

## **WINTER LIGHTING MEMORANDUM OF UNDERSTANDING**

Between

### **The City of Columbus Recreation and Parks Department AND Columbus Downtown Development Corporation**

This Memorandum of Understanding ("MOU") is made and entered into as of October 14, 2024 ("Effective Date") between The City of Columbus, an Ohio municipal corporation, acting by and through its Recreation and Parks Department (hereinafter called "CRPD") and Columbus Downtown Development Corporation (dba Downtown Columbus Inc.), an Ohio not-for-profit organization (hereinafter called "DCI"). (Both parties to this MOU collectively known as, "Parties").

#### **WITNESSETH**

WHEREAS, the City of Columbus ("City") owns and operates Bicentennial Park and the Promenade depicted in Exhibit A and hereinafter identified as "Premises"; and

WHEREAS, Parties share a common interest in the public enjoyment of Bicentennial Park and the Promenade; and

WHEREAS, It has been an annual tradition since the opening of the Premises for the City to coordinate a temporary installation of winter lighting to enhance the downtown experience; and

WHEREAS, CRPD desires to allow DCI to coordinate, on its behalf, with third party service providers to furnish, install and maintain winter lighting for the upcoming season; and

WHEREAS, Parties agree this agreement shall commence with an effective date of October 24, 2024 and expire on March 2, 2025; and

Now, therefore, in consideration of the mutual covenants and obligations contained herein, the Parties agree as follows:

#### Article 1- Property

1.1 The City owns and operates Bicentennial Park and the Promenade as depicted in Exhibit A

#### Article 2- Term

2.1 Unless otherwise terminated herein provided, the term of this MOU shall be for 160 days commencing on October 24, 2024 ("Commencement Date") and terminating on March 2, 2025, unless renewed by Parties in writing. Either party may terminate this MOU upon thirty (30) days written notice to the other party.

#### Article 3- Use and Control

3.1 DCI to create plan for CRPD review which identifies all features to be illuminated, the method of lighting (miniature lights/up-lights) proposed installation and removal dates, proposed operating hours, and anticipated support or operational assistance needed from CRPD to facilitate DCI's plan.

- 3.2 CRPD shall review plan for compliance with park policies, safety concerns, and impact on trees and other natural landscape features on Premises.
- 3.3 CRPD shall have final approval over the schedule and all work on the Premises necessary to align department resources with management of park infrastructure.
- 3.4 DCI agrees to follow the attached operational timeline in Exhibit B. The operations timeline is subject to change due to weather conditions, equipment delays, or other unforeseen circumstances. Any changes made to this schedule will be requested in writing by DCI to CRPD and approved by CRPD.
- 3.5 DCI will be responsible for filing a permit with CRPD's Forestry Division 10 days prior to start of installation.

Forestry Permit: <https://app.smartsheet.com/b/form/bc470e43586b49029ce6358db6680409>

- 3.6 DCI shall not be assessed CRPD application fees or park rental fees associated with approved winter lighting in Bicentennial Park and the Promenade.
- 3.7 DCI will be responsible for filing applications and paying associated fees for all permits and inspections required by other City Departments.
- 3.8 CRPD agrees to coordinate with City Division of Power to activate festival power service feeds for use by DCI's licensed electrical contractor.

#### Article 4- Nondiscrimination

- 4.1 DCI will operate in compliance with all requirements imposed by or pursuant to regulations of Title VI of the Civil Rights Act of 1964 (78 Stat, 241, 525) and Executive Order 11246. DCI will not deny, on the basis of race, sex, sexual orientation, gender identity or expression, color, religion, ancestry, national origin, age, disability, familial status, or military status to any person the use, benefits, or services provided in Downtown Parks.

#### Article 5 –Insurance

- 5.1 During the term of this MOU, DCI, at DCI's sole cost and expense shall carry and maintain commercial general liability insurance against liability for personal injury, bodily injury to or death of persons and loss or damage to property occurring in, on and about the Property, with coverage limits of at least One Million Dollars (\$1,000,000.00) per occurrence, Three Million Dollars (\$3,000,000.00) in the aggregate, which can be achieved through a combination of liability insurance and an umbrella or excess insurance policy. Where alcohol will be included as part of a program, Liquor Liability coverage shall be obtained with coverage limit of at least One Million Dollars (\$1,000,000.00) per occurrence.
- 5.2 Such insurance shall (i) name the City of Columbus as an additional insured by the endorsement so long as this MOU, any renewal, or holdover, is in effect; (ii) specifically cover the liability assumed by DCI under this MOU; (iii) be issued by an insurance company having a rating of not less than A-X in Best's Insurance Guide or which is otherwise acceptable to CRPD and licensed to do business in the State of Ohio; and (iv) provide that such insurance shall not be canceled or coverage changed unless thirty (30) days prior written notice of such cancellation or change is given to CRPD. DCI shall deliver such policy or policies or

certificates thereof, to CRPD on or before the MOU Commencement Date, and at least thirty (30) Days before the expiration dates thereof.

