

**AGREEMENT FOR LANDSCAPE MAINTENANCE SERVICES
BETWEEN THE
KOCHVILLE TOWNSHIP DOWNTOWN DEVELOPMENT AUTHORITY
AND
KOCHVILLE TOWNSHIP**

THIS AGREEMENT, made as of February 21, 2022 (Effective Date) by and between the **KOCHVILLE TOWNSHIP DOWNTOWN DEVELOPMENT AUTHORITY**, a public body corporate, whose address is 5851 Mackinaw Road, Saginaw, Michigan 48604, hereinafter called the **DDA** and **Kochville Township**, whose address is 5851 Mackinaw Road, Saginaw, Michigan 48604, hereinafter called the **CONTRACTOR**. The **DDA** and **CONTRACTOR** are sometimes collectively referred to as the **PARTIES** herein.

WHEREAS, **DDA** desires to contract with the **CONTRACTOR** and the **CONTRACTOR** desires to perform professional landscaping maintenance including grass cutting in designated areas and for designated special events, weed trimming around light poles and trees, and edging sidewalks in the Kochville Township Downtown Development District (the “District”) for the 2022-23 growing season; and

WHEREAS, **CONTRACTOR** desires to contract with the **DDA** to perform the professional landscaping maintenance as set forth in this Agreement; and

NOW, THEREFORE, the **DDA** and the **CONTRACTOR** in consideration of the **CONTRACTOR’S** performance of its duties and responsibilities set forth in this Agreement and the payment for those duties and services by the **DDA**, the **PARTIES** hereto agree as follows:

SECTION 1 : DUTIES OF THE CONTRACTOR

The **CONTRACTOR** shall be responsible for the following services as authorized and subject to the terms of this Agreement:

- 1.1. **Grass Cutting.** Perform twenty-four (24) grass cuttings in the District on the dates established pursuant to Section 1, subsection 1.1.3 of this Agreement, in the areas as set forth in Exhibit 1 subject to the following:
 - 1.1.1 **CONTRACTOR** shall remove all accumulated trash and litter located on the grass cutting area as to avoid debris from being cut by the mower and re-deposited upon the grass cutting area. If abnormal or excessive debris or impediments will impeded the grass cutting on the day scheduled, the **CONTRACTOR** shall notify the DDA Director with an estimated cost for the removal of the abnormal or excessive debris or impediments. Upon authorization by the DDA Director, the **CONTRACTOR** shall remove all abnormal or excessive debris or impediments. Grass cutting shall thereafter be performed by the **CONTRACTOR** as soon as practically possible. The removal of the abnormal or excessive debris or impediments shall be performed by the **CONTRACTOR** at the rate set forth in **Exhibit 2**.

- 1.1.2 All grass cuttings shall be performed between the hours of 7:00 a.m. and 9:00 p.m. (local time).
- 1.1.3 The **CONTRACTOR** shall meet with the DDA Director before April 1 of each year to establish a mutually beneficial grass cutting schedule. The grass cutting schedule may be modified by the DDA Director throughout the year as needed to assure the grass is cut to ensure that the entire District is esthetically pleasing in the opinion of the DDA.
- 1.1.4 All grass cutting and string trimming shall be at the height not to exceed three inches (3”).
- 1.1.5 Grass belts shall be cut approximately seventy-two inches (72”) wide on each side of the sidewalks.
- 1.1.6 The **CONTRACTOR** may use chemicals for grass growth retardation in the areas that require string trimming. Prior to the application of any chemicals upon grass cutting or string trimming areas, the **CONTRACTOR** shall provide the DDA Director with a copy of the **CONTRACTOR’S** or its designee application license and a list of all chemicals being applied pursuant to this Agreement. The **CONTRACTOR** shall further ensure that the **CONTRACTOR’S** employees have been trained in the application of the chemicals and the first aid remedies for any chemicals that are applied. Additionally, the **CONTRACTOR** shall promptly notify the DDA Director of any chemical spill while preparing for or applying the chemicals to the property set forth in this Agreement. All chemicals shall be approved for use within the United States by the agency regulating such chemicals.
- 1.1.7 Grass cuttings shall include the cutting of grass, weed trimming around light poles, trees, and other incumbents, and edging sidewalks. The **CONTRACTOR** shall determine the sequence of the grass cutting (i.e., cutting, string trimming, edging, etc.). Special care must be taken to protect trees, shrubs, fencing, light poles, and buildings on or adjacent to the grass cutting area.
- 1.1.8 All grass cuttings shall be removed from the sidewalks, streets, parking lots, and other areas that are not part of the surface being cut.
- 1.1.9 The DDA Director may direct the **CONTRACTOR** to not perform grass cuttings within the District as set forth in Exhibit 1, if the DDA Director determines that the grass has not grown enough to warrant cutting. If the **CONTRACTOR** is informed by the DDA Director not to perform grass cutting, the grass cuttings that would have been performed may be added to the end of the Agreement by the DDA Director so that the total number of grass cuttings equals twenty-four (24).

