

Neither Party shall be in default under this Agreement for failure to perform any obligation hereunder while, and to the extent, such performance is prevented by Force Majeure, meaning any accident, breakage, war, insurrection, civil commotion, riot, act of terror, act of God or the elements, governmental action, strike, lockout, or other cause beyond the reasonable control of the affected Party. A Party delayed by Force Majeure shall provide prompt written notice to the other Party describing the cause and the anticipated length of delay, and shall use reasonable efforts to mitigate the effects of the Force Majeure event and resume performance as soon as practicable. The affected Party's obligations shall be suspended only for the duration of the Force Majeure event and only to the extent of its effect, and the time for performance shall be extended accordingly. If a Force Majeure event prevents performance of a material obligation for more than sixty (60) consecutive days, either Party may terminate this Agreement upon written notice to the other Party, subject to the payment and refund provisions of Section 15.

17. GOVERNING LAW

This Agreement shall be governed by and construed in accordance with the laws of the State of Wisconsin. Any action arising out of or relating to this Agreement shall be venued exclusively in the Circuit Court for Walworth County, Wisconsin.

18. NOTICES

Any notice required under this Agreement shall be in writing and delivered to the following addresses, or to such other address as either Party may designate in writing:

*City of Whitewater – Community Development Department, 312 W. Whitewater St., P.O. Box 178,
Whitewater, WI 53190*

Downtown Whitewater, Inc., 402 W Main St, Suite 2, Whitewater, WI 53190

19. SEVERABILITY

If any provision of this Agreement is held invalid or unenforceable, the remainder of the Agreement shall continue in full force and effect.

20. ENTIRE AGREEMENT

This Agreement, including any attachments, constitutes the entire agreement between the Parties and supersedes all prior negotiations, representations, or agreements, whether written or oral, relating to its subject matter. This Agreement may be amended only in a written instrument signed by both Parties in accordance with Section 9.

21. EXECUTION IN MULTIPLE COUNTERPARTS

This Agreement may be executed in one or more counterparts, each of which shall be deemed an original and all of which together shall constitute one and the same instrument.

22. NO THIRD-PARTY BENEFICIARIES

This Agreement is made solely for the benefit of the Parties hereto and their permitted assignees, and no other individual or entity shall acquire or have any rights under this Agreement or by virtue of this Agreement.

23. CONSTRUCTION

The Parties acknowledge and represent that this Agreement has been the subject of negotiation by both Parties and that both Parties together shall be construed to be the drafter hereof; this Agreement shall not be construed against either Party individually as drafter.

24. RESERVATION OF RIGHTS

Nothing in this Agreement shall be construed to be a waiver or modification of the governmental immunities or notice requirements imposed by Wis. Stat. § 893.80 or any other law.

25. AUTHORITY

The individuals executing this Agreement on behalf of DTWW warrant and represent that they are duly authorized to bind DTWW to this Agreement, and that execution of this Agreement is not prohibited by DTWW's articles of incorporation, bylaws, operating agreement, or other internal governing documents. DTWW shall provide proof of such authority upon request.

26. REPRESENTATION

DTWW acknowledges that it has either had the assistance of legal counsel in the negotiation, review, and execution of this Agreement, or has voluntarily waived the opportunity to do so; that it has read and

understood this Agreement's terms, conditions, and provisions, and their effects; and that it has executed this Agreement freely and not under conditions of duress.

IN WITNESS WHEREOF, the Parties have caused this Agreement to be executed by their duly authorized representatives as of the dates set forth below.

CITY OF WHITEWATER

Signature: _____
Printed Name: John Weidl _____
City Manager
Date: _____

ATTEST:

Signature: _____
Printed Name: _Heather Boehm _____
City Clerk
Date: _____

DOWNTOWN WHITEWATER, INC.

Signature: _____
Printed Name: _____
Title: _____
Date: _____