#### Article 6 –Assignment and Subletting

6.1 DCI shall not assign, or otherwise transfer, this MOU or any interest hereunder nor permit any private use of Bicentennial Park and Promenade.

#### Article 7 –Surrender of Property

7.1 Upon Termination of the MOU Term, or upon any termination of DCI's right to light Premises, DCI will at once surrender possession of the Premises to CRPD in good condition and repair. Upon such expiration or termination, DCI shall, without expense to CRPD, remove or cause to be removed from the Premises all items of equipment and other articles of personal property owned by DCI.

#### Article 8 –No Waiver

8.1 The failure of CRPD to insist on any one or more cases upon the strict performance or observance of any of the covenants, agreements, or conditions of this MOU or to exercise any option herein contained shall not be construed as a waiver or a relinquishment for the future performance, observance or exercise of such covenant, agreement, condition, or option. No waiver of any default hereunder shall be implied from any omission by CRPD to take any action on account of such default or to declare a forfeiture if such default persists or is repeated, and no condition or covenant shall be deemed waived by CRPD unless such waiver be in writing signed by CRPD. One or more waivers of any breach of any covenant, term or condition of this MOU by CRPD shall not be construed as a waiver of any subsequent breach of the same covenant, term or condition.

#### Article 9–Law Applicable

9.1 This MOU shall be construed and enforced in accordance with the laws of the State of Ohio and resolved in Franklin County, Ohio.

#### Article 10 –General

10.1 Each party shall comply with all applicable federal, state, and local laws, rules, and regulations.

10.2 DCI, along with its employees, agents and subcontractors, shall be and shall remain an Independent Contractor with respect to all services performed hereunder and neither DCI nor its employees shall be considered "public employees" for purposes of OPERS membership or worker's compensation laws. DCI hereby agrees to and does hereby accept full and exclusive liability for the payment of any and all contributions or taxes for Social Security, unemployment insurance or old age retirement benefits, pensions or annuities now or hereafter imposed under any state or federal law which are measured by the wages, salaries or other

remunerations paid to the persons employed by DCI or their agents and subcontractors for work performed under the terms of this MOU and further agrees to obey all lawful rules and regulations and to meet all lawful requirements which are now, or hereafter may be, issued or promulgated under said respective laws.

10.3 DCI shall comply with the Ohio Worker's Compensation laws and agrees that it is liable for any claims or payments made by or to its employees should the employee make a Worker's Compensation claim while on the Premises.

10.4 Parties agree that this agreement does not restrict Parties from participating in similar agreements with other public or private agencies, organizations, and individuals that align with the goals and objectives of each Party.

10.5 Parties agree that nothing in this MOU shall obligate either Party to transfer funds. Such endeavors will be outlined in separate agreements that shall be made in writing by representatives of the parties involved and shall be independently authorized by appropriate statutory authority. This MOU does not provide such authority.

10.6. This MOU constitutes the entire agreement among the Parties. No modification or amendment of this MOU may be made or be binding unless made in writing and signed by each of the Parties.

10.7 Notices: All notices or other communications required or desired to be given to either Party under this MOU shall be in writing to the parties as addressed below and shall be deemed given when delivered personally, or three business days after having been mailed by certified mail (return receipt requested) to the party at the address for that party (or at such other address for such party as shall have specified in written notice to the other party), or one day after having been delivered to Federal Express, UPS or any similar nationally-recognized express delivery service for overnight delivery to that party at that address.

If to CRPD:

Primary: Jason Nicholson, 614-645-3335, [jtnicholson@columbus.gov](mailto:jtnicholson@columbus.gov)

Secondary: William Behnke, 614-645-7956, [wfbehnke@columbus.gov](mailto:wfbehnke@columbus.gov)

#### **DCI**

Primary: Nick Stefanik, 614-545-4725, [nstefanik@downtowncolumbus.com](mailto:nstefanik@downtowncolumbus.com)

Secondary: Ashley Myers, 614-545-4732 [amyers@downtowncolumbus.com](mailto:amyers@downtowncolumbus.com)

IN WITNESS WHEREOF, the Parties hereto have executed this MOU through their duly authorized representatives, to be effective as of the Effective Date.