- 1.1.10 The DDA Director may authorize special grass cuttings in excess of the twenty-four (24) grass cuttings in the District at the rate as set forth in **Exhibit 2** of this Agreement. The **CONTRACTOR** shall perform the special grass cuttings within forty-eight (48) hours of being authorized by the DDA Director to perform the special grass cutting.
- 1.1.11 The **DDA** reserves the right through its DDA Director to add or delete areas to be cut during the Agreement period. The **CONTRACTOR** and DDA Director shall negotiate a price for the additional or reduced areas of grass cutting. The negotiated price shall be agreed upon by the **PARTIES** and incorporated herein by addendum. Failure to execute an addendum to this Agreement to establish the new price will not guarantee and increase or decrease in payment due to the **CONTRACTOR**.
- 1.1.12 This Agreement does not guarantee payment for work not completed due to Force Majeure as set forth in Section 6 of this Agreement.

SECTION 2 : ADDITIONAL SERVICES WHICH MAY BE AWARDED TO CONTRACTOR

The **CONTRACTOR** shall be responsible for the following services and subject to the terms of this Agreement:

- 2.1. **Trash Disposal.** Empty the trash receptacles and replace the plastic liners in the trash receptacles located within the District during each grass cutting. **CONTRACTOR** shall be responsible for the disposal of all trash from the trash receptacles, including all costs associated therewith.
- 2.2. **Litter Pickup.** The **CONTRACTOR** shall pick-up loose-blowing refuse and litter within the District as directed by the DDA Director.
- 2.3. **Tree Trimming.** All trees in the public right-of-way as set forth in **Exhibit 1** shall be trimmed and shaped once annually on a date that is acceptable to the DDA Director and the **CONTRACTOR** subject to the following:
 - 2.3.1 All tree trimmings shall conform to established horticultural pruning practices.
 - 2.3.2 The **CONTRACTOR** shall be responsible for the disposal of all trimmings and all costs associated therewith.
 - 2.3.3 All tree trimmings shall be done at the rate set forth in **Exhibit 2** of this Agreement.
 - 2.3.4 The **CONTRACTOR** shall maintain the tree base “sucker” limbs once per fiscal year on a date mutually agreed to by the **DDA** and the **CONTRACTOR**. The **CONTRACTOR** shall not be paid for any additional maintenance of the tree base “sucker” limbs other than the

total price of this Agreement as set forth in **Exhibit 2** of this Agreement.

2.3.5 The DDA Director may authorize additional tree trimmings at no additional costs to the **DDA**.

2.4 **Mulch.** The **CONTRACTOR** shall turn mulch at the beginning of the year at a date that is mutually agreed upon by the **DDA** and the **CONTRACTOR**. If new mulch is needed for the tree bases, the **CONTRACTOR** shall install the new mulch as needed, which shall be equal quality and color of the mulch currently installed. The **CONTRACTOR** shall not be paid for the turning and installation of the new mulch other than the rate set forth in **Exhibit 2** of this Agreement for the entire Agreement. The **CONTRACTOR** shall be responsible for the cost of the mulch and all associated clean-up after the installation of the mulch.

2.5 **Special Services.** The **CONTRACTOR** shall perform the following services that are included in the rate set forth in Exhibit 2 of this Agreement as directed by the DDA Director or his/her designee:

2.5.1 Raking

2.5.2 Blowing

2.5.3 Debris Collection

2.5.4 Miscellaneous Landscape Maintenance as determined by the DDA Director. The cost shall be billed at a per hour cost with the cost of all physical goods billed to the **DDA** at the actual amount paid for by the **CONTRACTOR**.

