Meeting Date: 07/18/2018
211 Williams Street
Royal Oak, MI 48067
Phone: 248-246-3286
downtownroyaloak.org

MEMORANDUM

DATE: **July 12, 2018**
TO: **Royal Oak Downtown Development Authority**
SUBJECT: **Advertising and Marketing Proposal**

On March 5th, the Consumer Marketing Committee authorized the distribution of an RFP for advertising and marketing services to promote Downtown Royal Oak. The RFP was distributed on the Michigan Intergovernmental Trade Network, the downtown website. The DDA received several responses from reputable and talented firms from across southeastern Michigan as well as from out-of-state firms.

Over the course of several regular and special meetings in May and June 2018, the Consumer Marketing Committee reviewed the proposals and conducted interviews of prospective firms. After careful deliberation, the committee selected a firm that it felt stood-out for its imagination, quality, and vision. The committee is pleased to recommend Factory Detroit Incorporated to provide advertising and marketing services for the DDA.

Should the DDA concur with this recommendation, the following resolutions have been prepared for its consideration:

> **Be it resolved**, the Downtown Development Authority approves the recommendation of the Consumer Marketing Committee regarding the selection of the advertising and marketing firm.
>
> **Be it further resolved,** the Downtown Development Authority approves the agreement with Factory Detroit Incorporated for advertising and marketing services, which is subject to any final revisions required by the city attorney, and authorizes the executive director to sign the agreement.

Respectfully Submitted,

SK Kammer

Sean Kammer
Downtown Manager

ADVERTISING AND MARKETING AGREEMENT

This agreement is entered into on the 18th day of July 2018, by and between the Royal Oak Downtown Development Authority, a public body corporation organized pursuant to Act 197, Public Acts 1975, as amended, having offices at 211 Williams Street, Royal Oak, Michigan 48067, hereinafter referred to as "DDA", and Factory Detroit Incorporated, a domestic profit corporation qualified to do business in the State of Michigan, having a mailing address of 215 S Center St #200, Royal Oak, MI, hereinafter referred to as "Agent".

For and in consideration of the mutual promises contained herein, the DDA and Agent do hereby agree as follows:

1. **AGENCY**
   Subject to the terms of this agreement, DDA does hereby appoint Agent as its agent for the following purposes:
   - **i.** Creation of advertising content for DDA and the Royal Oak downtown district; and
   - **ii.** Consultant to DDA for advertising and marketing purposes.

2. **RELATIONSHIP**
   DDA and Agent agree that Agent is an independent contractor and shall pay his or her own employees, income and other taxes as well as all insurance.

3. **DUTIES**
   Agent shall perform the following duties within a period of ninety (90) days from the date this Agreement is approved, unless otherwise extended by the DDA:
   - **a.** Develop a marketing strategy for Downtown Royal Oak including, but not limited to:
     - **i.** Strategies that encourage patrons to shop and dine at downtown businesses.
     - **ii.** Cross-promotion strategies that promote downtown businesses.
     - **iii.** Outreach strategies that take into consideration new media as well as traditional methods including website, social media, television, video, radio, print, apps, etc.
     - **iv.** Develop effective and efficient media-purchasing recommendations for DDA implementation.

   - **b.** Develop advertising and marketing materials that promote Downtown Royal Oak as a regional arts & entertainment destination, as well as a family-friendly destination for city residents.

   - **c.** Develop advertising and marketing materials and other recommendations that help to educate and inform the public about navigating the parking system in Downtown Royal Oak to improve its ease of use.

   "Advertising" as used throughout this agreement means promotional ads of any kind or form, for any product, service, show or other item, and includes television ads, radio ads, magazine ads, newspaper ads, product endorsements, promotional literature, social media ads, videos, books or any other services.

4. ROLE OF DDA & STAFF

- **a.** The advertising and marketing strategy, and all advertising content will be submitted to the DDA for approval before implementation.
- **b.** The DDA will assist in outreach to stakeholders as may be necessary. Additionally, the DDA reserves the right to reject any partners, vendors, or sponsors that it determines may reflect negatively on the organization or the downtown development district.
- **c.** Recommendations may only be executed by DDA staff under the direction of the Executive Director of the DDA.
- **d.** Agent shall not be authorized to bind DDA to any advertising or marketing agreements until Agent obtains the written consent from the Executive Director of the DDA.