**CRPD:**

THE CITY OF COLUMBUS RECREATION AND PARKS DEPARTMENT

Signature: Bernita A. Reese

Printed Name: Bernita A. Reese

Title: Director

Date: 10/17/2024

**DCI:**

COLUMBUS DOWNTOWN DEVELOPMENT CORPORATION

Signature: Amy Taylor

Printed Name: Amy Taylor

Title: President

Date: 10/14/24

Exhibit A – Bicentennial Park & Promenade



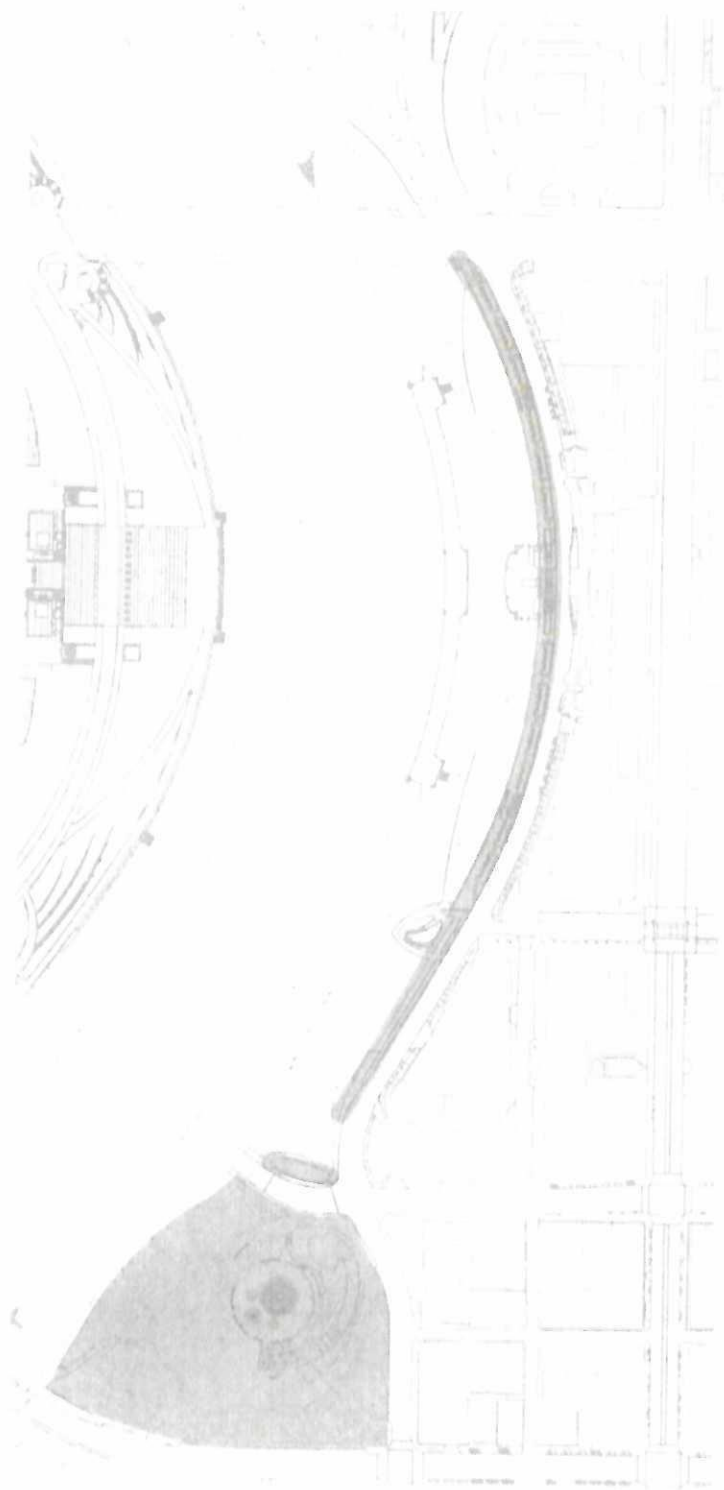


Exhibit B- Operational Timeline

1. Contractor mobilization to commence on 10/24/24
2. Feature illumination to begin 10/24/24
3. Installation substantially complete by 11/2/24
4. Pre-operational testing 11/2/24-11/22/24
5. Illumination 11/22/24- 2/16/25
6. Removal 2/17/25-3/2/25