2.6 **Storm Damage.** In the case of storm that causes damage to the trees located in the District, the **CONTRACTOR** will handle the cleanup and removal of all debris and limbs from the grass cutting area prior to the **CONTRACTOR** performing the grass cutting services. If, however, **CONTRACTOR** is unavailable to perform the cleanup and removal of all debris and limbs, the DDA Director may authorize an independent contractor or Kochville Township to perform cleanup and removal of all debris and limbs. The amount paid to the independent contractor or to Kochville Township may be deducted from the total amount of this Agreement set forth in **Exhibit 2** of this Agreement. The **CONTRACTOR** shall be paid for the cleanup and removal of the debris and limbs at the rate as set forth in **Exhibit 2** of this Agreement.

2.7 **Gateway Monument Signs.** The **CONTRACTOR** shall provide landscaping maintenance of the vegetation located on or adjacent to the Gateway Monument Signs located in the District during the beginning of the fiscal year at the direction of the DDA Director. The **CONTRACTOR** shall perform the landscaping maintenance of the vegetation located on or adjacent to the Gateway Monument Signs in a timely manner. The **DDA** shall be responsible for the cost of all vegetation and the **CONTRACTOR** shall be responsible for providing all

equipment needed to perform the maintenance at the beginning of the fiscal year. If the **CONTRACTOR** purchases the vegetation, the **DDA** shall be invoiced by the **CONTRACTOR** for the actual cost of all vegetation that needs to be installed or replaced during the fiscal year.

- 2.8 **Equipment.** Unless expressly set forth herein, the **CONTRACTOR** shall provide all equipment and supplies needed to conform to the requirements set forth within this Agreement.
- 2.9 **24 Hour Contact.** Designate a person to act as **CONTRACTOR'S** representative with respect to this work. This person shall have the authority to make decisions and bind the **CONTRACTOR**. The representative designated by the **CONTRACTOR** shall provide the **DDA'S** representative with a 24 hour contact phone number to be used in case of an emergency.
- 2.10 **Compliance with Safety Standards.** The **CONTRACTOR** shall ensure that all employees conform to MIOSHA, OSHA, and all other applicable safety standards.
- 2.11 **Record Keeping.** The **CONTRACTOR** shall keep a written journal of the locations of all grass cuttings or other services were performed.

SECTION 3 : DDA'S RESPONSIBILITIES

- 3.1 Provide **CONTRACTOR** with complete information concerning the requirements of the authorized service(s).
- 3.2 Assist **CONTRACTOR** in securing rights of entry upon public lands as required for the **CONTRACTOR** to perform authorized work.
- 3.3 Give thorough consideration of all reports and other documents presented by the **CONTRACTOR** and inform the **CONTRACTOR** of all decisions within a reasonable time as not to delay the work of the **CONTRACTOR**.
- 3.4 The **DDA** hereby designates the DDA Director or his/her designee to transmit instructions, receive information, interpret and make decisions pursuant to this Agreement. In the absence of the DDA Director, the DDA Chairperson shall act in the place of the DDA Director.

SECTION 4 : PAYMENT

- 4.1 **Regular Grass Cuttings.** For services rendered by the **CONTRACTOR** under the terms of this Agreement, **DDA** shall pay the **CONTRACTOR** in four (4) equal quarterly installments (\$6,875 per installment) in an amount not to exceed **Twenty-Seven Thousand Five Hundred Dollars (\$27,500.00)** as set forth in **Exhibit 2**, without the prior written authorization of the **DDA** Board.

- 4.3 **Payment by the DDA.** Payment for services rendered shall be paid by the **DDA** at the next regularly scheduled **DDA** meeting, excluding special meeting.

SECTION 5 : INSURANCE

The **CONTRACTOR** shall not commence work under this Agreement until it has obtained insurance satisfactory to the **DDA**. The insurance that the **CONTRACTOR** shall provide to the **DDA** includes, but is not limited to: Workers Compensation Insurance; Commercial General Liability Insurance; and Motor Vehicle Liability Insurance.

Additionally, the **CONTRACTOR** understands and agrees that the insurance shall not be: (1) changed without at least sixty (60) days prior notice to the **DDA** by the **CONTRACTOR** and the **DDA** shall be promptly furnished with a copy of such policies upon written request by the **DDA**; and (2) cancelled without the prior written consent of the **DDA**.