5. COMPENSATION

a. DDA shall pay unto Agent for his or her services according to the following pay schedule:

   i. $25,000 upon the DDA's approval of a production plan submitted to DDA by Agent that is consistent with the duties prescribed in Section 3 of this Agreement.
   ii. $25,000 upon successful completion of production of deliverables, and submission of deliverables to the DDA for implementation, in accordance with the approved production plan.
   iii. $25,000 agency fee upon completion of duties outlined in Section 3 of this Agreement.

b. Deliverables rejected by the DDA may be revised and resubmitted by Agent to the DDA within thirty (30) days of rejection, not to extend beyond the term of this Agreement, unless otherwise extended by the DDA.

c. Agent shall submit invoices in accordance with the above pay schedule in section 5(a) of this agreement in order to receive payment from the DDA.

d. Payments shall be disbursed as outlined above in accordance with the City of Royal Oak Accounts Payable schedule.

6. TERM

The term of this agreement shall be for a period of one (1) year from the date this agreement is approved by the DDA and shall terminate with no further obligations for either party, unless extended by written agreement of the parties.

7. TERMINATION

This Agreement may be terminated (i) by either party upon breach by the other party of any of the material provisions of this Agreement, which breach remains uncured for twenty (20) days from the date of receipt of written notice from the non- breaching party to the other party specifying such breach; (ii) by the mutual written agreement of the parties.

8. MODIFICATION

This agreement may not be modified except by amendment reduced to writing and signed by both DDA and Agent. No waiver of this agreement shall be construed as a continuing waiver or consent to any subsequent breach thereof.

9. PARTIAL INVALIDITY

If for any reason any portion of this agreement is found by a court of competent jurisdiction to be illegal or unenforceable, the same shall not affect the validity or enforceability of the remaining provisions.

10. INDEPENDENT COUNSEL

The parties hereto further represent that they have had the opportunity to obtain independent legal counsel before entering this agreement.

11. FURTHER DOCUMENT

The parties further agree that if any other provisions or agreements are necessary to enforce the intent of this document, that both parties will execute same upon request.

12. INDEMNIFICATION

The DDA agrees to indemnify and hold Agent harmless from and against any and all costs, losses or expenses, including reasonable attorneys' fees, that Agent may incur by reason of any third-party claim or suit arising out of or in connection with the DDA's negligence, gross negligence, intentional misconduct or failure to perform pursuant to this Agreement.

Agent agrees to indemnify and hold the DDA harmless from and against any and all costs, losses or expenses, including reasonable attorneys' fees, that the DDA may incur by reason of any third-party claim or suit arising out of or in connection with Agent's failure to perform pursuant to this Agreement, as well as the negligence, gross negligence, or intentional misconduct of Agent, its employees, agents and representatives, contractors or subcontractors, including the employees and representatives of said contractors or subcontractors.

13. INSURANCE

Agent shall at all times during the term of this Agreement maintain current comprehensive general liability insurance coverage on an occurrence basis in the minimum amount of $2 Million (Two Million Dollars) per occurrence. The Agent shall provide a certificate of insurance evidencing such coverage to the Royal Oak DDA and shall name the Royal Oak DDA and the City of Royal Oak as additional insureds thereon solely with respect to the activities which are the subject of this Agreement.

14. NO ASSIGNMENT

No party hereto may assign or transfer its rights or obligations arising under this Agreement, without the prior written consent of the other party hereto. This Agreement shall be binding upon and shall inure to the benefit of the respective permitted successors and assigns of the parties.

15. AUTHORITY

Each party hereto represents and warrants to the other that it has the authority to enter into this Agreement and that it is not a party to any other Agreement which prohibits it from entering into this Agreement or which renders any provision of this Agreement ineffective or unenforceable.

16. GOVERNING LAW AND FORUM

This Agreement and any dispute arising under or relating to it directly or indirectly shall be governed and interpreted under Michigan law, without giving effect to its conflict of law provisions.

17. NOTICE

Any notice by either party to the other under this Agreement shall be in writing and shall be addressed as set forth below, provided, however, that if either party shall have designated a different address by written notice to the other, then such notice shall be provided to the last address so designated.

Factory Detroit Incorporated	Royal Oak DDA
Attn: Mark Lantz	Attn: Sean Kammer, Downtown Manager
215 S Center St #200,	211 Williams Street, PO Box 64
Royal Oak, MI 48067	Royal Oak, MI 48067
info@factorydetroit.com	Sean.kammer@romi.gov

18. COOPERATION

To the extent that the DDA retains any other entity to engage in activities on behalf of the DDA compatible with Agent's duties, Agent agrees to cooperate with any such entities with respect to such activities.

19. ENTIRE AGREEMENT

This Agreement supersedes any prior understandings or oral agreements between the parties regarding the subject matter hereof and constitutes the entire understanding and agreement between the parties with respect to the subject matter hereof, and there are no agreements, understandings, representations or warranties among the parties other than those set forth herein.

Royal Oak DDA

_____ _____

Timothy E. Thwing, Executive Director — Date

Royal Oak Downtown Development Authority

Factory Detroit Incorporated

_____ July 12, 2018

Mark Lantz, President — Date

Factory Detroit Incorporated