The **CONTRACTOR** understands and agrees that the policy limits set forth in the insurance policies shall not be reduced during the term of this Agreement.

The **CONTRACTOR** agrees that deductible for the insurance policies set forth in the insurance policies shall not exceed \$1,000.00.

SECTION 6 : NON-LIABILITY/INDEMNIFICATION

In further consideration of the **DDA's** entry into this Agreement, the **PARTIES** agree that:

- 6.1 The **DDA** shall not be liable for actions of the **CONTRACTOR** while performing services pursuant to this Agreement that causes any loss, cost, injury, or death to persons.
- 6.2 The **DDA** shall not be liable for actions of the **CONTRACTOR** while performing services pursuant to this Agreement that causes any loss, cost, injury, or damage to any property.
- 6.3 The **DDA** shall not be liable for any claims of **CONTRACTOR'S** employees and mechanics for violations of Federal, State, or local laws, including, but not limited to laws governing fair labor law practices, and claims for payment of material and equipment purchased, claims for payment of material and equipment leased or rented.
- 6.4 The **DDA** shall not be responsible for the payment of any worker compensation, unemployment, or other payments to the **CONTRACTOR'S** employees as pursuant to the terms of this Agreement, the **CONTRACTOR** is an independent contractor.

SECTION 7 : FORCE MAJEURE

- 7.1 Any delay attributable to a Force Majeure shall not be deemed a violation of the **CONTRACTOR'S** obligations under this Agreement. A "Force Majeure" is an occurrence or nonoccurrence arising from causes beyond the control of the **CONTRACTOR**, including, but not limited to: (1) an Act of God; (2) unreasonable delay by a governmental agency in reviewing a submission, which occurrence or nonoccurrence could not have been avoided or overcome by due diligence and that delays the performance of any obligation of the **CONTRACTOR** hereunder; and (3) Wet or other weather conditions that prevent the **CONTRACTOR** from performing pursuant to this Agreement. "Force Majeure" does not include unanticipated or increased costs, changed financial circumstances, commencement of a proceeding in bankruptcy, contractual disputes, the failure to obtain a permit or license as a result of the **CONTRACTOR'S** actions or omissions, or the failure to obtain any settlement or judgment for contribution, or insurance coverage.
- 7.2 When circumstances occur that the **CONTRACTOR** believes constitute Force Majeure, the **CONTRACTOR** shall notify the **DDA** in writing of the circumstances within one business day after it first becomes aware of those circumstances. Within ten (10) business days after the **CONTRACTOR** first becomes aware of such circumstances, the **CONTRACTOR** shall supply the **DDA**, in writing, a report explaining, to the extent of the **CONTRACTOR'S** knowledge, an explanation of the cause(s) of any actual or expected delay, the anticipated duration of the delay, the measures taken, and to be taken by the **CONTRACTOR** to avoid, minimize, or overcome the delay, and the timetable for implementation of such measures. Failure of the **CONTRACTOR** to comply with the written notice provision of this paragraph shall constitute a waiver of the **CONTRACTOR'S** right to assert a claim of Force Majeure with respect to the circumstances in question.
- 7.3 If the **DDA** agrees that a delay is or was caused by Force Majeure, the **CONTRACTOR'S** delay shall be excused and the **DDA** shall provide the **CONTRACTOR** such additional time as may be reasonable necessary to compensate for the Force Majeure event. In no event shall the additional time be longer than that period reasonably necessitated by the Force Majeure event. Any determination by the **DDA** that an event does not constitute a Force Majeure shall be subject to dispute resolution under Section 7 of this Agreement. In proceedings on any dispute regarding a delay in performance, the **CONTRACTOR** shall have the burden of proving: (1) that the delay is or was caused by a Force Majeure event; and (2) that the amount of additional time requested is reasonable necessary to compensate for that event.

SECTION 8 : DISPUTE RESOLUTION

- 8.1 Any dispute that arises under this Agreement shall in the first instance be the subject of informal negotiations between the **PARTIES**. The period of negotiations shall not exceed ten (10) days from the date of written notice by any

party that a dispute has arisen, but it may be extended by agreement between the **PARTIES**. The period for informal negotiations shall end when the **DDA** provides a written statement setting forth its proposed resolution of the dispute to the **CONTRACTOR**.

- 8.2 If the **PARTIES** fail to resolve a dispute by informal negotiations, then the dispute shall be resolved in accordance with the resolution proposed by the **DDA** unless, within ten (10) days after receipt of the **DDA'S** proposed resolution, the **CONTRACTOR** files a petition for mediation with the **DDA** setting forth the matter in dispute, the efforts made by the **PARTIES** to resolve it, the relief requested, and the schedule, if any, within which the dispute must be resolved to ensure orderly implementation of this Agreement.
- 8.3 In any proceeding before a mediator on any dispute, the **CONTRACTOR** shall have the burden of coming forward with the evidence and the burden of persuasion on factual issues.
- 8.4 If any dispute proceeds to mediation, the **CONTRACTOR** and **DDA** shall each pay 50% of all costs of the mediation.

SECTION 9 : MISCELLANEOUS

- 9.1 **Total Agreement Cost.** The total cost of this Agreement, unless expressly exempted herein, is set forth in **Exhibit 2**.
- 9.2 **Termination.** The obligation to provide further services under this Agreement may be terminated by:
 - 9.2.1 The **DDA** with or without cause upon seven (7) days written notice to the **CONTRACTOR**;
 - 9.2.2 The **CONTRACTOR** for cause upon thirty (30) days written notice to **DDA**.

In the event of any termination, the **CONTRACTOR** will be paid for all services and reimbursable expenses rendered to the date of termination. Further, the **CONTRACTOR** shall be required to complete any requirements of this Agreement should **DDA** require same.

- 9.3 **Term of Agreement.** Subject to Section 6, subsection 6.2(a), this Agreement shall remain in full force and effect for the period from the Execution Date until **March 31, 2023** unless extended hereafter in writing.
- 9.4 **Breach by the CONTRACTOR.** It is mutually agreed that in the event the **CONTRACTOR** fails to complete the services as stated in this Agreement for any reason, the **DDA** may hire an independent contractor to proceed with such work and deduct all reasonable costs from the amount hereinabove specified as payment to the **CONTRACTOR** for such services or in the event that such

payments due to the **CONTRACTOR** are insufficient to fully compensate the **DDA** for such reasonable costs, it shall be the obligation of the **CONTRACTOR** to reimburse the **DDA** for such costs.

- 9.5 **Amendment.** This Agreement constitutes the entire agreement between the **PARTIES** as to the subject matter hereof. It may not be changed or modified except in writing, signed by the **PARTIES** hereto.
- 9.6 **Integration.** This Agreement sets forth the entire agreement and understanding between the **PARTIES** as to the subject matter hereof, and supersedes all prior and/or contemporaneous discussions, representations, amendments, or understandings of every kind and nature between them. No verbal statements made by any employee, representative, or agent of the **DDA** shall constitute an agreement of the **DDA** unless such verbal statement is set forth in this Agreement.
- 9.7 **Waiver.** No waiver of any of the obligations contained herein shall be effective for any purpose unless the same shall be in writing signed by a representative of the **TOWNSHIP** and signed by Chairpersons of the **DDA** upon its executive Board's approval.
- 9.8 **Assignability.** This Agreement may not be assigned by either party without the prior written consent of the other party.
- 9.9 **Applicable Law.** This Agreement has been executed, delivered and accepted at and shall be deemed to have been made in Kochville Township, Saginaw County, Michigan and shall be interpreted in accordance with the laws of the State of Michigan.
- 9.10 **Severability.** If any provision of this Agreement is found to be invalid or unenforceable, it shall not affect the validity of the balance of this Agreement, which shall remain valid and enforceable according to its terms.
- 9.11 **Construction.** This Agreement has been prepared and negotiations have occurred in connection with said preparation pursuant to the joint efforts of the **PARTIES** hereto. This Agreement therefore shall not be construed against any party to this Agreement.
- 9.12 **Notices.** All communications given pursuant to this Agreement except for notices given pursuant to Section 9.13 of this Agreement, shall be in writing and shall be deemed properly served when delivered if delivered in person to the party to whom it is addressed, on the next business day if delivered by a nationally recognized overnight delivery service, or two (2) business days after deposit in the U.S. Mail if sent postage prepaid by United States registered or certified mail, return receipt requested, addressed as follows:

If to **DDA:**

Kochville Downtown Development Authority
5851 Mackinaw Road
Saginaw, Michigan 48604
Attn: DDA Director

With additional copy to:
McGraw Morris P.C.
2075 West Big Beaver Road
Suite 750
Troy, Michigan 48084
Attn: Attorney Kevin Kilby

If to **CONTRACTOR:**

Kochville Township
5851 Mackinaw Road
Saginaw, MI 48604

9.14 **Time is of the essence.** The **CONTRACTOR** agrees that time is of the essence with regard to the performance of this Agreement. Subject to Section 6 of this Agreement, the **CONTRACTOR** agrees to deduction of Fifty Dollars (\$50.00) per day for grass cuttings that are performed more than seventy-two (72) hours after being notified by the DDA Director in person, by phone, or in a written communication left at the **CONTRACTOR’S** place of business that the grass needs to be cut.

IN WITNESS WHEREOF, the **PARTIES** hereto have made and executed this Agreement as of the day and year first above written.

DDA:
KOCHVILLE DOWNTOWN
DEVELOPMENT AUTHORITY

CONTRACTOR:

Lyle Davis, DDA Chairman

EXHIBIT 1:

The District roads to be cut include vacant properties on Trautner Road between Bay Road and Davis Road; Fashion Square Boulevard from Loeffler Lane to Tittabawassee Road; Loeffler Lane from Bay Road to Fashion Square Boulevard; Hampton Place from Davis Road to the north end of the cul-de-sac; and Davis Road (including the center island on Tittabawassee Road south of Davis Road connection) from Tittabawassee Road to Trautner Road, inclusive of all grass beltways on both sides of sidewalk to curbside, boulevard islands, and cul-de-sac islands will be cut.

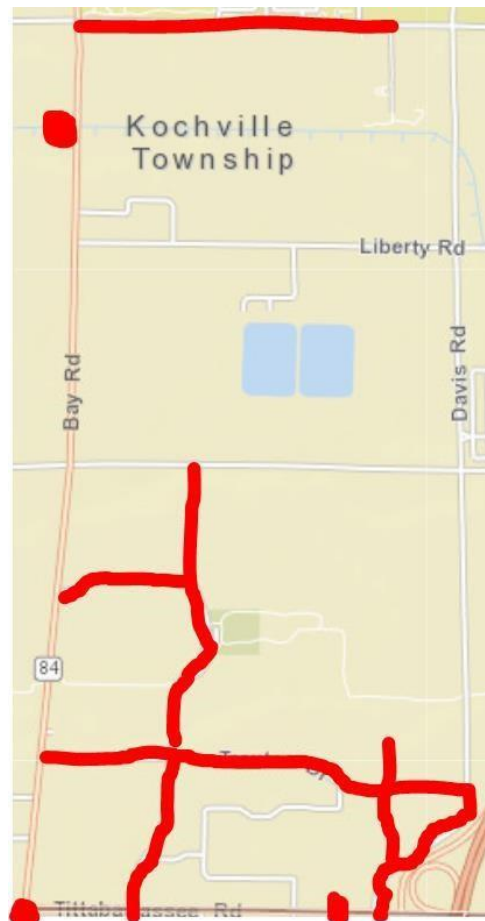


EXHIBIT 2:

Cost of Entire Agreement

The total fee to be paid by the **DDA** to the **CONTRACTOR** for performance of this Agreement by the **CONTRACTOR**, which shall include all services provided in this Agreement, unless expressly set forth herein, shall not exceed Twenty-Seven Thousand, Five Hundred Dollars and Zero Cents (\$27,500.00), without the prior written authorization of the DDA Board. This total fee paid by the **DDA** to the **CONTRACTOR** shall be paid in accordance with Section 4 of this Agreement.

All landscape maintenance as determined by the DDA Director not expressly set forth herein shall be billed at a per hour cost with the cost of all physical goods billed to the **DDA** at the actual amount paid for by the **CONTRACTOR**. This shall include all services performed in addition to those stated in section 2, all services performed outside of the season stated in section 9.3, and outside the duties stated in section 1.

The Parties expressly agree to the fee for services as set forth in this **Exhibit 2** of this Agreement and the payment schedule as set forth in Section 4 of this Agreement

DDA:
KOCHVILLE DOWNTOWN
DEVELOPMENT AUTHORITY

CONTRACTOR:

Lyle Davis, DDA Chairman